

SUBMISSIONS FOR THE 2019-20 POLICY ADDRESS CONSULTATION

October 2019

Justice Centre Hong Kong (Justice Centre) appreciates the opportunity to provide a submission to the 2019-2020 Policy Address and its consultation process.

Recent protests in Hong Kong and the disproportionate use of force by the Hong Kong Police Force

There are numerous reported incidences since June of the Hong Kong Police Force's disproportionate use of force, including the shooting of a live round at the chest of a 18-year-old protestor¹, the use of tear gas launched from tall buildings onto crowds below², projectiles aimed at protesters³ and journalists⁴, and tear gas canisters fired into crowded, enclosed spaces⁵.

Under Article 12 of the United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which applies to Hong Kong, the Government is obliged to establish prompt and impartial investigations whenever there are reasonable grounds to believe that an act of torture or cruel, inhumane or degrading treatment or punishment has been committed. This means that, even in the absence of a formal complaint, the relevant authorities must undertake an impartial, effective, independent and thorough investigation as soon as they receive information indicating any instance of such acts. News outlets and netizens have reported and recorded numerous incidences that should be independently investigated as a step in restoring the public's faith in the Government to uphold the rule of law. The scope of such an independent investigation should also include alleged inaction of the police, including in response to the assault against passengers in the Yuen Long MTR station by white-clad men on 21 July 2019⁶.

¹ Emma Graham-Harrison and Verna Yu, "Hong Kong protester shot with live round during China National Day rally", The Guardian (1 October 2019). Available at:

<https://www.theguardian.com/world/2019/oct/01/hong-kong-protester-shot-with-live-round-during-china-national-day-rally>

² K.K. Rebecca Lai and Austin Ramzy, "1,800 Rounds of Tear Gas: Was the Hong Kong Police Response Appropriate?", The New York Times (18 August 2019). Available at:

<https://www.nytimes.com/interactive/2019/08/18/world/asia/hong-kong-tear-gas.html>

³ Kris Cheng, "Hong Kong police shoot projectiles at close range in Tai Koo, as protester suffers ruptured eye in TST", Hong Kong Free Press (12 August 2019). Available at:

<https://www.hongkongfp.com/2019/08/12/hong-kong-police-shoot-projectiles-close-range-tai-koo-protester-suffers-ruptured-eye-tst/>

⁴ Kris Cheng, "Hong Kong riot police target journalists during Sunday unrest, as reporter shot in the eye with projectile", Hong Kong Free Press (30 September 2019). Available at:

<https://www.hongkongfp.com/2019/09/30/hong-kong-riot-police-target-journalists-sunday-unrest-reporter-shot-eye-projectile/>

⁵ See note 2 above.

⁶ Lily Kuo and Verna Yu, "Where were the police? Hong Kong outcry after masked thugs launch attack", The Guardian (22 July 2019). Available at: <https://www.theguardian.com/world/2019/jul/22/where-were->

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Justice Centre stresses that the existing accountability mechanism for the police lacks independence and effectiveness, thus falling short of fulfilling Hong Kong's international obligations outlined above.

Various United Nations human rights bodies have consistently called for reform of the police complaint system. For instance, the Committee against Torture observed in its most recent concluding observations on Hong Kong dated February 2016 that investigations of police complaints continue to be conducted by the Complaints Against Police Office (CAPO), which is a separate division of the police force. The committee is also concerned that the Independent Police Complaints Council remains an advisory and oversight body of the investigations of CAPO, with no power to conduct investigations on its own. The committee recommended that Hong Kong establish *“a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint”*⁷.

The Human Rights Committee expressed similar concerns in its most recent concluding observations on Hong Kong dated April 2013 that investigations of police misconduct are carried out by police themselves through CAPO and that the IPCC has only advisory and oversight functions to monitor and review the activities of the CAPO and that the members of IPCC are appointed by the Chief Executive. The Committee recommended that Hong Kong *“establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints”*⁸.

Further, Justice Centre opposes the use of the Emergency Regulations Ordinance by the Administration and the corresponding introduction of criminal offences for face covering. The Administration has unnecessarily bypassed the Legislative Council in creating criminal offences, jeopardizing the rule of law and the separation of powers in Hong Kong. The introduction of these offences also infringes on the right to privacy and goes against the Administration's obligation to facilitate an enabling environment for the protection of the freedom of peaceful assembly, the right to security and other related rights⁹. The Administration has also failed to

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⁷ Committee against Torture, “Concluding observations on the fifth periodic report of China with respect to Hong Kong, China” CAT/C/CHN-HKG/CO/5 (3 February 2016) at paragraphs 8 and 9. Available at: <https://undocs.org/en/CAT/C/CHN-HKG/CO/5>

⁸ Human Rights Committee, “Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013)” CCPR/C/CHN-HKG/CO/3 (29 April 2013) at paragraph 12. Available at: <https://undocs.org/en/CCPR/C/CHN-HKG/CO/3>

⁹ See Human Rights Council, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies” A/HRC/31/66 (4 February 2016). Available at:

show how the introduction of such offences will ‘deter violent and illegal behaviour’ and ‘restore the normal function society’, as the Administration claims¹⁰; in fact, it risks inflaming the situation. This raises serious concern over the constitutionality of the decision of the Administration to introduce such offences.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Uphold its commitment under the Convention against Torture;
- Implement recommendations made by the Committee against Torture and Human Rights Committee to establish an independent mechanism to investigate abuse of powers and excessive use of force by the police; and
- Repeal the criminal offences related to face covering introduced by way of the Emergency Regulations Ordinance.

Asylum seekers, refugees, victims of torture, forced labour, human trafficking and other people seeking protection

In February 2016, the Hong Kong Administration started a “comprehensive review” of the strategy of handling non-refoulement claims. The stated objective of the review is to reduce the overall number of non-refoulement claimants, so as to ‘tackle all related issues, including crimes, at its root.’¹¹ The “comprehensive review” is focused principally on four key aspects: (a) pre-arrival control, (b) screening procedures, (c) detention; and (d) enforcement and removal.¹²

On 6 July 2018, as part of the “comprehensive review”, the Administration announced it is considering proposing a number of legislative amendments, including:

- (i) Shortening the time permitted for claimants to complete and submit a Non-refoulement Claim Form;
- (ii) Reducing the time allowed for the inclusion of supporting documents and for the filing of a notice of appeal to the Torture Claims Appeal Board;
- (iii) Allowing the Immigration Department to conduct a screening interview in a language other than the claimant’s mother-tongue (against the express intentions of the applicant/claimant); and
- (iv) Allowing immigration officers to possess arms and ammunition.¹³

<https://undocs.org/A/HRC/31/66>

¹⁰ The Government of the Hong Kong Special Administrative Region Press Release, “Prohibition on Face Covering Regulation gazette” (4 October 2019).

Available at: <https://www.info.gov.hk/gia/general/201910/04/P2019100400613.htm?fontSize=1>

¹¹ Secretary for Security, “Reply to Joint Letter from HON Leung Che-cheung, Dr HON Elizabeth Quat and Dr HON Chiang Lai-wan in the Panel on Security of the Legislative Council”, LegCo Paper No.

CB(2)623/17-18(01) (29 December 2017), at paragraph 4. Available at: <https://www.legco.gov.hk/yr17-18/english/panels/se/papers/secb2-623-1-e.pdf>

¹² *Ibid*, at paragraph 2.

¹³ Security Bureau and Immigration Department, “An Update on the Comprehensive Review on the Strategy of Handling Nonrefoulement Claims: Proposals to Amend the Immigration Ordinance (Cap. 115)”,

While these changes appear to have been proposed as a way of combating delays currently existing in the process, there has been no explicit explanation given. There is indication that the Government believes such delays are deliberate on the part of non-refoulement claimants, when there is no publicly available data supporting this claim.¹⁴

Furthermore, none of the recommendations made by the Committee against Torture in its concluding observations on Hong Kong in February 2016 has been mentioned in Government papers relating to the comprehensive review¹⁵.

On human trafficking, in January 2019, Justice Centre published *Not Stopping Here: Hong Kong as a Transit Site for Human Trafficking*, exploring how and why Hong Kong may be a transit site for human trafficking¹⁶. Cases of potential human trafficking through Hong Kong include the deployment of migrant domestic workers hired in Hong Kong in mainland China; the involuntary movement of a woman through Hong Kong for forced labour in sex work; and deception into drug trafficking through Hong Kong. The research suggests that time in “transit” in Hong Kong can be protracted and used to facilitate human trafficking or exploitation.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Request the extension of the Convention relating to the Status of Refugees and its 1967 Protocol to Hong Kong;
- Accept and implement the Committee against Torture’s recommendations that Hong Kong should review the non-refoulement claim screening procedure to ensure that persons in need of international protection are fully protected against refoulement;
- Meet with and consult civil society and non-refoulement claimants in a considered, meaningful manner on the comprehensive review;
- Request the extension of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children to the United Nations Convention against Transnational Organized Crime to Hong Kong;
- Introduce a comprehensive anti-human trafficking bill to strengthen prosecution, protection and prevention;

LC Paper No. CB(2)1751/17-18(01) (9 July 2018). Available at: <https://www.legco.gov.hk/yr17-18/english/panels/se/papers/se20180710cb2-1751-1-e.pdf>

¹⁴ Ibid, at paragraph 5 the Security Bureau and the Immigration Department claim that there have been “delay tactics”.

¹⁵ For the Committee’s recommendations, see Committee against Torture, “Concluding observations on the fifth periodic report of China with respect to Hong Kong, China” CAT/C/CHN-HKG/CO/5 (3 February 2016). Available at: <https://undocs.org/en/CAT/C/CHN-HKG/CO/5>

¹⁶ Justice Centre Hong Kong, “Not Stopping Here: Hong Kong as a Transit Site for Human Trafficking” (January 2019). Available at: https://www.justicecentre.org.hk/framework/uploads/2019/01/JC_eA4_28pp_OP9-2.pdf

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- Meet with and consult civil society regularly and meaningfully on its policies in relation to human trafficking; and
- Investigate why and how people are being moved through Hong Kong and the vulnerabilities of individuals subject to human trafficking and exploitation, and adapt laws and policies accordingly for more adequate victim identification and protection, prevention and prosecution.

Consultation methods

Hong Kong is facing unprecedented challenges in the upcoming year whereby timely, meaningful, transparent, open and inclusive engagement with civil society and the general public is vital to restoring the public's faith in the Government's policy-making process. We welcome the Government's stated intention to reform the consultative process "to ensure that it can listen to views from different sectors before implementing policies."¹⁷ While the "First Community Dialogue" held on 26 September 2019 gave the public an opportunity to voice their views and concerns, the dialogue did not take place on the basis that the Government would implement the main demands of a large section of the public. Furthermore, the one-off dialogue was only organized after months of protests, with the police using disproportionate force and taking inadequate action in response to retaliation against protestors.

In its consultation exercise for this Policy Address, while the Government generally meets with specific sectors of its choosing, many civil society organisations, including Justice Centre, have not been invited to these meetings during Chief Executive Lam's period in office so far. This is despite repeated concerns raised by Justice Centre in our submission on the consultation exercise for the Policy Address last year¹⁸ and at the Human Rights Forum held by the Hong Kong Government.

There has also been no Human Rights Forum meeting held since January 2019, and no meeting on the concluding observations made by the Committee on the Elimination of Racial Discrimination on Hong Kong in August 2018¹⁹.

It is also noteworthy that some of these forums are not available in Hong Kong's official languages. For example, the vast majority of the posts on the following Facebook pages are in Chinese only: "林鄭月娥 Carrie Lam"²⁰, "政務司司長辦公室" (the Office of the Chief Executive)²¹,

¹⁷ Information Services Department, "Consultative process to be reformed" (9 July 2019). Available at: https://www.news.gov.hk/eng/2019/07/20190709/20190709_105003_925.html?type=category&name=admin&tl=t

¹⁸ Justice Centre Hong Kong, "Submissions for the 2018-2019 Police Address Consultation" (October 2018). Available at: <http://www.justicecentre.org.hk/framework/uploads/2014/03/Justice-Centre-Hong-Kong-Policy-Address-2018-Submission-final.pdf>

¹⁹ See "Human Rights Forum, Meetings" in website of the Constitutional and Mainland Affairs Bureau. Available at: https://www.cmab.gov.hk/en/issues/human_forum.htm

²⁰ "林鄭月娥 Carrie Lam" in Facebook. Available at: <https://www.facebook.com/carrielam.hksar/>

²¹ "政務司司長辦公室" in Facebook. Available at: <https://www.facebook.com/CSOGOV/>

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“民政事務局 Home Affairs Bureau HK”²², “屋宇署 Buildings Department”²³, “公務員事務局 Civil Service Bureau”²⁴, “發展局 Development Bureau”²⁵, “財經事務及庫務局 Financial Services and the Treasury Bureau”²⁶, “勞工及福利局 Labour and Welfare Bureau”²⁷, and “政府青少年網站 Youth.gov.hk”²⁸. In addition, Justice Centre notes that the principal website for the Policy Address remains bare and is not regularly updated with records of meetings or other consultation activities. The deadline for submission is not stated on the website. When we enquired about the deadline by phone, the Government could not provide a definite answer. This limits the transparency of the process and raises doubt over how meaningful it is.

The United Nations Human Rights Council has consistently noted the benefits of civil society participating in policy and legislative development. For example, Human Rights Council resolution 32/31 “Civil society space” urges States to create and maintain a safe and enabling environment for civil society, including:

“Providing for the participation of civil society actors, including by enabling them to participate in public debate on decisions that would contribute to the promotion and protection of human rights and the rule of law and on any other relevant decisions, and to provide input on the potential implications of legislation when it is being developed, debated, implemented or reviewed, and exploring new forms of participation and opportunities brought about by information and communications technology and social media.”²⁹

Beyond the Human Rights Council, conducting real and effective consultations is also consistent with Goal 16 of the Sustainable Development Goals (SDGs), on promoting just, peaceful and inclusive societies, by ensuring responsive, inclusive, participatory and representative decision-making at all levels. Additionally, Goal 17 of the SDGs, on revitalising the global partnership for sustainable development, calls for an increase in multi-stakeholder partnerships, including encouraging and promoting effective public and civil society partnerships.

²² “民政事務局 Home Affairs Bureau HK” in Facebook. Available at:

<https://www.facebook.com/HomeAffairsBureau>

²³ “屋宇署 Buildings Department” in Facebook. Available at:

<https://www.facebook.com/BuildingsDepartment/>

²⁴ “公務員事務局 Civil Service Bureau” in Facebook. Available at: <https://www.facebook.com/csbgovhk>

²⁵ “發展局 Development Bureau” in Facebook. Available at:

<https://www.facebook.com/DevelopmentBureau>

²⁶ “財經事務及庫務局 Financial Services and the Treasury Bureau” in Facebook. Available at:

<https://www.facebook.com/fstbhk/>

²⁷ “勞工及福利局 Labour and Welfare Bureau” in Facebook. Available at:

<https://www.facebook.com/LabourAndWelfareBureau>

²⁸ “政府青少年網站 Youth.gov.hk” in Facebook. Available at: <https://www.facebook.com/youthgovhk>

²⁹ United Nations Human Rights Council, “32/... Civil Society Space” A/HRC/32/L.29 (27 June 2016). Available at: <https://undocs.org/en/A/HRC/32/L.29>

Recommendations

Justice Centre recommends the Hong Kong Government:

- Issue public directions to all bureaux and departments which encourage face to face meetings with civil society organisations;
- Adopt a default position of full public consultation for all forms of policy and legislative development;
- Develop new forms of consultation, which are empowering, participatory and consistent with international best practice principles;
- Prior to the next Policy Address, engage in a comprehensive public consultation with civil society, including face-to-face meetings with relevant stakeholders by senior representatives from relevant bureaux and departments;
- Increase the frequency of Human Rights Forum meetings and ensuring the points and concerns raised by civil society organisations are meaningfully addressed in the meetings; and
- Implement a Regulatory Impact Assessment mechanism to enhance transparency and deliver better policy outcomes.

I trust that this information is of assistance. Please contact Annie Li, Senior Research and Policy Officer (annie@justicecentre.org.hk) with any questions.

About Justice Centre Hong Kong

Justice Centre Hong Kong is a non-profit organisation focused on the promotion of human rights through our legal, psychosocial, research, policy and advocacy work. We are committed to driving change for a just and fair society.

Founded in 2007 as The Hong Kong Refugee Advice Centre, over seven years we helped over 2,000 men, women and children on the road to a new life.

Building on our expertise in refugee issues, in 2014 we identified a clear need for an increased response to tackling forced labour and human trafficking in Hong Kong, and expanded our remit to fill this gap and rebranded as Justice Centre Hong Kong. We now help around 300 people each year through our direct services and aim to benefit many more through our research, policy and advocacy work.