

SUBMISSIONS FOR THE 2020-2021 POLICY ADDRESS CONSULTATION

October 2020

Justice Centre Hong Kong (Justice Centre) appreciates this opportunity to provide submissions to the 2020-2021 Policy Address consultation.

1. Refugees, asylum seekers and people seeking protection in Hong Kong

1.1 Comprehensive review of the Unified Screening Mechanism (USM)

In 2018, the Government announced proposals to amend the Immigration Ordinance (Cap. 115) as part of its comprehensive review of the strategy of handling non-refoulement claims¹. Not only do these proposals have serious implications on the human rights of protection claimants, it is also questionable whether the stated aim of increasing the efficiency of the USM can be achieved. We take this opportunity to reiterate our concerns and recommendations made in previous submissions on this matter, see: *Submission to the panel on Security for its meeting on 8 January 2019* (January 2019) LC Paper No. CB(2)565/18-19(02)² and *Submission to the subcommittee to follow up issues relating to the unified screening mechanism for non-refoulement claims for its meeting on 27 November 2018* (November 2018) LC Paper No. CB(2)325/18-19(01)³.

Hong Kong's substantiation rate for non-refoulement claims remains at less than 1%, which is among the lowest in the developed world. United Nations human rights bodies such as the Human Rights Committee and the Committee against Torture have expressed concerns that the threshold for granting non-refoulement protection in Hong Kong may be too high⁴. The low recognition rate is also indicative of systematic issues within the USM, such as poor quality decisions, a general lack of substantive and procedural fairness, and a lack of legal representation discussed below.

Justice Centre asks that the Government adopt a holistic, human rights-based approach in improving the USM following meaningful consultation with civil society and protection claimants. Enhancing the fairness and transparency of the USM ensures resources are allocated more efficiently. For example, improving the quality of USM decisions can reduce the number of subsequent judicial review applications and reduce the courts' caseload on non-refoulement-related matters.

1.2 Quality of USM decisions

Justice Centre observes that USM decisions are of a low standard. Basic mistakes are frequently made, including mistaking claimants' countries of origin, using unverified information from Wikipedia as

¹ Legislative Council Panel on Security, "An Update on the Comprehensive Review on the Strategy of Handling Non-refoulement Claims: Proposals to Amend the Immigration Ordinance (Cap. 115)" (10 July 2018) LC Paper No. CB(2)1751/17-18(01); "An Update on the Comprehensive Review of the Strategy of Handling Non-refoulement Claims: Proposals to Amend the Immigration Ordinance (Cap. 115)" (8 January 2019). LC Paper No. CB(2)529/18-19(03).

² Justice Centre Hong Kong, "Submissions to the panel on Security for its meeting on 8 January 2019" (January 2019) LC Paper No. CB(2)565/18-19(02). Available at: <https://www.legco.gov.hk/yr18-19/english/panels/se/papers/se20190108cb2-565-2-e.pdf>

³ Justice Centre Hong Kong, "Submission to the subcommittee to follow up issues relating to the unified screening mechanism for non-refoulement claims for its meeting on 27 November 2018" (November 2018) LC Paper No. CB(2)325/18-19(01). Available at: https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-325-1-e.pdf

⁴ Committee against Torture, "Concluding observations on the fifth periodic report of China with respect to Hong Kong, China" (3 February 2016) CAT/C/CHN-HKG/CO/5 at [6]; Human Rights Committee, "Concluding observations on the third periodic report of Hong Kong, China" (29 April 2013) CCPR/C/CHN-HKG/CO/3 at [9].

evidence to determine claims⁵, or using outdated, substandard or otherwise non-credible sources as country of origin information. We also note that some USM decisions display an overall poor grasp of non-refoulement law and related concepts. Examples include failing to recognise sexual and gender-based violence as acts that can constitute torture, ill-treatment and/or persecution, and failing to consider child-specific forms of persecution and human rights violations (such as child soldier recruitment risks) in cases involving families.

There is also a worrisome trend of adjudicators displaying cynicism or hostility toward claimants. In *Villarico Louterliz Talag v Torture Claims Appeal Board*⁶, the adjudicator insisted the appeal hearing continue despite the pregnant claimant going into labour. This decision was found by the High Court to be unlawful as it failed to adhere to a high standard of fairness⁷.

Crucially, Torture Claims Appeal Board (TCAB) and Non-refoulement Claims Petition Office (NRCPO) decisions are not published, in contrast to other common law jurisdictions such as the UK⁸, Canada⁹ and Australia¹⁰. The lack of transparency makes it difficult for civil society to monitor the decision-making of adjudicators, and limits the system's transparency and accountability.

1.3 Access to legal services

Access to legal services for protection claimants throughout the screening process is crucial to maintaining the high standards of fairness required by law following *Secretary for Security v Sakthevel Prabakar*¹¹. Justice Centre notes with concern that most claimants at the appeal stage of the USM are not provided with publicly-funded legal assistance (PFLA). Likewise, most claimants pursuing judicial reviews against their USM decisions are unable to obtain legal advice or secure legal aid.

The continuance of PFLA at the appeal stage depends upon the opinion of the handling duty lawyer regarding the merits of the claim or appeal. Statistics from 2014-2020 shows that only 8% of claimants are provided with PFLA at the appeal stage¹². Although claimants who are rejected for PFLA at the appeal stage are entitled to request a second opinion by a fresh duty lawyer as to the merits of their case, this option is not published anywhere and there is no apparent requirement for claimants to be informed of this option. Less than 1% of claimants requested a second opinion in the said period, which suggests most claimants are not aware of their right to request this¹³. Legal representation at the appeal stage ensures claimant's cases are properly presented and maintains the quality of decisions, which can then lower the possibility of the courts having to intervene in problematic USM decisions in judicial review proceedings.

Moreover, the difficulty in obtaining legal aid means that most protection claimants before the courts are unrepresented. In 2018, only about 3% of claimants who applied for legal aid for judicial review of

⁵ See for example *Md Nazir Ahmed Sarkbar v Torture Claims Appeal Board* [2018] HKCFI 801.

⁶ [2018] HKCFI 468.

⁷ *Villarico Louterliz Talag v. Torture Claims Appeal Board* [2018] HKCFI 468; HCAL 179/2017.

⁸ See the UK Government, "Immigration and asylum tribunal appeal decisions". Available at: <https://www.gov.uk/immigration-asylum-appeal-decisions>

⁹ See Immigration and Refugee Board of Canada, "Decisions". Available at: <https://irb-cisr.gc.ca/en/decisions/Pages/index.aspx>

¹⁰ See Australasian Legal Information Institute, "Refugee Review Tribunal of Australia". Available at: <http://www6.austlii.edu.au/cgi-bin/viewdb/au/cases/cth/RRTA/>

¹¹ [2005] 1 HKLRD 289

¹² Security Bureau, "Publicly funded legal representation at TCAB 2014-2020" (September 2020). Available at: https://accessinfo.hk/en/request/publicly_funded_legal_representa#incoming-1431

¹³ Ibid

USM decisions were successful¹⁴. Unrepresented applicants create a lot more work for the courts, as they are unable to present their cases succinctly or understand and comply with court procedures, all of which create significant delays. Improving protection claimant's access to legal services should also help ensure that individuals whose cases do not have merit are recommended not to pursue them at appeal or judicial review.

1.4 Social welfare support

Protection claimants are not eligible for humanitarian assistance during the period where they are waiting for their permission of stay to expire in order to lodge non-refoulement claims, and the period between the filing of their written signification and their registration at the International Social Service (ISS, the Social Welfare Department's outsourced service provider). This means protection claimants could go for months without access to basic subsistence, including food, shelter, or medical care.

Further, the current level of humanitarian assistance provided to protection claimants has not been adjusted since 2014. The minimal level of assistance compounded by claimants' inability to take up legal work in effect forces them to live for prolonged periods in poverty and destitution. Protection claimants' socio-economic vulnerabilities were exacerbated as COVID-19 swept through Hong Kong earlier this year; many claimants were unable to purchase food, acquire sanitation products, and access healthcare services, for example¹⁵.

1.5 Durable solutions

There is currently no policy on durable solutions for protection claimants with substantiated claims. Substantiated claimants are only granted non-refoulement protection, and no additional rights, such as residency rights, greater socio-economic protection or any legal right to work are conferred. Only claimants substantiated on persecution grounds are eligible to be referred to the UNHCR Hong Kong Sub-office for resettlement, and the number of individuals resettled remains low¹⁶.

While substantiated claimants may apply for permission to take up employment, the permission is only granted for a six-month period. This arrangement means that claimants need to reapply for permission to take up employment frequently, which is unattractive to employers and increases the burden on Hong Kong to provide continued support to this group.

Recommendations

¹⁴ Legal Aid Department, "Legal aid applications for JR of the TCAB's decisions" (2019) Available at: https://accessinfo.hk/en/request/legal_aid_applications_for_jr_of

¹⁵ See for example, "Policy Recommendations: supporting the refugee community in Hong Kong during the COVID-19 pandemic" (April 2020). Available at: https://docs.google.com/document/d/169_zAGkuEp9mN_b3_vXNsUYPFouL88eG/edit; Refugee Concern Network, "Refugees in Hong Kong – a community forgotten in the coronavirus crisis", Hong Kong Free Press (21 March 2020). Available at: <https://hongkongfp.com/2020/03/21/refugees-hong-kong-community-forgotten-coronavirus-crisis/>

¹⁶ Security Bureau, "Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims Follow-up matters to the meeting of 27 November 2018" (January 2019) LC Paper No. CB(2)592/18-19(01). Available at: https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-592-1-e.pdf

Justice Centre recommends the Hong Kong Government to:

- Request the extension of the Convention relating to the Status of Refugees and its 1967 Protocol to Hong Kong;
- Accept and implement recommendations made by United Nations human rights mechanisms on issues relating to protection claimants, including:
 - The Committee against Torture’s recommendations that Hong Kong review the non-refoulement claim screening procedure to ensure that persons in need of international protection are fully protected against refoulement¹⁷;
 - The Committee on the Rights of the Child’s recommendations that Hong Kong should combat discrimination against refugee, asylum-seeking or undocumented children; ensure these children have equal access to basic services including health, education and other social services; and ensure these children have access to special care and other support services, including legal representation¹⁸.
 - The Committee on Economic, Social and Cultural Rights’ recommendations that Hong Kong adopt legislation on asylum seekers and refugees in order to improve their enjoyment of economic, social and cultural rights, granting them access to legal employment, including vocational training, and adequate housing¹⁹.
- Meet with and consult civil society and protection claimants in a considered, meaningful manner on the comprehensive review and related policies on protection claimants;
- Publish redacted TCAB/ NRCPO decisions;
- Improve protection claimants’ access to legal services

2. Immigration detention

The recent hunger strike by detainees at the Castle Peak Bay Immigration Centre (CIC) highlighted the lack of transparency in Hong Kong’s immigration detention regime and raised concerns about potential violations of detainees’ human rights.

2.1 Lack of data on immigration detention

Since 2016, the Immigration Department has detained more than 10,000 individuals annually²⁰. There is however very little publicly available information about the detainee population (such as their age, gender, immigration status and national origin), the duration of detention, and detention condition. The lack of information makes it incredibly difficult for civil society to monitor the prevalence of immigration detention. In this regard we would like to draw the Government’s attention to Objective 1 of the Global Compact on Migration, which provides that the collection and utilization of accurate and

¹⁷ Committee against Torture (CAT/C/CHN-HKG/CO/5) at [6] – [7].

¹⁸ Committee on the Rights of the Child, “Concluding observations on the combined third and fourth periodic reports of China” (29 October 2013) CRC/C/CHN/CO/3-4 at [29], [30], [82] and [84].

¹⁹ Committee on Economic, Social and Cultural Rights, “Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China” E/C.12/CHN/CO/2 (13 June 2014) at [41], [42] and [51]

²⁰ Immigration Department, “Appendix 13 – Enforcement Branch Statistics”, Annual Report 2018. Available at: https://www.immd.gov.hk/publications/a_report_2018/en/appendices-13.html

disaggregated data is crucial to evidence-based policy-making and well-informed public discourse on migration issues²¹.

2.2 Lack of published policy or guidance

The Government has yet to develop a coherent and transparent policy to ensure vulnerable persons are not detained arbitrarily or for prolonged periods of time. In particular, there is insufficient guidance or policy to ensure the timely identification of survivors of torture or CIDTP and thereby positively ensure they are not detained due to their specific vulnerability. In this regard, Justice Centre estimates that 30-40% of our clients, including children, have been detained at some point during their asylum claims. Amongst those who were detained, around 26% have been identified by Justice Centre as survivors of torture and/or CIDTP and as such should not have been detained in the first place.

Moreover, the Immigration Department has yet to release the CIC Operational Manual (the Manual) for public access, despite undertakings made in 2010 to publish the Manual when it took over operation of the CIC²².

2.3 Lack of effective oversight

Complaints against members of the Immigration Department are investigated internally by the Department²³. This arrangement casts doubt on the impartiality and effectiveness of the complaint mechanism, as detainees may fear retaliation for reporting abuse. Likewise, visits conducted by Justices of the Peace (JP) are not effective as a monitoring mechanism. Legislators and civil society organisations have noted that visits conducted by JPs at places of detention were rarely unannounced, and detainees often refrained from lodging complaints for fear of reprisals²⁴. There is also no established mechanism for civil society organisations to regularly access detention facilities to monitor the situation.

2.4 Allegations of abuse and substandard conditions of detention

²¹ Global Compact for Migration, “Global Compact for Safe, Orderly and Regular Migration – Intergovernmentally Negotiated and Agreed Outcome” (13 July 2018). Available at: https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

²² Subcommittee on Subsidiary Legislation Relating to Transfer of Management of the Castle Peak Bay Immigration Centre “Follow-up to Meeting on 5 March 2010” (2010) LC Paper No. CB(2)1083/09-10(02). Available at: https://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc52/papers/sc520315cb2-1083-2-e.pdf

²³ Hong Kong SAR Government, “The Hong Kong Special Administrative Region (HKSAR) Government’s Response to the List of Issues adopted by the United Nations Committee against Torture in relation to the sixth periodic report of the People’s Republic of China” (November 2015) at [18.3]. Available at: https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Response_to_LOI_CAT_e.pdf

²⁴ Cheng Tsing-yi 鄭靖而, “JP visits not unannounced, organisations asks for review of prisons complaints mechanism 太平紳士巡倉非突擊 團體促檢討監獄投訴機制”, Citizen News (8 March 2019). Available at: https://www.hkcnews.com/article/18939/%E6%87%B2%E6%95%99%E7%BD%B2-%E5%9B%9A%E6%AC%8A-%E7%AB%8B%E6%B3%95_%E6%9C%83-18939/%E5%A4%AA%E5%B9%B3%E7%B4%B3%E5%A3%AB%E5%B7%A1%E5%80%89%E9%9D%9E%E7%AA%81%E6%93%8A-%E5%9C%98%E9%AB%94%E4%BF%83%E6%AA%A2%E8%A8%E7%9B%A3%E7%8D%84%E6%8A%95%E8%A8%B4%E6%A9%9F%E5%88%B6

Detainees and civil society organisations have long expressed concerns about the poor conditions at immigration detention facilities, such as substandard food, the lack of basic amenities such as beds and blankets, poor hygiene and rat infestations²⁵.

In addition to these concerns, there are alarming reports about substandard medical care and rights violations. Female detainees alleged that they were subject to strip search conducted by male medical officers, and detainees with serious pre-existing medical conditions alleged that they did not receive the treatment they needed²⁶. There appears to be a lack of mental health support for detainees, which is essential as detention may increase detainees' likelihood of developing mental health issues. We are aware of at least one case of a detainee attempting suicide due to their prolonged detention²⁷. Former detainees also alleged that they were subject to physical and verbal abuse, including the punitive use of strip search and solitary confinement²⁸.

Recommendations

Justice Centre recommends the Hong Kong Government to:

- Collect and regularly publish statistics on the number of immigration detainees at all places of detention, disaggregated by sex, age, nationality and immigration status;
- Meet with and consult civil society, detainees and former detainees in a considered and meaningful manner on reforming Hong Kong's immigration detention regime
- Accept and implement recommendations made by United Nations human rights mechanisms on issues relating to immigration detention, including:
 - The Committee against Torture's recommendation that Hong Kong establish a fully independent mechanism to receive and investigate complaints in all places of detention; empower the Justices of Peace to monitor and visit all places of detention or, alternatively, establish an independent body to monitor all places of detention; reduce

²⁵ Laura Westbrook, "Coronavirus: Hong Kong lawyers, lawmakers flag hygiene issues at detention centre, but Immigration says health measures in place", SCMP (26 April 2020). Available at: <https://www.scmp.com/news/hong-kong/health-environment/article/3081544/coronavirus-hong-kong-lawyers-lawmakers-flag>

²⁶ "Male doctor strip searched me: expelled Indonesian" RTHK (7 December 2019). Available at: <https://news.rthk.hk/rthk/en/component/k2/1496483-20191207.htm>

²⁷ Cheng Tze-yu 鄭祉愉, "Vietnamese Refugee Golden Eagle's second life sentence 海上出世的越南難民「金鷹」出獄後的「第二次」終身監禁", Ming Pao Weekly (28 July 2018). Available at: <https://www.mpweekly.com/culture/%E8%B6%8A%E5%8D%97-%E8%B6%8A%E5%8D%97%E6%88%B0%E7%88%AD-%E8%B6%8A%E5%8D%97%E8%88%B9%E6%B0%91-79490>

²⁸ "Subdued during strip-search and medications withheld: CIC detainees allege abuse 遭赤裸制服、被拒提供藥物 青山灣中心羈留人士控訴受虐" Stand News (8 June 2020). Available at: <https://www.thestandnews.com/society/%E9%81%AD%E8%B5%A4%E8%A3%B8%E5%88%B6%E6%9C%8D-%E8%A2%AB%E6%8B%92%E6%8F%90%E4%BE%9B%E8%97%A5%E7%89%A9-%E9%9D%92%E5%B1%B1%E7%81%A3%E4%B8%AD%E5%BF%83%E7%BE%88%E7%95%99%E4%BA%BA%E5%A3%AB%E6%8E%A7%E8%A8%B4%E5%8F%97%E8%99%90/>; "CIC detainees allege inhuman treatment. Concern group accuses Immigration of distorting facts, suppressing the fourth estate CIC 羈留人士稱被不人道對待 關注組斥入境處歪曲事實、打壓第四權" Independent Media (19 August 2020). Available at: <https://www.inmediahk.net/node/1076597>

and regulate the use of solitary confinement in line with international standards; and establish guidelines to regulate the use of strip search²⁹.

- The Committee on the Rights of the Child’s recommendation that Hong Kong cease the practice of detaining asylum-seeking and refugee children³⁰
- Develop guidance to identify detainees in situations of vulnerability or risk, such as LGBTI individuals, victims of torture, victims of trafficking, and individuals with mental or physical disabilities;
- Immediately publish the CIC Operational Manual;

3. Human trafficking

Evidence compiled by civil society organisations³¹ and other stakeholders, such as the United States Department of State³², shows that Hong Kong remains a source, destination, and transit site for human trafficking.

While the Government has a human trafficking victim screening mechanism in place³³, Justice Centre is concerned about the adequacy of the mechanism. In 2019, the Government only identified 2 people as victims of human trafficking out of 6,790 people screened for this purpose³⁴. We are concerned that the low number of victims identified reflects inadequacies of the victim identification mechanism, including vagueness of the screening form, lack of training for police and immigration officers, and the lack of legal representation for victims at their screening interviews.

Civil society efforts to screen victims suggest the number of victims is significantly higher³⁵. For instance, Justice Centre estimated in 2016 that 17% of migrant domestic workers in Hong Kong were in conditions of forced labour, and among those workers 14% had been trafficked into it³⁶. This means

²⁹ Committee against Torture (CAT/C/CHN-HKG/CO/5) at [8], [9], [16], [17], [18], [19]; Committee against Torture, “Concluding observations of the Committee against Torture: Hong Kong Special Administrative Region” CAT/C/HKG/CO/4 at [18]

³⁰ Committee on the Rights of the Child CRC/C/CHN/CO/3-4 at [84]

³¹ See for example, Amnesty International, “Exploited for Profit, Failed by Governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong” (November 2013). Available at: <https://www.amnesty.org/download/Documents/12000/asa170292013en.pdf>; Farsight, “Modern Slavery in East Asia: Protecting the rights and promoting the autonomy of domestic workers from Indonesia and the Philippines” (February 2016). Available at: <http://un-act.org/publication/view/modern-slavery-in-east-asia-protecting-the-rights-and-promoting-the-autonomy-of-domestic-migrant-workers-from-indonesia-and-the-philippines/>; 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; Justice Centre Hong Kong, “Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong” (February 2016). Available at: <https://www.justicecentre.org.hk/research/#publications>

³² United States Department of State, “Trafficking in Persons Report: 20th Edition” (June 2020). Available at: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

³³ Security Bureau, “Victim Identification” (10 December 2019). Available at: <https://www.sb.gov.hk/eng/special/bound/iimm.htm>

³⁴ Security Bureau, “Human trafficking: 2016 - 2020 Q2” (2020). Available at: https://accessinfo.hk/en/request/human_trafficking_2016_2020_q2

³⁵ See for example, Holmes Chan, “NGO task force identifies 63 victims of human trafficking in Hong Kong using new toolkit”, Hong Kong Free Press (31 July 2018). Available at: <https://hongkongfp.com/2018/07/31/ngo-task-force-identifies-63-victims-human-trafficking-hong-kong-using-new-toolkit/>

³⁶ Justice Centre Hong Kong, “Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong” (February 2016). Available at: <https://www.justicecentre.org.hk/research/#publications>

potentially over 9,000 people among the approximately 390,000 migrant domestic workers in Hong Kong are victims of human trafficking for the purpose of forced labour³⁷.

Moreover, there is currently no specific legislation to combat human trafficking in Hong Kong other than the Crimes Ordinance, Cap. 200, which criminalises bringing/taking another person into/out of Hong Kong for the purpose of sex work. This is despite there being strong evidence of human trafficking for a wider range of purposes in Hong Kong. The lack of comprehensive anti-human trafficking legislation means that there is inadequate prosecution, protection and prevention.

Recommendations

Justice Centre recommends the Hong Kong Government to:

- 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 for Hong Kong;
- Introduce a comprehensive anti-human trafficking bill to strengthen prosecution, protection and prevention;
- Meet with and consult civil society and victims of trafficking on reforming Hong Kong's policies on human trafficking.
- Accept and implement recommendations made by United Nations human rights mechanisms on issues relating to human trafficking, including:
 - The Human Rights Committee, the Committee against Torture, the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Racial Discrimination's recommendations that Hong Kong intensify its efforts to identify and protect victims of trafficking, and combat human trafficking in all its forms³⁸.

4. Consultation with Civil Society

It remains challenging for civil society to engage directly with the Government in the policy-making process. While the Government has conducted video conferences to meet with political parties and selected sectors for the 2020-2021 Policy Address³⁹, many civil society organisations, including Justice Centre, have not been invited to these meetings. The principal website for the Policy Address remains bare and is not regularly updated with relevant information, such as records of meetings, consultation activities and the end date of the policy address public consultation. The Human Rights Forum has not

³⁷ The number of migrant domestic workers in Hong Kong as of June 2019 is stated in a press release of the Hong Kong Government: Hong Kong Government, "Government response to US Trafficking in Persons Report 2019" (June 2019). Available at: www.info.gov.hk/gia/general/201906/2019062000915.htm.

³⁸ Human Rights Committee (CCPR/C/CHN-HKG/CO/3) at [20]; Committee against Torture (CAT/C/CHN-HKG/CO/5) at [20] – [21], Committee on the Elimination of Racial Discrimination, "Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)" CERD/C/CHN/CO/14-17 (19 September 2018) at [49]- [50]. Committee on the Elimination of All Forms of Discrimination against Women, "Concluding observations on the combined seventh and eighth periodic reports of China" CEDAW/C/CHN/CO/7-8 (7 November 2014) at [56] - [57].

³⁹ See the Chief Executive's Office "CE launches Policy Address consultation session (with photos)" (24 August 2020). Available at: <https://www.info.gov.hk/gia/general/202008/24/P2020082400779.htm>; "CE continues Policy Address consultation (with photo)" (24 August 2020) Available at: <https://www.info.gov.hk/gia/general/202008/27/P2020082700748.htm>

been held since January 2019⁴⁰, and there is no announcement on when the Human Rights Forum will resume.

The use of social media as avenues for political engagement is a positive step in informing and engaging with members of the public, especially in times of social distancing. However, dialogue on these platforms remain largely one-off, and there is no indication on whether recommendations made through these avenues are followed-through. The vast majority of the Government’s social media pages are in Chinese only⁴¹, which excludes the participation of non-Chinese speaking stakeholders.

The United Nations Human Rights Council has consistently noted the benefits of civil society in 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.”⁴²

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.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Issue public directions to all bureaus 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 bureaus and departments;
- Resume the Human Rights Forum while making a concerted effort to address the points and concerns raised by civil society organisations; and

⁴⁰ 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

⁴¹ See for example, “林鄭月娥 Carrie Lam” in Facebook. Available at: <https://www.facebook.com/carrielam.hksar/>; “政務司司長辦公室” in Facebook. Available at: <https://www.facebook.com/CSOGOV/>

⁴² 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>

- Implement a Regulatory Impact Assessment mechanism to enhance transparency and deliver better policy outcomes.

Please contact Rachel Li (rachel@justicecentre.org.hk), Research and Policy Officer at Justice Centre Hong Kong, with any questions regarding this submission.

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.