

Paralysis by Analysis

An Inquiry into the barriers towards good governance in the Special Administrative Region of Hong Kong

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1. Executive Summary
2. Foreword
3. Introduction
4. Research methodology
- 5 The Context of Governance in Hong Kong
 - 5.1 The economic context
 - 5.2 The Political Context
 - 5.3 The Public Sector and Civil Service in Hong Kong
6. Governance in Hong Kong
 - 6.1 Accountability
 - 6.1.1 Undermining morale in the public sector
 - 6.2 Participation, Equity and Inclusiveness
 - 6.2.1. The (ab)use of consultations
 - 6.2.2. The (ab)use of experts
 - 6.3. Rule of law
7. Conclusions
8. Recommendations
 - 8.1 Constitutional Reform
 - 8.2 Return to the Whitehall model of Bureaucracy
 - 8.3 Fewer Consultation

1. Executive Summary

Based on the interviews with stakeholders and comparative analyses of data the reports findings are as follows:

- 1) The Hong Kong public sector's capacity to deliver and to make decisions has suffered from the politicisation of the higher echelons of the civil service. This has had several detrimental consequences on the quality of public policy;
- 2) The replacement of career civil servants with external appointees with little or no experience of working in the Hong Kong government has robbed the public sector of expertise accumulated through years of experience. While a similar trend can be observed in other countries, the tendency has been much stronger in Hong Kong;
- 3) The politicisation has led to a decline in the moral of public sector workers. The prestige of working in the civil service has declined and the quality of public services has suffered as a result. This means that the civil service in Hong Kong – which was one of its most cherished legacies from the colonial period – is in danger of being undermined;
- 4) As a result of the politicisation, the advice provided to higher executives and ministers has been based on political considerations and not on neutral evidence. As civil servants and external consultants are dependent on patronage for promotion or renewed contracts, they have been reluctant to point out short-comings in proposals. As a consequence the policies are not evidence based but analysed in terms of their compatibility with policy preferences;

- 5) The extensive use of consultations – roughly four times as many as in the United Kingdom and the United States – has led to ‘paralysis by analysis’-situation in which the government is unable (and perhaps unwilling) to reach decisions for fear of upsetting Beijing and the residents of Hong Kong;
- 6) While it is difficult to show that the lack of democratic institutions has had a directly negative effect on the governance in Hong Kong, there is evidence to suggest that the current constitutional set-up indirectly has negative effects on the governability of Hong Kong.
- 7) The inability to hold the executive to account means that grievances are more likely to result in mass protests and extra-parliamentary activities (e.g. demonstrations and civil disobedience),
- 8) The lack of mechanisms of democratic accountability decreases the legitimacy of the Hong Kong government’s decisions, and has consequently resulted in indecision and lack of responsiveness
- 9) In the absence of proper channels of political redress (such as a functioning system of representative government) has had the effect that the judiciary has been overburdened with cases, which in other jurisdictions would have been handled through the political or administrative system. This has a) over-burdened the judiciary, b) forced the judiciary to get involved in political issues, which in turn led to criticisms from citizens and Beijing alike

2. Foreword

Governance in Hong Kong is at the cross-roads. The ongoing debate about constitutional reform and the external factors resulting from the global economic show-down are but two factors that constrain governance in Hong Kong. Another is the efficiency –or otherwise - of the public sector. While public sector or (*New Public Management* (NPM)) reforms have been undertaken in Hong Kong, the outcomes seem to have been less successful than in other countries.

Combining interviews with experts and comparisons with best-practice models, this study provides a critical assessment of the management of the public sector in Hong Kong. We know from research that new public management reforms have improved efficiency in other countries. How does Hong Kong compare? What are the reasons for the state of affairs? How – if necessary - can things be improved?

The aim of this research project is to provide an independent analysis of the structure of decision making processes in Hong Kong. Written by a political scientist (who has previously been also a policy advisor to governments²), presents an overview of the problems of governance in Hong Kong as well as it -albeit briefly- concrete proposals for reform.

² The author was a senior civil servant in the Home Office in the UK 2001-2003 and has worked as an adviser to the US State Department 2004-2004 and 2009.

3. Introduction

The problems of governance in Hong Kong are well established and not hard to come by. Even the Government's own figures show that only a minority (28 percent) of the respondents are satisfied with the Government's performance. It is not immediately clear whether this low score has dropped following 1997 (when Hong Kong became a special administrative region of *The People's Republic of China* (PRC)), but the indications are that the capacity to deliver policies has declined and that 'governance' (defined as the capacity to make decisions and implement them efficiently) has weakened³.

While there are some indications that Hong Kong's public sector's record on delivering services has remained the same⁴, there is growing recognition even among those sympathetic to the current government that governance has deteriorated. Anthony B.L. Cheung (now a member of Hong Kong's *Executive Council*) has argued (or admitted) that the efficiency of the Hong Kong Government is:

Facing increasing difficulties" and that "it performance has been seriously questioned both in terms of efficiency and crisis management, as well as policy leadership and competence⁵.

This is a massive change from earlier years. Up to the mid 1990s the territory's system of governance had been positively viewed as "one of the territories major legacies from its previous colonial masters"⁶, and there was a general consensus in the *commentariat* that Hong Kong system of government was one to be emulated⁷. What has changed the Hong Kong government's capacity to deliver?

³ Ian Scott (2007) 'Legitimacy, Governance and Public Policy in Post-Handover Hong Kong' in *The Asia Pacific Journal of Public Administration*, Vol. 29, No.1, p.40

⁴ World Bank (2005) *Governance Matters IV: Governance Indicators for 1996-2004*, Washington DC, World Bank

⁵ A.B.L. Cheung (2002) 'Transformation of the Civil Service' in Ming K. Chan and Alvin Y. So (Editors) *Crisis and Transformation in China's Hong Kong*, Hong Kong, Hong Kong University Press, p.183

⁶ A.B.L. Cheung, 'Transformation of the Civil Service', 166.

⁷ Hilton L. Root (1996) *Small Countries – Big Lessons: Governance and the Rise of East Asia*, Hong Kong, Oxford University Press, pp. 52-64.

Are the perceived short-comings due to structural reasons – many of which are related to the constitutional architecture laid out in the Basic Law? Or are there other reasons? Indeed, are the perceptions justified?

4. Research methodology

It is a challenge to study foreign countries. Students of comparative politics – such as the author – are often challenged by country specialists who are well versed in the intricacies of a particular political system. Needless to say, the country specialist has a unique knowledge of the finer points of any political system. Yet, such knowledge comes at a price. Often the country expert fails to see the wood for the proverbial trees. Or, to use a proverb used by the Native Americans, “Who discovered the water? Asked the warrior. “I don’t know” said the wise man. “But it certainly wasn’t a fish”.

The problem for the country specialist – as well as for the metaphorical fish – is that she sees the situation from within the pond. The external spectator, on the contrary, can get an overview from the shore and can put things in perspective. This does not, of course, mean that the external observer’s view is better or renders the views of country-specialists redundant, but it does provide a different perspective which sheds a new and different light on the situation.

But the problem of perspective is not the only challenge facing the student of public administration and public policy is a challenge. Unlike the natural sciences it is impossible to make experiments and the conclusions are always drawn from variety of sources.

This study is no exception to the rule. In the course of preparing for this report the author has used a combination of approaches rather than followed one particular approach. The author has thus combined structured interviews with quantitative approaches. In addition to a through study of the relevant literature by country specialists, the author has interviewed politicians, public (civil) servants, representatives from civil society, consultants and front-line staff (so-called ‘street-level bureaucrats’)⁸. The interviewees

⁸ T. Evans, and J. Harris, (2004) ‘Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion’, *British Journal of Social Work*, vol.34, no.6.

were asked a number of identical questions in structured interviews. These pertained to their perceptions of governance in Hong Kong before and after 1997. The respondents were similarly asked to identify areas of strength/weaknesses in Hong Kong governance.

The results of these interviews were subsequently tested against official data and international comparative data pertaining to governance. By combining stakeholders' perceptions with generally available figures it was possible to draw an overall picture of the state of governance in Hong Kong. Based on these findings, it was possible to identify general trends and tendencies. In political science we have to accept that the "the statement about the impact of institutions is not causally determinative (A causes B) but probabilistic (A tends to be associated with B)"⁹.

Carrying out studies in political science or public administration does not reveal laws of iron cast certainty, yet it may reveal patterns which we ignore at our peril. Politics is not an exact science, but that does not mean that its conclusion are subjective and the result of preconceived preferences. Governance is an objective measure, and the conclusion from numerous studies around the world point towards a general conclusion as to what constitutes good governance and to factors that are conducive to reaching this goal. Hence this study is based on comparatively solid grounds.

The study follows the traditional *PolSci* pattern. First a benchmark is presented. This puretype is subsequently tested against the real-world experience¹⁰.

The pure-type ideal in this study is 'good governance'. Governance – here defined as 'the ability to make decisions and implement them' – lies at the heart of public policy. Without governance, the whole case for politics, a public sector and government would be void. The question, however, is if any particular system hinders (or otherwise) the exercise of good governance, and, more specifically if Hong Kong lives up to a workable

⁹ Alfred Stepan and Cindy Skach (1993) "Constitutional Frameworks and Democratic Consolidation: Parliamentaryism versus Presidentialism", in *World Politics*, Vol. 46, No. 1 (Oct., 1993), p.2

¹⁰ I have set out this methodology in my book *A Comparative Study of Referendums. Government by the People*, Manchester, Manchester University Press, pp.3-10.

definition of governance. To answer this question, it is necessary to come up with an operational definition of the elements of good governance.

This study is not preoccupied with the type of government – whether democratic or not – but with structures pertaining to good governance. The aim of this report is not to advocate – or otherwise – a political system (although some of the conclusions may suggest that one system is more conducive to establishing good governance than others).

The aim here is predominately to determine if the public sector in Hong Kong meets the definition of good governance. *The United Nations' Economic and Social Commission for Asia and the Pacific (ESCAP)* has come up with an internationally recognised model for good governance, which is both politically neutral and accepted by other international organisations such as the World Bank and the IMF (though the latter are more explicit in their espousal of democratic governance¹¹).

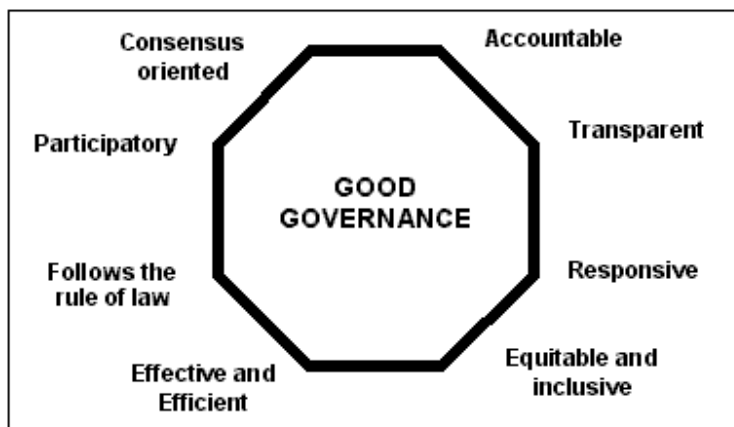


Figure 1: Characteristics of good governance

¹¹ See e.g. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/03/07/000090341_20060307104630/Rendered/PDF/34899.pdf (Accessed 1 May 2010).

According to the *ESCAP*, good governance has eight major characteristics. These are, respectively, that the system is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It further assumes that “that corruption is minimized”, that “the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making”. Based on these *ESCAP* uses the following model. The question is if Hong Kong meets these criteria?

Before analyzing whether Hong Kong meets the criteria a bit of context is necessary to briefly consider the political and economic context of the Special Administrative Region.

5 The Context of Governance in Hong Kong

Political institutions can not be seen in isolation and do not exist in a vacuum. Before analyzing whether the public sector lives up to the ESCAP criteria it is, consequently, necessary to consider the economic, political and public sector context. We begin with the economic dimension.

5.1 The economic context

With a GDP per Capita of \$29,826, Hong Kong is a relatively rich society. It is roughly on par with Brunei (\$30,030) and more exotically Greenland \$29,310). While it lags behind countries like The United Kingdom (\$45,440), the USA \$45,590 and oil rich Norway \$82,480, it is ahead of Israel.

Hong Kong has ranked as the world's freest economy by the American Heritage Foundation 15 times in a row. Yet, the economic freedom has not translated into growth. Nor has the wealth trickled down and created a more equal society. Hong Kong one of the most unequal societies in the world. The GINI-index is a measure of inequality used by the World Bank. Perfect equality measures zero on the scale. Most developed capitalist economies score on average between 25 and 35. Denmark – the most equal society in the world has a GINI index of 24 – and countries like Canada, Australia and Britain are on, respectively, 35,32 and 36. Other developed capitalist societies in East Asia are more equal. The GINI Indices for Taiwan and South Korea are, respectively, 31 and 34.

Hong Kong, by contrast has a score of 54, which is roughly on par with Panama and Honduras (both 55). As something completely unique in a comparative perspective, inequality has risen by 10 points since the early 1990s. Back then Hong Kong was on par with Singapore on 44. But while inequality in the latter country has fallen to 43, it has risen in Hong Kong.

The credit crunch had a severe impact on Hong Kong. The GDP has fallen by 3.1 percent of GDP in the past year. This puts it on par with Lebanon (3.1) and Congo-Kinshasa (4.1). While the economy is predicted to grow in 2010, it is noteworthy that Hong Kong the fall in GDP growth was larger than in comparable countries such as Singapore (-2%) and New Zealand (-1.3%) and Taiwan (0.1%).

While unemployment has only risen marginally, the confidence in the economy – as measured by the *Hang Seng Index* - has fallen by 38% percent. This is the largest drop of any of the major stock exchanges in the world – but should be seen in the context of new rises in the first months of 2010¹².

Overall the economy in Hong Kong, is not as resilient as in previous decades, but the Special Administrative Region remains one of the wealthiest – though most unequal - societies in East Asia.

5.2 The Political Context

The *Sino-British Joint Declaration* (1984) stated that Hong Kong could maintain her institutions, even if Hong Kong in terms of international law was under Chinese sovereignty, this was enshrined in the *Basic Law*, which serves as the constitution of the Special Administrative Region of Hong Kong.

One of the most fundamental features of the Basic Law¹³ is that the system of government falls well short of a democratic system. While Article 45 states that “the ultimate aim is the selection of the Chief Executive by universal suffrage upon

¹² Census and Statistics Department, Government of the Hong Kong Special Administrative Region, OECD (2009) Economic Information on Hong Kong, OECD, Paris, www.oecd.org/dataoecd/6/10/18470677.pdf, Accessed 6 January 2010. The Economist Intelligence Unit, *Pocket World in Figures*, London, Economist, p.32.

¹³ The Basic Law was adopted on April 4, 1990 by the Seventh National People’s Congress (NPC) of the People's Republic of China. It took effect on July 1, 1997.

nomination by a broadly representative nominating committee in accordance with democratic procedures”. Further, Art. 68 specifies that “the ultimate aim is the election of all the members of the Legislative Council by universal suffrage”. To date it has been impossible to reach a consensus on when these universal suffrage will be introduced.

The current system is composed of the executive (including the chief executive) and the legislature (Legco)

The Chief Executive appoints an **Executive Council** – which can be seen as the equivalent of a cabinet in representative democracies. The latter is responsible for assisting the Chief Executive in policy-making. (Article 54 of the Basic Law). The members of the Executive Council are appointed by the Chief Executive from among principal officials (often called "ministers"), members of Legco and public figures. The appointment and removal is decided by the Chief Executive. There is no fixed term of office, but the term of office of members shall not extend beyond the expiry of that of the Chief Executive who appoints them. (Article 55 of the Basic Law). The Council is presided over by the Chief Executive. The Chief Executive is selected by an Election Committee, consisting of members elected from respective sectors and appointed by the Central government. The selected nominee must subsequently be appointed by the Central People’s Government (the the chief administrative authority of the People’s Republic of China)

The Legislative Council (Legco) has 60 members, half of which are directly elected by universal suffrage by permanent residents of Hong Kong in 5 geographical constituencies (using List Proportional Representation). The other half, known as functional constituencies, are directly elected by a smaller electorate, which consists of corporate bodies and natural persons from various stipulated functional sectors¹⁴. The latter may be elected by as few as fifty electors, and the functional constituencies have, consequently, been compared to

¹⁴ This system is similar to the system that operates in Macau. Here the Legislative Assembly (*Assembleia Legislativa da Região Administrativa Especial de Macau*) is a 29-member body comprising 12 directly elected members, ten indirectly elected members representing functional constituencies and seven members appointed by the chief executive <http://www.al.gov.mo/en/en.htm#Composition>

the so-called ‘rotten boroughs’, which existed in the United Kingdom before 1832. As it stands, half of the members are not democratically elected, but are chosen by panels of professions, a system which is arguably less democratic than the one that was abandoned in the United Kingdom 180 years ago¹⁵.

Progress towards the “ultimate aim” of universal suffrage has been slow – and in the views of some – non-existent. In December 2007, the Standing Committee of the National People’s Congress (NPCSC¹⁶) resolved that the Chief Executive and *Legco* could be elected via universal suffrage in 2017 and 2020 respectively. After the failure to achieve universal suffrage in 2007, the target of the pan-democrats shifted to 2012, while the pro-Beijing camp stated its preference for 2017.

In November 2009 the Hong Kong Government published the "*Consultation Document on the Methods for Selecting the Chief Executive and for Forming the LegCo in 2012*"¹⁷, which declared that the Government was determined to advance Hong Kong’s democratic development in 2012 in order to pave way for universal suffrage elections of the Chief Executive and the Legislature in 2017 and 2020 respectively.

The administration proposed to enlarge the Election Committee for electing the Chief Executive members, establishing ten new Legco seats, of which five indirectly elected. The administration also proposed to give elected district council members more seats on the Election Committee. The latter would benefit the Pro-Beijing parties, especially *The*

¹⁵ This system bears some resemblance to the system of ‘vocational representatives’ in the Irish Senate. However, the members of the Seanad Éireann are not elected by members of these panels, but merely nominated by them, moreover, the powers of the Senat are de facto limited. 43 of the 60 members of the Senat are elected by the Oireachtas, the lower house of the *Dáil Eireann*, Irish parliament. Six members are elected by graduates and the remainder are selected by the Prime Minister, hence securing that the government has a majority in the chamber. See George Tsebelis and Jeanette Money (1995) *Bicameralism*, Cambridge, Cambridge University Press, p. 50.

¹⁶ The NPCSC is a committee of about 150 members of the *National People’s Congress* (the legislature of the People’s Republic Of China). Between plenary sessions of the NPC the NPCSC has constitutional authority to modify legislation within limits set by the NPC, and thus acts as a *de facto* legislative body.

¹⁷ <http://www.legco.gov.hk/yr09-10/english/panels/ca/papers/ca1126-ppr091118-e.pdf>

Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), which has a higher share of the votes at the local level than in Legco¹⁸.

Following the unveiling of the consultation document, Pan-democrats attacked the slow progress, arguing that the proposals were but a revised version of the 2005 proposals which they vetoed. In response to the proposal members of the Civic Party (the third largest group in Legco) resigned their seats to campaign in a de-facto referendum on political reforms. The five candidates were returned to their seats with overwhelming majorities on 16th May 2010.

Whether this will advance the cause of the pan-democrats remains an open question. In the aftermath of the 2003 demonstrations, the Chinese Communist Party (CCP) reminded people in Hong Kong that:

The high autonomy that Hong Kong enjoys is endowed by Beijing and is not determined by the local residents. Promoting democracy on the residents' own initiative runs against the Basic Law and will jeopardize the territory's stability. The procedures stipulated by the Basic Law must be followed and democracy should be developed in a gradual manner by taking into account the realities in Hong Kong¹⁹.

How to square the circle of accommodating the views and wishes of Beijing and at the same time not upsetting the constituents in Hong Kong who have increasingly voted for more radical parties requires considerable political skill and acumen, qualities which are not necessarily in high supply among the current leadership in Hong Kong.

¹⁸ In the most recent Legco elections the pan/democrats (E.g. the Democratic Party, the Civic Party, the League of Social Democrats and independents) won 57.37% of the votes. The Pro-Beijing (such as the Liberal Party and DAB) parties won 39.90%.

¹⁹ Commentary – *China Daily*, 24 July 2003

5.3 The Public Sector and Civil Service in Hong Kong

Before 1997, the political system in Hong Kong was best described as a “pure administrative state”²⁰. Of course, in some sense, every developed country is an administrative state because a large and powerful bureaucracy has become a standard feature of modern states. But Hong Kong was an almost *pure* administrative state because its large and powerful bureaucracy existed in the absence of a democratic context. Through monopolizing most of the political power, the pure administrative state in Hong Kong was a rare real-life ideal type of bureaucratic domination as described in the theories of the German theoretician Max Weber²¹.

In the model of bureaucracy developed by Weber civil servants, owing to their administrative experience, expertise and permanency, dominate the political system. During most of the over 150-year British rule over Hong Kong, political power was held mainly by the local civil service established along weberian lines. While other organizations did appear in the chart of Hong Kong’s constitutional design, they were mainly consultative in nature. Even if they had some statutory and constitutional power, like the Legislative Council, most of the power was granted by the bureaucracy and had to be exercised under its monitoring and approval.

All governors, with the exception of the last governor, Chris Patten (a former chairman of the British Conservative party and UK cabinet minister), were members of either the British or the colonial bureaucracy.

Regulation of the Hong Kong civil service ensured the high autonomy of the local bureaucracy against any extensive external influence by either the Governor or the British government. Many government functions, including budgetary and administrative powers, were decentralized to the Hong Kong administration and the Hong Kong

²⁰ Ahmed Shafiqul Huque, Grace O. M. Lee, Anthony Cheung (1998) *The Civil Service in Hong Kong: Continuity and Change*, Hong Kong, Hong Kong University Press, p.23

²¹ Max Weber (1947) *The Theory of Social and Economic Organization*. Translated by A.M. Henderson and Talcott Parsons. London: Collier Macmillan Publishers.

government functioned as a de facto independent and self-governing state. This gave the Hong Kong civil service a high level of prestige.

This system changed gradually following the handover, one of the reasons for this was arguably political. The belated democratic reforms led by Governor Patten, strategically relied on administrative officers whom he had personally promoted to the top levels of the civil service, ensuring their loyalty to him and support for the reforms.

Since these top civil servants were perceived to have become deeply involved in Patten's democratization efforts, the Chinese government perhaps understandably questioned their political loyalty. As a consequence Beijing abandoned a plan of plan of picking the Chief Executive from the civil service, and turned instead to Hong Kong's business sector, eventually selecting pro-Beijing Tung Chee-hwa to be the first Chief Executive. (Though in fairness it should be noted that Tung's successor Donald Tsang Yam-Kuen was Chief Secretary for Administration, and thus a career civil servant).

This political background as well as notable policy failures led to diminished confidence in the bureaucracy. In addition to being perceived to be close to Pattern, the civil service was made scapegoats because of developments over which they had little control. (For example, the financial crisis in the 1990s, the bird flu crisis, problems scandal of social housings and the chaotic opening of the new airport in Chek Lap Kok). These developments were used by the new leadership as a pretext for changing the civil service from a traditional 'administrative state' to one which was based on a large number of political appointees, and a de facto 'spoils system'.

The most conspicuous example of this was the political appointments system was introduced in 2002. The aim of the system to reinforce the Chief Executive's ministerial team by inserting two layers of senior political officials between ministers and the permanent secretaries (the highest-ranking civil servants). This made the system more political than administrative and began to undermine the administrative state. These reforms were intended to enhance accountability. But it is questionable if they did so. According to a recent authoritative study, accountability refers to the ability to control

those actors to whom we delegate the right to act. Hence, *principals* should choose wisely and put in place incentive structures that encourage good behavior²². In Hong Kong – as we shall see below – there is concern among many that this has not been done.

However, these organizational factors cannot be seen in isolation. The institutional architecture must be viewed in the light of the size of the public sector. And one of the distinguishing features of the public sector in Hong Kong is its relatively small size.

The government has more recently played an active role in the provision of social services, such as education, health care and housing, in Hong Kong. Half of the population in Hong Kong lives in public or government-subsidized housing, and the public health care system in Hong Kong has a market share of more than 90%. Education is also heavily subsidized and universities in Hong Kong receive about 80% of their funding from the government. However, the role of the public sector in Hong Kong, can still be considered as small by an international standard. For example, in 1997, public expenditure as a percentage of GDP was only 17.7%. Hong Kong is not a social welfare state in the mould of West-European states or even USA and Canada.

Another distinguishing feature is that the Hong Kong civil service provides a wide range of services, which in many countries are divided among various public authorities, e.g. public works and utilities cleansing and public health, education, fire services and the police force.

As of September 30, 2004, the civil service employed about 160,100 people (excluding about 1 500 ICAC (*Independent Commission Against Corruption*) officers and judicial officers) or about five per cent of Hong Kong 's work force. About 1,200 of them are directorate officers. There are about 400 grades or job categories in the administrative, professional, technical and manual fields, with some 1,100 ranks or job levels. In the United Kingdom by contrast there are only 13 layers, and in Denmark there are only five.

²² Jose Maria Maravall and Ignacio Sanchez-Cuenca (2008) *Voters, Institutions and Accountability*, Cambridge, Cambridge University Press

Over 99 per cent of the service are local officers and there are about two men to every woman employed. The size of the civil service is about 15 per cent down from that in early 2000.

6. Governance in Hong Kong

In the context of these political and economic circumstances, how does Hong Kong's public sector measure up against international bench-marks? The following section analyses the performance of the public sector in Hong Kong using the aforementioned ESCAP measures, namely participation, rule of law, responsiveness, consensus orientation, effectiveness and efficiency and accountability.

6.1 Accountability

It is generally acknowledged that – to use a definition from ESCAP - “Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders”. There is a growing body of evidence that suggests that governance is positively correlated to mechanisms of accountability. As a recent review pointed out: ‘There is no issue more central to good governance than accountability generally and the accountability of those in government to their citizenry in particular. Consequently, there is no issue more central to any discussion of the challenges facing government and civil servants, either now or in the 21st Century, than the matter of commitment to a high degree of accountability’²³.

Accountability – the ability of the citizens and consumers to hold governments to account for their actions or otherwise – is not merely a slogan and a rallying cry from proponents of democratic reforms, it is a hard indicator espoused by such institutions as the World Bank and the IMF. The reason for this is not idealism but hard economic realism. In fact, in a recent cross-national analysis found that greater accountability is correlated with trust

²³ <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN005698.pdf>, Accessed 1 May 2010.

in governments whereas the opposite is true in countries with little accountability – especially if that country (like Hong Kong) has considerable inequality²⁴.

The United Nations Economic and Social Commission for East Asia and the Pacific (UNESCAP) takes a similar view, in arguing that good governance is characterized by public involvement, i.e., "Good governance...is participatory, consensus oriented, accountable²⁵.

Hong Kong 's public sector has in many ways been driven by a commitment to achieving a higher level of accountability. Yet it is arguable that this drive has led not to more accountability but to more dominance by the chief executive. Since the mid 1990s, and especially since the handover in 1997, the administrations have officially pursued a policy model on so-called *New Public Management*.

This model of public sector management states that individual managers and public sector employees should be held accountable for their actions. The *Principal Officials Accountability System* introduced in 2002 by Tung Chee Hwa made all Principal Officials, including the Chief Secretary, Financial Secretary, Secretary for Justice and head of government bureaus political appointees rather than neutral career civil servants. This meant that many without public sector experience were elevated to senior positions in a government bureaucracy of which they had no or little prior knowledge. For example, of the three secretaries appointed by Tung in 2002, two came from outside the civil service. Only Donald Tsang, the Chief Secretary for Administration, was a former civil servant.

Further among the 11 principal officials heading the policy bureaus, only 5 of them were former civil servants. Although there are former civil servants joining the ranks of appointed principal officials, the change in nature of the appointment system had major

²⁴ Charles F. Andrain and James T. Smith (2006) *Political Democracy, Trust and Social Justice: A Comparative Overview*, Boston, MA: Northwestern University Press, p.151.

²⁵ <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>, Accessed April 15 2010.

political implications for those former-civil servant principal officials as well as the civil service as a whole. This is internationally unique / in Singapore, New Zealand and the United Kingdom these are career civil servants selected on account of their expertise and experience.

There is a considerable body of literature that points to the dangers of patronage and political ‘spoils systems’. The most persistent criticism is that such systems undermine the civil servants ability to ‘speak truth to power’, i.e. to offer neutral and objective advice. Officials will not – so the argument runs – be critical of those in power, as this might hinder their chances of promotion²⁶. Conversely, under a traditional bureaucracy – where promotion and selection is on merit – civil servants are rewarded for ‘speaking truth to power’.

Both civil society, public policy experts and civil servants interviewed for this report were critical of this development towards a more political civil service. A senior civil servant (speaking on condition of anonymity) found,

That at the system basically promotes patronage rather than merit. The civil servant who is dependent someone who has appointed him, and whose promotion is dependent upon the support of the same person is unlikely to speak his mind. Political appointees are unlikely to be critical in the same way as a neutral public servant. Neutral public servants will be promoted on merit, and being critical is therefore in his own interest. The opposite is true for political appointees.

Another former top-civil servant believes this has had detrimental effects on public policy making in Hong Kong. ”It is clear”, she says,

That such as system is bound to have a negative impact on governance. Problems, ill conceived ideas and ill-considered policies are unlikely to be questioned appropriately if the civil servants owe their careers to sycophancy”

²⁶ Aarnon Wildavsky (1979) *Speaking Truth to Power: The Art and Craft of Policy Analysis*. New York. Little, Brown, p.3

The system introduced by Tung provided for Principal Officials to be appointed by the Chief Executive on contract. This contrasts with the hitherto existing system, where top civil servants were employed on permanent contracts along lines following the Whitehall model, known from the United Kingdom²⁷.

6.1.1 Undermining morale in the public sector

As a consequence of the new system, failure to perform well should *in extremis* result in dismissal. Such a system has worked in *inter alia* the United Kingdom. However, one of the distinguishing features of New Public Management in other developed capitalist democracies has been that individuals at all levels in the public sector could be held accountable. This has not been the case in Hong Kong. A top civil servant in the Efficiency Unit remarks:

There have been several spectacular examples of lack of accountability in the public sector in Hong Kong. Not at the lower level, far from it. Here many people have lost their jobs, but at the higher level. There is nothing that suggests that this has in any way approved the system. Rather it has created a culture of fear. Higher managers become reluctant to commit to actions for fear that they might lose their jobs.

A former employee in the Education Bureau, is equally critical, but also stresses that the reforms have lowered the prestige of the civil service. This has added to the already detrimental effects of the supposed effects of New Public Management. She says:

The role of the top civil servant in Hong Kong used to be a prestigious one. To join the government was enviable. The top graduates would compete to join and they would be rewarded for their loyalty. This is no longer the case. Not only has

²⁷ J.P. Burns (2004) *Government Capacity and the Hong Kong Civil Service*, Hong Kong, Oxford University Press, pp.157-180

pay fallen behind the public sector – that is always likely – but the they used to have job security. Now they find that they have to take the rap for political decisions that go wrong, whereas their masters in more political offices go free. It has not lived up to it expectations.

Joseph Lian, chief Writer of the *Hong Kong Economic Journal* and former member of the Central Policy Uniy, *HKSAR*, is equally adamant that these reforms have not necessarily achieved their targets. While he is a “testified supporter of marked mechanisms”, he concedes that the New Public Management reforms have had drawbacks. He says:

“The ethos of the mandarin civil service is expertise and knowledge accumulated over many years of service. And, of course, a bit of arrogance that goes with that. The reforms of the public bureaucracy threw the proverbial baby out with the bathwater by focusing almost purely on service delivery, thereby undermining the expertise that had gradually developed in areas of crisis management”²⁸.

It is difficult to dismiss this view as merely the sour grapes of a former public sector worker who has gone on to become a successful consultant. A similar view has been expressed by Anthony B.L Cheung. In an academic article, the Executive Council member has written:

Job security and steady pay progression, supplanted by generous job-related welfare and fringe benefits, had been instrumental in making the colonial civil service one of the most loyal workforces in the world, able to attract the best talent at the point of recruitment because new recruits could look forward to protected and promising careers. With the latest reforms, the traditional edge of civil service over private employment is being gradually eroded. In the future there will be more movements out of the service, particularly including those induced by voluntary exit schemes. Civil servants will also tend to become less

²⁸ Joseph Lian, Personal communication 10th December 2009.

loyal in terms of career commitment, and motivated more by material gains than by a sense of lifelong vocation²⁹.

This assessment has proved to be correct. As Joseph Lian says: “there is not much point in working for little money, if one can earn more in a more prestigious job elsewhere”. He goes on “ unlike in states with larger bureaucracies - such as Britain and New Zealand – the NPM in Hong Kong went much further and in some ways undermined the capacity of crisis management”.

These views chime well with assessments reached by other academic experts studying the Hong Kong public sector. According to Ian Scott, “the new system could hardly be regarded as one which promoted accountability”³⁰. In fact, it could be argued that the reforms did the very opposite. According to Michael DeGolyer – who criticised the reform when they were introduced – predicted that Hung’s reforms would

Severely weaken what's left of the SAR's system of checks and balances. Bureau heads will no longer report through the Chief Secretary and Financial Secretary but directly to Tung. When all bureau heads were civil servants, their career protections effectively blocked the Chief Executive's ability to pressure them. The Chief Secretary and Financial Secretary acted as "professional" checks on "political" pressures. A case of checking power allegedly involved Anson Chan blocking Tung and Secretary for Justice Elsie Leung acting against the Falun Gong. Additionally as a check, Article 56 of the Basic Law requires the Chief Executive to put on record his reasons for rejecting a majority opinion of ExCo members. Since a majority were civil servants, this gave politically neutral, pro-Hong Kong civil servants a balance against Beijing-leaning Tung. Political secretaries will also have a say over who will become their permanent secretaries.

²⁹ Cheung, A B L and Lee, J C Y (eds) (2001) *Public Sector Reform in Hong Kong: Into the 21st Century*, 2nd edn, Hong Kong: The Chinese University Press, p.

³⁰ Ian Scott (2007) ‘Legitimacy, Governance and Public Policy in Post-Handover Hong Kong’ in *The Asia Pacific Journal of Public Administration*, Vol. 29, No.1, p.40

This creates a "shoe-shining" culture among civil servants who will seek top posts by currying favour with political appointees³¹

There are indications that this has already happened. Joseph Lian believes this to be the case:

It is difficult to see what incentive a an ambitious high-flying civil servant has in criticising the Chief Executive. The result has been – as far as I can gather – that officials become indebted to those who have appointed them. The result is that the impartial advice, which was the hallmark of the old system is replaced by a system that incentivises patronage rather than impartial counsel.

This essentially undermines the thrust of the rationale for more accountability. The New Public Management model is based on the premise that good performance will result in rewards. The fact that it top-officials are accountable to their political masters, but not answerable – whether directly or indirectly – the users, essentially makes a mockery of the ideals of accountability.

But why has the public sector reforms not worked in Hong Kong when similar reforms have worked elsewhere. One of the obvious explanations is that New Public Management was designed to address problems that hardly a large public sector, one that consumed well over 40 percent of GDP. As an official from the OECD noted:

NPM was invented as a remedy against bloated bureaucracies in western welfare states and are perhaps ill-suited for a small public sector such as that of Hong Kong³².

³¹ Professor Michael DeGolyer in *The Standard*, Wednesday, May 29, 2002
http://www.thestandard.com.hk/news_detail.asp?pp_cat=&art_id=10753&sid=&con_type=1&d_str=20020529&sear_year=2002

³² Ian Hawkesworth, personal communication 16 March, 2010.

But, above all, the NPM was established in a system characterized by choice and competition, however, due to the at best-quasi democratic nature of Hong Kong's system of government, the basic tenant of competition upon which NPM is based does not apply in Hong Kong for the simple reason that it does not allow accountability at the ministerial level.

As international evidence shows, it is a vital part of any system of accountability that the political leaders are held responsible for their actions, and suffer the consequences for mismanagement. Representatives from civil society find this to be the most pressing concern. Dr Kenneth Chan Ka-Lok, Secretary general of the Civic Party believes that "political accountability is not present in (at best) semi-democratic regime such as that of Hong Kong". Such a view is perhaps not surprising, as it comes from one of the leading proponents of universal suffrage. But the fact of the matter is that accountability, in the end, revolves around the ability to hold people to account. And in this the political system in Hong Kong is ill-suited for the 21st Century challenges. This leads directly to the question of participation.

6.2 Participation, Equity and Inclusiveness

A society's well being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. As a result, participation by both men and women is a key cornerstone of good governance.

Participation can be either direct or through legitimate intermediate institutions or representatives. These definitions are not free floating or arbitrary but are taken from those agreed to by ESCAP members, and hence ones, which both the government of Hong Kong and PRC accept. But does their acceptance of these ideals mean that Hong Kong's government live up to the espoused ideals?

There is – as we shall see – reasons to believe that the answer, regrettably, is non-affirmative. While the system of representation in Hong Kong might be better than in

other jurisdictions such as PRC. It falls “short of the standards in both Japan and Taiwan, and arguably in Thailand and Singapore as well”, says Professor Sing Ming from HKUST. He points out ³³:

Participation in Hong Kong is limited to formal elections, but those elected have not got the ultimate say. As long as we have a system under which the Chief Executive is in effect chosen by PRC and under which very unrepresentative organisations elect a large number of members of Legco through functional representatives, we cannot say that public participation is optimised.

This view does not imply, however, that public participation is ineffectual. The public has often taken to the streets and forced through changes. In 2003, the mass demonstrations against Tung over tightening of security legislation was an example of what public participation and protest can ultimately do.

The resignation of the Chief Executive in 2003 was, in effect, a vote of no confidence by the people; a kind of recall not dissimilar to the process which saw the removal of California unpopular governor Grey Davis in 2003. This is accepted by Professor Ming, but with one caveat:

The difference is, of course, that this was mass protest and not an institutional mechanism. It creates resentment if people have to take to the streets – in effect start a revolution – every time they want to protest against a policy. The system might have worked, but it did so at a cost. What my research shows is that a system of accountability through formal electoral participation is more cost-effective. Democracy is not just a philosophical practice, it is also a system which is less costly in terms of lack of legitimacy. And, of course, it is not good for productivity if people skip work to protest, is it?

³³ Personal communication 6 December 2009.

A more recent example is the protest against the High Speed Railway”. Both are examples of the limitations of the currently existing means of influencing decision making, believes Regina Ip who herself was Secretary of Security (1998-2003), says,

At the present moment, we cannot say that people are included in the process. Far from it. Some people might compare Hong Kong with Singapore. Some people might even aspire to becoming a Singapore. But in Singapore all members of the legislative assembly can propose laws, and all the members are elected in relatively free elections. This system is more participatory and hence establishes a safety valve in the event of discontent. The presence of this system, is probably one of the reasons why Singapore has had fewer public protests than Hong Kong.

However, some stress that Hong Kong in contrast to for example Thailand and South Korea has no history of violent protests. Yet the growing discontent in Hong Kong and the frustration with the slow progress towards universal suffrage has also spilled over into more direct action. This is a novelty, which does not necessarily bode well for Hong Kong. Hong Kong used to be a haven of tranquillity.

Interviewing a senior civil servant in the Hong Kong government in early November 2009, he expressed the view that Hong Kong “unlike so many other places here in Asia has an essentially peaceful political culture”.

As he put it:

In the 2003 protests about Art. 23 of the Basic Law, two women police officers were able to direct thousands of people in another direction as easily as they would have directed the traffic at a pedestrian crossing. This says something about the political culture in the SAR. Violent protests are not our style, nor are they ever likely to be.

This assessment ceased to be correct less than a month later when 1000 protesters clashed with the police in a dispute over the proposed Rail link with mainland China in January 2010³⁴.

6.2.1. The (ab)use of consultations

In order to open up participation the government is increasingly committed to using consultations with stakeholders. This is a mechanism used elsewhere.

Good governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community. It could be argued that the Government in Hong Kong has – in one sense – gone too far in seeking to secure this consensus. As a consequence of wanting to accommodate both Beijing and the local citizens, the government has been unable to reach decisions. How can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society or community.

In order to open up participation the government is increasingly committed to using consultations with stakeholders. This is a mechanism used elsewhere, but not to the same extend. Figures on how many consultations are started in Hong Kong are hard to come by. Compared to other developed capitalist societies, Hong Kong makes much more use of consultations. Compared to countries like Germany, Denmark and Great Britain, there are roughly three times as many consultations in Hong Kong.

Based on the interviews for this report, respondents in the civil service said that – on average – 4.8 consultations were started every day. This compares to 2.0 in Denmark

³⁴ Scarlett Chiang ‘Angry rail-link protesters clash with police’, *The Standard*, Monday, November 30, 2009, A1. The Legislative Council approved the HK\$66.9 billion (US\$8.6 billion) in funding for the project with 31 votes for to 21 against. Those in favour were exclusively composed of Pro-Beijing parties and members representing functional constituencies.

(which has a similar population) and 2.8 in the United Kingdom. This figure might even be higher. Respondents from the civil society, suggested that a figure of 8-9 consultations was more accurate. But can these consultations substitute – or even complement – more representative processes? Many believe that they are a means for stalling controversial decisions (See the next section).

One of the problems with the current system of consultations is that it has resulted in considerable delays and often in inaction. Previously – i.e. under the British – decisions by the government were taken without hesitation and typically implemented swiftly. This is no longer the case. Based on evidence from interviewed members of civil society – such as Greenpeace and Oxfam – there is a perception that, as one interviewee put it,

Some stakeholders find that there is a pattern of “endless consultations in Hong Kong”³⁵. “Consultations over the West Kowloon cultural district is an extreme example, but it is not uncommon”, says Ho Wai-Chi, director of Oxfam³⁶.

One of the most cited reasons for the administration’s use of consultations is the administration’s fear of upsetting constituents. As Regina Ip noted when interviewed by the author:

The Chief Executive – and the Executive Council – have to walk a tightrope between pleasing the citizens in Hong Kong and at the same time ensuring that they do not fall out of favour with Beijing. That is a delicate balance, and one way of achieving it – at least temporarily – is by delays and inaction. Consultations can be a way of doing this. Analyse the matter endlessly, and in the end no controversial decision is made. It is like, what should I call it? Paralysis by analysis³⁷.

³⁵ Personal Communication, Joseph Lian, 10 December 2009

³⁶ Personal Communication, Ho Wai-Chi, 11th December 2009

³⁷ Personal Communication, Regina Ip 9 December 2009

This tactic has not, however, always had the intended effects. Indeed, no less a figure than Zhū Róngjī (Chinese premier 1998-2003) publicly criticized this when noting in 2001 that you [the Hong Kong government] deliberate for a long time, but you don't reach a decision". But what about the outcome of the consultations? There is evidence to suggest that the "conclusions of the consultations always end up being incredibly close to the government's original ideas. Now that could be a coincidence. But it is interesting", according to Ho Wai-Chi.

6.2.2. The (ab)Use of Experts

To claim that governments ask experts to suit conclusion to their preferred policy options, i.e. tailor their findings to preferred policies is a serious one. The aim of external experts and the justification of their use in public policy is that they offer independent, neutral and objective advice as to the best means of achieving a given policy goal. The buzzword *evidence based policy making* has been much in vogue since the early 1990s. The idea was that policy making rather than being based on ideologically motivated decisions, should be driven by a 'what works' approach, which took pragmatic rather than political concerns as its *leitmotif*³⁸.

In researching this report, the author encountered four examples of 'policy tailoring', i.e. independent experts who were asked to suit their conclusions to already decided policies. The areas were transport, education and the environment. As one consultant – speaking on condition of anonymity – said:

It is obviously a problem that we have to tailor-make our conclusions to what the Bureau wants. But there is little else we can do. We need the money, and it is a recognized part of the game. Everybody knows the score.

³⁸ Young, K., Ashby, D., Boaz, A. and Grayson, L. (2002) Social science and the Evidence-based Policy Movement, in *Social Policy and Society* Vol. 1, pp. 215-224

The consultant noted that,

the government is increasingly asking international experts to perform the same role [tailoring conclusions to the government's policies]. But they are finding it difficult. They [international experts] have reputation, but we have to live. It is as simple as that.

Such practices, needless to say, undermine the very legitimacy of the policy process, and in turn that of both experts and the government.

A similar criticism has, it should be noted, occurred elsewhere. In the United Kingdom, a debate about evidence from experts raged over drugs policy in 2010³⁹.

However, the lack of transparency in the public sector in Hong Kong means that such abuses of evidence based policy making is rarely reported. A more open system of decision-making might limit this misuse of expert evidence.

6.3. Rule of law

Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible While there are criticism of short-comings of the legal system in Hong Kong, these are relatively minor compared to other countries in the vicinity, there is evidence that the Rule of Law is gradually being eroded. This is not due to the decisions by the courts, but a result of the government's reactions to rulings. The Court of Appeal's ruling on 29 January 1999, which stated that it had jurisdiction to decide whether legislation passed by the NPC or its standing committee was consistent with the Basic Law or 'invalid'.

³⁹ <http://www.guardian.co.uk/commentisfree/2010/apr/01/mephedrone-drug-classification-scientific-policy>. Accessed 10 April 2010

However, the Government⁴⁰ The ruling – which pertained to the rights of mainland Chinese to live in Hong Kong – prompted the Government of Hong Kong to seek clarification.

The Court confirmed the original ruling, and the Government requested the NPC Standing Committee to reinterpret the relevant provisions of the Basic Law to limit the number of people who could claim right to abode in Hong Kong. This ruling, according to one expert, “effectively overturned the Court’s ruling. In some quarters this was seen as undermining the rule of law in Hong Kong”⁴¹. Article 2 of the Basic Law grants the Hong Kong “independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.”, and Article 85 states that the Hong Kong courts should be “free from interference.” It is difficult to maintain this view in the light of this and similar rulings.

This conclusion is shared by Maria Wong, who has campaigned for the right of special needs children. She finds, “the judicial system somewhat biased” and believes “that there are some examples of the judiciary having to be too mindful of decisions that might upset those in authority⁴²”.

While it is not possible to talk about an erosion of the rule of law, there are strong indications that judicial independence is likely to be a future concern. Further there are indications that NCP are concerned about the development. So far there have been no changes to the judiciary, nor have there been major concerns about judges appointed to the Bench. But this might change if – as has been the case in recent years - political activists continue to seek review of government decisions and policies, as they can place the courts in the middle of sometimes contentious political debates. In the first year after the handover, 947 proceedings were brought against the government, of which the government lost a mere 6.5 percent (or 62 cases). Since then the number of cases have sky-rocked.

⁴⁰ Ng Ka Ling et al. v. Director of Immigration (Final Appeal No.14 of 1998)

⁴¹ John P. Burns, *Government Capacity*, p.27.

⁴² Maria Wong, Personal Communication 8 December 2009.

The number of civil cases rose from 8,161 in 1996 to 17,270 in 2006, more than doubling in 10 years. According to Hong Kong's Department of Justice, the increase in civil cases is in part due to the greater use of the Chinese language in post-Handover Hong Kong courts.²⁰ Under the Basic Law, all legal proceedings can be held in either English or Chinese. However, activists believe that the rise in civil cases also reflects increased awareness and concern among Hong Kong people about their legal rights. In this view the perceived incompetence of the Government – and the perceived limitations to influencing the political system through democratic means – has resulted in people seeking recourse in the legal system⁴³. Thus while the legal system, remains relatively independent, the demands on the legal system – and the use of the judiciary to challenge controversial political decisions – puts strain on the courts. The courts are overburdened and are forced to adjudicate in matters that elsewhere would have been decided by administrators answerable to elected politicians. This development is yet another indication that Hong Kong's political system has become more politicised without becoming more democratic. This is not a stable situation and one that needs to be addressed.

⁴³ Lee, Tahirih V., 'Apres Moi Le Deluge'? Judicial Review in Hong Kong Since Britain Relinquished Sovereignty. *Indiana International & Comparative Law Review*. Available at SSRN: <http://ssrn.com/abstract=223730> and <http://www.fas.org/sgp/crs/row/RL34071.pdf>, Accessed June 1 2009.

7. Conclusions

The aim of this research project was to provide an independent analysis of the structure of decision making processes in Hong Kong. How did Hong Kong Compare with other countries? The answer is: not very good!

Measured by the ESCAP yardstick (according to which a governance is a function of factors like accountability, responsiveness, participation, the rule of law and consensus), Hong Kong scores low on all counts.

While the government has stated that it wanted to improve accountability, the reverse has been the case. The reforms of the civil service in 2002 and subsequent changes in 2008, have led to a politicization of the public sector. The top-officials are no longer selected on merit, but due to their political allegiance and patronage. This has led to a decline in their ability to critically assess the policies of the chief executive. “The quality of a politician is measured by the aptitude of his advisers”, noted the Italian political theorist Machiavelli in 1513⁴⁴. Based on the evidence from Hong Kong, the quality of the political leaders in Hong Kong is arguably meager.

Accountability

It is not difficult to refute the official argument that the ministerial system reforms have enhanced public accountability. Under the political system set up by the Basic Law, the Chief Executive is only elected by an election committee of a few hundred people, dominated by business interests and pro-Beijing groups. Since the Chief Executive is not directly elected by the people of Hong Kong, there is simply no mechanism to hold him and his political appointees accountable to the public. The Legislative Council is the only political institution in Hong Kong with a democratic component, but the Chief Executive denies its participation and involvement in the entire system. As a result, even though Hong Kong’s new ministerial system is a common system adopted widely in other democracies, in the absence of a democratic setting it does not create the accountability witnessed in other systems.

⁴⁴ Nicoló Machiavelli (1513) *The Prince (Il Principe), Il Principe*, Milan, Einaudi, Chapter XXII

In fact, by enhancing the power of an undemocratically elected Chief Executive, the new system has created the opposite effect, namely one of weakening accountability.

Without political competition driven by a democratic process, the Chief Executive has not been very sensitive or responsive to the demands and opinions of the public. Throughout his first term, Chief Executive Tung was notorious for his disrespect for public opinion and intolerance of alternative voices. In his first term, there were cases in which he refused to remove extremely unpopular officials who had committed mistakes, drawing strong public criticism⁴⁵. Although the Chief Executive seemed to pay some lip service to the spirit of accountability, it is hard to imagine how accountability can be enhanced with the ministerial system functioning in an “accountability without democracy” context. The argument that allowing outside talent, especially from the business sector, to head the policy bureaus under the ministerial system can enhance the quality of policy-making in government, also has little validity.

While Hong Kong’s public sector has in many ways been driven by a commitment to achieving a higher level of accountability this has not led to more accountability but to more dominance by the chief executive. Both civil society leaders, public policy experts and civil servants have been critical of this development. The use of patronage rather than merit has diminished the Government’s ability to resolve policy issues and has diminished the government capacity.

One of the consequences of the reforms has been a decline in morale among public servants. One interviewee found that “the reforms of the public bureaucracy threw the proverbial baby out with the bathwater by focusing almost purely on service delivery, thereby undermining the expertise that had gradually developed in areas of crisis management”

And a member of the Executive Council (Anthony Cheung) found that “With the latest reforms, the traditional edge of civil service over private employment is being gradually

⁴⁵ D.H. Rosenbloom and D.D. Goldman (2002) *Public Administration: Understanding Management, Politics and Law in the Public Sector*, New York, Random House

eroded....Civil servants will also tend to become less loyal in terms of career commitment, and motivated more by material gains than by a sense of lifelong vocation.

Unlike in other countries where public sector reform and accountability was introduced, the semi democratic nature of Hong Kong's system of government meant that accountability at the ministerial level was absent. This was especially a problem as more and more top-civil servants became political appointees.

In addition to these problems – which would be serious enough in their own right – Hong Kong also suffers from the problem of legitimacy due to insufficient mechanisms for public participation. While the citizens in Hong Kong score highly in terms of public engagement there is a danger that their civic reserves are being depleted by demands that they participate in consultations, which rarely result in decisions. Further, while mass protests (such as in 2003) achieved their purpose (the resignation of the Chief Executive), the political system is ill-suited for transforming the views of the public into policies. The measure of governability, is in large part a function of the political systems ability to transform views articulated by the public into public policies. This ability is not necessarily the sole preserve of pluralist democracies.

Even in polities with few opportunities for public engagement, the government may have the capacity to aggregate views articulated into policies. However, the political system as it has evolved in Hong Kong is not one of them. Growing discontent and numerous examples of the lack of responsiveness has led the political system to breaking point (as was evidenced during the protests following Legco's vote on the Rail-Link to Mainland China in January).

It is in the context of these developments that the discussions on constitutional reform should be viewed. Based on evidence, the stability of the Special Administrative Region is best maintained if the residents are provided with proper mechanisms for holding their leaders to account. This will require genuine constitutional reform, including granting Legco the right to initiate legislation.

Needless to say, such a move is controversial. However, provided that the CCP maintains the view that “the territory’s stability” is their main concern, a move towards universal suffrage is likely to result in better accountability and indeed in greater stability than the current system.

But constitutional reform is not the only concern. In many ways, the problems with the public sector in Hong Kong are deeper and wider, and more structural than merely institutional. The abuse of consultations, which we have already mentioned, is a major concern for most of those interviewed. As a consequence of wanting to accommodate both Beijing and the local citizens, the government has been unable – or unwilling to reach decisions. What one respondent has described as “endless consultations” has been described by another as “paralysis by analysis”. The result is that Hong Kong is unable to make decisions, and hence fall behind other countries in the geographical vicinity and further a field.

Another concern which previously has received little attention is use of experts. Due the closed nature of decision making and the lack of transparency that results from a mainly self-selective elite monopolising the policy process. The Government relies heavily on experts to provide expertise on policy implications. This is a feature in most systems around the world. However, the outsourcing of expert advice has led to a situation in which the government reportedly pays experts to provide evidence that suits the government. This might not be a sinister plot – although some of the respondents suggested as much. A more charitable interpretation is that the outsourcing of public sector functions and the politicisation of the bureaucracy has eroded the ethos of independent and neutral advice that traditionally characterised the civil service. As a consequence the traditional ‘mandarins’ culture of independent and political neutral counsel has been replaced by external experts, who legitimize decisions for which there is little or no evidence. It goes without saying that this state of affairs in the long run has detrimental effects on both the Government’s legitimacy and on the quality of the

policies decided and implemented. As a result both the government and the citizens will suffer.

As a consequence of these problems – lack of accountability and the erosion of the traditional civil service values – many more citizens are turning to the courts. This presents a dual challenge. The increase in the number of cases has put strains on the courts. The courts are ill-equipped to deal with essentially political cases, and as a result the courts risk becoming a pawn in a political game. The consequence of this can be – but isn't yet – that the independence of the courts will be challenged. There are already indications that CCP are concerned about the role of the judiciary in Hong Kong. This might lead to more careful selection of judges, i.e. judges who are less critical of the government in the future. That appointment of judges is likely to go relatively unnoticed – especially as those nominated are not subject to hearings, let alone approval by Legco – makes this a plausible scenario.

8. Recommendations

In many ways Hong Kong is *sui generis* or one of its kind; a unique example of a jurisdiction governed according to one particular system, while under the sovereignty of another power, which is governed by another political system. Such examples are, to be sure rare, yet Hong Kong is not the first example of a polity governed according to a (semi)pluralist system of government, while part of a larger entity governed according to a patrimonial system. For example, Finland was (from 1809 to 1917) a special administrative region within Russia, a status which enabled the former to have a system of the rule of law, balance of power and pluralistic democratic institutions⁴⁶. While the cases are not directly comparable, there is thus at least one example of how ‘one-country two systems’ might work. Indeed, Finland would in all likelihood have continued this arrangement had it not been for the Russian Revolution.

Based on this reading of political history, there is scope for relatively radical reforms in Hong Kong within the overall sovereignty of PRC. And reforms are long overdue, although they must be realistic and take the realities into account. Nothing is more futile than presenting ideas that stand no chance of being implemented.

While there is little doubt that democratic reforms – including universal suffrage – would increase the legitimacy of the political system and improve accountability, the introduction thereof is a matter that requires careful consideration by those concerned. It is beyond the brief of this report to interfere in these matters, yet it would be a dereliction of professional duty to refrain from stating the facts regarding governance and constitutional reform.

⁴⁶ Nevakivi, Jussila, Hentilä (1999), *From Grand Duchy to a Modern State: A Political History of Finland Since 1809*, London, Hurst & Co.

8.1 Constitutional Reform

Anybody recommending such changes runs the risk of incurring the wrath of those who – for different reasons – are reluctant to embrace universal suffrage. Yet, there is little doubt that proper mechanisms of political accountability would provide a safety valve which would give the public vent to their occasional frustrations. More mechanisms for direct engagement and participation is universally shown to lead to more political stability and economic growth. The professional view of this report is that it would be in the interest of Beijing to accede to the demands for universal suffrage. Public support for this high and the events following the vote on the Rail Link in January 2010 showed that many citizens are willing to go to extremes in pursuit of their goals. This would benefit no one. A compromise on constitutional reform is a high priority!

8.2 Return to the Whitehall model of Bureaucracy

But constitutional reform is not the only impediment towards better governance in Hong Kong. The most important problem is the emergence of a ‘spoil-system’ under which top-civil servants are selected on the basis of patronage rather than merit. This system means that

1. The independent expertise of long-serving public officials has been discarded, and that;
2. The prestige of the civil service has been eroded (which in turn may lead to recruitment problems in the future)

The recommendation of this report is that a return to a more traditional system like the Whitehall system, which existed prior to the reforms undertaken by Tung in 2002.

8.3 Fewer Consultation

One of the problems of participation is that citizens only have limited time for engagement. In most situations, citizens are happy to delegate decisions to, say, elected representatives. But when their interests are at stake or when they really care about an issue, they become engaged. In any effectively functioning political system, there are mechanisms that allow citizens to channel this energy into the political system. Consultations can be one of the mechanisms, which allow citizens to voice their concerns. But all too often, consultations become a drain on the ‘civic reserves’ and as a result citizens become apathetic and their trust in the government ability to solve problems declines. This is arguably the case in Hong Kong.

Hong Kong suffers from consultation fatigue. No other country or jurisdiction in the world hold more consultations – and no countries arguably make fewer decisions. The ‘paralysis by analysis’ situation, described in the report means that the high volume of consultations has a directly negative impact on decision capability. Furthermore the lack of decisions means that the (ab)use for consultations has detrimental effects on the legitimacy of the regime. This critique is not to say that consultations have no place in a modern state. They do! But consultations are no substitute to proper engagement (e.g. through legislative hearings and parliamentary interpellations. The recommendation of this report is that the use of consultations should be limited to situations when the citizens – or a proportion thereof – demand these through channels established for this purpose (such as the e-petitions in the Scottish parliament- where consultations can be initiated by public demand). This system will both lead to better and swifter decision, and save money and energy for controversial cases.

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