

**Testimony to the Constitutional Affairs Panel of the
HKSAR Legislative Council
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1. Concepts and definitions

- 1.1. Tyranny is by definition power without accountability. Accountability which flows only from the bottom upwards is by definition slavery. For government and society there can be no more important issue than a well-ordered and well-functioning system of accountability. For a government and society which values free markets and free people such as ours, properly constituted and efficiently operating accountability systems comprise the foundation element.
- 1.2. Democracy requires that power and accountability flow both from the bottom upwards and from the top downwards. It requires that all fall equally subject to the rules and regulations governing the system of properly constituted power and accountability, otherwise defined as the rule of law. This mutual and equal subjection of all parties to laws created by a consensual and representative process which connects top to bottom and bottom to top, and which divides power and accountability among all providing each their rights as well as responsibilities and each their place and role, none of which are permanently fixed to anyone's disadvantage, translates power into authority and accountability into legitimacy. This is the heart and soul of justice, the insurance of a healthy society and of social order.
- 1.3. Authority and legitimacy deriving from well-constructed and mutual accountability structures lay the basis for a society's stability and prosperity. Without properly constituted and functioning authority and legitimacy there can be no prospect of good governance, and no hope of a stable governance system or prosperous society.
- 1.4. Authority must not only be properly constituted, it must be recognized as a role held in trust by its temporary occupants, for no person in authority continues permanently in that role. We as individuals all die; societies live on. Accountability structures must provide systematic means by which those currently occupying such positions may be replaced, and their grants of authority must be renewed by some systemic and periodic process. Health — physical, social and political — requires renewal. The most effective and stable social renewal processes yet developed depend on regular elections of those exercising public grants of authority.
- 1.5. Authority, like those who exercise it, is also subject to the ravages of time and eroded by social change. It must be periodically renewed by reversion to those who grant it, both

from above and from below. To be renewed responsibly and efficiently so that those holding authority in trust are genuinely accountable, such authority must be transparently exercised and subjected to bottom upwards and top downwards grants of power. For example, authority over a certain area may be granted by a higher official, who in turn must account for that grant of authority and the efficiency and justice of its exercise to those who granted that higher official the role. Modern societies globally have developed various forms of periodic elections to achieve this necessary renewal of authority and authorities (those who exercise properly authorized governmental roles).

- 1.6. Transparency can only be ensured by governance and social structures and actors who are assigned the roles of oversight and monitoring of those granted authority. In modern societies these include both departments of government dedicated to check graft and corruption among civil servants and public servants (civil servants are defined as those whose profession and career is dedicated to the public and its authorized representatives; public servants are those elected or properly appointed by the public or its representatives to temporary positions of authority), and by agents of "civil society," the non-governmental organizations which members of the public voluntarily support or join such as the media, charities, churches, private businesses, and so on which take a responsibility to monitor the actions of government which affect their constituents and/or supporters. The government and these voluntary and private bodies provide perspectives and information to the larger public from which both originate, and from which both are provided their power and their means of support. Members of all groups may and should change roles or positions, from private to public spheres and vice versa, for the best functioning and renewal of both spheres. In modern societies, such movements between the private and public spheres take place regularly and constantly.

2. Structures and the state of accountability in Hong Kong

- 2.1. In Hong Kong we have an executive-led system in which authority has been granted by election from a body intended as representative of the public. In turn, that grant of authority has been recognized and duly authorized by the higher authority of the nation-state of which the SAR is a part. The Chief Executive accounts upwards for his actions to state officials; he accounts downward for his actions to the people's representatives, on a daily basis in the Legislative Council and once every five years to the larger representative of the public, the Election Committee.
- 2.2. However, the Basic Law realizes that the colonially-derived state of partial accountability and partial election is defective and only a stop-gap measure meant to serve until society feels ready to advance further. The Basic Law therefore provides that universal suffrage elections for Chief Executive and the Legislative Council are the "ultimate" aim. These provisions in the Basic Law find strong support among the public as established by academic surveys of public opinion.
- 2.3. The Hong Kong Transition Project has been tracking public views on constitutional structures for a number of years. Random sample surveys conducted before and after the

1998 and 2000 Legco elections show a steady rise in support to replace functional constituency elections with direct elections.

Table 1 Do you support or oppose replacing Legco functional constituencies by direct elections?

	Support	Oppose	DK/Neutral
January 1998	18	55	28
June 1998	31	42	28
April 2000	49	23	27
Nov 2000	67	14	19

There is also strong support for the direct election of the Chief Executive.

Table 2 Do you support or oppose direct election of the Chief Executive?

	Strongly support	Support	Neutral	Oppose	Strongly oppose	DK
April 2000	34	41	5	11	2	7
Aug 2000*	28	43	5	17	2	5
Nov 2000	35	40	6	10	4	5

*of registered voters only

- 2.4 The proper accountability of senior officials, who are appointed by the Chief Executive, confirmed by the Central Government, and who are subject to investigation and query by the Legislative Council, cannot be fully assured except by achievement of these "ultimate aims" for direct election of public officials as indicated in the Basic Law.
- 2.5 The Executive Council contains the senior-most elected official, the Chief Executive, and the senior-most appointed officials. From it originates all policy decisions. Furthermore, under the Basic Law, the Chief Executive must approve private member bills which may affect government policy or the budget. Consultation with the Executive Council on such proposals should be expected prior to Executive approval or disapproval. The Executive Council thus in effect exercises a "veto" on proposals emanating from the Legislative Council.
- 2.6 While support for various forms of political debate are well supported by a majority of the public, and while the public show strong support for structures such as the Legislative Council and political parties, as Table 3 below shows, the Executive Council's role as a checking body over the Legislative Council is not as well supported. Barely half of the public accept the Executive Council's veto power over Legco proposals. This indicates a significant need for improved public accountability in the Executive Council in order to enhance the acceptability to the public of its actions. While direct election of the Chief Executive would no doubt improve the situation, further action on amending the present composition of the Executive Council and the role of senior officials may be required in order to enhance the legitimacy of its

decisions. In large part, the hearings of this Legco Panel have been stimulated by the felt public need for greater legitimacy via greater accountability and more effective political efficacy.

Table 3 Acceptability of political disputes June 98, April and August 2000

	Acceptable June 1998	Acceptable Aug 2000
Multiparty competition in elections	85	83
Party debates in Legco	83	83
Disagreements between Exco & Legco	76	76
Arguments btwn party leaders on tv/radio	73	75
Street demonstrations & protests	72	62
Exco veto of Legco proposals	50	50
Lawmaker's use of harsh words in debate	50	53
Business group veto of grassroots proposals	34	41
Protests in Legco by non-Legco protestors	25	22

- 2.7 The Executive Council needs an enhanced, politically effective composition and role. Senior officials of many departments of the government who now sit on the Executive Council can, and should, be political appointees. In turn, the senior-most person on civil servant terms should function as the professional assistant to the political head of department. Such a system functions well in the United States executive branch, for example. Other members of the Executive Council should be advisees to the Chief Executive from political parties friendly to that Executive and supportive of his/her policies. When the Chief Executive and those parties stand for election, the electorate may then vote not just for personalities, but for policies. Clarifying the policy role of elections is absolutely essential for the development of responsible democracy in Hong Kong. This, along with the further development of the electoral system for Legco and the Chief Executive, as envisioned in the Basic Law, is one of the most important means to enhance the accountability of senior officials.