

LO SHIU HING'S SUBMISSION ON THE QUESTION OF ACCOUNTABILITY

The government of the Hong Kong Special Administrative Region (HKSAR) proposes the idea of introducing "a system of accountability of principal officials." In my view, this term is perhaps inaccurate because as the positions of principal officials are increasingly occupied by politicians, or political appointees made by the Chief Executive, we should use the term "accountability of political appointees" rather than that of "principal officials." Moreover, it remains to be seen whether there will be such "system" established by the HKSAR government.

Arguably, having a spirit of accountability, or a democratic spirit, is more important than having a so-called "system." Even in democratic countries like Britain, it took decades or even generations for the principle of ministerial responsibility to be established. After all, the principles of ministerial responsibility (ministers accountable to the legislature for their mistakes made) and collective responsibility are actually constitutional conventions—political habits which have developed for a long period of time, which are not legally binding, and which can change over time.

The crux of the problem of the HKSAR's so-called "system of accountability of principal officials" is that neither the existing government officials nor the future political appointees (who will be principal officials) appear to understand the importance of constitutional conventions. Above all, neither the existing officials nor the future political appointees can really spell out what are the constitutional conventions that can ensure political accountability. I suggest that the government should set up a committee to look into areas of political reform, including the question of constitutional conventions (such as whether principal officials should resign in case of serious mistakes, and what will be the possible principles determining that resignations). I also suggest that the LegCo's Constitutional Affairs Panel should look into the existing constitutional conventions in the HKSAR, and whether some new conventions should be established or experimented in the future. For example, whether ExCo members should come to LegCo to answer questions from LegCo members regularly (say, once or even twice every week), or whether the ExCo convenor should lead other ExCo members plus principal officials to answer questions from LegCo members every week, thus entrenching a constitutional convention of making the executive branch regularly accountable to the legislature. Conventions include not only (1) methods of executive-legislative communications which are not stated in the Basic Law, but also (2) when the powers of the Chief Executive should be exercised (especially regarding private member's bills and bills relating to government expenditure and government policies), (3) the principles in which the LegCo President exercises his or her veto powers over private member's bills, and (4) the principles governing the resignation of principal officials over scandals and serious governmental blunders. Unless these principles are at least spelt out (though not legally binding as conventions can change over time), there is arguably no "system" of accountability. Accountability needs to be entrenched by spelling out these essential

principles and implementing them in reality. Otherwise, "the system of accountability of principal officials" only exists in name but is practically abandoned in reality.

Furthermore, the principal officials, whether they are political appointees and/or career civil servants, should also understand the importance of developing their constitutional conventions of being held accountable to the public as well as the legislature. One of the problems of the HKSAR government is that the principal officials do not have any political and legal training on the importance of constitutional conventions. The Civil Service Training and Development Institute (CSTDI) should enhance the training of senior civil servants on the question of constitutional conventions and accountability. Otherwise, when senior civil servants retire and leave the bureaucracy to become politically appointed principal officials, they will still be ignorant about accountability and conventions. I suggest that all politically appointed principal officials in the future should undergo training and education on constitutional conventions and accountability. Here, the CSTDI should invite experts from other parts of the world to discuss accountability and conventions. At the same time, the LegCo's Constitutional Affairs Panel and also the HKSAR government's Constitutional Affairs Bureau should study how to develop a Hong Kong-style of constitutional conventions that guarantee and implement accountability. Otherwise, accountability exists on paper only.

On the other hand, the LegCo and the HKSAR Government should consider whether the Chief Executive, when he or she runs for the Chief Executive election in the near future, should at the same time put forward a list of principal officials or political appointees. These proposed ExCo members will need to face the questions raised by the 800-member Selection Committee for the Chief Executive. This convention, I suggest, should be developed in the process of selecting the Chief Executive. The advantage of this convention is to make the Chief Executive candidates and their proposed ExCo members at least more accountable to the electors. Also, another convention is that two or three years after the Chief Executive assumes office, he or she will lead the ExCo members to answer questions from the 800-member Selection Committee, which in my design here does not serve as a second power chamber but acts as reasonable checks and balances upon the Chief Executive and the ExCo members. This will also enhance the role of the Selection Committee in improving the accountability of principal officials, at least institutionally speaking.

In short, it is urgent for the HKSAR Government, LegCo's Constitutional Affairs Panel, the CSTDI to consider how to concretize the elements and principles concerning accountability of political appointees and/or principal officials. Otherwise, the so-called "system of accountability of principal officials" will likely be a slogan without concrete principles, without a democratic spirit to implement these principles, and without a long-term plan to enforce accountability. The HKSAR must develop its own style of constitutional conventions, some of which are suggested here in this submission, and must develop an accountable spirit in the minds of the senior civil servants, the principal officials and the political appointees.