Governance, Organizational Effectiveness, and the Nonprofit Sector – Hong Kong in Transition

By YUEN Yiu Kai, Terence

Introduction

Maintaining stability and prosperity is of the utmost significance to most Hong Kong people throughout the 80's and 90's, when the territory went through the transition period in transforming from a British colony to becoming a special administrative region of the People's Republic of China (PRC). Before Hong Kong was handed over to China, practically no one had queried about the notion that maintaining stability before and after sovereignty change would be crucial in securing ongoing prosperity in Hong Kong. Ironically, there is a price to pay in maintaining stability. It would have the undesirable consequence that institutions in both public and private sectors would have developed the inertia against making change and adjustments, and as a result many of the existing institutions, including those from the civil society and the nonprofit sector, were not prepared for, and sometimes unwilling to cope with the multitude of challenges that were awaiting to unfold. Since the handover in 1997, unprecedented challenges have been confronting the new Government, beginning with the Asian Financial crisis which slipped in shortly after the handover, then came a series of political and economic turbulences, not to mention the latest SARS outbreak whose impacts to Hong Kong are disastrous. As the events gradually unfolded, it was obvious that the institutions in various sectors were forced to make changes, but at best they were responding to the evolution of events instead of being proactive and eager to embrace change. Parallel to the overall theme of the APPC research project, this article attempts to examine how Hong Kong's nonprofit sector and civil society organizations respond to the rapidly changing environment during Hong Kong's transition period, particularly with reference to nonprofit governance and legitimacy, as well as issues related to nonprofit accountability and transparency.

It is now obvious that in order for Hong Kong to continue its prosperity, all sectors in Hong Kong including the civil society would need to revitalize its existing operations and be able to embrace change. As in the case of the nonprofit sector, it requires strong community initiation and leadership in guiding its way through this transition process. Unfortunately, as will be seen in this article, the nonprofit sector at present is still by and large subservient to the state sector, both in terms of funding support as well as taking initiatives in setting community agenda. The research topic *Governance and Organizational Effectiveness of the Nonprofit Sector* thus represents an important topic in exploring issues like: (a) roles and responsibilities of nonprofit

governance, (b) transparency and accountability of the nonprofits, (c) evaluation and monitoring of nonprofit performances, and (d) roles of civil society in enhancing effective public governance. The article will also reveal the main causes of greater attention being allocated to the improvement of governance and organizational effectiveness, as well as the perceived roles and social standing of civil society organizations including new developments of state-society relations. The main body of the paper will also briefly document several initiatives undertaken to improve governance and organizational effectiveness of civil society organizations, and partly as a conclusion, the article will also recommend possible ways to improve nonprofit governance and in particular transparency and accountability of civic organizations.

The article is divided into three main parts in respect of the above issues and topics. In the next section it will first examine the development of the civil society in Hong Kong, explore why nonprofit governance has been moved to the centre stage, and note some of the immediate challenges in connection with nonprofit corporate governance. In the second section it will document some of the government's and the civil society's responses to improve governance and organizational effectiveness of civil society organizations. In the concluding section, it will review from a wider perspective the challenges faced by the civil society, and provide an overall road map for mitigating the identified problems.

A) Civil Society Development and Nonprofit Governance

Role and Influence of the Nonprofit Sector in Hong Kong

While finalizing this article, the first local comprehensive study commissioned by the Government to examine the make-up of Hong Kong's third sector is still underway, the result of which will be available in late 2003. No other studies are currently available to offer a comprehensive picture on the makeup of the nonprofit sector in Hong Kong. However, with influence from British traditions, the character and makeup of the third sector in Hong Kong would closely resemble that of the United Kingdom. Voluntary associations of various kinds have long been serving important social functions including service provision, advocacy, interest articulation, and civic participation. Strong presence of nonprofit activities can be found in areas including arts and culture, education, health, social welfare, recreation and sports, merchants' associations, business and professional associations, among others. While the role and influence of the nonprofit sector has been largely shaped by the colonial history, of equal importance is the makeup of the early local Chinese population comprising mostly refugees coming from different provinces of China. Due to the lack of resources, the colonial rulers in the early time would be reluctant to provide community services to the local Chinese population. Self-help and mutual help were thus developed to fill the service gaps, and the common social origins of the

immigrant population, often sustained through civic organizations like clansman's associations as well as other religious and cultural groups with Chinese cultural traditions, had played an important role in linking people together for collective problem-solving. Hong Kong thus has a long history of civil society movement, which was again strengthened in the two World Wars when there were tremendous service needs. Civil society, in the form of community-based initiatives, had thus been heavily involved in meeting local needs at a time when community needs were not well met by the colonial government. In addition to clansman's associations and indigenous religious and civic groups, western-styled welfare agencies, international relief agencies, and branches of overseas religious bodies all set up their base in Hong Kong during the 50's and 60's. Both overseas and indigenous philanthropic resources were raised to fund the activities of the voluntary sector, which were much welcomed by the then colonial government. A truly pluralistic scene of civil society development was once registered in the history of Hong Kong.

With rapid economy development since the 70's, however, the situation has changed considerably. Rapid economic growth has led to the emergence of a strong business and market sector, which has also generated the necessary resources to beef up the state and bureaucracy. With escalating public resources available, the colonial government was under great pressure to improve welfare provision. When the government began to take on more responsibilities in providing different types of welfare services, it soon realized the benefits in using civil society organizations in service delivery, which could serve as an effective interface between citizens and the colonial government. The nonprofit sector had responded positively, and the public-private partnership had supported rapid development of services in various areas including education, health, and social welfare. Ironically, after decades of public funding support, the result of increased state involvement has not strengthened but instead crowded out the once robust civil society sector. At present, spending by government on education, health and welfare has been nearly becoming the sole source of funding for all three service areas, and together accounted for over 60% of the government annual budget. While both public health and education sectors are close to becoming the exclusive terrain of state provision, over 90% of social welfare services are also funded by government subvention, though most of the services are still delivered by some 180 social welfare NGOs. Increasingly, the nonprofit sector has become an extension of the bureaucracy. This is contrary to the general belief that Hong Kong is a small government, and a minimalist approach of government is being adopted. As for other civic associations like the clansman's associations, even though many of them still exist today, their importance has also faded, since most of their functions would have been undertaken by new social networks of top business and community elites gradually built after decades of economic development.

Drivers for Change since the 1990's

Hong Kong's civil society organizations thus have long undertaken the functions in service delivery, advocacy, interest aggregation and articulation, as well as serving as a medium of civic participation. Most Hong Kong people would be familiar with the service delivery and advocacy roles of nonprofit organizations, which were given a more prominent and visible presence under the late colonial rule. After moving into the post colonial period, in realizing "Hong Kong people running Hong Kong", the other two civil society functions on the articulation of community interests and in enhancing civic participation would have far greater implications on effective public governance.

While the discussion so far has provided the broad context explaining some of the changes affecting the nonprofit sector in colonial period, the situation has turned even more complicated by the 90's. Several parallel trends have increasingly led to greater attention being given to nonprofit governance and organizational effectiveness. The changing political socio-economic environment both during and after the handover period have further augmented those effects:

- *Demands for administrative reform:* Following the pathways of many modern governments, various public sector reforms have been initiated throughout the 1990's which have led to fundamental change in Government's funding policies to nonprofit organizations. For example, in the welfare sector, continuous and wide-ranging changes have been introduced, which include the introduction of the Service Performance Monitoring System, Funding and Service Agreements, Service Quality Standards, new models of allocating new services, enhanced service integration, and most importantly, the implementation of the Lump Sum Grant (LSG) funding system. In the case of implementing the LSG system, in replacing the original input-based funding system that ran on a reimbursement basis, it has triggered lots of controversies given the new scheme would impact the job security and salary protection of the professional social workers. It has taken the Government nearly a full decade to have the new funding system implemented. Similar administrative reforms, which are widespread in different policy domains, mainly call for improved cost-efficiency on service delivery. As a result, improved NGO corporate governance and organizational effectiveness are being emphasized, but very often only focusing on effective financial management based on market principles.

- *Demands for community-based problem-solving and joined-up government:* Another observable trend, which is also found in governments in other countries, calls for joined-up, inclusive, and participatory governance in dealing with complicated community problems that are often intractable by the state sector acting alone.

An example is the establishment of the "Community Investment and Inclusion Fund" by the Government in 2001 and the related emphasis of developing a vibrant third sector promoting self-help and mutual help. The associated agenda of building social capital and enhancing capacity building of nonprofits also calls for improved internal governance and organizational effectiveness of nonprofit organizations. One should however note that the Government's initiatives are instituted amidst pressure for wider political participation, and the call for democratization in both the executive and legislative arms of the Government. It is thus unclear if it is the Government's genuine desire to materialize community governance, or it is engineered as a gesture to ease political pressure. Either case, since the initiatives of community governance were instituted by Government, with strong state influence, those initiatives might have the opposite effect that civil society organizations might turn even more subservient to the Government, which have already aroused growing concerns in the civil society sector.

- *Transformation of the administrative state:* Attaining effective public governance has been a huge challenge to Hong Kong both as a colony and after turning into a special administrative region of China. Past commentators have credited the effectiveness of the "administrative state" in successfully governing Hong Kong, with the nonprofit sector only viewed as marginal to public governance. Yet, it was also true that with the running of the administrative state, public governance was made possible by a large network of advisory boards, ad hoc committees, rural committees, civic and voluntary associations, as well as individual citizens, which the government would consult routinely in the policy-making process. Since the inception of the new Hong Kong SAR Government after change of sovereignty, the administrative state has been encountering multi-faceted and unprecedented challenges. On the one hand, raised public expectations on government performance and prolonged economic recession have rendered public governance a much more difficult task. On the other hand, there are ever-increasing demands for political reforms, but understandably the authority in power is considering a rather slow, if not stagnant, pace of democratization. The Government has thus been caught in the situation where the old colonial governance scheme has become totally obsolete, while movement toward a western styled full democracy has also been ruled implausible. Consequently, it has to look for a new way of governance, and a new model of "government by consensus" has to be developed; incorporating the civil society and third sector organizations in the governance scheme would be desirable for enhancing public governance. Formal and credible mechanisms have to be instituted to materialize participatory and inclusive governance.

If the trends depicted above concerning the interactions of sectors and the positive role of the nonprofit sector in effective public governance are correct, it would have significant implications on improving the quality of public policy discourse. Some of the relevant follow-up questions would include the following:

a) If the functioning of the administrative state, with its unique configurations with the market and the nonprofit sectors, has contributed toward effective public governance during the colonial period, what new governance arrangements would be necessary for coping with the new challenges faced by the new Hong Kong Government after handover?

b) According to the following quotes of the Chief Executive's Policy Address, it appears that the Government is keen to collaborate with the voluntary "third sector" to enhance the legitimacy of policy making. If this is the intention of the government, what are the needed adjustments for both the state and nonprofit sectors in order to successfully achieve the kind of community governance depicted in the policy address?

> The progress of our community hinges largely on the long-term commitment of our citizens. I believe that in the years ahead, our citizens will play an increasingly active role in serving the community and in voluntary services. … Non-profit-making and voluntary services, which are outside the ambit of the market and the Government, are often known as the "third sector". … In Hong Kong, voluntary organisations already provide a vast array of services, but still have great potential to improve in terms of both quality and quantity. I hope that apart from having a highly efficient and modernised market economy and a small and effective government, Hong Kong can also boast a dynamic and growing sector of voluntary services. We will continue to enhance our working partnership with these organisations. Together we will build a better future for Hong Kong (Tung 2000: paragraph 98).

> The success of "Hong Kong people running Hong Kong" hinges on the active participation of all sectors of our community. … We want to open up more channels for greater participation by our citizens in public affairs. This will enable the Government to hear and consider the public's views in formulating appropriate and acceptable policy measures. This is an important basis for our governance. Notwithstanding our adherence to the principle of an executive-led government, the views of the public will be taken fully into account (Tung 2000: paragraph 120).

c) In examining civil society development in Hong Kong, it would have at least three different meanings on governance:
   - How to enhance the *internal governance* of nonprofit organizations
   - How to enhance *sector-wide governance* over certain policy domains (e.g. arts, education, philanthropy, social welfare, sports, etc.)
   - How to enhance effective *public governance* and improve the legitimacy of public policy discourse at the society level

   The three levels of governance are apparently linked with one another. By examining internal governance of nonprofit organizations, we are in fact looking at the micro-foundation of the wider issue of effective public governance. Yet, what are the exact linkages between these different levels of governance? And do we have good understandings on the underlying mechanisms that could allow us to enhance governance at all levels?

d) If the voluntary nonprofit sector is being called upon to perform a greater role in legitimizing public governance, what about the issues confronting civil society organizations themselves in terms of legitimacy, transparency and accountability? Do the leaders from civil society organizations perceive themselves as having such an imperative role in enhancing public governance, or they merely consider themselves servicing localized needs or specialized interests?

In addressing the above questions, several group discussion meetings were arranged and some very broad observations have been gathered regarding the latest changes and development on perceived roles and standing of civil society organizations:

- *Service delivery:* Without a doubt, NGOs in Hong Kong would continue to serve an important role in delivering public services. The nonprofit sector is still being regarded as a trustworthy, relatively inexpensive partner in service delivery. Yet, the sector has to change its past image as just an extension of the bureaucracy and restore its own independent identity. The challenges are to enhance service effectiveness, place greater emphasis on outcome and social impact, and balance professionalism with spontaneity. The renewed emphasis on NGO's corporate governance and organizational effectiveness is a good sign but over-emphasis on financial accountability and non-strategic use reporting and evaluation may have diverted the efforts to the wrong directions. Excessive government regulatory measures and rules of funding bodies might even weaken corporate governance. In short, the sector must learn to govern professionally but not to allow either professionalism or managerialism to dominate its agendas.

- *Building social capital:* With due acknowledgement of the limitations of the state sector in dealing with many community problems, civil society organizations are

being counted on and are thus welcomed partners of the government in developing local solutions to address grassroots problems. The establishment of the Community Investment and Inclusion Fund, as noted above, is a good sign of the state sector supporting the development of social capital and civil society. Given it is apparent that the present highly centralized mode of government has not achieved the desired policy outcomes, incorporating bottom-up initiatives with emphasis on communities and social capital could at the least smoothen the policymaking process. In this sense, NGOs are not merely viewed as inexpensive service providers, but they are connectors and social lubricants that facilitate policymaking and implementation.

- *Advocacy:* Albeit recognizable actions in areas such as environment, human rights, labour issues and housing, etc., the third sector in Hong Kong seems only lightly populated by well-organized advocacy groups and research oriented think tanks. While the situation has been changing gradually and the number of advocacy groups would likely grow, two pending issues would need to be resolved. First, most of the advocacy groups at present do not have broad membership base and are not deeply rooted in the community; the government could easily dismiss their opinions. Second, many NGOs and even the Hong Kong Council for Social Service are substantially funded by government. It would be difficult for those government-funded nonprofit organizations to be truly independent to perform their advocacy functions. The government has also openly noted that while it affirms the advocacy role of NGOs, it does not think those activities should be funded by public money. In order to claim legitimacy to better serve its advocacy role, the sector has to engender greater community representation and achieve funding independence.

- *Legitimizing public governance:* Workshop participants expressed relevant views have supported the notion that engaging the civil society would be a desirable means to legitimize public governance, but the real challenge is to turn the rhetoric into practice. Different means to materialize the concept were suggested. At present, appointment system is still widely used by government in appointing members to the District Councils and for various advisory committees. While the inclusion of appointed members could be a balancing force in the councils/committees and could provide essential information and expertise to better decision-making, their "representativeness" is often questioned by the elected members. Thus it would be useful if the appointment system could be made more credible through the development of a pool of civic representatives and formally rationalizing the mechanisms for making the appointments according to civic representation. By the same token, it was also suggested the future election systems for the Legislature and even the Chief Executive's election

could also follow similar approach to introduce an element of civic representation into the electorates, if full direct election is deemed implausible in the foreseeable future. The election system of the Legislative Council at year 2007 is due to be reviewed and according to the Basic Law, the mini-constitution of Hong Kong, there are no specific limits on the election system. By instituting the concept of civic representation to complement direct election and functional constituencies election, it is considered an upgrade and arguably a good interim measure before ultimately transforming into full direct election as specified by the Basic Law.

Nonprofit Governance Challenges in Hong Kong

To hurdle the challenges and to meet the emerging new demands, it is imperative that internal organization governance of nonprofit organizations would need to be enhanced. However, the present situation in Hong Kong was not so optimistic. A full list of issues and problems were identified:

- *Who wants governance:* Given there are no real owners in nonprofit organizations (board members of nonprofit organizations are trustees serving the interests of service beneficiaries who often could not speak for their own rights), a rather pessimistic view is that it is virtually impossible to exercise effective governance control under most circumstances. The situation of the business sector was used as a reference, and the case of Enron and other US corporate scandals were noted in the discussions as typical governance failures even in situations where enterprise ownership could be clearly defined. While the notion of multiple stakeholders was noted in the discussions, it was more of a challenge than solution to nonprofit governance. In fact, the state of stakeholder interactions in philanthropy in Hong Kong is considered unsatisfactory at present, which is attributable to several factors including the secretive nature of many foundations and funding bodies, transparency issues of nonprofit organizations themselves, and the power differentials between stakeholders.

- *Difficulties in recruiting committed and capable board members:* With changing social environment, the basic qualities for good board members have also been changed. Not only they are required to have commitment over the causes they serve, they also need to possess the expertise to govern their organizations in a professional manner. In the past many board members just participate in nonprofit activities with a sense of community serving, and many don't realize they are liable to fiduciary duties for mismanagement. It is still common for many civil society organizations that board members are only selected within closed circles. There are no formal tenure restrictions in many cases, and the same group of people could serve on the same board for an extensive long period of time. Without the injection of new bloods, innovation would be stifled. The situation is not just

confined to one or two service fields but widespread in different areas. Worse still, there are situations where an organization would have difficulty year after year identifying suitable candidates for filling its various board positions, and those eventually engaged would unlikely be fully committed to the work.

- *Organizational resistance to changing governance model:* Due to government rigid regulatory measures, in service fields such as social welfare and education, governance functions have been rested in the hands of government officials and service professionals for several decades; the renewed emphasis of independent board governance has been a threat to many. While some agency CEOs would have accepted the challenges, many of them encountered great resistance from the organizations' middle level managers. Similar to board members, many agency CEOs, most of them are service professionals, also lack the expertise to institute the new corporate governance model. From time to time they would also encounter value conflicts when managerialism is increasingly being emphasized to substitute professionalism and faith-based interactions. Often times changing funding rules, which are supposed to relieve and empower service agencies, have instead become extra chore to the service professionals and in the end turned into unnecessary paperwork.

- *Structural problems affecting legitimacy of the nonprofit sector:* While all of the above point to certain governance issues which are temporal in nature and could be changed over time, perhaps the most fundamental problem constraining the potentials of the nonprofit sector in contributing towards effective public governance is the legitimacy crisis of the nonprofit sector itself. First, it is agreed that transparency and accountability have for long hindered the progress of the sector. Whether they are incapable or unwilling to connect with the public, the secretive nature of nonprofit and philanthropic activities has hindered the sector's ability to gain broad public support over its activities. Second, government regulations on the establishment of charities and nonprofit organizations are lax, and appropriate self-regulatory mechanisms of the civil society have not been developed. Memorandum and articles of association are prepared for fulfilling the relevant registration requirements, and very often they are ignored once the organization has been established. Lacking the ability to take community leadership, our existing peak organizations also failed to raise the reputation of the nonprofit sector. Lastly, few nonprofit organizations would conduct open election of board members, if genuine elections have ever been taken place. Few agencies have a large membership base that would render election of board members meaningful. If an NGO cannot legitimately represent the constituencies it is supposed to serve, how could it legitimately represent community interests in the arena of public governance?

In the above discussion, we have examined, in fairly broad strokes, the development of Hong Kong's civil society, its roles and influence, and its relationships with the other sectors. Issues on transparency, accountability and legitimacy of the nonprofit sector have also been examined. In the next section, we will move on to examine specific responses of government and the civil society sector in addressing issues related to governance and organizational effectiveness.

B) Sectoral Responses and Innovative Programs

Broadly speaking, most of the initiatives to strengthen governance and organization effectiveness are government-initiated or funded by government resources, though a few pure community-initiated efforts are also identified. A total of six innovative programs are documented below.

Government Responses
a) Board Survey and Guide on Corporate Governance for NGO Boards
The Social Welfare Department (SWD) in June 2002 published the text "*Leading Your NGO: Corporate Governance – A Reference Guide for NGO Boards*". The reference guide was distributed to the CEOs and board members of some 200 government-funded social welfare organizations.

Rather than going through the details of the contents of the reference guide, it would be more useful here to examine the rationale and the process undertaken in preparing the document. Preparation of the *Reference Guide* was initiated by the Lump Sum Grant Steering Committee, an *ad hoc* committee established to deal with matters related to the implementation of the LSG funding system. Under the LSG funding model, with relaxed government control, NGOs are given more flexibility and autonomy to manage the use of subvention funding. The notion of corporate governance has immediately come to centre stage and was highlighted in the *Lump Sum Grant Manual* issued by Government. At the request of the welfare sector, the Government agreed to put extra efforts to develop relevant knowledge base for assisting social welfare NGOs to strengthen their corporate governance. Apart from arranging workshops and seminars for staff and board members and commissioning baseline research study, the Government made reference to a best practice guide from a Canadian source and, after consultation with the sector, developed the local reference guide discussed here.

In addition to compiling the reference guide on corporate governance, the SWD, as advised by the LSG Steering Committee, has also commissioned a local university to undertake an exploratory survey of board members of social welfare agencies funded by Government. The objectives of the survey study are threefold: a) to obtain an overall profile of boards of directors of subvented NGOs in Hong Kong;

b) to gauge more information about NGO's board governance, board membership composition, board members' perception and expectation of their own roles and responsibilities, their attitude towards welfare reform and organization effectiveness in subvented NGOs, as well as their inter-relationships; and c) to identify training needs of directors and other areas in board governance of subvented NGOs that can be enhanced through training programs to improve board effectiveness and thus organizational performance.

Questionnaires were sent to 184 NGOs subvented by the SWD, and in-depth interviews were also conducted with selected CEOs and board members of the NGOs. The overall response rate of the survey is 46%. Some of the study's recommendations are summarized as follows (Chan, et al. 2002):

- Training and support services should be provided to areas including people leadership, strategic leadership, board management, public accountability, risk management, etc.; training programs should be separately provided for CEOs and board members.

- Most NGO boards had used to emphasize more on "inward-looking" conformance functions rather than "outward-looking" performance roles; more attention should be diverted to responding to community needs and service innovation for addressing emerging community needs.

- Stakeholder interactions should be strengthened and communication should be improved for better accommodating the views of service users and nonprofit staff members.

- Communication between the agency CEOs and their boards should be strengthened through properly instituted mechanisms.

- Support should be offered to small NGOs in helping them to look for suitable candidates to serve on their boards; existing peak organizations should offer better assistance in this regard.

- Induction programs for new board members should be provided which could be organized at both agency level and the sector level.

b) The Education (Amendment) Bill 2002 Regulating School Board Governance
The Education (Amendment) Bill 2002 was submitted to the Legislative Council at November 2002 for first reading. The Bill aims to introduce the school-based management (SBM) governance framework to all aided schools in Hong Kong, which are operated by a large number of school sponsoring bodies (SSBs), which are a wide range of nonprofits of diverse nature, including religious groups, clansman's associations, etc., and are substantially funded by Government. Similar to other administrative reforms, SBM seeks to provide aided schools with enhanced flexibility and autonomy in managing their own operation and resources. It also aims to

increase the transparency and accountability in the use of public funds and school operations by providing for a participatory decision-making mechanism where all key stakeholders are involved. At present, the majority of primary and secondary schools are aided schools operated by various SSBs. Major recommendations of the Bill could be summarized in the following six areas:

- *Registration of School Boards:* At present, School Management Committees (SMCs, i.e. the school boards) are not required to register as incorporated bodies and the "school managers" (i.e. the board members) may attract civil liability. It is recommended that all SMCs be requested to register as incorporated bodies in order that legal liabilities will vest in the incorporated SMCs as a collective body.

- *Composition of School Boards:* It is recommended that teacher, parent and alumni representatives be introduced to the school boards, while the School Sponsoring Bodies would be given the right to nominate up to 60% of the total membership of the school board.

- *Maximum Number of School Boards to be Served by Any Individual:* To ensure the board member has sufficient time to get to know the school and to attend school board meetings, a school manager, saved for some exceptions, may serve on no more than five school boards. There was a recorded case in the past that a particular person had served on as many as 75 school boards at one time and this new provision is to fill this void.

- *Removal of Board Members from Office:* The new school boards could compel any individual board members who, without acceptable explanations, have been absent from three consecutive board meetings. Also, the Government would be given the power to appoint board members to a school board when it has found that the provision of the Education Ordinance has been contravened.

- *Constitution of School Boards:* The SMC in each school will draw up its own constitution. Each constitution will address specific matters including the composition of the school board and its membership, the tenure of office, arrangement for filling vacancies, selection of school principal and the means by which the constitution may be amended.

- *Disclosure of Personal Interests:* To enhance transparency and accountability of aided schools, information of school board members (e.g. names, tenure and representing sector) would need to be registered. Board members are also required to declare to the school board any personal interests which may conflict with their duties.

In explaining why the legislative route is pursued to implement the governance framework, the Government asserts that legislating the SBM requirements will give the framework a higher and credible status. The government has made it clear that it wants to enhance the accountability and transparency of nonprofit aided schools by

introducing a participatory governance framework. While there are still questions concerning whether the level of participation engendered in the Bill is sufficient, it has been a major step forward. This is indeed an interesting case showing the changing mode of state-society interactions in the education sector, but somehow a different approach is applied in the social welfare sector, which emphasizes self-compliance and regulation instead of law enforcement.

<u>c) Proposed Public Register System for Charitable Organizations</u>

In view of the growing public concern over the control of fundraising activities, the Government has drafted a preliminary proposal in examining the feasibility to introduce a Public Register System for regulating fundraising activities. The Social Welfare Advisory Committee, an advisory body appointed by Government, has been consulted on this approach and supports the proposed course of action.

Since the early 1990's, there have been calls for greater transparency and accountability with regard to the solicitation and disposal of funds for charitable purposes and for more stringent control and monitoring of these activities. The Government considers that the fundamental issue is how to enhance the transparency and accountability of charitable fundraising activities so that the public can make an informed choice, without stifling these activities by imposing onerous and costly bureaucratic requirements on the part of the charities. It had come up with the following policy positions: a) adopt an administrative approach so as to avoid legislation; b) rule out the establishment of a statutory Charities Commission or Regulatory System which is considered unnecessary in the local context and entails substantial resources; and c) enhance transparency in fundraising activities as far as possible.

Tentatively, the Government proposes to set up a public register of charitable fundraising organizations who have pledged and demonstrated compliance with certain reference guidelines, which could include disclosing the intended purpose and beneficiaries of the donations, the fraction of donations used for administrative expenses, the preparation of accounts and their publication in local newspapers, payment to beneficiaries within a prescribed period, etc. The public will be provided with information on the track record of bona fide charitable organizations that carry out regular fundraising activities. Under the proposed scheme, the role of the Government would be restricted to making the public register available for public inspection including uploading relevant materials filed by the fundraisers, and strengthening its hotline capacity so as to respond to increasing public enquiries. Entry onto the register will be processed through application by fundraising organizations, and updated and re-confirmed regularly. In order to put in place the register system depicted above, the Government needs first to develop certain

guidelines on charitable accountability for voluntary compliance by different kinds of charities, including fundraising NGOs. Yet, under the present proposal, the Government will not proactively monitor or enforce adherence of the guidelines. Only upon receipt of complaints against a charity's certain action being deviated from the guidelines, an independent committee will be asked to adjudicate whether the complaint is valid after studying information available to it. The Government considers the proposed approach has the following strengths:

- The Government will leave the Reference Guide in the hands of the members of the public to ensure its wide acceptance;

- The adoption of the Guide will on a voluntary basis by the conscious decision of the governing board of the charities which would have better motivation to comply with the Guide;

- The donors and the general public will have a commonly accepted benchmark which should be flexible enough to cover all types of fundraising activities to make informed choices of donation and to monitor the charities;

- It will help avoid over-regulation, which may stifle bona-fide charitable fundraising activities; and

- By avoiding the legislative move, a shorter time span is needed to implement the system, and the cost for running the system would also be lowered.

On the other hand, the Government admits that there are weaknesses on the system in that there is no effective sanctions, since offenders will not receive any penalty in court for not complying with the guidelines so developed, and it is likely that the time required for the process of the discovery of the misbehavior, complaint, and adjudication may be considerable.

d) Joint Business Improvement Projects

Yet another measure to facilitate the LSG reforms, one-off project grants have been made available by the Government for supporting social welfare NGOs to undertake necessary reengineering projects for making the transition to the LSG funding mode. The initial focus of the funding scheme is to cover three areas: a) Organizational improvement; b) Service efficiency; and c) Service re-engineering. While many agencies preferred to undertake their own individual projects, the Joint Business Improvement Project (JBIP) was spearheaded by the Hong Kong Council of Social Service (HKCSS), the umbrella peak organization serving most of the social welfare NGOs in Hong Kong. Seventeen social welfare agencies including the HKCSS jointly participate in the project as equal partners, with initial focus on two improvement priorities: i) strategic and change management, and ii) human resources management. Another JBIP proposal has also been spearheaded by the HKCSS. A total of more than 40 NGOs would be benefited in the two joint projects.

Responses by Civil Society

a) Self Help Development Centre Established by Oxfam Hong Kong

Oxfam Hong Kong commissioned a research study in 1998 to investigate the status of the self-help movement in Hong Kong. Based on the recommendations of the study, the Self Help Development Centre was established in December 2001 to support the self-help movement and to serve as a clearinghouse to house and nurture a wide variety of self-help groups that are in its initial stage of development. The Centre thus serves the "nonprofit incubator" function and at present has the capacity to accommodate as many as 20 self-help groups in its rented facility where centralized administrative support are offered to the self-help groups at a highly subsidized fee. Other service features of the Centre include:

- Use of meeting and training facilities
- Information dissimilation, news about other self-help groups, experience sharing, assistance to locate community resources
- Volunteer recruitment services
- Umbrella professional support services such as accounting, legal issues, etc., and the provision of other consulting services
- Practical training, e.g. drafting funding proposals, book-keeping, etc.

In addition to offering an overall enabling environment, the Centre also aims to assist the self-help groups to clarify some fundamental service issues regarding running self-help services, e.g. Are they here to serve or be served? What is the true meaning of empowerment? What should be the right balance between professional help and mutual help?

b) Workshop Opportunities Offered by the Creative Initiatives Foundation

The Creative Initiatives Foundation (CIF) offers workshop opportunities for allowing nonprofit groups and organizations to enhance their organizational effectiveness. Promoting the use of group creativity problem solving techniques, *Creative Initiatives Workshops* are developed by management experts, and have been cautiously fine-tuned to enable the participating group or organization to: a) build consensus regarding the issues and problems that are affecting its efficiency and efficacy; b) determine the best and most practical solutions to the issues and problems in light of competing needs and resources; and c) formulate consensus regarding the group or the organization's future direction.

The workshop outputs typically include a list of initiatives that the group or organization needs to implement to fully realize its potential. At present, mainly three types of workshop opportunities are offered by CIF:

- *Awareness Workshops:* Awareness Workshops are half-day events organized for small teams of participants from the same nonprofit sector (e.g., arts and culture,

social services, environment, etc.) who gather together to address creatively a common problem such as fund-raising, audience widening, service delivery, or corporate governance.

- *Workshops for Nonprofit Organizations:* NPO Workshops bring policymakers, administrators, managers, employees and other stakeholders of a nonprofit organization together for the purposes of addressing significant problems and issues, revisiting the organization's vision and mission in light of changes in the operating environment, and performing needs assessment and strategic review.

- *Workshops for Groups with Shared Interests:* These are "sector-wide" workshops that bring a diverse group of individuals, sector stakeholders, government agencies and business representatives together for the purpose of i) formulating a shared vision for the group or service sector; ii) starting a public interest association or a sector-wide organization; and iii) determining strategies for influencing public behavior or government policy.

Since its inception in 1997, the Foundation has assisted more than fifty nonprofit organizations to enhance their organizational effectiveness through its workshop opportunities. CIF has had keen interest in promoting capacity building of nonprofit organizations and sectors, and is now considering different options for promoting family and community philanthropy in Hong Kong.

Six initiatives have been examined in this section, four are government-initiated and the other two are pure community response. In summary, both the board survey and the guidebook prepared for social welfare NGOs have emphasized enhanced corporate governance and public accountability, but in both exercises arguably there is a strong feeling of the welfare sector demanding help from the state in enhancing internal nonprofit governance, and the call of increased public scrutiny seems to have translated into increased reporting in the use of public funding to government. Lacking in the core discussion is how the public could have greater involvement in the new structure of corporate governance and public accountability. The proposed reform in the governance of the education sector makes marked difference with that of the welfare sector, given one pursues the legislative route while the other stresses self conformance. There are inconsistencies in the policy designs across sectors, and the government has yet to establish the general principles on public accountability that could help nonprofits engender public engagement and support. Compared to the government-initiated programs, the two self-initiated efforts from civil society are of much smaller scale, but potentially could have great contribution in enhancing capacity building of civil society organizations.

C) Challenges for the Civil Society Sector

Like many other Asian countries, improving internal governance and organizational effectiveness is of great importance in furthering civil society advancement in Hong Kong. Some of the issues and problems affecting corporate governance of nonprofit organizations have already been examined in the previous discussion, which include problems in ascertaining agency ownership and the lack of stakeholder interactions, difficulties in recruiting qualified and committed civic leaders to serve as board members, organizational resistance to changing governance models, as well as other structural problems affecting overall legitimacy of the sector. In addition to internal corporate governance issues, the challenges confronting civil society development are very wide-ranging, and some of the most critical issues are identified here.

a) Developing a Genuine Independent Sector

A recurring theme embedded in various parts of our discussion is a call for a genuine independent voluntary sector, which would entail at least three important aspects: i) Self-sustaining; ii) Self-regulation; and iii) Community self-governance.

- *Self-sustaining:* The civil society is now substantially funded by government in many service fields in Hong Kong, and the situation is indeed very unhealthy. With subventions in areas such as education and welfare, the once very robust civil society has gradually turn into an extension of the bureaucracy. The emerging new government funding models, whether based on market or communitarian principles, do not fundamentally alter the power differentials between the two unequal partners. In fact, one might argue that both the Government and the nonprofit sector still have not changed their deep-rooted mindsets regarding models of civil society development. From time to time, the Government would be advocated by many civil society groups, and in response to those demands it has built many specific funds for supporting emerging services. But without the necessary mechanisms to entail community support, those service funds would become the dominant funding source in the relevant service fields, which could lead to undesirable consequences on the development of the related civil society groups. Developing indigenous philanthropy is therefore of utmost importance, but for a wealthy international city like Hong Kong, the status of community philanthropy and local sustainable development is by and large disappointing.

- *Self-regulation:* In order to enhance accountability and transparency in the nonprofit sector, it would require delicate balance between board governance, professional supervision, and formal funder monitoring. Only after credible self-regulatory mechanisms are properly instituted, the sector could make a strong case to government as well as other funding bodies that excessive

monitoring using bureaucratic or market rules are indeed unnecessary, given it could be better substituted by self-regulatory model that is open and trust-based. Obviously, based on our previous examination, many civil society organizations at this stage are not ready to make such claims. In this article, we have seen government introducing more stringent controls in specific sectors, but little or minimal efforts were devoted to other areas where the policy jurisdictions were not clearly defined. It would need joined-up efforts to overcome these problems. On the one hand, nonprofit and philanthropy laws should be carefully reviewed to provide for a more enabling environment for the nonprofit sector, enhancing its legitimacy but without unduly affecting the degree of autonomy the sector used to enjoy. On the other hand, a more unified self-regulatory system should be promoted, and the introduction of the proposed public register system for governing fundraising activities could be one step forward.

- *Community self-governance:* There is nothing new about this argument but we need to develop institutions to make the concept work. In this article, we have already examined practical models that could help promote community self-governance. In one of the focused group meetings, it has been criticized that the government's existing public consultation mechanism is deficient, and it was suggested that "consultation protocol" and the method of deliberative opinion polls should be developed for collecting public opinions. All these models require that inclusive and participatory decision-making be followed. Moreover, one should realize that achieving empowerment does not necessarily lead to enhanced state capacity. It would be important that the right institutions be developed and the existing state-society linking arrangements be carefully rationalized to ensure that empowerment has been followed to strengthen, rather than weaken, state capacity.

b) Strengthening Social Infrastructures

In order to have a self-sustaining, self-regulating, and self-governing independent nonprofit sector, we need to invent the right kinds of institutions, collective action mechanisms, and intermediaries for continually raising the standard and legitimacy of the sector. We have already come across some relevant developments here: the proposed public register for regulating charities, a new peak organization for supporting self-help organizations, etc. For promoting indigenous philanthropy and nurturing an endowment building culture, the model of community foundation is currently being examined by interested parties in the nonprofit field, and relevant legal studies and a sector-wide workshop are being planned for to examine the applicability of the model in Hong Kong. Other areas where further collective efforts are required but now missing include expert institution to promote/offer nonprofit

management training, and intermediary bodies to facilitate cross-sector learning and benchmarking, which could also help develop models of knowledge transfer in the nonprofit field. These are all institutions with the function to resolve complicated collective action problems, and the development of intermediaries or umbrella peak organizations are always instrumental in providing a leverage point to strengthen governance at both organization and sector levels, and ultimately help bridge the gap between nonprofit internal governance and public governance.

c) Rationalizing State-Society Linking Arrangements

As important as developing new community infrastructures, there is also a need to rationalize the operations of various kinds of "linking arrangements" that are currently being adopted by government in engaging the nonprofit sector. At present the Hong Kong Government mainly relies on four board types of civil society linking arrangements: i) consultative committees, ii) direct subvention, iii) statutory bodies, and iv) specific purpose field-of-interest funds. One way or the other, these linking arrangements allow civil society and grassroots organizations to participate in the public policy process and gain access to government resources. However, while the government has been long engaged in collaborative linking arrangements with civic organizations in various service fields, the institutional choices for managing state-society interactions have mostly been made in a rather *ad hoc* manner. It does not seem that the government has a rationalized framework that guides her institutional choices for managing state-society interactions. The increasing complexity of public affairs and an increasingly more demanding public, however, would render effective state-society links a must for effective governance and public administration. How the government should synchronize its different interfaces with the civil society would be conducive to achieving state-society synergy.

Summary

This article has documented, in fairly broad strokes, the changing status and relevant developments of nonprofit sector and governance in Hong Kong. The civil society in Hong Kong had once played a major role in the colonial history in helping the local people solve collective action problems and meet community needs, at a time when both the state and market sectors had not been well developed. However, with the development of a strong market and a highly efficient administrative state, the once robust civil society has been gradually crowded out, becoming an extension of the bureaucracy, and increasingly turning subservient to the state. Bureaucratization of the service sectors has weakened community leadership further, and the reliance of public funding has undermined the need to develop philanthropic resources. In the wake amidst its governance crisis, the Government now has renewed interest to

promote the development of a vibrant third sector. The nonprofit sector however has not responded as if it would like to resume its status as a genuine independent sector, but instead continues to seek provision and guidelines from Government. To remedy the situation, the nonprofit sector should not be limited to just following the government-initiated reform agenda. It must rediscover its torch and reestablish the leadership it once possessed.