

立法會
Legislative Council

LC Paper No. CB(2)2250/01-02(02)

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LegCo Panel on Home Affairs

Background paper prepared by Legislative Council Secretariat

Village Representative Elections

Purpose

This paper provides background information on Village Representative (VR) elections. It also gives an account of past discussions on the subject matter held by Legislative Council (LegCo) Members since the first term of LegCo, including -

- (a) discussions on VR elections held by the Panel on Home Affairs;
- (b) discussions on regulation of VR elections held in the course of discussing the District Councils Bill and the Elections (Corrupt and Illegal Conduct) Bill by LegCo;
- (c) questions raised at Council meetings in respect of relevant court rulings on the rights of non-indigenous inhabitants in VR elections;
- (d) discussions on VR elections at a meeting between Members and Councillors of Heung Yee Kuk.

Background

2. VR is defined under section 3(3)(a) of the Heung Yee Kuk Ordinance (Cap. 1097) to mean "a person elected or otherwise chosen to represent a village who is approved by the Secretary for Home Affairs". VRs assist in the certification of the indigenous status of villagers for the purpose of applying for small house and hillside burials, and in witnessing villagers' applications for succession to estate. "Indigenous villager" is defined under section 2 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) as "a person who was in 1898 a resident of an established village in Hong Kong or who is descended through the male line from that person". VRs also liaise between the Government and the villagers on village removal, development clearance and other rural affairs.

3. There should be 981 VRs elected from 688 villages, and a village may have up to five representatives. VRs of a designated area are the members of the Rural Committee (RC) of that area. There are 27 RCs in total. The chairmen of RCs are ex officio members of the relevant District Councils. The chairmen and vice-chairmen of RCs are Ex Officio Councillors of Heung Yee Kuk. Special Councillors of Heung Yee Kuk are elected by the Ex Officio Councillors of three districts, namely, Tai Po, Yuen Long and Southern District, from among VRs. Heung Yee Kuk has become a functional constituency of LegCo since 1994.

4. The composition, powers and functions of Heung Yee Kuk are governed by the Heung Yee Kuk Ordinance. The First Reading of the Heung Yee Kuk Bill 1959 was moved at the Council sitting on 25 November 1959. An extract from the Official Record of Proceedings of the sitting is in **Appendix I**. The Administration moved an amendment to the Heung Yee Kuk Ordinance at the Council sitting on 16 March 1988 to include 15 co-opted members to the Full Council of the Board. An extract from the Official Record of Proceedings of the sitting is in **Appendix II**.

5. Heung Yee Kuk promulgated a set of Model Rules in August 1994 for the conduct of VR elections. According to the Rules, for instance, any indigenous villager, male or female, aged 18 or above may be a voter or may be nominated as a candidate in a VR election. The Rules also provide for fixed four-year terms for the elected representatives. Details of the qualifications for a voter and candidate as prescribed by the Model Rules are in **Appendix III**.

6. Villagers have flexibility to adapt the Model Rules in accordance with local customs so long as the adapted rules are not in conflict with the principles of the Model Rules and have the approval of the respective RC. Voter registers for VR elections are compiled by the villagers themselves based on the principles of the Model Rules.

7. It has all along been the position of the Administration that VR elections are internal elections within the rural community and that the role of the Administration is strictly supportive and ancillary. District Officers (DOs) provide administrative support to villagers. DOs will exercise the authority under section 3(3) of the Heung Yee Kuk Ordinance of approving a person as VR. However, if that person has been elected by a procedure in which women have not been able to participate on equal terms with men, DOs will, in accordance with section 35(5) of the Sex Discrimination Ordinance (Cap. 480), not exercise such authority.

Recent development

8. A Working Group on Rural Elections (the Working Group) was set up by the Home Affairs Bureau in April 1999 to review the arrangements and procedures for rural elections and to formulate proposals to further improve the framework of the rural elections. In the meantime, two non-indigenous villagers, Mr CHAN Wah and

Mr TSE Kwan-sang launched separate legal challenge against the system of VR elections.

9. Mr CHAN Wah is a fisherman who was denied his voting right in the VR election of the Po Toi O Village where he has lived all his life. Mr CHAN is not an indigenous villager, but he is married to an indigenous villager. In the case of Mr TSE Kwan-sang, he was refused permission to stand as a candidate in the VR election of the Shek Wu Tong Village, although he was born in that village. Both men were denied their right to be a voter/candidate because they are not indigenous villagers.

10. In 1999, the Court of First Instance ruled in favour of Mr CHAN and Mr TSE that non-indigenous villagers should have the right to vote and to be a candidate in VR elections. The Court of First Instance also took the view that Heung Yee Kuk should not only represent the interest of indigenous residents. An appeal was lodged by the Government and the RCs concerned which was dismissed by the Court of Appeal of the High Court on 26 January 2000. The Government then appealed to the Court of Final Appeal (CFA).

11. The main points of the judgment delivered by CFA on 22 December 2000 are as follows -

- (a) the VR electoral arrangements which deprived non-indigenous villagers of their right to vote or to stand as candidates are unreasonable and inconsistent with Article 21(a) of the Hong Kong Bill of Rights Ordinance (Cap. 383) and involved unlawful discrimination on the ground of sex under the Sex Discrimination Ordinance; and
- (b) the Secretary for Home Affairs was bound not to approve any person elected as VR under such arrangements.

12. The discrimination issue is only involved in Mr CHAN's case. The alleged discrimination is that non-indigenous women married to indigenous villagers have the right to vote, but non-indigenous men married to indigenous villagers are excluded from voting.

13. The CFA judgment has significant implications. In reaching the judgment, the Court took the view that a VR represents the whole population of the village instead of just the indigenous villagers, and that Heung Yee Kuk represents the whole population of the New Territories and not just the indigenous villagers there.

14. The Court further took the view that there is no justification that indigenous villagers should have the political rights to vote and to stand as candidates in VR elections to the exclusion of others, in order to ensure that the traditional rights and interests of indigenous inhabitants under Article 40 of the Basic Law are adequately protected.

15. After the delivery of the CFA judgment, the Administration has held discussions with Heung Yee Kuk concerning the arrangements of VR elections which would comply with the judgment. According to media reports, the latest proposal put forward by the Administration is entitled "New arrangements for holding rural elections". Under the proposal, non-indigenous people who have lived in the New Territories and outlying islands for three years are eligible to vote in VR elections and those who have lived there for five years will be eligible to stand as candidates. Each of the rural villages will be allowed to elect two types of representatives. One will be elected by both indigenous and non-indigenous villagers and the other by indigenous villagers only. The representative elected by indigenous villagers will be responsible for all affairs of the clan, such as funerals for elders and deciding who is eligible to build houses on village land. All other matters will be handled by both representatives.

Main points of past discussions

16. Members closely monitored the issue of VR elections. They expressed dissatisfaction that 100% compliance with the Model Rules had not been achieved even though the Rules were promulgated as early as 1994. Members were also dissatisfied that villagers had the flexibility to adapt the Model Rules. Members considered that the Administration should take a more active role in the process of VR elections, including compilation of the electoral roll, in order to ensure fair and open elections. In the light of complaints about lack of transparency and unfair practices of VR elections, members had urged the Administration to regulate these elections by legislation. They were of the view that VR elections should not be considered as internal elections within the rural community because VRs could be elected as chairmen of RCs who were in turn ex officio members of the District Councils.

17. The Administration advised the Panel on Home Affairs at its meeting on 10 May 1999 that the Working Group considered that the three-tier elections in rural sector, i.e. Heung Yee Kuk, RCs and VR elections, should be subject to the regulation of the Corrupt and Illegal Practices Ordinance. The Administration also informed members that according to the ruling of the Court of First Instance, Heung Yee Kuk represented the entire New Territories. As the ruling differed from the usual interpretation adopted by the Government, legal advice was being sought as to whether an appeal should be lodged against the ruling. One of the purposes of the appeal was to clarify the role of Heung Yee Kuk.

18. After the delivery of the CFA judgment, the Administration briefed the Panel on Home Affairs at its meeting on 26 February 2001 on the implications and the progress of the review of VR elections. Some members were of the view that allowing non-indigenous inhabitants to vote in VR elections might conflict with the original intent of the Heung Yee Kuk Ordinance which was enacted in 1959. The Administration pointed out that although it was not disputed that a great majority of residents in the New Territories in 1959, except Tsuen Wan, were indigenous inhabitants, non-indigenous inhabitants now made up a substantial part of the

population of the New Territories. The Administration assured members that it would endeavour to expedite the review and work out a formulation which would comply with the CFA judgment and, at the same time, protect the lawful traditional rights and interests of indigenous inhabitants.

19. At a meeting between Members and Councillors of Heung Yee Kuk on 29 January 2002, proposed new arrangements for holding rural elections were discussed. Members noted that the mainstream view of Heung Yee Kuk was that while the CFA judgment should be accepted and respected, the traditional rights and interests of indigenous inhabitants under Article 40 of the Basic Law should also be protected. A Member expressed agreement with the view of Heung Yee Kuk. He pointed out that if one VR was to be elected by indigenous villagers and another VR elected by both indigenous and non-indigenous villagers, they should have overlapping, but not identical, functions. Another Member, however, expressed concern that it would be unfair that indigenous villagers would get two votes under the proposed new arrangements for holding rural elections.

Chronological account of past discussions

20. A chronological account of the past discussions is set out in the following paragraphs for members' easy reference.

1998-1999 legislative session

Meeting of the Panel on Home Affairs on 8 February 1999

21. The Administration briefed the Panel on Home Affairs on the position of VR elections. Various issues including compliance with Model Rules, participation of women, role of DOs and compilation of electoral roll were discussed. An extract from the relevant minutes of the meeting is in **Appendix IV**.

Council meeting on 10 March 1999

22. During the Committee Stage discussion of the District Councils Bill on 10 March 1999, some Members had expressed views on the regulation of VR elections by law. An extract from the Official Record of Proceedings of the meeting is in **Appendix V**.

Council meeting on 31 March 1999

23. At the Council meeting on 31 March 1999, Hon Cyd HO raised a question about the Government's follow-up actions in respect of the arrangements for VR elections following the ruling of the Court of First Instance on the cases of Messrs. CHAN Wah and TSE Kwan-sang. An extract from the Official Record of Proceedings of the meeting is in **Appendix VI**.

24. Hon Andrew CHENG also raised a question about the rules for qualifying as voters and candidates in VR elections adopted by various villages in the New Territories at the same Council meeting. An extract from the Official Record of Proceedings of the meeting is in **Appendix VII**.

Council meeting on 21 April 1999

25. At the Council meeting on 21 April 1999, Hon SZETO Wah raised a question relating to regulation of VR elections by law and relevant investigation by the Equal Opportunities Commission. An extract from the Official Record of Proceedings of the meeting is in **Appendix VIII**.

Meeting of the Panel on Home Affairs on 10 May 1999

26. The Administration briefed the Panel on Home Affairs on the progress of the review of VR elections, as discussed in paragraph 17 above. An extract from the relevant minutes of the meeting is in **Appendix IX**.

1999-2000 legislative session

Council meeting on 16 February 2000

27. When the Second Reading debate on the Election (Corruption and Illegal Conduct) Bill was resumed at the Council meeting on 16 February 2000, Members had expressed view about legislation to regulate VR elections. An extract from the Official Record of Proceedings of the meeting is in **Appendix X**.

Council meeting on 23 February 2000

28. At the Council meeting on 23 February 2000, Hon Albert HO raised a question relating to the Government's action after its appeal against the ruling of the Court of First Instance in respect of the rights of non-indigenous inhabitants in VR elections was dismissed. An extract from the Official Record of Proceedings of the meeting is in **Appendix XI**.

2000-2001 legislative session

Meeting of the Panel on Home Affairs on 26 February 2001

29. As discussed in paragraph 18 above, the Administration briefed the Panel on Home Affairs on the implications of the CFA judgment on the rights of non-indigenous inhabitants in VR elections and the progress of the review of VR elections. An extract from the relevant minutes of the meeting is in **Appendix XII**.

2001-2002 legislative session

Meeting between Members and Councillors of Heung Yee Kuk on 29 January 2002

30. Members exchanged views on the proposed new arrangements for holding rural elections with Councillors of Heung Yee Kuk. An extract from the relevant minutes of the meeting is in **Appendix XIII**.

Council Business Division 2
Legislative Council Secretariat
10 June 2002

節錄自1959年11月25日立法局會議過程正式紀錄
Extract from Official Record of Proceedings of
Council sitting on 25 November 1959

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HEUNG YEE KUK BILL, 1959.

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to provide for the Establishment and Functions of an Advisory and Consultative Body for the New Territories and for purposes connected therewith."

He said: Sir, although the Heung Yee Kuk has not until now been a statutory body, it has existed, as honourable Members are no doubt aware, for more than thirty years. During that period it has, until recently, enjoyed a respected position in the eyes not only of the people of the New Territories but also of the officials charged with the administration of the New Territories and of the Government and the community as a whole. The present Bill seeks to set up the Kuk as a statutory advisory body on New Territories affairs and to establish and consolidate and indeed to broaden its representative position, and to ensure that it may retain and enhance in the future the honoured status and prestige which have been won for it in the past by those New Territories elders who have accepted the responsibility of office therein and who in that capacity have made so substantial a contribution towards the good administration of that part of the Colony.

The immediate occasion for the introduction of this Bill arises from a dispute, or conflict, which has virtually prevented the Kuk from functioning at all during the last two years. This unhappy state of affairs began as a dispute between two factions within the Kuk which led in late 1957 to the withdrawal by the Government of recognition of the representative status of the Kuk. Matters finally developed into a dispute between one of these two factions on the one hand and the Government on the other. The point at issue was a very simple one: those who had by then assumed control of the Kuk maintained that the Government ought to treat that body as being authoritatively representative of New Territories opinion but should at the same time in no way concern itself with the question how the Kuk officials were elected—that is to say, with the Kuk's constitution—or with the question whether the Kuk was truly representative.

Such a proposition cannot logically command any support, although I suppose that if Government attached no importance to New Territories opinion, then the existence and constitution of the Heung Yee Kuk might be similarly dismissed as unimportant. This is not, however, the case, as honourable Members are well aware, and indeed since the war the Government has gone to considerable lengths to ascertain and give heed to rural opinion. Much time and care has been spent upon this, and the result has been the establishment of the twenty-five Rural Committees which now exist for the representation of local opinion in almost every area of the New Territories.

Some Members may be interested to learn, Sir, of the arrangements that are made to ensure as far as possible that these Rural Committees truly reflect rural opinion. At the bottom of the representative system is the ordinary village family. The heads of the families in each village choose one or more representatives, depending on the size of the village. The choice is reported to the District Officer who, if he is satisfied that the nomination genuinely commands the support of the majority of the

village and that the man is of good character, will extend formal recognition to the Village Representative. In the Rural Committee areas the Village Representatives sometimes together with one or two other well-known men, form the full Rural Committee and they in their turn elect the officials of the Rural Committee. Elections for Village Representatives are not often contested and in many cases a formal election is not necessary. In the Rural Committees there is usually greater competition and elections are supervised by the District Officers who ensure that the ballot is secret.

The Bill before Council not only gives statutory recognition for the first time to the Village Representative and the Rural Committee; it also establishes the Heung Yee Kuk as the apex in the representative pyramid which I have just described. The leading office-bearers of these twenty-five Rural Committees, reinforced by some twenty elders of their own choosing, will compose the Full Council of the Heung Yee Kuk and will elect the Kuk's office-bearers from amongst their own number.

All this is in line with the Government's policy, over the last ten years or more, towards the representation of rural opinion. Honourable Members will readily see that there is a need for some organization to carry out the Heung Yee Kuk's traditional functions, that is to say to co-ordinate purely localized opinion and to present, in relation to matters that affect the New Territories at large, as opposed to matters that are of only local significance, a consolidated and truly representative statement of responsible New Territories opinion. The object of the Bill at present before Council is to set up the Kuk for this purpose as a statutory body.

I should perhaps emphasize here that the Heung Yee Kuk and the Rural Committees on which it will be based are purely advisory and consultative bodies, and the main purpose of this Bill is simply to re-establish and confirm the Heung Yee Kuk in the position which it has already held for a long time, under less formal arrangements until the unhappy events of the past two years. I am confident that the future Kuk, functioning within its new statutory framework, will more than uphold the very worthy traditions which it inherits, and will again make a substantial contribution towards the good government of the New Territories. It will certainly be the policy of the Government to assist it to do so.

Finally, Sir, before closing I feel that, in order to prevent any possible misapprehension that might otherwise arise, I should mention that the proposals in this Bill are quite separate and distinct from the issue raised in an action, of which honourable Members may be aware, instituted before the Supreme Court just over a year ago by certain officers of the Kuk and which is still pending. Government, of course, respects the accepted general principle that the law should not be

changed to prejudice the existing rights of a litigant which he is seeking to assert in the Courts. The proposals in this Bill do not offend this principle. The litigation to which I have referred concerns solely the position under the Societies Ordinance of the present Heung Yee Kuk, an issue not affected by this Bill if it becomes law. While it is true to say that this Bill if enacted will make the issue before the Courts an academic one, it is equally true to say that whether or not the present Heung Yee Kuk should be held to be subject to the Societies Ordinance Government would still need to introduce this legislation in order to establish a truly representative body.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:—

The reasons for this legislation are set out in the preamble. In creating a statutory body it is not intended to alter the general advisory functions of the Heung Yee Kuk which are defined in clause 9.

2. In providing for the constitution of the Full Council clause 3 accords statutory recognition of Rural Committees, whose Chairmen and Vice-Chairmen are *Ex Officio* Councillors and vote for the Special Councillors.

3. Clause 14 provides that the statutory body shall have the exclusive use of the name and style Heung Yee Kuk, while clause 13 entitles the corporation (to be established under clause 12) to call for a lease of the property in Tai Po which has long been associated with the activities of the Heung Yee Kuk.

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**Extract from Official Record of Proceedings of
Council sitting on 16 March 1988**

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First Reading of Bill

HEUNG YEE KUK (AMENDMENT) BILL 1988

Bill read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

HEUNG YEE KUK (AMENDMENT) BILL 1988

THE SECRETARY FOR DISTRICT ADMINISTRATION moved the Second Reading of: 'A Bill to amend the Heung Yee Kuk Ordinance'.

He said: Sir, I move that Heung Yee Kuk (Amendment) Bill 1988 be read a Second time.

The Bill is the result of extensive discussion between the Administration and the Heung Yee Kuk on their proposal to name some of their ex-members as non-voting permanent advisers and to expand the membership of their full council and executive committee by additional co-opted councillors.

It has always been the Kuk's intention to widen their representation and recruit more talents so as to enhance their capability and efficiency. They have therefore suggested to the Administration that the constitution be amended to allow for the recruitment of 15 more members who need not be selected from amongst the indigenous New Territories population. However, the Kuk would take care in identifying personalities who have long-standing connections with the New Territories and are thus capable of contributing to the well-being of the New Territories residents.

The selection of co-opted councillors will be closely scrutinised. The candidates for selection will have to be nominated by five members of the Kuk's executive committee, one of whom being the chairman or a vice-chairman. The nominations will then be vetted and approved by myself before they are finally put to the full council of the Kuk for confirmation.

To give recognition to long-serving members and in order that experience and knowledge can be retained, it is also proposed that members of their executive committee who have served for two consecutive terms and all past chairmen should be made permanent advisers of the Kuk.

Besides the expansion in membership and introduction of permanent advisers, the Bill introduces some technical amendments to facilitate the orderly conduct of elections and smooth operation of the Kuk. In brief, the Bill is aimed at enhancing the Kuk's efficiency and capability.

Sir, I move that the debate on this Bill be adjourned.

Question on adjournment proposed, put and agreed to.

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**Extract of Official Record of Proceedings of
Council sittings on 27 April 1988**

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HEUNG YEE KUK (AMENDMENT) BILL 1988

Resumption of debate on Second Reading (16 March 1988)

Question proposed.

MR. CHEUNG (in Cantonese): Sir, as proposed by the Heung Yee Kuk, the major amendment in the Heung Yee Kuk (Amendment) Bill 1988 is to expand the membership of the Executive Committee of the Heung Yee Kuk by up to 15 additional persons known as co-opted councillors. From my observation, the Heung Yee Kuk Ordinance (Cap 1097) has been put into force for 28 years since its passage into law by this Council in 1959. Throughout these years, our community in the New Territories has witnessed considerable changes. Consequently, the workload of the Heung Yee Kuk has become increasingly heavy. As provided in section 9 of the Heung Yee Kuk Ordinance, one of the objectives of the Kuk is 'to advise the Government on social and economic developments in the interests of the welfare and prosperity of the people of the New Territories.' Thus, the proposed amendment is in no way contradictory to the spirit of the Ordinance. In fact, it enhances the capability of the Kuk in coping with the changing needs and enables it to open its door and draw from a wider pool of available talents to improve its efficiency in serving the community. It is a good thing that the Kuk can make such a reform. It deserves our support.

These additional co-opted councillors of the Kuk cannot be members of a rural committee, but are otherwise unrestricted as to their eligibility for office. This is a clear indication of the Kuk's determination to change its rules. If talented people are to become co-opted councillors only by way of election or nomination on a district basis, it would be difficult for the Heung Yee Kuk to draw benefit from the talent of individuals of high calibre. However, it is necessary that these co-opted councillors should have certain links with the local community in the New Territories.

As regards the introduction of the offices of non-voting permanent advisers and the new provision to disqualify members who fail to regularly attend the Kuk's meetings, these are considered as tangible measures to enhance the Kuk's efficiency aiming at fostering a better sense of responsibility among members in a bid to prevent members from holding their positions merely in name. Such pragmatic attitude is indeed commendable.

Consequential upon the expansion of membership by 15 co-opted councillors, amendments to the provisions regarding the Kuk's meetings and its election procedures are also necessary. I, therefore, shall move some amendments to this Bill at the Committee stage to ensure that these procedures will be clearly provided in law.

Sir, with these remarks, I fully support the motion.

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I would like to thank Mr. CHEUNG Yan-lung for his support to the Bill. I agree with Mr. CHEUNG's amendments which he will propose to be made to the Bill at the Committee stage.

Question put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

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Committee stage of Bills

Council went into Committee.

HEUNG YEE KUK (AMENDMENT) BILL 1988

Clauses 1 to 3 and 6 to 8 were agreed to.

Clauses 4, 5, 9 and 10

MR. CHEUNG: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 4

That clause 4 be amended by deleting clause 4 and substituting the following—

‘Section 4 of the principal Ordinance is amended—

- (a) in subsection (1) by deleting “and Ordinary Members” and substituting the following—
“, Ordinary Members and all of the Co-opted Councillors”; and
- (b) in subsection 2(a)(ii) by deleting “Unofficial”.’.

Clause 5

That clause 5 be amended by inserting after ‘amended’ the following—

- ‘—
- (a) in subsection (1) by inserting after “elected” the following—
“or confirmed”; and
 - (b) ’.

Clause 9

That clause 9(a) be amended by deleting ‘All Councillors other than Ex Officio Members of the Executive Committee’ and substituting the following—

‘All Special Councillors and Vice Chairmen of Rural Committees’.

Clause 10

That clause 10(a) be amended by deleting ‘members’ in both cases and substituting the following—

‘Councillors’.

The amendments were agreed to.

Clauses 4, 5, 9 and 10, as amended, were agreed to.

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Third Reading of Bills

THE ATTORNEY GENERAL reported that the

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HEUNG YEE KUK (AMENDMENT) BILL 1988

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Bills proposed, put and agreed to.

Bills read the Third time and passed.

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**Qualifications for a voter and candidate
as prescribed by the Model Rules**

The qualifications for a voter and candidate are prescribed by the Model Rules as follows :

1. Qualifications for a voter :

- (a) *Any indigenous villager, male or female, aged 18 or above; or*
- (b) *Any person, male or female, aged 18 or above, who is a Hong Kong permanent resident within the meaning of the Immigration Ordinance (Cap 115) whose major place of residence is the village.*

2. Qualifications for nomination as a candidate in an indigenous village :

Any indigenous villager, male or female, aged 18 or above.

3. Qualifications for nomination as a candidate in a non-indigenous village :

Any person, male or female, aged 18 or above, who is a qualified voter under Rule 4 above and who has ordinarily resided in Hong Kong for the 10 years immediately preceding the date of election.

**Extract from minutes of meeting of
LegCo Panel on Home Affairs on 8 February 1999**

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Action

IV. Village Representative elections

[Paper No. CB(2)1251/98-99(02)]

16. The Chairman informed members that Duty Roster Members of the Legislative Council had recently interviewed a deputation of villagers from Shung Ching San Tsuen, Shap Pat Heung, Yuen Long who complained about the proposal of the Yuen Long District Office to delete the names of 94 villagers from the provisional electoral roll of the coming Village Representative (VR) election of the village based only on the advice of the existing VRs. These Members suggested that the general issues of VR elections be referred to the Panel for discussion.

17. At the invitation of the Chairman, Deputy Director of Home Affairs (DD of HA) briefed members on the Administration's paper. DD of HA informed the meeting that there were currently about 1 000 VRs in the New Territories (NT). In 1994, the Administration and the Heung Yee Kuk had agreed on a set of the Model Rules for VR elections to ensure open and fair elections. Previously, VR elections were largely based on "one-household-one-vote", but the Model Rules had introduced more equitable arrangements including one-person-one-vote, equal voting rights for men and women and fixed four-year term for VRs.

Compliance with Model Rules in Village Representative elections

18. DD of HA informed members that more than 95% of the NT villages had elected their VRs in accordance with the Model Rules since 1994. As regards the remaining 5%, DD of HA explained that some of these villages were compiling their electoral rolls or lists of eligible candidates. In a few villages, there had been disputes or disagreement over the electoral roll, resulting in delays in holding the re-election, and a recent case was still awaiting judicial adjudication. Nevertheless, DD of HA stressed that, in general, there had not been serious problem in the implementation of Model Rules for VR elections, and the nine NT District Officers had provided administrative support to facilitate the conduct of fair and open VR elections.

19. Mr LEE Wing-tat noted that most NT villages had completed one round of re-elections already, and he queried why 5% of the villages still had not

completed the necessary procedures for re-election five years after the adoption of the Model Rules. DD of HA clarified that these villages had not objected to the Model Rules, but they needed time to complete the necessary preparatory work for the re-election. Mr LEE was dissatisfied with the Administration's explanation and the long time taken by these villages in complying with the Model Rules. Mr LAU Wong-fat also asked whether the Administration had made any efforts to ensure 100% compliance with the Model Rules. In response, DD of HA said that the 95% compliance was based on previous round's performance and he expected better performance on completion of the current round of re-election by April this year. He assured members that the Home Affairs Bureau, Home Affairs Department and the nine NT District Officers would continue to make concerted efforts to resolve disputes and to facilitate the conduct of open and fair elections. In response to the Chairman, DD of HA undertook to inform the Panel of the progress of VR election in the remaining 49 villages.

Adm

20. DD of HA informed members that most villages were undergoing re-election of their VRs as their current term would expire on 31 March 1999. He said that about 80 % of the villages had already completed the second round of re-election while the remaining 20 % would also hold their re-election before April. If the VRs were not re-elected in time, they could not stand for the Rural Committee elections. In response to members, DD of HA said that the re-election was progressing smoothly and the District Officers would make their best efforts to ensure compliance with the Model Rules, particularly the principles of one-person-one-vote and equal voting rights for men and women. He would also visit the villages personally to see that the Model Rules were complied with. He stressed that while the Administration would provide support to facilitate the conduct of rural elections, it would not be appropriate for the Administration to interfere too much with VR elections which were basically private and internal elections of the rural community. Mr LEE Wing-tat considered that the Administration should set a target of 100% compliance with the Model Rules, and urged the Administration to report to the Panel the results of the current round of VR re-elections which were expected to complete in April 1999. DD of HA agreed to provide the information.

Participation of women in VR elections

21. Ms Emily LAU referred to the Initial Report on the Hong Kong Special Administrative Region under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women that there were 10 women among about 1 000 VRs. She said that the low participation rate of women was also mentioned in the UN Hearing on 2 February 1999. In this connection, she asked whether there were any barriers against women participating in VR elections. She commented that the District Officers appeared to have played a rather passive role in VR elections and had not made efforts to analyse the reasons for the low participation rate of women in VR

elections. DD of HA clarified that there were 951 incumbent VRs (95% of the 1 000 VR seats) and election of these VRs was based on the Model Rules which provided for one person-one-vote and equal voting rights for men and women. If any of these elections were found to have not complied with the principles of the Model Rules, the District Officer concerned would not endorse the result of the election. As VR elections were voluntary elections, he did not see any barrier against women participating in the elections. DD of HA added that since his assumption of the present office, he had not received any complaint on sex discrimination in VR elections. He stressed that the election process was fair and open and that about 20 women stood as candidates in the first round of VR elections.

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22. Deputy Chairman expressed concern that female villagers might be inhibited by social pressure from participating in VR elections. DD of HA responded that traditionally male villagers were more active in rural elections, but he also noted a trend of increasing women participation. Recently, the number of female VRs elected in the second round of VR elections had been increased to 13. At the request of Deputy Chairman, DD of HA undertook to provide statistics on the number of male and female electors registered for VR elections in different villages.

Role of District Officers

23. Ms Emily LAU referred to the Administration's earlier response that District Officers only played a supportive and ancillary role in the process of VR elections. If that was the case, Ms LAU queried how the District Officer could endorse the VR election results if the District Officer had not monitored the entire process to ensure there were no irregularities. DD of HA responded that the District Officer would not endorse the status of an VR who was not elected in accordance with the principles of one-person-one-vote, equal voting right for men and women and fixed four-year term as stipulated in the Model Rules. Without the endorsement of the District Officer concerned, the "VR" could not take part in the Rural Committee election and could not discharge the functions of VRs such as certification of the status of indigenous villagers. Re-election would then be necessary. Responding to Ms LAU's further enquiry, DD of HA advised that so far the District Officers had not refused to endorse the status of the VRs elected, since elections normally would not be held in villages where there was disagreement over the election procedures. Mr LEE considered that if the Administration insisted on non-interference in the VR election process, the Administration should at least put in place an appeal mechanism to deal with objections raised during the election process.

Compilation of the electoral roll

24. Mr LEE Wing-tat asked whether the list of eligible voters for VR election required the approval of the District Officer or the incumbent VR concerned. He was concerned that there would be conflict of interest if the

incumbent VR had the authority of determining the list of eligible voters for the VR election. DD of HA responded that although approval of the District Officer was not required, the list was compiled by the villagers themselves based on the principles in the Model Rules and consensus among villagers. Mr LEE disagreed with the Administration's response, pointing out that the VR had the authority of determining whether a person had the status of an indigenous villager, and such a status would affect the person's eligibility as a voter/candidate in VR elections. He was disappointed that the Administration had failed to resolve this long-standing problem. DD of HA replied that issues concerning the indigenous villager status should be determined by the elders of the village and the VR concerned. He said that it was not possible for the VR to distort or conceal the fact in this respect because NT villages were closely-knit rural communities and there should be proof of family trees, etc. With regard to differences in opinions regarding the voting rights of residents in villages, DD of HA said that the village elders concerned would need time to settle the disputes through consultation and discussion among villagers. He considered it impractical for the District Officers to impose uniform criteria for all villages which had different characteristics and traditions.

25. Noting that villagers had the flexibility to adapt the rules in accordance with the traditions of the villages so long as these rules were not in conflict with the "Model Rules" and had the approval of the respective Rural Committee, Deputy Chairman considered it inappropriate to leave compilation of the electoral roll entirely to village elders and VRs. He referred to recent complaints that Rural Committees had been allowed to add new criteria to the "Model Rules" to prevent some villagers who would otherwise qualify for registration as voters to participate in VR elections. For example, an indigenous villager must live in self-owned property in order to be qualified for registration, while a female indigenous villager who was married to a person outside the village would be excluded from registration. In response to Deputy Chairman's enquiry, DD of HA explained that the procedure of voter registration for "indigenous" villages was comparatively simple. However, there were some "non-indigenous" villages which also allowed registration of non-indigenous villagers subject to a residency requirement. He informed members that Shung Ching San Tsuen was a "non-indigenous" village which had at one time imposed the additional condition for registration as voters by requiring a villager to have self-owned property in the village. The District Office had subsequently resolved the dispute and this additional condition was withdrawn. DD of HA said that it was the role of a District Officer to decide whether to recognize the VR status on the basis of the broad principles of the "Model Rules". On the voting right of married women, DD of HA pointed out that it was the general principle that a married indigenous female villager should vote in the village where she resided. However, if the married women could not vote in the village they lived, alternative arrangements might have to be made, with regard to the circumstances of the concerned villages, for the indigenous female villagers to take part in the election of their original village.

Deputy Chairman opined that it was a case of sexual discrimination to impose restriction on the voting right of married indigenous female villagers, since no similar conditions applied to male indigenous villagers who could freely take part in the VR election even though the latter had moved out of the village concerned. He was of the view that if villages were allowed the flexibility to adapt the “Model Rules”, it would be difficult to ensure fairness since unreasonable additional conditions for registration as voters might be included by individual villages. Mr LEE Wing-tat shared the views of Deputy Chairman. DD of HA reiterated that as NT villages had different traditions and characteristics, it was necessary to allow some flexibility in the implementation of the Model Rules so long as it was not in conflict with the principles of the “Model Rules”. As the election process was open and transparent, it was not possible for a particular village to impose very unreasonable conditions and any dispute could be for the court to decide.

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26. Miss Christine LOH said that she had received a few complaints of a different nature. These cases involved acceptance of unqualified persons as indigenous villagers and their inclusion in the electoral roll. In this respect, Principal Assistant Secretary for Home Affairs informed members that the provisional electoral roll would be posted in the village and the District Office before the election, and anyone could challenge the qualification of the prospective electors on the roll. Miss LOH said that she would refer these complaints to the Administration for follow up. In this connection, Mr LEE Wing-tat said that he had also received a complaint that residents in Ha Kwai Chung Tsuen who had moved to live in that village during the pre-war period were prevented from participating in VR election by the existing VRs. DD of HA agreed to follow up these complaints to see whether there was any irregularity in the process of vetting the qualification of the indigenous villagers concerned.

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Legislative Council Secretariat
3 May 1999

**Extract from Official Record of Proceedings of
Council meeting on 10 March 1999**

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DISTRICT COUNCILS BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the District Councils Bill.

CLERK (in Cantonese): Clauses 1, 3, 4, 7, 22, 23, 25, 28 to 31, 34, 35, 36, 40 to 58, 60 to 66, 71 to 76, 78, 80, 84 and 85.

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MIR LEE WING-TAT (in Cantonese): Madam Chairman, I move the deletion of the definition of "ex officio member" and "rural committee" from clause 2, clause 9(c), clause 10, sub-heading before clause 17, clauses 17, 18, 19 and clause 20(3), and the amendments to the definition of "member" in clause 2, heading and paragraph of clause 9, clause 26(b), clause 70(3), clauses 81 and 82 and Schedule 4, as set out in the paper circularized to Members. All these numbers in fact point to one issue, which is *ex officio* seats.

In the District Councils Bill it is proposed that in the new term of the District Councils there shall be 519 seats, of which over 5%, that is, 27 seats shall be *ex officio* seats to be taken up automatically by rural committee chairmen in the New Territories. According to the existing arrangements, all rural committees are returned by election from amongst their members. Rural committee members comprise village representatives from their respective villages and some others who are special members and Justices of the Peace (JPs). (Individual villages have amended their regulations to allow village representatives who have held office for two terms to become special members and sit on Rural Committees as life members.) The Democratic Party holds the view that by retaining *ex officio* membership the Government of the Special Administrative Region (SAR) is encouraging coterie elections, slowing down the pace of democratization, and at the same time granting certain people privileges and preferential treatment. We strongly oppose this!

1. *Ex officio* seats are coterie elections

Although most rural committee chairmen are elected from among village representatives, some are JPs or special members of rural committees, such as the Tai Po Rural Committee chairman, the Pat Heung Rural Committee chairman and the Kam Tin Rural Committee chairman. So the credibility and representativeness of some of these chairmen are questionable. In addition, the number of members in the existing 27 rural committees ranges from nine to over 30. Most comprise of 15 to 17. District Council members elected from among these members is a good example of a coterie election. Their credibility is definitely questionable. *Ex officio* seats are like appointed seats: they both constitute a hurdle to the democratization process of one-person-one-vote. The system is unfair to those who may become District Council members through direct elections.

2. *Ex officio seats give some people two votes each which is inconsistent with the principle of fair election*

As proposed by the Bill, rural committee chairmen from rural areas in the New Territories will become *ex officio* members of the District Councils to which they belong. So, members of the rural committee may take part in the election of rural committee chairmen and that of *ex officio* members of the districts to which they belong. These rural areas are small constituencies of District Councils. In other words these people in fact have two votes in voting for their representatives in the District Councils. The general public, like those people living in urban areas of the New Territories, Kowloon and Hong Kong, however, have only one vote each in voting for their representatives. This is inconsistent with the principle of the right to fair election.

3. *"Elections" for ex officio seats are looser compared to direct elections*

Although elections in the executive committees of rural committees are controlled by the Corrupt and Illegal Practices Ordinance, their voters are not subject to no special qualification restrictions. Anyone who is a member of the Full Council of a Rural Committee is entitled to vote. In comparison, voter qualifications for District Councils are far stricter. They have to be permanent residents and registered in the final register. They must not be convicted in or outside Hong Kong or sentenced to death or prison terms which are yet to be served. They must not be guilty of an offence under the Corrupt and Illegal Practices Ordinance or the Prevention of Bribery Ordinance within three years immediately prior to the election. They must not be found to be of unsound mind or incapable of managing himself or herself. A person who does not satisfy any of the conditions stated above will not be qualified if he belongs to the urban area. In other words, a person who has been convicted for corrupt and illegal practices three years immediately before an election cannot vote in the direct elections in a District Council. But if the person is a member of a rural committee, then he may vote in the election for *ex officio* District Council members. Thus restrictions on the voter qualification for District Council elections vary and this is unfair.

4. *Village representatives elections are not regulated by law*

Although most of the present rural committees comprise of village representatives, elections of village representatives do not necessarily satisfy the principles of one-person-one-vote or equal voting rights for both sexes. Nor are they regulated by law. The Heung Yee Kuk promulgated a set of "Election Regulations for Village Representatives" in August in 1994, as guidelines for villages in their election of village representatives. They included requirements for the elections to be conducted in a one-person-one-vote manner and in a way that manifests equal voting rights for both sexes, and the term of office should be four years.

After the promulgation of the Guidelines, the Government only encourages villages to follow them, but allow villages to amend the Guidelines as necessary. It does not enforce strictly the criteria contained in the Guidelines. Some villages may be reluctant to comply and try their best to resist one way or the other. They may convene a full council of the villagers and pass resolutions against granting voting rights to women. Or they may choose not to submit names of women voters to the Home Affairs Department on re-registering for elections of village representatives. Some just delay re-elections of village representatives. Since the implementation of the Guidelines four years ago, the Government is still unable to realize the system of one-person-one-vote and equal voting rights for both sexes in all villages in elections of village representatives.

Furthermore, the existing laws regulating corrupt and illegal practices is not applicable to elections of village representatives. So, any irregularities or unfair acts in elections of village representatives do not constitute offences in law. Irregular electoral activities have thus been encouraged. The ward office of the Democratic Party in New Territories West received a complaint early this year against the cancellation of voting rights for 94 villagers at Shap Pat Heung, Yuen Long. It was found that those who were disqualified were all supporters of a candidate who was to challenge the incumbent village representative. Indeed, if a village representative is empowered to verify or cancel the qualifications of voters in an election of a village representative, irregularities may occur easily. In fact the Legislative Council is scrutinizing the Corrupt and Illegal Practices Ordinance. I have queried repeatedly the system of having a candidate or an incumbent representative or district board member to decide who can qualify as a voter. I cannot find anywhere in the world a system as absurd as this. The candidate or incumbent district board member, who is also the village representative, has almost supreme (if not absolute) power to decide who can be a voter in an election for a village representative. This leads to numerous complaints and disputes.

Let me give another example. The office of the Democratic Party at New Territories East received a complaint against threats made against some villagers in this year's election for a village representative at Ho Sheung Heung, Sheung Shui. They were threatened not to go to vote at the election. The matter has been referred to the District Officer in North District and the police. The village representative who made the complaint requested a re-election in order to be fair. So we can see how easily it is for discrepancies to occur in an election without any statutory control. Even worse is that there is no suitable law to prevent or sanction such wrongful acts. There is in fact another case being dealt with by the court: The Po Toi O case at Sai Kung. As it is being dealt with by the court I am not in a position to comment on it here. So there is a case of complaint being pursued through legal proceedings, involving which villagers can or cannot participate in the election of a village representative.

The Democratic Party wants to stress that when elected a village representative will be confirmed by the Secretary for Home Affairs and receive an appointment certificate. A village representative is a member of the rural committee and may be elected to be chairman thereof and become an *ex officio* member of a District Council. A village representative may also be elected to the Legislative Council through the Heung Yee Kuk functional constituency. As such a village representative is a public office entrusted with important public responsibilities. How can the election be subject to accusations of being a private election without any statutory control?

Therefore, the Democratic Party thinks that the SAR Government should abolish the system since village representatives are presently elected in an unfair manner and without any statutory control, and they may become District Council members by way of coterie elections.

Madam Chairman, my last point is about clause 20(3), which provides that a person who holds office as chairman of a rural committee is not eligible to be nominated as a candidate at an election of the District Councils. Under this provision, the right of a person who is elected as chairman of a rural committee but who wants to serve both the rural committee and people of a wider area in the District Council through an election of greater acceptability is limited.

In fact, the system of *ex officio* seats inevitably strips some individuals of the right to be elected in District Council elections; hence the system should be abolished.

Madam Chairman, indeed there is a already system of direct election in the rural areas. Villagers may elect their representatives through a one-person-one-vote election and the representatives may take part in the affairs of District Councils. It is not necessary to open another channel for some special persons and create unfairness. I understand that in many districts, such as the North, Yuen Long, Tuen Mun, Tai Po, Sai Kung, and Islands Districts, most directly elected district board members there are members of rural committees or village representatives. I hope Secretary Michael SUEN may confirm this. In other words, indigenous residents with the status of rural committee members may also be elected through the geographical constituencies to which they belong. Therefore there is no special justification to provide extra channels for them.

Thank you, Madam Chairman.

Proposed amendments

Subheading before clause 17 (see Annex IV)

Clause 17 (see Annex IV)

Clause 18 (see Annex IV)

Clause 19 (see Annex IV)

Clause 20 (see Annex IV)

Clause 26 (see Annex IV)

CHAIRMAN (in Cantonese): Does any Member wish to speak? Please raise your hand to so indicate.

MIR WONG YUNG-KAN (in Cantonese): Madam Chairman, the Democratic Alliance for the Betterment of Hong Kong (DAB) opposes Mr LEE Wing-tat's motion to delete seats of *ex officio* members in the District Councils. One must understand that since the establishment of the district boards, there have been *ex officio* seats which are taken up by rural committee chairmen. If these *ex officio* seats were deleted without sufficient consultation, it would not be a reasonable act.

The DAB has come to the view that retaining the 27 *ex officio* seats fits the reality of Hong Kong. Due to historical reasons, there are still 27 rural committees in the New Territories, representing the views and interests of residents in various parts of the New Territories. Some may say that the New Territories is continually developing and the difference between the city and rural areas is less and less conspicuous; therefore, it is not necessary to retain *ex officio* seats. However, the New Territories is undeniably a place covering vast stretches of land. The customs and concerns of New Territories residents are never the same as urban people. In addition, there are still some remote villages which are sparsely populated. Even if seats in the District Councils are returned by universal suffrage, villagers' interests may not be fully catered to. The DAB thinks it is beneficial to Hong Kong to keep the *ex officio* seats at this stage if we are to give due consideration to the overall situation.

As to criticisms against the mode of election for rural committee chairmen for its lack of democratic substance, we would recall, however, that Mr LEE Wing-tat also mentioned that chairmen of rural committees were elected by village representatives through a one-person-one-vote system, and village representatives are in turn elected by qualified voters from each village. I think their representativeness is not to be doubted. In the election of the chairman of the Cheung Chau Rural Committee which was completed not long ago, for example, chairman was elected by village representatives through a one-person-one-vote system. These elected village representatives in turn elected the chairman by a one-person-one-vote system. It would be turning the matter upside-down if the credibility of rural committee chairmen was denied by saying that the election of village representatives is unfair.

With these remarks, Madam Chairman, the DAB opposes Mr LEE's amendments.

CHAIRMAN (in Cantonese): Mr LEE, do you seek a clarification?

MIR LEE WING-TAT (in Cantonese): Yes. Can I seek a clarification about the speech of the Honourable WONG Yung-kan? It seems the first utterance of Mr WONG means he supported LEE Wing-tat's amendments. That was why the Secretary immediately asked Mr IP sitting next to him whether Mr WONG supported Mr LEE. But then Mr WONG said he was against the amendments. I want to ask Mr WONG whether he personally supported the amendment but the DAB was against it? I heard that many people were surprised at Mr WONG's speech. Is Mr WONG going to vote for my amendments? Thank you, Madam Chairman.

MIR WONG YUNG-KAN (in Cantonese): I personally oppose Mr LEE Wing-tat's amendments.

MIR CHEUNG MAN-KWONG (in Cantonese): Just now Mr WONG Yung-kan argued, using his own reasoning, why "*ex officio*" seats are reasonable. But I want to use some numbers to point out how *ex officio* seats twist and change the structure of a popularly elected district board.

Mr WONG said the election of the Cheung Chau Rural Committee chairman was conducted on a one-person-one-vote basis, and he was right. That was the latest development of the "one-person-one-vote" and "votes for both sexes" system promoted by the Legislative Council for rural committees.

But let us look at the structure of the Islands District Board, to which Cheung Chau belongs. By population, there should only be seven elected members for the Islands District Board. The number of *ex officio* members, that is, *ex officio* members elected from the rural committees is eight. Because counted together there are 15 seats for both elected and *ex officio* members, the number of appointed seats which amounts to one fifth of the seats was enlarged. There were four appointed seats. So we had an absurd situation. A district board, which is supposed to be popularly elected, the Islands District Board, had only seven popularly elected members after a strenuous election, but eight *ex officio* members from rural committees. What is the point of holding the election if the number of *ex officio* members exceeds that of elected members? Not only that, if appointed members are counted, there are altogether 12, that is to say four members were appointed by the Government or the Chief Executive and

eight *ex officio* members. These 12 members exceeds the seven elected ones. Is this fair? Whose interests is this going to cater to? Why are the interests of some people so important as to be necessary any to be protected by some other means than election? I am saying in the district board, 12 seats were from *ex officio* and appointed sources but only seven from elected sources. What kind of system is that? What era would we say this is? I am not speaking about tradition. I do not know how different it is between men and women in the New Territories and those in urban areas. Why do residents in the New Territories have such enormous rights? Just because they are living in the New Territories or in the villages then they can have eight *ex officio* seats, which is more than that granted to all other Hong Kong people living in the Islands District? I find it hard to understand. Do not try to think there are a large number of *ex officio* seats only for the Islands District. We have six in Yuen Long, four in the North District, and one or two in each of the smaller ones. I find this very strange indeed.

In addition, there is a bizarre cross-district nature in the rural committee. In the Tsuen Wan District Board, for example, for some of the *ex officio* seats, the relevant villages belong to the Kwai Ching district. That means someone from the Kwai Ching Rural Committee can become an *ex officio* member in the Tsuen Wan District. I do not see how a person who is a voter at the Kwai Ching District Board can take part in a rural committee election in the Tsuen Wan District. That person was going across districts. What kind of system is that? How could this person go across districts? How could he hold himself out as a candidate in the Kwai Ching District and then do the same in the Tsuen Wan District? I am not sure if this is allowed in law, but the Government said there is no problem in that. The point is we can highlight the two characteristics to reflect the absurd nature of *ex officio* seats. They distorted the will of the people in the otherwise normal district board elections. The system will continue into the 21st century. Some say a lack of consultation has caused this situation, but we have been opposing the system for many years, so it cannot really be attributed to a lack of consultation. Do we need a consultation that goes well into the 22nd century? The system has to be changed. It will be changed for the better. People living in every corner of Hong Kong, Kowloon or the New Territories should be equal insofar as election in every district is concerned. But we are not equal now. Every part of Hong Kong, Kowloon or the New Territories is delineated into special districts within certain boundaries. Each such district may have *ex officio* seats. In some, the number of *ex officio* seats may exceed the number of popularly elected seats. I fail to understand why. The only explanation is that the system is unfair. Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, in fact before 1997 I discussed with some colleagues in this Chamber about elections in villages and the election of village representatives. A Member who had rural constituency background said to me: "Every village has its own rules." He meant to explain to us indeed the election of village representatives is not the same for each village. In some villages, both men and women may vote, in some one person has one vote, and in some only men but not women can vote, in some only indigenous residents can vote, and in some other people who have been living there since birth cannot vote because they are not indigenous residents. In addition, Madam Chairman, the election of village representatives is not regulated by the Corrupt and Illegal Practices Ordinance. As a result, there was exchange of votes, corruption and rigging, which are out of bounds of the law. Such coterie elections, not regulated by law, have attracted the attention of the Heung Yee Kuk. So, it issued some guidelines in 1994 but unfortunately — the Honourable LAU Wong-fat may have something to say about this — they have no legal effect. Some may follow the guidelines while some may not. Hence, it can be seen that they have indeed noted the problem. As the elections are fraught with problems, we should abolish the *ex officio* seats as soon as possible. Thank you, Madam Chairman.

MISS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in support of Mr LEE Wing-tat's proposal to delete the *ex officio* seats. Madam Chairman, at a meeting of the Convention on the Elimination of All Forms of Discrimination Against Women at the United Nations in February, focus was particularly placed on the election of village representatives because participants felt the elections might not be fair to women. At the moment, among the numerous villages there are about 900 village representatives. Only 10 among them are women. I believe the United Nations was less than happy with this situation. Mr David LAN, Secretary for Home Affairs, was present at the meeting. I trust he had told other colleagues about the case. Other colleagues also pointed out there was insufficient legal basis for the elections of village representatives. Many of our laws cannot regulate such elections. Although officials of the Home Affairs Department attended the elections, they did not follow up on them through legal channels. So, I have the feeling that the elections were confusing and unfair. Despite this, products of the confusing and non-legally based election are linked to our multi-tiered system of government. We are particularly concerned and we find this inappropriate.

In addition, as I said in the Second Reading debate, I could not see with every imagination why indigenous residents have the privilege of having seats reserved for them. The 27 *ex officio* seats are filled by rural committee chairmen. Why do they have the privilege? Are they being discriminated against or hyped so that they have to be compensated in this way? We fail to see why. On the contrary, we can see privileges enjoyed by them such as small houses. Therefore I hope the Secretary for Home Affairs can explain (as he did not do so in detail in the Second Reading debate) why these people are so special as to be granted one privilege after another. These people also enjoy the benefit of having extra seats, which overrides the rights of district representatives elected through a one-person-one-vote system from other Hong Kong people.

Lastly, I want to respond to Mr WONG Yung-kan's idea of the New Territories covering vast stretches of land. Madam Chairman, I believe it is acceptable for some discrepancy if after taking into consideration of the vast area covered by the New Territories, as district board elections require that one board member should represent around 17 000 people. That is to say even if a certain district has a large area but the district board member represents only a small number of people, this is acceptable. But if more seats are granted just because a certain district is big, I find it difficult to understand. I hope the Secretary for Home Affairs can answer my questions. Thank you, Madam Chairman.

MR ANDREW WONG (in Cantonese): Madam Chairman, I rise to speak against the Honourable LEE Wing-tat's amendment, that is his point on the deletion of *ex officio* seats. I am not an indigenous resident in the New Territories. But I have been living there for quite a number of years. When Tsuen Wan took the lead in implementing a district consultative committee, I was already taking part in district administration in Sha Tin. I think there should be a bridge during the course of development of new towns in the New Territories. The bridge serves as a link between not only the Government and villagers but also between villagers and those who newly arrive. So, I think there is a need for rural committees and village representatives to exist.

In 1985, when I took part in the Legislative Council election, it was an indirect election. Of course there are those who say it was a coterie election but I think indirect elections are still more desirable than elections in terms of functional constituencies because these seats represent certain regions. The indirect elections may become direct ones later on. My campaign slogan was

"eliminate difference between urban and rural people". I hoped to foster a harmonious relationship between newly arrived residents and indigenous residents. There may be some who are envious of the privileges of indigenous residents, which may not be fair treatments but these privileges are separate issues to be dealt with later. At least the privileges were a reality. Often indigenous residents felt people coming from the urban areas called themselves "urban people" and the newly arrived also called themselves "urban people". "Urban people" came to take their land. Such prejudices greatly hindered the development of the New Territories, and they affected the harmony of the entire community.

After listening to the comments of Members, I think these problems can be solved. Let us look at the problem mentioned by Dr YEUNG Sun. The Government has been trying to solve the problem by making amendments in the law to solve the problem through legislation. Even if amendment has not been made, there should not be any problem. Some people are sticking too closely to the question of boundary in district administration when they look at this question. The Heung Yee Kuk holds different views. Since the Tsuen Wan District includes Kwai Chung, it comes as no surprise that Kwai Chung village representatives being elected to the Tsuen Wan Rural Committee. Similarly, it is not strange to see Kwai Chung village representatives being elected to the Tsuen Wan Rural Committee. There is no reason why each district should have its own *ex officio* seats. Obviously, very often the Tsuen Wan Rural Committee chairmen became an *ex officio* member of the Tsuen Wan District Board.

Turning to other issues, some district administrative regions are under the Heung Yee Kuk, the 27 rural committees in a certain district administrative region would appear to account for a high proportion. Earlier I cited two examples, one of which was Yuen Long. Maybe from tradition, Yuen Long has more rural committees, but I have not looked into the details of its history and I do not live there. For some districts, however, even if one has not lived there one would still understand it. By that I mean the Islands.

By its sheer name, one would understand there will be a number of rural committees. We have Cheung Chau, Lamma Island North, Lamma Island South, Mui Wo Village, Peng Chau, Lantau South, Tai O Village and Tung Chung Village. Since we have a number of district boards on Hong Kong Island, why can we not understand that there should be a number of rural committees elsewhere?

Some Members may say, under these circumstances, these areas have more than their fair share of seats or even do not deserve that many seats. What can we do when there are eight appointed seats but seven directly elected seats? Maybe the Honourable Miss Emily LAU was right when she said districts with smaller population should have fewer seats but that is against the existing laws because the population size for different districts should not vary for more than a certain percentage. I have forgotten it but it should be either 10% or 15%. Therefore, I think there should be some laws to delineate the boundaries of constituencies. However, District Councils for those district administration regions of scarce population — I need to point out that they are districts with dual seats — may have 17 000 residents just as other districts do, but they may elect two District Council members. If that is the case, there would be 14 instead of seven popularly-elected members for the Islands. So, every scarcely-populated District Council would have an adequate number of members to serve the people and the need for appointed seats would diminish.

Madam Chairman, I have spelt out clearly my views hoping to tell Members and the public, through you, that I am against appointed seats, but I support the continued existence of *ex officio* seats.

Regarding the question of equality, Legislative Council Members have played an active part in promoting equal rights for both men and women in the election of village representatives. The Heung Yee Kuk has also taken the matter seriously but only managed to reach the stage of issuing guidelines. It allows villages to decide for themselves about what to do. I think the matter can be discussed between the Secretary for Home Affairs and the Kuk. I hope the Honourable LAU Wong-fat, as chairman of the Kuk, can draft a set of standards for elections in the villages. I am not sure if it is possible for outsiders who have moved into the New Territories can vote and be elected among organizations formed of indigenous residents. That is another issue. At least this can safeguard equality between men and women.

The issue of privilege is another issue. If it is considered inequitable, it can be dealt with in time. I have learned, from those indigenous residents living in the New Territories whom I know personally and the grievances they have expressed, that they thought the many rights they enjoyed had been removed by the British Hong Kong Government after 1898, without compensation. That was what they thought. At the time, there were many district boards in the New Territories. If chairmen of rural committees, which are formed of indigenous

residents, could not act as district board members, it would be difficult for the Government, even if the Democratic Party had assumed powers of administration, to explain the matter to villagers. I am not speaking on behalf of Secretary Michael SUEN or Mr LAU, but I hope everyone understands that is what I think. The matter cannot be dealt with overnight. It has to be studied from various angles, and with efforts from everyone, it would be solved.

Thank you, Madam Chairman.

MISS MARGARET NG (in Cantonese): Madam Chairman, on this issue I am afraid I hold a view different from my friend, Mr LEE Wing-tat, from the Democratic Party.

I agree with many of the points raised by Mr LEE. I very much agree the election of village representatives are not satisfactory. Unfortunately, I must face a reality. After the promulgation of the Sino-British Joint Declaration, I saw no reason or logic for keeping the indigenous resident status for the New Territories people. However, the status was kept in the Sino-British Joint Declaration, and so were their rights in the Basic Law. So, in the same district there are two kinds of realities, that is, there must be a representative from the rural committee to serve consultation purposes.

Hence I think they have a reason to be appointed as *ex officio* members. I hope as time goes by and progress is made, rural committees can see the demand for reform on them. If they do not modernize there would be more and more dissatisfaction. As the Basic Law has provisions to protect their rights and the district boards are consultative structures, I must with regret take a different stance from Mr LEE. I would have to vote against his amendments. Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, the Honourable Miss Margaret NG said it was better for indigenous residents of the New Territories to retain *ex officio* seats for consultation purposes since the Sino-British Joint Declaration and the Basic Law have provided for their status. However, I do not think that they should necessarily have *ex officio* seats even though they have the status.

As we all know, the constituencies for district boards elections are small. If village representatives stand for election they would have a high probability of being elected. I believe Mr Andrew WONG and Mr LAU Wong-fat will agree that is the case, given the community relations village representatives have.

Therefore, I think even if the Sino-British Joint Declaration has provided for the status or has stipulations to honour their rights, it does not necessarily follow that they should be given *ex officio* seats. Such seats are a legacy of the colonial government. Must we follow? For example, Mr WONG pointed out the difference between urban and rural areas. But I have no discrimination. I treat them as equals. I admit they have the status constitutionally as stated in the Sino-British Joint Declaration but that does not mean they should enjoy the benefit of *ex officio* seats. Why do they not stand for elections? Election would make their position even clearer, would they not? If we understand the nature of elections for district boards, we will know they stand a good chance of being elected.

Thank you, Madam Chairman.

DR TANG SIU-TONG (in Cantonese): Madam Chairman, as an indigenous villager, I will be blamed if I do not speak on the subject, I would like to thank Mr WONG Yung-kan, Mr Andrew WONG and Miss Margaret NG for their speeches just now. As for the reason why there is an *ex officio* seat on each district board for the rural committees, this is actually not a privilege. Looking back on our history, we can see that over the centuries, our ancestors' sustained effort had contributed to the continuous development of the community. Over the past few years, our villagers have joined hands with new comers from the outside to develop our community. I think it is only reasonable to let them have their views expressed in the district boards by their representatives.

Concerning gender equality, the Heung Yee Kuk started to implement equality between the sexes a few years ago, allowing both men and women to take part in the election of village representatives. Although it is a guideline rather than a piece of legislation, it is subject to the monitoring of the respective District Offices. If a certain village does not follow the guideline in electing its village representative, the elected village representative may not be confirmed by the District Office. Hence, the Heung Yee Kuk has been doing the job in this aspect. Under the current circumstances, as mentioned by Mr LEE Wing-tat, litigation is

bound to arise from any election. For instance, disputes over the confirmation of a village representative are common. Even in a district board election, I had attended a trial in court. Though some of these disputes are inevitable, I still hope that they can be minimized and resolved. In the recent village elections, both men and women in all villages are given votes.

As regards the Islands District, I hope Members would consider the geographical situation of the islands. The Islands District covers a large area, as mentioned by Mr WONG Yung-kan, and consists of a large number of islands. There may be only a dozen households on each island. If a constituency should comprise 17 000 population, there may be only six or seven district board members to represent all the islanders. How can this small number of people take look after the needs of these dozen households living in the remote islands? In fact, they cannot. Village representatives on the Islands District have their value of existence. There are indeed many rural committees in the Islands District. On top of that, there are seven or eight *ex officio* members and a same number of elected members. But we should not be envious of them for it is their geographical uniqueness which necessitates such an arrangement. Otherwise, the interests of those living in the remote villages on the islands cannot be fully represented.

Concerning the rights of women, although the Heung Yee Kuk comprises many district board members and village representatives, only a minority of them are women. As a matter of fact, we can also take a look at the Members of the Democratic Party in this Chamber to see how many of them are women. Hence, on the same issue, it is not that we do not want the participation of women or look down upon them. Rather, in an election or during a democratic process, men have gained the upper hand for the time being. Perhaps women will gain the upper hand in the future. In Hong Kong, women have already gained the upper hand since many important government posts are taken up by women and many government officials sitting in this Chamber are also women. We should give them time and allowance for gradual change.

So, in this aspect, I hope Members can support rural committee chairmen to become *ex officio* members.

Thank you, Madam Chairman.

MISS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in response to what Dr the Honourable TANG Siu-tong said about elections of village representatives. He said the results had to be confirmed by the Secretary for Home Affairs. At the particular meeting of the Bills Committee, we discussed the matter and I believe Dr TANG was present then. We asked the government officials present how their officer confirm the results as the election lack legal basis and clear rules. The officials did not seem to have provided any answer because they did not have any basis so to say. The Government's stance was rather ambiguous. The officials said the elections were in fact elections of the villagers; they only played the role of giving assistance. But eventually they need to confirm the status of the successful candidates. However, if they need to do that they have to know whether the process is legal and reasonable. Actually they do not have any guideline to follow.

Therefore, Dr TANG's comments were misleading. If you did not hear clearly you would have thought since the Government has to confirm that everything would be done according to procedures because verification work has to be completed before confirmation. But in fact that is never done, as far as I know. I do not know how the Government did its confirmation. At the meeting I got no satisfactory answer. Maybe Dr TANG got a reply from the Government. It is because the candidates were elected in a dubious manner and then were asked to join the multi-tiered government, we feel this is absolutely unacceptable.

Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, I would like to talk about the Basic Law. Article 40 says the lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region (SAR). But if we also look at Article 39, it says the provisions of the International Covenant on Civil and Political Rights (ICCPR) and other conventions shall be implemented through the laws of the SAR. We all know the Hong Kong Bill of Rights Ordinance has been passed. This is where the problem lies. Is the tradition of indigenous inhabitants of the New Territories, that is, one which precludes women from voting, a lawful tradition? This is a problem. If this is not a lawful tradition, I do not think we should continue to invoke Article 40 to perpetuate the outdated and unlawful election method. Madam Chairman, we should not allow — and the Government has a

duty to prevent — polarization between indigenous inhabitants in the New Territories and those from the city. This is unhealthy, especially city people also move to live in the New Territories. So the two categories of people are in fact no different. They should integrate and live harmoniously. They would be happier this way. If there was segregation, no group would maintain an edge over another. In terms of numbers, the so-called city people, who move into the New Territories would amount to a larger number. So, I always say this is not a good idea and is not good for either side. Unlawful traditional interests which go against the tide should not be protected. Hence, I oppose the *ex officio* seats — not a very palatable term in Chinese — what is *ex officio* anyway? *Ex officio* carries the notion of taken for granted. If they are popularly elected, they can be taken for granted; but if they are not then they should not be. So, I am in favour of the amendment.

MR ANDREW WONG (in Cantonese): Madam Chairman, I would like to give a brief reply to what Dr YEUNG Sum has said. He mentioned the name of Mr LAU Wong-fat and that of mine. Dr YEUNG said it is easier for indigenous residents to be elected. I think it depends on the number of indigenous voters and the district and what is in the vicinity of a district. If a public housing estate is nearby, I can say the indigenous candidate can never get elected. It would be a lie to say that an indigenous candidate can get elected in this situation, unless the village in the constituency is very large, with as many as 17 000 villager voters living there. A candidate would be elected if the constituency is delineated for him. He would then win the election. I can see Mr LEE Wing-tat shaking his head. Madam Chairman, I feel he may mean some indigenous residents are rich and they may use their influence to lobby for many votes. City people can also lobby for votes so that is not an issue. What I wanted to say is indigenous residents who live in the New Territories feel the pace of development too quick for them. Their place has been urbanized, with people from outside moving in. Over the years, they have held a lot of grievances because they feel the British Hong Kong Government took their land. That is how they feel. Now, the Sino-British Joint Declaration — I do not want to talk about the Basic Law or the Sino-British Joint Declaration, or the provisions about gender equality in them — I only want to speak about title to land. What was rented in 1898 should be returned to their owners. The land is freehold land, which can be owned forever. But it is not returned. It is transferred from the British Hong Kong Government which forcibly took their land, to the Chinese Government, the Government of the motherland. All they can get is some privileges, for a term of 50 years, that

is up to 2047. The so-called "privilege" means that they can continue to pay the rent at the old rate. But they are not allowed to develop the land. They are still subject to the same old restrictions. I feel that is what the reality is: There is such a group of people, who belong to the villages. Some of them might have moved, but their roots are there. Some villages are remote, for example, Fu Yung Pit, Kwun Yum Shan, just to name a few. I am now living at Hing Keng Shek, which is also a remote place. There are very few indigenous residents at Hing Keng Shek but many villas have been built there, which is another issue. We must understand that it is appropriate to retain the practice of allowing the relevant rural committee chairmen to become *ex officio* members. These *ex officio* seats are certainly not to be abolished. Hence I will not support Mr LEE's amendment.

MR ANDREW CHIENG (in Cantonese): Madam Chairman, I would like to rebuff some of the arguments put forward by Mr Andrew WONG and Miss Margaret NG. In particular, I would like to rebuff the point made by Mr WONG. He said rural committees act as a bridge between the Government and the indigenous residents and so their chairmen should become *ex officio* members of the District Councils, which is certainly reasonable. It is exactly because of this point that I must stress this: We have the rural committees already. Hence there is a channel for representation. We are not saying indigenous residents should not be allowed to fight for their interests. We are not trying to close their channel for representation. They have the rural committees, which are the required channel. Mr WONG said if there is a large housing estate near the village of a candidate, it is quite certain he will not succeed in the election. That view is self-contradictory. I want to refute two of the points made. Firstly, if that is the case then the candidate must be rather reluctant to visit the housing estate to lobby or do some work for the district. Maybe he is mindful only of the interests of that particular village. However, he must understand that it is a District Council and a District Council should be concerned about the affairs of the entire district. Any indigenous resident who wants to represent the people and serve them should not label himself as a village representative or a representative of a certain district. Why can it be asserted that he will lose?

In addition, I want to talk about elections for rural committees within a district. If a villager wants to play the role of a co-ordinator in village affairs in the district and would therefore want to stand for election in a rural committee, the villager would have a privilege. That privilege, as can be seen from the District Councils Bill, is that a rural committee member has two votes, a point which we have kept coming back to. If this privilege is maintained, it would mean indigenous residents would be given two votes; they would vote in the election of rural committees to enable the chairmen thereof obtain an *ex officio* seat and they would vote again in their own constituency of district administration for a District Council member. I think the Government must explain to us convincingly the distribution of interest. Is the Government telling us these villagers are an underprivileged group so they need our special care. But that is not true. Let us look at the issue of the right to building small houses, or the communication or co-operation between rural committees and the Government. We cannot see how they can be an underprivileged group, so much so that they should be guaranteed such privilege in the Administration or representative government. So, I hope both Mr WONG and Miss NG can understand that in the existing representative government there are five Legislative Council seats after the election year in New Territories East and New Territories West. I trust every Legislative Council Member may have had the experience of dealing with disputes or affairs among indigenous residents. Can we not act as a bridge for the communication between indigenous residents and the Government, and fight for their interests? Is it not a good reflection of all this? I hope after today's debate, there will be no further mention of historical issues, or views about indigenous residents being shortchanged or even persecuted by the British Hong Kong Government, whereby there arises the need to strive for *ex officio* seats for them. I hope we will make no mistaken judgement. I am not saying indigenous residents should not be allowed to fight for their interests but in the District Councils Bill, they should not be given extra benefit. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, I would like to add several points briefly. First I want to stress we need not necessarily rely on *ex officio* seats to foster communication between the Government and indigenous residents living in the villages and those so-called city people. Nor need we create some privilege for that purpose, thereby undermining the fair system of election. That is the first point I would like to make.

Secondly, as a popularly elected member in the New Territories, I feel that there are many services we can provide for indigenous residents as far as we are willing to act as a bridge for communication. My ward office has received complaints from many indigenous residents regarding village affairs. According to them, in the past even if they lodged complaints with the rural committees in the areas to which they belonged, their complaints might not be dealt with at all. So, it all depends on the mentality of the members who serve the people, a mentality of serving them with all their heart without differentiating between city people and villagers. This is the second point I would like to make.

The third point is something that has always been bothering me. If we are over- worried about the feeling of alienation and persecution among indigenous residents so that we feel we need to assist them in reinforcing and protecting their privilege, I think this would be counter-productive as this would create more communication difficulties and aggravate alienation.

I think indigenous residents should treat themselves as if they were any other ordinary people. They should integrate into our system on an equity basis. Indeed they are enjoying a lot of rights, which if lawful, such as the entitlement to land, should be continued. I can tell Members that the Government has resumed a large amount of land for the construction of the West Rail. Indigenous residents in the New Territories have obtained a handsome sum of deserved compensation, in accordance with the law. There have been a number of complaints of course and we should help them deal with these complaints as far as we can. Some concepts are however not appropriate. For example, some indigenous residents tend to think that the title to land they hold are permanent, "freehold" in Mr WONG's words, and not limited in time. Such concepts are wrong and outdated. We are not living in the Ching dynasty. We all know that we have reunified with our motherland, and are subject to the provisions of the Basic Law. Such entitlements shall end by the year 2047. Thus is the new concept we should have. In conclusion, I do not think we should perpetuate some privileges by some unfair systems, just for the sake of maintaining communication. This is unrealistic. Thank you, Madam Chairman.

MR ANDREW WONG (in Cantonese): I was very much shocked as the Mr Albert HO, as a lawyer, was talking about expropriation, that is, the resumption of land without compensation. This is where the grievances I was referring to lie. Indigenous residents felt their land was freehold

MR ALBERT HO (in Cantonese): Excuse me, Madam Chairman, I said it was necessary to compensate owners for land resumed from them.

CHAIRMAN (in Cantonese): Mr HO, I know, but you should have asked Mr WONG whether he was willing to stop his speech and let you speak. Mr WONG, please continue.

MR ANDREW WONG (in Cantonese): If Mr HO thinks I have misunderstood him, he should explain afterwards. Madam Chairman, please make a ruling on that. Was I correct? I feel that the issue lies not in indigenous residents craving for seats in the District Council. If an indigenous resident so wants, all he needs to do is take good care of the affairs in his village and stand for election as a village representative. If there is a large housing estate adjacent to his village and he very much desires to be a District Council member he could do either one of these two things. He could vie for a village representative, and join the rural committee to be elected to be its chairman. He would then become an *ex officio* District Council member. This however is an extremely difficult route. Alternatively, and this is an easier route, he may start serving the people in the adjacent housing estate but then he may be too carried away by the service for the housing estate and become gradually oblivious to the big issues in his own village. He would become someone who is minded about the business of the housing estate and that of other housing estates in "estate issues". Thus as an *ex officio* member of the District Council, a rural committee chairman, may represent the village as he knows well the affairs of the village. I also knows well the affairs of the village. As far as I am willing to, I can play that role as someone who represents the village. As Mr HO said, whoever among us can do that as far as we are willing to; but if that is the case we do not need anyone for any particular category of people or any boundary for constituencies. We need not draw boundaries for constituencies in Hong Kong. The 20 seats can all be returned from direct elections, and then what members need to do is complete their tasks.

Not so. At times we need a division of labour. I think our system has been working for a number of years. It was not abolished even in 1994. Now the Government is saying the appointed seats should be restored. That we have to rise against without doubt. But is the abolition of *ex officio* seats making things more complicated than they should be? I really do not understand what is going on here. I mean, we are good friends, Mr LEE. As things stand, I am of the view that even though Mr LEE may think his motion is correct and wants to insist on it, he should not be too extreme in some of the things he said.

MISS MARGARET NG (in Cantonese): Madam Chairman, I know it is a bit late but I am sorry I must say a few words.

I am not particularly sympathetic with indigenous residents in the New Territories people although I am an indigenous resident woman myself. I do not look just at the past but, put simply, the Basic Law comes from the Constitution. Article 40 of the Basic Law says: "The lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region." I am not saying because they have lawful traditional rights and interests they are automatically allowed *ex officio* seats, but I think our biggest problem is we have never had a good discussion in this Chamber about what lawful traditional rights and interests are and how wide their range is. Are all rights and interests mentioned before lawful rights and interests to be protected by Article 40? If we can define what these lawful rights and interests are, we can then say what exceeds them are not lawful or accepted as such. Thus we can say what is protected and what is not.

After listening to the comments by several of our friends from the Democratic Party, I am only more convinced that there is a need for rural committees to have their own representatives. Many of the speakers negated that they should enjoy the so-called special rights and interests or privileges. That indigenous residents are given certain "privilege" is one of the views, but indigenous consider those are their due rights and interests. Therefore, I think if their rights and interests are left purely to the protection by other District Council members, they may not think there is any protection at all. Hence, I think the ways mentioned in this Bill are the best. In fact I think they are outrageous. But I feel that in the light of Article 40 of the Basic Law, the Government has some ground to implement the clause. That means if we are honestly enforcing the Basic Law, like it or not, we must admit that the Government has the ground

to do so. I would rather hope to see a clear definition given in future to what lawful traditional rights and interests are, and how they can be protected. Once a clear definition is drawn, we may then clearly say with good reasons what has exceeded the defined area and is therefore not acceptable. Madam Chairman, I want to thank everyone for allowing me this portion of time.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, I have found it difficult for look in detail into the lawful traditional rights and interests of the indigenous inhabitants as referred to in Article 40 of the Basic Law. It is difficult for me to comment on it too. However, I understand how the New Territories work. There are rural committees and the Heung Yee Kuk. What are these entities? Long before the district boards came into existence, both entities had been safeguarding the so-called lawful rights and interests of the indigenous inhabitants, and had been holding discussions on community matters, and representing their views to the Government.

In the past, the Government would turn first to the Kuk or even the rural committees on matters concerning the indigenous residents of the New Territories. So, both entities have been playing a very important role. So, if indigenous residents want to find a channel to express their views about their affairs, they already have one. After the emergence of district boards, the entities also joined in the discussion of community affairs. At the early stage, *ex officio* members were added. Can this arrangement safeguard the interests of indigenous residents? I am not sure. The fact was, as has been pointed out, the district boards themselves have no authority. They were only consultative bodies. Indeed, insofar as authority is concerned, they are even weaker than the rural committees or the Kuk (especially the Kuk). And as far as consultation is concerned, they play a less important role than the Kuk in certain ways. Therefore I must ask: Is it really necessary for the lawful traditional rights and interests of indigenous residents to be protected through *ex officio* seats in the district boards? This is a great puzzle. I think whether the *ex officio* seats are a privilege bears little import, but is that a necessary arrangement? Since there are already other channels, is it necessary for the district boards to help? I have a number of unanswered questions.

I think we are talking about a democratic system, although some colleagues said we need to honour provisions in the Basic Law. Without a clear definition, that is, with some grey areas in front of us, I think I would want to look at the issue from a wider perspective. Why can we not employ special means to deal with the issue, which has more often than not given people the impression that they are special? We should scrap them. We should not allow them to continue to exist. By scrapping them I mean we should strike them off, remove them. Our District Councils will then be more democratic. I do not want to indulge in finding the proper name for the so-called "privilege", for that matter. By any name, I think we are talking about elections today and we must look at the issue from the point of fairness. For me, it can hardly be "fair" at all if someone can speak into parliament without going through an electoral process. I would like everyone to think more in terms of the role played by the Kuk than the traditional rights and interests. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? I hope Members can speak at this stage. If no one wants to speak, I would now invite the Secretary for Constitutional Affairs to speak.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, when I spoke earlier in the resumption of Second Reading debate, I pointed out that the *ex officio* seats on the District Councils in the New Territories are set up to ensure the representation of the views of indigenous villagers. To the District Councils in the New Territories, the arrangement of *ex officio* seats is a practice which has been in use and proven effective for a long time; besides, members of the Provisional District Board in the New Territories at large are in support of the proposal.

Just now Honourable Members have expressed their respective views regarding the points I raised. Actually, I still have here a great many supplementary materials, but to save time, I am not going to present them. Perhaps I should concentrate on a few points which Honourable Members have either skipped or not sufficiently covered.

Firstly, in reviewing the district organizations, we have consulted the public regarding this issue and received from them many views. In this connection, the Consultation Report on the Review of District Organisations has incorporated the following paragraph: "Likewise, some people have also pointed out that in order to safeguard the interests of the indigenous villagers, it should be reasonable to maintain the arrangement by which the chairmen of the 27 rural committees could become *ex officio* members of the district boards in the New Territories." After the consultation exercise, quite a number of views have been found in support of this point.

Just now Miss Emily LAU referred to the election of village representatives and expressed her concern over the fairness of the elections; besides, she also considered the confirmation process not prudent enough and hence questioned us if this would be a reasonable arrangement. I should like to remind Honourable Members here that the arrangement is a long-standing practice. When we introduced the Political Reform Package in 1994 and deleted the appointed seats, the *ex officio* seats still remained unaffected. At that time, we were also aware of the unsatisfactory aspects of the elections of village representatives, hence, as mentioned by some Honourable Members just now, the Government and the Heung Yee Kuk were urged to formulate some feasible methods in respect of the elections of village representatives. The model election rules were later produced under this circumstances.

Insofar as I understand it, the rules have to a large extent been followed. Certainly, the results might not be satisfactory when the rules were implemented for the first time. However, we would hold fast to the principle of "striving for better improvement" and rectify the imperfections. I am sure we should be able to gradually improve the mechanism upon this basis. In addition, our colleagues from the Home Affairs Department will also inspect the process of the elections held in the villages in the light of the relevant laws and rules, to see if the rules have been complied to or not. If any elections are conducted not in compliance with the rules or have obviously breached the rules, the status of the village representatives elected will not be confirmed by us. Should it come to our knowledge that there has been conduct unacceptable to us, such as having obviously breached the Prevention of Bribery Ordinance and so on, apart from reporting the case to the police, we will also refuse to confirm the qualification of the village representative so elected.

On the other hand, certain Honourable Members have mentioned that the boundary of the Tsuen Wan Rural Committee is inconsistent with that of the Tsuen Wan District Council. I do not think this should come as any surprise, since the boundary of the Tsuen Wan Rural Committee was determined in the past, the criteria used would inevitably be different from that we have used to demarcate the boundaries of District Councils. Besides, the old boundary has come into existence before ours. The so-called boundary conflict we now have is in fact a very minor one, since only three of the villages under the Tsuen Wan Rural Committee have fallen within the boundary of the Kwai Ching District Council. We have noticed this situation and will move a textual amendment later on to confirm that the three villages should be included as part of the Tsuen Wan District, and that they could not be represented in two districts simultaneously. As such, we have basically resolved the problem already.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I have been listening attentively to what Andrew WONG said because I respect his opinions most of the time, with the exception of those times when he has taken some wine.

I think colleagues may have the misconception that indigenous residents will not do well when they stand for elections. If I remember it correctly, I think the district board member at Tai Yuen Estate, Tai Po, is an indigenous resident. He is a trainer, but not Mr Brian KAN Ping-chee. He is another person.

As I said in my speech earlier on, I do not have statistics on hand tonight but there are a number of district board members popularly elected (that is, elected by the ordinary voters, not from elections in the villages) in the North District, Yuen Long District, Tai Po District, Islands District, and Sai Kung District who are also members of the rural committees. So, what Mr WONG said was wrong.

Secondly, I would like to cite another example. In the elections of the New Territories West constituency, Mr LAM Wai-keung, being someone from the Heung Yee Kuk, was one of those who stood for election. He lost by a narrow margin. Were it not for the rain and the floods in the villages, he would have won the election. I do not mean to belittle the Democratic Party, but Mr LAM stood a real chance of being elected. Indeed, I tend to think Mr KAN Kwok-tung from the Heung Yee Kuk has a greater chance of succeeding as the first Kuk member than the Democratic Party in direct elections. So, I do not understand why Mr WONG had such a conservative view.

I think that the creation of functional constituencies has done harm to the business sector and the Liberal Party, while that of *ex officio* seats to the Kuk. The reason is that in a protected election, those protected will be enticed to follow the easy path instead of trying the harder way. Mr Allen LEE is commendable. He came from the business sector but was willing to take part in a direct election. Although he lost by a small margin, I very much hope he could stand for election in the next term; but he said he would not.

If every political party thinks this way, and choose the functional constituency, which is the easier route, to stand in the elections, we would have a slower pace of democratization. Although the Secretary said democracy will dawn on Hong Kong eventually, he has been saying that for almost 20 years. I would have wanted democracy to arrive earlier but this is not possible. The later we start off with democracy the more we will be struggling with all these modes of election.

I hope Mr WONG can persuade Mr LAU Wong-fat, who is a rather good member. From the conversation between Mr LAU and I, I understand he puts in great efforts in encouraging villagers to take part in direct elections. I would urge Mr WONG to give him some encouragement, as it is quite normal to lose once or twice. I can recall Mr Albert HO has also lost twice in elections. No big deal, isn't it? Everyone may stand the chance of being defeated, but having been defeated for several times, one can turn defeats into victories. The courage to fight again after defeat is good enough to impress voters. Hence I cannot agree with Mr WONG who said that indigenous residents would be at a disadvantage when public housing estates and non-indigenous resident villages are put together. Of course we hope that those who succeed in the elections can strike a balance in their work so that the interests of indigenous residents as well as other people in the village are catered to. I do not think this is too difficult. I do not think it is too difficult for a representative of the public to represent the interests of different social strata, and interest groups (Hong Kong does not have too many races) in the community. I hope my point can motivate Mr WONG. I suggest he give more encouragement to Mr LAU. It would be better still if Mr LAU could mobilize villagers to participate in direct elections.

I understand that there is a set of guidelines for elections of village representatives. I have looked at them in detail, and Secretary Michael SUEN said the provisions in it have been enforced. What the Secretary did not say to us was the guidelines were just a sample. A village may choose not to follow them as each village may have its own rules.

We discussed the issue of election of village representatives at the Panel on Home Affairs chaired by the Honourable Miss CHOY So-yuk on several occasions this year. In fact, there has been a number of discussions on the Panel since I held office as a Legislative Council Member in 1991. However, to date, complete equality has yet to be achieved between men and women in the election of village representatives. A small number of the villages do not meet the target. These are very stubborn cases. They are so stubborn that even Mr LAU, during a conversation with me, complained to me saying he did not understand why the people involved were so stubborn as to reject a one-person-one-vote system for both men and women in the election. If such people were in future confirmed (the district officer may of course refuse to confirm) to be rural committee chairmen, they would be people elected from an unfair system.

Yesterday, during our discussion about the Corrupt and Illegal Practices Ordinance, we talked about the possible application of the relevant laws to village representative elections. At the panel meeting, I asked for many times whether it was against the law for candidates to buy meals for people during these elections. And how about dealing out "red packets" after the elections? If corrupt practices happened during village representative elections, is the Ordinance enforceable against such activities? Deputy Secretary IP vaguely referred to other ordinances such as Offences against the Person Ordinance and Theft Ordinance, which are indirectly related in terms of supervision. The legal advisers of the Secretary was smart enough to have sorted out four ordinances, which were said to be related, but were in fact not directly related. The legal advisers found these four ordinances only after searching through all law books. However, any act against these ordinances is always an offence, irrespective if there is an election or not. Take the of Offences against the Person Ordinance and Theft Ordinance as examples. If I said to Mr LEUNG Yiu-chung: "I am upset because you do not like me. If you indicate once more you do not like me, I will hit you!" That is an offence, but that does not relate to elections. It does not help at all by citing the ordinance. Even the Secretary is laughing now. In its effort to show the elections are supervised, the Government cited even ordinances which are in no way related to elections. This is ridiculous. Strictly speaking, village

representative elections are subject to no regulation at all. Why must we accept that a village representative elected from a non-regulated election should enjoy a substantive right of indirectly electing a representative to the District Councils?

I hope Members will bear this in mind: Firstly, there may be a number of indigenous resident candidates who can win in direct elections. This is a fact I want to reiterate. Secondly, we do not want elections in which some candidates are given special favour to continue to exist. We do not want to have any elections which discriminate against women. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Andrew WONG, speaking for the fourth time.

MR ANDREW WONG (in Cantonese): Madam Chairman, I am not trying to give a speech. I just want to explain a little bit. My earlier comments might have been misinterpreted. I said if a village of indigenous residents is situated near a housing estate, it would be difficult for the residents to be elected. I said that in response to what Dr YEUNG Sum said before, which was about indigenous residents standing a chance to win elections. And then I said if an indigenous resident wanted to stand for elections, it would be difficult for him to do so by holding himself out as someone who represents indigenous residents or their interests. That was the gist of my speech, not the point about the ease with which indigenous resident candidates can win. Mr LEE Wing-tat misinterpreted (I hope he misinterpreted, not misled) my words to refer to the ease with which indigenous residents can win. He gave no data, nor did Dr YEUNG. I did not say whether it is easy or difficult for indigenous residents to win. I was referring to something else. Madam Chairman, I hope that through you I can stop Mr LEE's misinterpretation from misleading other Members.

MR MARTIN LEE (in Cantonese): Madam Chairman, whether there is available data or not is unimportant. What is important is what the Secretary just said, that is, democracy will come to Hong Kong sooner or later.

The example given by Mr LEE Wing-tat may not be good enough. I can give a better one, about a baby sparrow and a mother sparrow. When the baby sparrow is small the mother sparrow naturally needs to find some small worms to feed it. But after some time, the eagle (*laughter*), sorry the baby sparrow,

should learn to fly. However, the mother sparrow says to it: "You do not have to learn to fly, sure you will have food from me." So, it continues to find worms to feed its baby. The baby becomes obese now. The baby is so obese that it falls to death when it attempts to fly!

That is a point we all understand. Since democracy will arrive sooner or later, we should learn to fly early. We should avoid "obesity". Thank you, Madam Chairman.

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**Extract from Official Record of Proceedings of
Council meeting on 31 March 1999**

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Election of Village Representatives in the New Territories

13. **MISS CYD HO** (in Chinese): *The Court of First Instance of the High Court ruled on the 12th of this month that, in accordance with the provisions of the Basic Law and the relevant international covenant on civil rights, non-indigenous inhabitants living in the Po Toi O Village in Sai Kung should have the right to vote in the election of village representatives. In this connection, will the Government inform this Council of the follow-up actions it will take or has taken in respect of the arrangements for the election of village representatives in the New Territories?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, the Government is carefully studying the recent court judgement relating to the village representative election of Po Toi O Village in Sai Kung as its implications are wide and the issues involved are complex and require thorough examination. The follow-up actions to be taken by the Government in respect of village representative elections will depend on the outcome of this study.

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**Extract from Official Record of Proceedings of
Council meeting on 31 March 1999**

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Rules for Village Representative Elections

15. **MR ANDREW CHENG** (in Chinese): *With regard to the rules for qualifying as voters and candidates in village representative elections adopted by various villages in the New Territories, will the Government inform this Council:*

- (a) *of the rules currently adopted by Po Toi O Village in Sai Kung, Ho Sheung Heung Village in Sheung Shui, Tai Kei Leng in Shap Pat Heung, and Wing Lung Wai and Tai Hong Wai in Kam Tin; and*
- (b) *of the villages adopting rules that are different from those laid down in the relevant guidelines issued by the Heung Yee Kuk at present; the details of such differences; whether it has assessed if such rules are in breach of those provisions stipulated in the Basic Law and the laws of Hong Kong which safeguard the citizens' equal opportunities and rights to participate in political affairs; where such rules are assessed to be in breach of the relevant laws, whether the Government would hence refuse or has already refused to endorse the results of such elections; if it has refused such endorsement, the details of that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President,

- (a) The rules currently adopted by villages for qualifying as voters and candidates in village representative elections are as follows:
 - (i) Indigenous villagers aged 18 or above in Po Toi O Village in Sai Kung, Ho Sheung Heung Village in Sheung Shui, and Wing Lung Wai and Tai Hong Wai in Kam Tin are eligible to vote and stand for the respective village representative elections.

- (ii) Permanent residents of Hong Kong who are aged 18 or above, have property (including property owned by grand parents and/or parents) in Tai Kei Leng in Shap Pat Heung and consider it as their primary place of residence are eligible to vote in the village representative elections. Only those who consider the village concerned as their primary place of residence and have been residing for seven years immediately prior to the election are eligible to stand for the respective village election.

- (b) At present, all villages in the New Territories adopt the "Model Rules" promulgated by the Heung Yee Kuk in August 1994 as their rules for governing the conduct of village representative elections. Villagers have flexibility to make adaptations to the Rules in accordance with established traditions and practices in individual villages.

The Court of First Instance has recently held that certain rules regarding the voting rights of villagers in the village representative election of Po Toi O Village were in breach of certain provisions in the International Covenant on Civil and Political Rights, the Basic Law and the Sex Discrimination Ordinance. The Government, in view of the wide implications of the court judgement and the complexity of issues involved, is carefully studying the judgement with a view to, *inter alia*, determining whether an appeal against the judgement would be made. The follow-up actions to be taken by the Government in respect of village representative elections will depend on the outcome of the study.

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**Extract from Official Record of Proceedings of
Council meeting on 21 April 1999**

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Village Representative Elections

2. **MR SZETO WAH** (in Cantonese): *Madam President, in the judicial review regarding the Po Toi O Village Representative Election, the High Court expressly stated that the election of a village representative was a public affair, and that the Election Rules adopted by the village were in breach of certain provisions of the Sex Discrimination Ordinance (Cap. 480). In this connection, will the Government inform this Council whether:*

- (a) *it will consider enacting legislation to regulate the elections of village representatives, in order to ensure that the elections will be held in a fair, just and open manner; if so, the specific legislative timetable for that; if not, the reasons for that; and*
- (b) *it knows if any investigations have been conducted by the Equal Opportunities Commission to ascertain if there is inequality in such elections, and if any publicity campaign has been launched by the Commission in respect of such elections; if so, the results of them; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President,

- (a) The Government is fully committed to the elimination of sex discrimination. As regards village representative elections, in accordance with the Sex Discrimination Ordinance, we will not approve a person as a village representative where that person has been elected or otherwise chosen by a procedure in which women have not been able to participate on equal terms with men.

We have set up a Working Group in early April this year to review the arrangements and procedures for rural elections, including village representative elections. Its membership comprises representatives of the Home Affairs Bureau, Home Affairs Department, Department of Justice, Independent Commission Against Corruption and the Constitutional Affairs Bureau. Among its tasks, the Working Group will review the arrangements and procedures of village representative elections to ensure that the elections will be held in a fair and open manner. The Working Group will explore the need of using legislation to regulate the conduct of these elections and will consult parties concerned, including the Heung Yee Kuk and the relevant Legislative Council panels, in formulating the proposals. Since the relevant proposals on the way forward for rural elections have yet to be worked out, it is not possible at this stage to stipulate a timetable for their implementation. However, the Working Group is expected to come up with its finalized recommendations within six months.

- (b) According to information provided by the Equal Opportunities Commission, the Commission has received a complaint about the election of village representatives on 17 April 1999. The investigation process has just begun.

In February 1999, the Equal Opportunities Commission wrote to the Heung Yee Kuk and all the rural committees to advise them to comply with the Sex Discrimination Ordinance. It also explained, among others, that under the Ordinance, a person will not be recognized as a village representative if the election procedure does not allow the participation by men and women on equal terms.

MR SZETO WAH (in Cantonese): *Madam President, the Administration said that since the village representative elections are a kind of private election, it is inappropriate for the Administration to step in. However, the Administration has also enacted legislation under which village representatives, via special channels of the Rural Committee Chairman elections and the mutual elections in the Heung Yee Kuk, can assume public offices such as the ex officio members of district boards and the Legislative Council respectively. From this we can see*

that public office holders are returned on the basis of private elections. Is this in line with the principles of a fair, just and open election? Is the Administration contradicting itself?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we have been saying that village representative elections are a kind of private election in the sense that they are different from general public elections such as the district board elections, the Urban Council elections and the Legislative Council elections. The Administration will render assistance to them and take part in them. The Administration will recognize the result of a village representative election if it has complied with the model rules, which stipulate that it is a one-man-one-vote system, men and women enjoy equal participation, and all elected village representatives will hold office for four years. As I have explained earlier, the Administration's participation is in the recognition of the election result.

Although the village representative elections are a kind of private election, the Rural Committee Chairmen returned by this election will become the *ex officio* members of the district boards in accordance with another piece of legislation. The Rural Committee elections are tantamount to the Hong Kong Law Society elections in which the lawyers elect their own representative. Likewise, it is tantamount to the Hong Kong Institute of Architects elections in which a representative of the profession is elected. As regards what will happen after the election of their representatives under another piece of legislation is another matter.

As I have mentioned in my main reply, we have set up a Working Group to review the arrangements for private elections in a comprehensive way.

PRESIDENT (in Cantonese): A point of elucidation, Mr SZETO Wah?

MR SZETO WAH (in Cantonese): *Madam President, may I ask if representatives elected by the Hong Kong Law Society and the Hong Kong Institute of Architects will become public officers?*

PRESIDENT (in Cantonese): Sorry, Mr SZETO, you can only raise a follow-up question on the part of your previous supplementary which has not been answered by the Secretary. But now it appears it is not the case, and so you have to wait for your turn again.

MR SZETO WAH (in Cantonese): *In answering my supplementary question, the Secretary said that village representative elections are private elections similar to those of the Hong Kong Law Society and the Hong Kong Institute of Architects. However, the elections of these two bodies will not lead to the selection of public officers. That being the case, are these two kinds of elections really the same?*

PRESIDENT (in Cantonese): Mr SZETO, in accordance with the Rules of Procedure, you can ask a follow-up question if part of your first supplementary question has not been answered by the Secretary. The question you have just raised is in fact a new supplementary question. In that case, please wait for your turn again by pressing the "Request-to-Speak" button.

DR YEUNG SUM (in Cantonese): *Madam President, at present, the Administration allows villagers to make appropriate amendments to the model rules formulated by the Heung Yee Kuk according to the established traditions and practices under the village rules. What are the differences between these amendments and the model rules? What mechanism does the Government have to ensure that the amended regulations are in line with the principles of a fair, just and open election?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, no amendment to certain principles in the model rules is allowed. A person will not be recognized as a village representative if these principles are not complied with in the election procedures. Firstly, the election must be conducted in a one-man-one-vote system. In the past, elections were conducted in a one-household-one-vote system or some other systems. Secondly, men and women must be able to vote on equal terms. An election in which either only women or men can vote, or either sex has difficulty in participation in the election, is not

allowed in principle; thirdly, elected village representatives used to hold office for a permanent term or a long period of time, but now, the term of office lasts for four years only. As regards other non-principle provisions in the model rules, villagers can make modifications on their own according to the situation of their own village. We are not so concerned about issues which are not related to important principles.

However, there is a lot of response from the community in respect of village elections, and a recent incident has made the Administration feel that a review is necessary. I have also discussed the matter with the Heung Yee Kuk representatives. The Administration has set up a Working Group since early April in order to get a thorough understanding in all aspects.

MISS EMILY LAU (in Cantonese): *Madam President, in the main reply, the Secretary said that the Administration has set up a Working Group. There is a report in today's newspaper that a meeting was held on 29 March between the Secretary for Justice and the Heung Yee Kuk representatives to discuss the village representative elections. According to the minutes of meeting, the Secretary for Justice was not in agreement with the neutral position adopted by the Home Affairs Department towards the village representative elections. In her opinion, if the Administration thought that there were problems with the electoral procedures, improvement should be made as soon as possible instead of intervention after the election was over. Madam President, I believe her views would have been passed onto the Secretary for Home Affairs because she is the chief legal adviser of the Administration. May I ask the Secretary if he has been aware of the fact that she does not agree to his neutral position but he did not take heed of her advice; and what really happened? Madam President, it is really surprising that there is internal conflict within the Administration as revealed by a press report.*

PRESIDENT (in Cantonese): In accordance with Rule 25 of the Rules of Procedure, a question shall not be asked whether statements in the press are accurate. I therefore consider this part of your supplementary question out of order.

MISS EMILY LAU (in Cantonese): *Madam President, the thrust of my question is whether the Secretary has sought legal advice, and he did not take heed of it.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I would like to thank Miss LAU for her question. First, concerning the timing, as I have said earlier, the Working Group was set up on 1 April. And Miss LAU refers to a press report about a meeting with the Heung Yee Kuk which was held before 1 April. Today, before I came to the Legislative Council, I was aware that the Department of Justice had made a press release saying that the statements as reported were personal comments which did not represent the position taken by the Department.

Generally speaking, views of different departments may sometimes be different and that is only a minor issue. We have got a representative of the Department of Justice in our Working Group to do the review with us. I do not know if I have answered Miss Emily LAU's supplementary question. Even if Members may still suspect that our views are divided, I believe we will eventually come to a satisfactory conclusion by exchanging our different views within the Working Group.

MR LAU KONG-WAH (in Cantonese): *Madam President, I am much interested in part (b) of the main reply. I do not know how many complaints the Equal Opportunities Commission has received in the past. Apart from reminding them that they have to comply with the rules, did the Commission take the initiative of scrutinizing the procedures so that they could avoid stepping on those "land mines"?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I said in my main reply, the Equal Opportunities Commission wrote to the Heung Yee Kuk and all rural committees in February this year to advise them to comply with the relevant legislation. The fact that they are independent bodies does not imply that the Home Affairs Bureau cannot advise them on how to deal with the matter. As regards Mr LAU Kong-wah's advice, I am more than willing to convey his opinion to them and tell them to pay attention to existence of "land mines".

PRESIDENT (in Cantonese): Last supplementary question.

MR ANDREW CHENG (in Cantonese): *Madam President, I would like to follow up the point made by Mr LAU Kong-wah about "land mines". We feel that we should do more than taking the initiative in reminding them of those problems. Moreover, since the village representative elections are a kind of coterie election, they are usually reluctant to lodge complaints against any unfair electoral mechanism so as to avoid embarrassment. Would the Administration consider to invoke sections 70 and 71 of the Sex Discrimination Ordinance under which the Chief Secretary for Administration can require the Commission to conduct a formal and comprehensive investigation into the village representative election rules?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I believe Hong Kong today has reached such a stage, in terms of civic education and pace of democracy, where people would not refrain from making complaints simply because they have to give face to other people. We do receive complaints from various sectors of the community from time to time. In the past, complaints about village representative elections were also received. Sometimes the villagers lodged complaints to the District Officer of their respective district. Sometimes they lodged complaints to the Director of Home Affairs or the Secretary for Home Affairs. Sometimes they could even lodge complaints through other channels. In my opinion, Members should not be over concerned that they do not know how to make complaints.

Now the Administration has noticed that there are problems in a recent election and a Working Group has been set up to conduct a review on various aspects. I hope to take follow-up actions subsequent to the report completed by the Working Group within six months. Members who are interested will definitely be informed at the Panel on Home Affairs. I will also consult their views if necessary.

PRESIDENT (in Cantonese): Since we have spent more than 19 minutes on this question, we shall move onto the third question.

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**Extract from minutes of meeting of
LegCo Panel on Home Affairs on 10 May 1999**

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VI. Rural elections

[Paper No. CB(2)1839/98-99(04)]

25. At the invitation of the Chairman, Deputy Secretary for Home Affairs (DS for HA) briefed members on the progress of the Working Group on Rural Elections (the Working Group) which was set up in April 1999 to ensure that rural elections were conducted in a fair, open and clean manner. He informed members that the Working Group had already convened meetings to review the “Model Rules” promulgated by Heung Yee Kuk and the scope of legislation to regulate the conduct of Village Representative (VR) elections. A site visit was also conducted to examine the election practices adopted by “indigenous” and “non-indigenous” villages. While the “Model Rules” had the merit of being simple and easy to implement, the Working Group considered that these Rules had not adequately taken into account modern development in the society in recent years. The simplicity or inadequacy of the Model Rules had led to disputes requiring adjudication in court. While the court rulings or case law could provide reference for future interpretation of the Model Rules, the Working Group considered that having specific legislation for VR elections would provide greater clarity in the regulation and monitoring of such elections. In examining the scope of legislation for regulating VR elections, the Working Group had noted that there were different types of villages, and that the “indigenous” villages involved complicated issues which would need careful and detailed examination. In this respect, the Working Group had made reference to a master’s degree thesis which contained detailed information on the tradition and history of rural elections, written by Mr H H LO in 1975.

26. Mr Andrew WONG said that a number of problems were found in VR elections recently. He asked about the Government’s current views on VR elections and whether the Working Group would examine the need for including VR elections in the Corrupt and Illegal Practices Ordinance (CIPO) which regulated the elections of Heung Yee Kuk and Rural Committees. Mr WONG considered it necessary to review the current rural election mechanism and to designate a body such as Heung Yee Kuk or Electoral Affairs Commission or Home Affairs Department (HAD) to ensure that consistent criteria were adopted in respect of voting rights and candidature in VR elections. He suggested that the Working Group should also examine the

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demarcation and composition of villages, and rationalise the differences between “indigenous” and “non-indigenous” villages. In this connection, he said it was also relevant to examine whether Heung Yee Kuk represented the entire New Territories, or only the villages (or just “indigenous” villages) in the New Territories.

27. DS for HA responded that all the issues raised by Mr WONG were within the scope of the Working Group. To ensure fair, open and clean rural elections, the Working Group had agreed that VR elections should also be subject to CIPO. However, a proper election mechanism would have to be put in place before VR elections could effectively be brought under the regulation of CIPO. The legislative framework would be further deliberated by the Working Group. As regards the monitoring of VR elections, the Working Group was of the view that this should be carried out by a neutral body other than HAD, to avoid possible conflict of interest in the conduct of daily business affecting the villages. On the issue of “indigenous” villages (i.e. villages existed before 1898), DS for HA said this was the most complicated part of the review. He pointed out that Article 40 of the Basic Law had provided for the protection of the lawful traditional rights and interests of the indigenous inhabitants of the New Territories. In this respect, HAD was working with the Department of Justice on how this would be implemented to ensure consistency between any proposed legislation on VR elections and Article 40 of the Basic Law. On the representativeness of Heung Yee Kuk, he informed members that according to a recent court ruling, Heung Yee Kuk represented the entire New Territories. As the ruling differed from the usual interpretation adopted by Government, legal advice was being sought as to whether an appeal should be lodged against the ruling. One of the purposes of the appeal was to clarify the role of the Heung Yee Kuk in view of the urbanisation of the New Territories and the fact that many city-dwellers had moved to live in the New Territories.

28. Deputy Director of Home Affairs (DD of HA) supplemented that the Working Group considered that the three-tier elections in the rural sector (i.e. Heung Yee Kuk, Rural Committees and VR elections) should be subject to CIPO. However, in view of the large number of VRs (about 1 000 VRs) involved, a legal framework would have to be set up to regulate the election of VRs. He pointed out that the issue of “indigenous” villages was very complicated. For example, Lung Kwu Tan Tsuen and Sam Tung Uk Tsuen were indigenous villages but some villagers had rented their houses to outsiders. As regards Tong Yan San Tsuen, it only comprised non-indigenous villagers. On the other hand, many indigenous inhabitants of Cheung Chau and Peng Chau were fishermen who did not live on land had not been classified as indigenous villagers. Mr Andrew WONG said that the situation in Po Toi O was similar to that of Cheung Chau and Peng Chau. He considered that indigenous inhabitants who did not live on land should still be regarded as indigenous villagers. DD of HA noted the comments.

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29. Mr LEE Wing-tat sought clarification from the Administration as to whether it supported inclusion of VR elections in CIPO or the Election (Corrupt and Illegal Conduct) Bill which was now under LegCo scrutiny. Mr LEE said that he was considering moving a Committee Stage amendment to include VR elections in the Bill. If the Administration decided to expand the scope of the Bill to cover VR elections, he would not move the amendment. DS for HA responded that the Administration supported in principle that VR elections should also be subject to CIPO or the Bill, since VRs could be elected as Chairmen of Rural Committees and became ex-officio members of the District Councils. However, a proper election mechanism would have to be established for VR elections and the Working Group intended to replace the “Model Rules” by specific legislation. In formulating the legal framework, the Working Group would have to resolve issues such as the ratio of number of VRs to village population, demarcation of village boundaries, and issues relating to “indigenous” villages and fishing villages. DS for HA said that the most difficult task was to determine what were the lawful traditional rights and interest of the indigenous inhabitants in the New Territories that should be protected under Article 40 of Basic Law. He pointed out that in some villages, there were very few or even no indigenous villagers, and most of the residents only moved to live in the villages after 1898. The Working Group would have to carefully consider the implications of these issues and strike a balance when formulating views on the eligibility of a voter or a candidate in VR elections.

30. Ms Emily LAU was pleased to note the Administration’s support to include VR elections in CIPO. As the issue had been discussed by LegCo Panels for years, she wondered when the Administration had taken the current view. DS for HA said that the Administration formed the current view when examining the need to regulate VR elections by legislation. As regards Miss LAU’s question of whether the Administration would consider incorporating VR elections in the Bill, DS for HA advised that the Working Group would need six months to complete the review before legislation could be introduced to regulate VR elections.

31. Miss Emily LAU referred to a recent report that HAB and the Secretary for Justice held different views on the procedures for rural elections and enquired whether the differences had been resolved. DS for HA and DD of HA responded that it was not uncommon for different officials to have different opinions on issues during deliberations.

32. Responding to Miss Emily LAU’s enquiry as to whether re-election of VRs was necessary upon enactment of the legislation governing VR elections, DS for HA and DD of HA said that re-election of VRs had just been completed and their term of office was four years. Re-election would not be required during the term unless a particular election was found by court as illegal upon appeal.

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33. The Chairman thanked representatives of the Administration for attending the discussion.

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Legislative Council Secretariat
7 June 1999

**Extract from Official Record of Proceedings of
Council meeting on 16 February 2000**

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ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) BILL

Resumption of debate on Second Reading which was moved on 3 February 1999

PRESIDENT (in Cantonese): Under the Rules of Procedure, I have permitted Mr Ronald ARCULLI, Chairman of the Bills Committee on Elections (Corrupt and Illegal Conduct) Bill, to address the Council on the Committee's Report.

MR RONALD ARCULLI: Madam President, I rise to speak in my capacity as Chairman of the Bills Committee on the Elections (Corrupt and Illegal Conduct) Bill.

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Application of the Bill

On the scope of the Bill, some members consider that the provisions of the Bill should also apply to the elections of the Chief Executive and Village Representatives in the New Territories. The Administration initially did not consider it necessary to do so at the present stage, pending the introduction of the necessary legislation in respect of the arrangements for these elections. However, in view of some members' firm views that the Bill should cover all public elections, the Administration has subsequently agreed to amend the Bill to cover the elections of the Chief Executive and Village Representatives.

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MR LEE WING-TAT (in Cantonese): Madam President, after repeated discussions in the meetings of the Bills Committee, the Bill has resumed its Second Reading debate today. The Bills Committee has indeed spent a lot of time discussing various issues of the Bill. Just as Mr Ronald ARCULLI, the Chairman of the Bills Committee has said earlier, a major concern of the Democratic Party is whether the Bill has laid down any provisions to regulate the elections of the Chief Executive and Village Representatives.

In the opinion of the Democratic Party, the election of the Chief Executive is the election for the highest-ranking officer in Hong Kong while elections for Village Representatives belong to the most basic levels. Both are very important ones, though. It is a strange coincidence that when the Bill was first introduced, these two kinds of elections were not subject to any regulation by the Bill. As the Government puts it, the main objective of the Bill is to prohibit corrupt and illegal conduct so as to ensure that clean and honest elections are held. It strikes one as such a strange coincidence when these two kinds of elections are not included in the Bill. Does that mean that these two kinds of elections do not need to be clean and honest and can they be allowed to be held without anyone's control?

Madam President, in two years' time the Hong Kong Special Administrative Region (SAR) will be holding its second election for the Chief Executive. This election is by nature a game played by a small circle of 800 people and there is almost no chance for the public to take part in it at all. If we do not make use of this opportunity of re-enacting laws to control corrupt and illegal conduct in this election, it will only be held in an old and broken soy jar, as it were, and the Chief Executive so elected is open to questions in terms of his credibility, cleanliness and impartiality.

We recall last year when the Bill was gazetted, a lot of violence erupted in the elections of Village Representatives. I think Honourable Members will recall that there were scenes reminiscent of show-downs by triad societies in the movies. We recall vividly the electioneering teams of two sides dressed in orange and yellow standing in confrontation before the poll stations. Then there were cases where some villagers were allegedly kidnapped and hence unable to take part in the village elections. I am therefore very furious and baffled by the Government's hesitant stand, for this is tantamount to aiding and

condoning various kinds of corrupt and illegal conduct in elections of the Chief Executive and the Village Representatives.

As a matter of fact, way back in May 1999 I made a proposal to expand the application of the Bill to cover the elections of the Chief Executive and the Village Representatives. I have proposed amendments to amend the draft of the legislation. But sad to say, the Government did not make its stand known and dragged on the matter, raising a lot of questions and dissent. Then in about November or December last year, the Government made a sudden change of position. Of course, I welcome this change of position, for the first draft of the Bill did not include any attempt to regulate these two kinds of elections. When I made the proposal for an amendment, the representatives of the Government in the Bills Committee repeatedly said that they did not want to have this amendment. And it was by the end of last year that there was a change of position. I am glad to see the Government make this turn of the century in the year 2000. I welcome this move because it will make elections clean and honest.

I have discussed the issue with government representatives and they are of the view that it is not at all appropriate to lay down suitable mechanisms for the elections of the Chief Executive and Village Representatives and incorporate them into the Bill. I do not see why this is inappropriate and I have not been given a detailed explanation for it. Therefore, I can only say that the change of position made by the Government is a move I would agree to, for it is a change for the better.

I hope that the Government can do better in the legislation, in this amendment and in monitoring the enforcement later. We recall in the first election of the Chief Executive, there was no regulation by legislation though there was some kind of supervision. We heard stories like some candidates treated people to abalone and abalone feasts and other similar stories were reported. Besides, the Election Committee was not questioned or prosecuted in any way. How much money was spent in the elections for the Chief Executive at that time? What should be considered as appropriate expenses? All these are not subject to any regulation. In comparison, elections for the District Councils and the Legislative Council are subject to very stringent monitoring and requirements. In the elections of Village Representatives, apart from some very similar things which I have just mentioned, there are also big feasts and

dinners given to friends of the candidates. Although the Heung Yee Kuk has published the Regulations for the Election of Village Representatives as guidelines, in practice, these guidelines are not legally binding. Many villages were acting according to their customs and as a result, elections were carried out in ways which were not acceptable to many people and a lot of unfairness involved. For example, some villages held meetings for the villagers and denied women of their right to vote, or when registering voters, the names of female voters were not submitted to the Home Affairs Department, or the incumbent Village Representative would decide on the people eligible for the next election of the Village Representatives. These are all the things which I have never heard of. The elected can have the right to choose the people who can vote in the coming election. Were elections for the Legislative Council to be conducted in this way, I would be very lucky indeed. I do not have to do anything, I just need to ask my father (sorry, he is dead), my mother and my brothers and sisters to vote for me. I do not need to do so much work in preparation. Of course, that cannot be done that way. The Government has turned a blind eye on such a state of affairs for so many years. I hope that after the Bill is passed today, we will proceed with the great amount of work that should be done. That would include the formulation of sound subsidiary legislation or orders for the elections of the Chief Executive or the Village Representatives. Extensive public consultations will have to be held as well. It is my wish that these elections can be conducted in a clean and honest manner. Thank you, Madam President.

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MR LAU WONG-FAT (in Cantonese): Madam President, that the original Bill does not include the elections of Village Representatives is due to historical and other reasons. One of the reasons is believed to be considerations of resource allocation on the part of the Government.

Elections of Village Representatives in the New Territories date back to more than half a century ago and they have an even longer history than the elections of the various councils in Hong Kong. People in the New Territories settle in clans and they have their own unique social and political background. The some 700 villages still follow their own customs and traditions, one of which

is the election of Village Representatives. Such elections have been recognized and respected by the Government. Some people may have the misunderstanding that these elections are not subject to any control, but that is far from being the truth. The entire process of the elections in the villages, including ascertaining the eligibility of voters, their registration, nomination of candidates, vetting of their backgrounds up to the final step of voting, are all under the assistance and supervision of the departments concerned, that is to say, the respective district offices under various departments from half a century ago up to the present. These elections also follow the Requirements under the guidelines issued by the Home Affairs Department. Therefore, the Village Representatives elected have quite a considerable degree of impartiality and credibility. Due to the limited resources available on the part of the Government, it is quite a hard task already for the Government to provide the above-mentioned assistance and monitoring in the elections of Village Representatives.

The Heung Yee Kuk has always been advocating fairness and impartiality in the election of Village Representatives. I am confident that the elections of Village Representatives can be conducted in a fair and impartial manner even without the regulation of law. However, since everybody feel that elections should not just be fair and honest, but that they should be seen to be fair and honest, I therefore agree to the proposal to incorporate the elections of Village Representatives into the legislation.

As I have just said, villages in the New Territories are characterized by a concentration of people of the same clan. Contacts are frequent between clansmen and in the course of their day-to-day interactions and visits during traditional festivals, there may be possibilities of touching certain grey areas of the legislation out of sheer inadvertence. I hope the authorities can set up some guidelines before the legislation is actually enforced. Such guidelines should be promoted among and explained to the villagers, especially the elderly ones. This will prevent them from violating any provisions in law unawares. In this connection, the Heung Yee Kuk is more than willing to work with government departments to facilitate the enforcement of law.

Thank you, Madam President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I move the resumption of the Second Reading debate on the Elections (Corruption and Illegal Conduct) Bill. This Bill was read for the First time at the Legislative Council meeting on 3 February last year. The object of the Bill is to ensure that elections are conducted honestly and are free from corrupt conduct. This Bill when passed into law will substitute the existing Corrupt and Illegal Practices Ordinance.

First of all, I have to thank the Chairman and members of the Bills Committee on Elections (Corruption and Illegal Conduct) Bill for the contributions they made in the scrutiny process of this Bill. As Mr Ronald ARCULLI has said, the Bills Committee held 24 meetings last year. When members scrutinized this Bill, they expressed invaluable views on the basis of the actual experience they gained in past elections. Most of the amendments I am going to propose later on are made in response to the concerns of Members. All the amendments have been discussed in detail and supported by the Bills Committee, and they fully reflect the close co-operation between Members and the Government.

Clauses 3 and 4 of this Bill state that this Bill applies to the elections of the Legislative Council, District Councils, Heung Yee Kuk and Rural Committees. As some Members have said, during the scrutiny, we accepted the suggestions of the Committee to stipulate that the legislation also applies to the elections of the Chief Executive and Village Representatives. This explicitly reflects that the Government is determined to keep all public elections free from corrupt conduct. We have also made consequential amendments of a technical nature to some other provisions. I believe Members know that we still need to make legislation to regulate the elections of Village Representatives. There are hundreds of elections of Village Representatives and such elections are of a smaller scale compared to those of the Legislative Council or District Councils. Therefore, when we formulate legislation on the elections of Village Representatives, we will suitably invoke the provisions of this Bill applicable to the elections of

Village Representatives to ensure that the actual process and arrangements of future elections of Village Representatives can be based upon the criteria of being open, fair and free from corrupt conduct.

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**Extract from Official Record of Proceedings of
Council meeting on 23 February 2000**

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Regulation of Village Representative Elections

3. **MR ALBERT HO** (in Cantonese): *Madam President, on 26 January this year, the Court of Appeal of the High Court dismissed the appeal lodged by the Government and the rural committees concerned and upheld the decision of the Court of First Instance that non-indigenous residents should have the right to vote and to stand for elections of village representatives in the New Territories. Also, it is reported that an election of village representatives will be held in the middle or latter part of this month in Po Toi O Village in Sai Kung, which was involved in the case, and that the non-indigenous residents will have the right to vote and to stand for the election. In this connection, will the Government inform this Council whether:*

- (a) the Sai Kung District Office has followed or will follow the normal practice of assisting the Po Toi O villagers in their preparation for the said election; and*
- (b) it will expeditiously introduce legislation to regulate matters relating to village representative elections and give non-indigenous residents the right to vote and to stand for such elections; if it will, of the specific timetable; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I thank Mr Albert HO very much for his question. My reply is as follows:

- (a) According to the information provided by the Sai Kung District Office, Po Toi O Village in Sai Kung has no plans to hold a Village Representative election this month. Since the Government has now decided to file with the Court of Appeal a Notice of Intended

Application for Leave to appeal against the Court of Appeal judgment on Village Representative elections, we will advise the Po Toi O villagers to await the court decision on the appeal before conducting the Village Representative election accordingly.

- (b) A Working Group was set up in April 1999 to review the arrangements and procedures for rural elections, including Village Representative elections, to ensure that the elections will be held in a fair and open manner. The Working Group has initially proposed that legislation to regulate Village Representative elections be introduced. The proposed legislation will provide for the arrangements for Village Representative elections, including the qualifications of the voters and candidates. In finalizing its proposals, the Working Group will consult the parties concerned, including the Heung Yee Kuk and the relevant Legislative Council panel, and take into account the court decision. Since we have yet to consult the parties concerned to facilitate the formulation of detailed proposals on Village Representative elections, it is not possible at this stage to devise a specific timetable for the introduction of the relevant legislation. However, the Working Group will proceed with the review expeditiously and put forward comprehensive proposals as soon as possible.

MR ALBERT HO (in Cantonese): *Madam President, since the middle of last year when the Court of First Instance ruled that the election of village representatives of Po Toi O Village was void, the post of village representative has been left vacant due to legal proceedings in progress. Without a village representative, villagers would be devoid of any channel of communication with the Government; as such, they are complaining that their interests and rights have not been taken care of. Could the Secretary inform this Council of the specific measures taken by the Government to introduce a channel of communication to protect the interests of villagers in the interim when the post of villager representative remains vacant, which is the period between last year and the time when the Court of Final Appeal delivers its judgment or the next election?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I wish to thank Mr Albert HO for his supplementary question. Here, I should like to make two points. First, there is no statutory scope of duties for the post of village representative. Second, very often in the New Territories there are villages that have not elected any, or have no, village representatives, but that does not mean they cannot function or communicate with the Government. They may communicate with the Government through other channels such as their clan elders, or they may directly contact the District Offices concerned. Moreover, District Officers and their colleagues will also send Liaison Officers to contact villagers from time to time. So, there are channels for communication.

MR MARTIN LEE (in Cantonese): *Madam President, in answering an oral question raised by Mr SZETO Wah on 21 April last year, the Secretary informed this Council that a Working Group had been set up to review village representative elections, and that the Working Group was expected to come up with its finalized recommendations within six months. I believe the Secretary would also agree that although it has been more than six months since then, a timetable has yet to be formulated. Actually, the Government should at least conduct a consultation to solicit views from the public, including those from the Members of this Council. Up till now, not even a timetable is available. The Government only says that the Working Group will proceed with the review in full speed. Previously it was said that work could be completed within six months, but now six months have lapsed and no action can be detected. Could the Secretary inform this Council when would the review be completed "in full speed"?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I thank Mr Martin LEE for his supplementary question. Last year we did expect the Working Group to complete its work within six months. However, as it proceeded with the review, it found that the problem was very complicated. Naturally, the court decision has also affected the work progress of the Working Group to a certain extent, but this does not mean work has halted completely. As I have mentioned just now, we have, after discussing closely with the Heung Yee Kuk and other relevant parties, agreed in principle that Village Representative elections should be regulated by law. In addition, given the view that Village Representative elections should be properly regulated, we have

agreed to include Village Representative elections within the ambit of the Elections (Corrupt and Illegal Conduct) Ordinance. So, some progress has indeed been made, albeit it has taken more time than expected as pointed out by Mr LEE. However, there is a reason for this. The judgment of the court, for example, would certainly affect the work progress.

MR MARTIN LEE (in Cantonese): *I was asking the Secretary for a timetable. Could the Secretary inform this Council when a timetable would be available?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I have already said in the main reply that it was not possible to devise a specific timetable at this stage but we hoped to deal with it as soon as possible. I believe we can only make our best effort to expedite the work concerned.

MR MARTIN LEE (in Cantonese): *Madam President, last time the Secretary said work could be completed within six months, but now he does not even dare to make an undertaking of another six months. Why is the Secretary so afraid of committing himself to completing the work within six months?*

PRESIDENT (in Cantonese): Mr Martin LEE, please resume your seat. Government officials are free to answer in whatever ways they deem fit. However, I will ask the Secretary again whether he has any additional comments regarding this supplementary question.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, perhaps I should explain a bit here. I do not want to say six months now and another six then, lest Mr LEE should say that I am not being sincere enough in giving such a reply. We have decided to file with the Court of Appeal a Notice of Intended Application for Leave to Appeal against the Court of Appeal Judgment, but we do not know how long this would take or whether our application would be approved. Nevertheless, we will try our best. I can only tell Mr LEE frankly that we will proceed with the review as soon as we can.

MR ANDREW WONG (in Cantonese): *Madam President, according to Mr Albert HO's main question, "it is reported that an election of village representatives will be held in the middle or later part of this month in Po Toi O Village in Sai Kung, which was involved in the case." Apparently the newspaper report was possibly inaccurate because as far as I know the non-indigenous residents and some of the indigenous residents there have decided to elect a temporary village representative before or after the court delivers its judgment so that there is at least a leader in the village. Having regard to this fact, may I assimilate the part of Mr HO's main question to ask whether the Sai Kung District Office has followed or will follow the normal practice of assisting Po Toi O villagers in their preparation for the election, which is the election of a temporary village representative?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, in paragraph (a) of my main reply, I said we will advise the Po Toi O villagers to await the court decision on the appeal before conducting the Village Representative election. This is our suggestion and advice for the villagers.

MR ANDREW WONG (in Cantonese): *Madam President, my supplementary question was about assistance given to the election of a temporary village representative and not a village representative. The Secretary appears to have answered another question. Could the Secretary answer in terms of an election for a temporary village representative?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, no matter whether the election is for a village representative or a village chief, we will advise the villagers to await the court decision on the appeal before conducting the election. There could be confusion if a temporary villager representative is to be elected at this stage.

DR YEUNG SUM (in Cantonese): *Madam President, I am very much concerned about the appeal taken by the Government to the Court of Final Appeal regarding*

rural elections. Will it, as a next step, seek an interpretation of the relevant provisions by the National People's Congress (NPC)? I am very much concerned about this point.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, to file an application for leave to appeal is one of the rights to be enjoyed in a society that upholds the rule of law. All members of the public are entitled to this right, including the Government. I believe I only have to answer that the Government is exercising a right provided by the law and is acting in a lawful manner. As regards other matters, I do not think I need to make any comments.

DR YEUNG SUM (in Cantonese): *I am not questioning the Government's right to appeal, as the right is for everyone including the Government. I was asking whether the Government would seek an interpretation by the NPC.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, it is a very grave matter to request the NPC to interpret the Basic Law. In my position as Secretary for Home Affairs, I would say what we are doing is only to seek a judgment from the court. I see no connection of this with seeking an interpretation of the Basic Law by the NPC.

PRESIDENT (in Cantonese): We have spent nearly 16 minutes on this question, We shall move on to the fourth question.

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**Extract from minutes of meeting of
LegCo Panel on Home Affairs on 26 February 2001**

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I. Rural elections

[Paper No. CB(2)928/00-01(01)]

At the invitation of the Chairman, Secretary for Home Affairs (SHA) briefed members on the Administration's paper.

Judgment of the Court of the Final Appeal (CFA)

2. Referring to Article 40 of the Basic Law (BL) which specified that "the lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region", Dr TANG Siu-tong requested the Administration to provide the Panel with a list of these rights and interests.

3. SHA responded that it was not disputed that these rights and interests of indigenous inhabitants included various property rights and interests such as entitlement to hillside burials, exemption from government rent and rates and benefits relating to land granted to male indigenous inhabitants under the small house policy. He pointed out that the main issue before CFA was whether BL40 protected any right of indigenous inhabitants to vote and to stand as a candidate in Village Representative (VR) elections to the exclusion of others. CFA took the view that there was no justification that indigenous inhabitants should have the political rights to vote and stand as candidates in VR elections to the exclusion of others, to ensure that the traditional rights and interests of indigenous inhabitants under BL40 were adequately protected.

4. Dr TANG Siu-tong asked whether the Administration could provide the Panel with the confidential document which was submitted to CFA for consideration under the cases of *Chan Wah vs Hang Hau Rural Committee* and *Tse Kwan Sang vs Pat Heung Rural Committee*. Mr LAU Wong-fat then asked why the confidential document was submitted to CFA without consulting the Heung Yee Kuk (HYK).

5. In response, SHA said that the Senior Counsel to the Government might have submitted the confidential document on the basis of his professional

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judgment that the submission would be to the Government's advantage. He pointed out that the Home Affairs Bureau (HAB) had not been consulted in advance of the submission and was therefore not in a position to give an explanation for its submission. SHA informed members that the confidential document was prepared for internal reference on matters related to VR elections well before the judicial reviews. However, he considered that it would not serve any useful purpose in addressing the existing problem if discussion about the confidential document was dragged on. SHA supplemented that the Administration had already offered to provide a copy of the document to the executive committee of HYK which could then brief other HYK members as appropriate. The Administration however considered it inappropriate to make the document open because it might give rise to unnecessary misunderstanding.

6. Mr LAU Wong-fat queried whether submission of the confidential document to CFA without consulting HYK was consistent with the spirit of BL40. He also sought clarifications as to whether HYK would be held responsible for any subsequent leakage if it was provided with the confidential document and briefed its members on the content.

7. SHA responded that whether the submission of the confidential document to CFA was consistent with the spirit of BL 40 would have to be determined by the court. Whether HYK should be held responsible for leakage of confidential information should also be considered by the court in the light of the circumstances of each case. It would not be appropriate for him as a representative of the executive authority to give a definite answer. However, the fact that the Administration offered to provide the confidential document to HYK clearly demonstrated that it had nothing to hide in the matter. In fact, some members of HYK had already read the document in the course of the judicial review.

8. Ms Audrey EU remarked that it seemed unfair that the Administration had disclaimed all responsibility for submitting the confidential document to CFA and passed it to the Senior Counsel concerned instead. She pointed out that the Administration must have provided the document to the Senior Counsel who was under an obligation to present all documents relevant to the case to the court for consideration.

9. Mr Andrew WONG was of the view that the Administration should disclose the confidential document for public's perusal because the CFA judgment involved issues of constitutional significance. At Mr IP Kwok-him's suggestion, the Chairman asked and SHA agreed that the Administration would provide copy of the confidential document to the Panel under confidential cover.

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Legislative intent of the Heung Yee Kuk Ordinance (HYKO)

10. Mr Andrew WONG was of the view that in reviewing the VR elections, it was necessary to consider the legislative intent of HYKO which was enacted in 1959. Mr WONG pointed out that allowing non-indigenous inhabitants to vote in VR election might conflict with the original intent of HYKO, which was proposed to redefine the role and powers of the previous HYK. He explained that although the statutory objects of the HYK as provided in HYKO related to people in the New Territories, it was clear that people in the New Territories at that time meant indigenous inhabitants. The Administration should have revised the wording to dispel any uncertainty after the New Territories had gone through a demographic change. Miss CHOY So-yuk shared Mr WONG's view that it was important to give regard to the legislative intent of HYKO in devising the new VR election system.

11. SHA responded that there might be difficulty to ascertain the legislative intent of HYKO since it was enacted in 1959. Although it was not disputed that a great majority of residents in New Territories except Tsuen Wan in 1959 were indigenous inhabitants, non-indigenous inhabitants now made up a substantial part of the population of the New Territories. Deputy Secretary for Home Affairs (2) (DS/HA(2)) supplemented that given the fact that the statutory objects of HYK as provided in HYKO related to the people in the New Territories, CFA considered that the literal meaning of the term "people of the New Territories" should include non-indigenous inhabitants in the New Territories.

Review of VR election

12. Mr LAU Wong-fat expressed concern that given the prevailing sentiment of indigenous inhabitants, it would be very difficult to work out a mutually acceptable solution in devising a new VR election system which was compatible with the CFA judgment. Mr LAU asked whether the Administration had a preliminary proposal on a new VR election system. SHA responded that it would be more appropriate to disclose the details of a proposed new system after reaching a preliminary consensus with HYK.

13. Miss CHOY So-yuk asked about the Administration's remedial measures if it could not reach consensus with HYK on a new system of VR election before the next round of VR elections in late 2002. SHA said that HAB was working closely with HYK with a view to devising new electoral arrangements as soon as possible. However, in view of the complexity and difficulties involved, it might not be possible to complete of the legislative process before the next round of VR elections.

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14. Ms Emily LAU asked whether the Administration accepted the CFA judgment and how it was going to address the aspiration of non-indigenous inhabitants in the two villages concerned, namely, Po Toi O Village and Shek Wu Tong Village to participate in VR elections. Ms LAU also sought confirmation from the Administration that the new VR election system would be devised on a one-person-one-vote basis.

15. SHA responded that the Administration was bound to be guided by the CFA judgment in devising the new VR election system. CFA had indicated in its judgment that the judgment was only concerned with the electoral arrangements for the position of VR in the two villages concerned. Nonetheless, the Administration would need to consider how the VR elections should be reformed to ensure that the arrangements to be used in the next round of elections would be compatible with the CFA judgment. He added that in support of the Government's policy of encouraging fair and open elections, HYK had promulgated a set of guidelines for the conduct of VR elections in August 1994, which provided for, among other things, one-person-one-vote (for qualified voters), equal voting rights for men and women and fixed four-year terms for the elected representatives. SHA supplemented that the crux of the argument was only about the qualification of voters and candidates in VR elections. He did not anticipate that these principles would be abandoned in the new system for election of VRs.

16. Ms Emily LAU and Miss CHOY So-yuk queried why the Administration would need at least 18 months to complete the legislative and related processes. SHA explained that the Administration would have to consult HYK and relevant parties on the review of VR elections. He anticipated that the consultation would be a complicated and time-consuming exercise. The Administration had to work out a formulation which would on the one hand comply with the CFA judgment and on the other protect the lawful traditional rights and interests of indigenous inhabitants. Furthermore, it was very likely that there would be heated debate over the provisions of the relevant Bill within the LegCo.

17. Mr Albert HO suggested that the Administration should conduct an overall impact assessment of the CFA's judgement on future elections of VR and constitution of HYK, as well as on the lawful traditional rights and interests of the indigenous inhabitants under BL40. He also pointed out that following the CFA judgement, non-indigenous inhabitants of a village might apply to the court for an injunction of VR election to take place if they were not eligible to vote. Mr HO considered that a period of 18 months would be too long to wait unless the Administration had other interim measures. He asked whether the Administration intended to delay its decision given the fact that HYK had earlier indicated the wish to seek an interpretation of BL40 by the Standing Committee of the National People's Congress in relation to the CFA's judgment.

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18. SHA responded that the Administration had already made its stance clear that conduct of VR elections is an internal affair and there was no need to seek interpretation from the National People's Congress. The Administration would follow CFA's judgement in designing the new system for VR elections. He agreed that to facilitate on-going discussion with HYK, the impact of the CFA judgment on VR and HYK elections should be analysed and assessed. He assured members that HAB would endeavour to complete the legislative and related processes as soon as practicable, despite the complexity and difficulties involved in the processes. However, the Administration would have to be cautious in the consultation since the new system of election would affect the interests of some 600 villages and several hundred thousands of indigenous inhabitants. SHA supplemented that insofar as new electors were concerned, VR elections were internal elections within the rural community and these elections were conducted by the villagers themselves in accordance with the established rural traditions.

19. Dr TANG Siu-tong suggested that the Panel should consider inviting HYK to brief members on the history of HYK and the legislative intent of HYKO. Ms Emily LAU suggested that the Panel could also invite views on the VR election system from concerned organisations. Mr Andrew WONG had reservation on Ms LAU's suggestion, saying that it might not be appropriate when the Administration and HYK had yet to reach agreement on a preliminary proposal. He added that the briefing might well be arranged at an informal meeting. Miss CHOY So-yuk shared his view. In the light of different views expressed, the Chairman suggested and members agreed that the Panel would decide the way forward at a future meeting when the preliminary proposal about the new VR election system was available.

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Legislative Council Secretariat

11 June 2001

**Extract from minutes of meeting between
Legislative Council Members and Councillors of Heung Yee Kuk
on 29 January 2002**

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III. New arrangements for holding rural elections

26. Mr PANG Hang-yin explained that the item was proposed for discussion in the light of the impending legislative proposal concerning the "New arrangements for holding rural elections" to comply with the judgment delivered by the Court of Final Appeal (CFA) on 22 December 2000. Mr PANG said that the CFA judgment held that non-indigenous villagers could vote or stand as candidates for election of village representatives (VRs). Mr PANG further said that indigenous villagers from some 600 villages in NT had diverse views on the judgment. The mainstream view of Heung Yee Kuk was that while the judgment should be accepted and respected, the traditional rights and interests of indigenous inhabitants enshrined in Article 40 of the Basic Law should also be ensured. It was on this basis that Heung Yee Kuk had been holding discussions with the Administration concerning the arrangements for VR elections which would comply with the judgment.

27. Mr PANG Hang-yin informed Members that Heung Yee Kuk had been discussing with the Administration the "New arrangements for holding rural elections" put forward by the Administration, under which each of the rural villages would be allowed to elect two representatives. One representative would be elected by both indigenous and non-indigenous villagers while the other representative would be elected by indigenous villagers only. Mr PANG said that although the proposed arrangements might not appear to be fair to some people as the indigenous villagers would get two votes while non-indigenous villagers would only get one vote, the proposed arrangements seemed viable in light of the arrangements for LegCo elections, under which some voters also got two votes. Mr PANG further said that having regard to the unique history of rural villages, he did not envisage any problems with the proposed arrangements.

28. Citing his own village as an example, Mr PANG Hang-yin said that of the 1 300-plus households in the village, over half of them were non-indigenous villagers who could broadly be classified into two groups. The first group of non-indigenous villagers were those who had resided in the village for nearly

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20 years. They regarded themselves to be members of the village, and had deep respect for the traditions and customs of rural villages. As for the second group of indigenous villagers, they did not have long term plans to live in the village and therefore had shown little or no interest in the affairs of the village. Mr PANG pointed out that when villagers had problems, they would usually seek the assistance of District Council members or LegCo Members, rather than approaching the VR who was mainly responsible for the affairs of the clan. Mr PANG reckoned that this explained why not many villagers were willing to stand as candidates for VR elections. Mr PANG added that irrespective of the specific election arrangements to be adopted, they should ensure that the traditional rights and interests of indigenous villagers would be protected.

29. The Convenor advised that the subject matter of rural elections was last discussed by the Panel on Home Affairs in February 2001, and that the proposed "New arrangements for holding rural elections" was scheduled for discussion at the Panel meeting in April 2002.

30. Hon IP Kwok-him, Chairman of the Panel on Home Affairs, said that the Panel was fully aware that there were wide public concerns over the matter. According to the Administration, it was working on the "New arrangements for holding rural elections" having regard to the CFA judgment. Mr IP further said that when the Administration put forward the relevant proposal to the Panel on Home Affairs, views from interested parties would be invited.

31. Hon Emily LAU said that Members belonging to The Frontier were of the view that public elections should be fair and based on universal suffrage, and that the rights of non-indigenous villagers living in the villages should not be deprived of. Ms LAU further said that she was particularly concerned that indigenous villagers would get two votes under the proposed "New arrangements for holding rural elections". She asked whether legal advice had been sought as to whether the proposed arrangement of indigenous villagers having two votes was in compliance with the CFA judgment.

32. Mr PANG Hang-yin reiterated that Heung Yee Kuk was discussing with the Administration on a proposal which would, on the one hand, comply with the CFA judgment, and on the other hand, protect the traditional rights and interests of indigenous villagers.

33. Referring to paragraph 9 of the paper on background information on rural elections (LC Paper No. CB(2)998/01-02) prepared by the LegCo Secretariat, the Convenor said that the Administration had proposed that each of the rural village would be allowed to elect two representatives. The representative elected by indigenous villagers would be responsible for all affairs of the clan, while all other matters would be handled by both representatives. The Convenor enquired about Heung Yee Kuk's view on this

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proposal put forward by the Administration. Mr PANG said that Heung Yee Kuk would strive for electing two VRs from a rural village, i.e. one to be elected by indigenous villagers and the other by both indigenous and non-indigenous villagers, and that the two VRs should perform similar functions.

34. Mr TANG Kwok-kong said that the proposed arrangements for holding rural elections should ensure that the traditional rights and interests of indigenous villagers were adequately protected, in accordance with Article 40 of the Basic Law. Mr MAN Fu-wan added that as VRs played a specific role in the rural community, e.g. holding celebration of birth ritual at the Lantern Festival or worship ceremonies, he expressed doubts as to whether any non-indigenous villagers were willing to play such a role.

35. Referring to Heung Yee Kuk's proposal of electing two VRs who would perform similar functions, Hon Emily LAU expressed concern about the delineation of responsibilities between the two VRs under such an arrangement.

36. Hon Andrew WONG expressed agreement with Councillors of Heung Yee Kuk that the traditional rights and interests of indigenous inhabitants should be adequately protected. He pointed out that dealing with affairs of the clan involved more than just looking after the day-to-day affairs of rural villages. There were more important duties, such as deciding who were the descendants through the male line from an indigenous villager. In his view, if one VR was to be elected by indigenous villagers and another VR elected by both indigenous and non-indigenous villagers, they should have overlapping, but not identical, functions.

37. Mr LAM Wai-keung said that it was premature to go into detailed discussion about the specific functions of the two VRs under the proposed "New arrangement for holding rural election" as the details of the proposal had yet to be worked out. Mr LAM stressed that the whatever arrangements to be put in place, they should be in compliance with the CFA judgment as well as protect the traditional rights and interests of indigenous villagers in accordance with Article 40 of the Basic Law.

38. Hon LAU Wang-fat said that Heung Yee Kuk had yet to form its stance on the "New arrangements for holding rural elections" proposed by the Administration. At the present stage, it was inclined to accept the proposal of electing two VRs, i.e. one VR to be elected by both indigenous and non-indigenous villagers, and the other VR to be elected by indigenous villagers.

39. Responding to Hon Emily LAU, Mr LAM Wai-keung said that only about 2% to 3% of the Councillors of Heung Yee Kuk objected to the "New arrangements for holding rural elections" proposed by the Administration.

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40. The Convenor said that the details of the VR electoral arrangements should be discussed by the relevant Panel. She suggested that the matter be referred to the Panel on Home Affairs for follow-up. Members agreed.

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