

立法會
Legislative Council

LC Paper No. CB(2) 588/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of special meeting
held on Monday, 29 November 2004 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Dr Hon LUI Ming-wah, JP (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP

Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon LAU Chin-shek, JP
Dr Hon KWOK Ka-ki

Public officers attending : Item I

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

Ms Julina CHAN Woon-yee
Principal Assistant Secretary for Constitutional Affairs

Item II

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Motion proposed by Dr Hon Fernando CHEUNG Chiu-hung
(LC Paper No. CB(2)137/04-05(01) – Wording of the motion proposed
by Dr Hon Fernando CHEUNG Chiu-hung)

The Chairman said that at the last meeting, members had a debate on the motion proposed by Dr Fernando CHEUNG. The Secretary for Constitutional Affairs (SCA) had given his response and Dr CHEUNG had given a final reply. As five members, namely, Mr LEE Cheuk-yan, Mr Martin LEE, Mr LEE Wing-tat, Mr Albert CHENG and Mr James TIEN had indicated that they would like to respond to SCA's reply, the Panel agreed to defer a decision on the motion until this meeting.

Action

2. The Chairman invited other members to indicate their intention to speak before proceeding further. Mr Frederick FUNG and Mr CHIM Pui-chung indicated that they would also like to speak. The Chairman said that after the seven members had spoken, SCA could respond if he so wished. A vote would then be taken on the motion.

3. Pointing out that it was the practice for the Administration to respond to members' questions, one by one, at a Panel meeting, some members queried the decision of the Chairman to allow SCA to give an overall response after all the members had spoken. They stressed that such an arrangement was normally adopted after an item had been discussed for some time at a meeting and when there was insufficient time to continue the discussion, but not at the start of a meeting. They also queried why SCA should be given the discretion as to whether to respond to members' questions. In addition, SCA should not be the last person to speak on the motion given that the motion was not proposed by the Administration.

4. Some other members were agreeable to the approach proposed by the Chairman. They said that unlike agenda items proposed by the Administration for discussion of the Panel, the motion in question was proposed by a member of the Panel. Hence, it was appropriate for the Administration to give an overall response at the end of the debate on the motion. This was consistent with the procedure adopted by the Council for motion debates.

5. Mr Martin LEE and Mr Albert CHENG said that they wished to listen to SCA's reply to Mr LEE Cheuk-yan's question before giving further views. The Chairman said that he had earlier decided that SCA could respond, if he wished to, after the seven members had spoken. The Chairman then called upon the seven members to speak in turn.

6. Mr LEE Cheuk-yan said that at the last meeting, SCA had not responded to his question whether the Administration agreed that the Hong Kong community at large was in support of universal suffrage in 2007 and 2008. If the Administration did not accept that the views of the people participating in the mass procession on 1 July 2004 represented the consensus of the community on universal suffrage for 2007 and 2008, it was all the more necessary for a referendum to be conducted on the matter. Mr LEE further said that both the Chief Executive (CE) and SCA were repeating and echoing the words of the Central Authorities and the decision promulgated by Standing Committee of the National People's Congress on 26 April 2004 (the NPCSC Decision). A referendum was necessary to ensure that the public's views were not distorted.

7. Mr LEE Wing-tat said that there were new developments since the last meeting. For instance, Professor XIAO Weiyun of the Law Faculty of the Peking University had recently commented that the people of Hong Kong were

Action

“Hong Kong residents” (香港居民) and not “Hong Kong citizens” (香港公民) because there were foreigners among Hong Kong residents. Professor XIAO further said that the Basic Law had not provided for the conduct of a referendum (公民投票). Mr LEE said that it would appear that Professor XIAO had made a distinction between “Hong Kong residents” and “Hong Kong citizens” and had implied that only the latter had the right to vote in a referendum. Pointing out that under the Basic Law, permanent residents of the HKSAR had the right to vote and stand for election, and those holding foreign passports could also be elected as members of the Legislative Council (LegCo), Mr LEE asked the Administration to indicate its stance on Professor XIAO’s comments and to clarify whether only “Hong Kong citizens” were allowed to participate and to exercise their voting right in matters relating to constitutional development.

8. Mr James TIEN said that the opinion polls conducted at the end of 2003 and early 2004 had indicated that the majority of the people of Hong Kong supported universal suffrage for the elections in 2007 and 2008. Majority views, however, did not equate with a consensus. The opinion polls had indicated that about 60-70% of those polled supported the election of CE by universal suffrage in 2007, while a little over 50% of those polled supported the election of all LegCo Members by universal suffrage in 2008. However, this was not consensus on the methods for electing CE in 2007 and forming LegCo in 2008 (“the electoral methods”). Mr TIEN further said that the decision of NPCSC to rule out universal suffrage in 2007 and 2008 had taken into account the public’s aspiration and other considerations. The views of the business sector conveyed to NPCSC before April 2004 was that implementation of universal suffrage in 2007 and 2008 was inappropriate as constitutional development should proceed in a gradual and orderly progress and should have regard to the nine factors set out in the Second Report of the Constitutional Development Task Force (Task Force). Mr TIEN also said that SCA should explain whether NPCSC had ignored the views of the public when making its decision, as mentioned by some members.

9. Mr Frederick FUNG said that the referendum proposed in the motion did not have a legal status and binding effect. It was the practice of the Administration to conduct public consultation on important policy issues. He could not understand why the Administration did not support a non-binding referendum which was an alternative means of public consultation. He asked SCA whether the Administration had ruled out a referendum because of the NPCSC Decision, legal or other considerations.

10. Mr CHIM Pui-chung said that he supported the stance of the pan-democratic Members in regard to constitutional development as they represented the views of those who had elected them. His personal view, however, was that the effort to pursue universal suffrage for the 2007 and 2008 elections would be futile, having regard to the views of the Central Authorities.

Action

He urged members to focus on more important issues such as the Government's handling of the West Kowloon cultural district project which had been criticized as being unfair and unreasonable, instead of wasting efforts in pursuing something that was unattainable.

11. Mr CHIM further said that he found it inappropriate to use the Chinese term “公投” (referendum) which originated from Japan, and later adopted by Taiwan and Hong Kong. He preferred to use “民投” or “民意投票”. He also questioned whether “the views of the people” should include the 1.3 billion people in the Mainland, and not just the 6.7 million people in Hong Kong.

12. Mr Martin LEE declined to speak before SCA had responded to the questions earlier raised by members. The Chairman reiterated that SCA would give an overall response after members had spoken.

13. Mr Martin LEE said that in the circumstances, he would speak under protest. Mr LEE said that according to the interpretation promulgated by NPCSC on 6 April 2004, CE should make a report to NPCSC as to whether there was a need to amend the “electoral methods”, and NPCSC should make a determination in accordance with Articles 45 and 68 of the Basic Law. NPCSC promulgated its decision on 26 April 2004 after deliberating on the report submitted by CE. Mr LEE pointed out that since 26 April 2004, there were two new developments. First, over half a million of the people of Hong Kong took to the street on 1 July 2004 expressing support for universal suffrage for the elections in 2007 and 2008. Second, over 60% of the voters in the 2004 LegCo election voted for the pan-democratic Members who supported universal suffrage in 2007 and 2008. Under the circumstances, CE should take into account the new developments and make a further report to NPCSC highlighting the public's aspiration for universal suffrage in 2007 and 2008. The proposed referendum would ascertain the views of the public on the question of universal suffrage in 2007 and 2008 and facilitate CE writing his report. In his view, the conduct of a referendum would not contravene the NPCSC Decision. Regarding Mr CHIM's earlier comments, Mr LEE said that the Chinese term “公投” (referendum) was not new as it had appeared in the second draft of the Basic Law. He also disagreed that a referendum was unattainable.

14. Mr Albert CHENG said that he refused to speak in protest of the Chairman's decision of not requesting SCA to give an immediate response to the questions raised by individual members.

15. Mr LEUNG Kwok-hung said that he would like to speak on the motion. The Chairman said that his request could not be acceded to as he had failed to indicate his intention to speak earlier on.

Action

16. At the invitation of the Chairman, SCA gave the following response –
- (a) The comments made by Professor XIAO Weiyun, a Mainland academic, represented his personal views. The right of the permanent residents of Hong Kong to vote and to stand for election was provided for in the Basic Law (Article 26) and the electoral law. The Basic Law (Article 67) also allowed permanent residents of Hong Kong who were not of Chinese nationality or who had the right of abode in foreign countries to be elected LegCo Members, provided that the proportion of such Members did not exceed 20% of the total membership of the Council;
 - (b) The Administration's position on referendum was that any proposal which sought to introduce new requirements for amending the "electoral methods" in addition to those stipulated in the Basic Law and the parameters set by the NPCSC Decision was unnecessary and inappropriate. The Basic Law had made no provision for the conduct of a referendum. In addition, there was no local law to regulate the conduct of referendum or to provide for the use of the voter register for purposes other than the elections of Members of District Councils and LegCo;
 - (c) NPCSC had taken into account the public opinions in making its decision on 26 April 2004. The Second Report of the Task Force submitted to NPCSC on 15 April 2004 had set out in detail the views of the community received by the Task Force, and reflected the results of the opinion polls referred to by Mr James TIEN. The representatives of NPCSC had also met with different sectors of the Hong Kong community to listen to their views on issues relating to constitutional development before making its decision;
 - (d) It was a fact that some 60% of the voters in the 2004 LegCo election had voted for the pan-democratic Members who supported universal suffrage. However, about 40% of the voters had voted for Members of other political parties or groups whose stance on the direction and pace of constitutional development was different from that of the pan-democratic Members. It was the view of the Administration that there was a consensus in the community that constitutional development should proceed, but there was a lack of consensus as to whether universal suffrage should be implemented in 2007 and 2008; and
 - (e) The position of the Administration was that any changes to the "electoral methods" must comply with the Basic Law and the NPCSC Decision. While the NPCSC Decision had ruled out universal suffrage for the elections in 2007 and 2008, there was

Action

room for amending the “electoral methods” in accordance with the provisions of Articles 45 and 68 of and Article 7 of Annex I and Article III of Annex II to the Basic Law. As any amendments to the “electoral methods” required the consent of three parties, i.e. a two-thirds majority of LegCo Members, CE and NPCSC, it was important for Members returned by both functional constituencies and geographical constituencies to adopt an accommodating and receptive attitude so that differences in opinions could be narrowed. The Administration hoped that a mainstream proposal would have emerged by around mid-2005. The Administration would make the best endeavour to solicit support inside and outside of LegCo with a view to achieving consensus on the “electoral methods” and striving for democratic development in Hong Kong. Conducting a referendum would not help achieve a consensus as required in the Basic Law.

17. Mr LEUNG Kwok-hung, Mr LEE Wing-tat and Dr Fernando CHEUNG requested to speak again. The Chairman said that in accordance with his earlier decision, a vote should now be taken on the motion.

18. The Chairman put the motion to vote. Mr LEE Wing-tat requested a division.

19. The Clerk read out the names and number of members who were in favour of the motion, those who were against the motion, and those who abstained from voting.

20 members voted for the motion

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr Ronny TONG, and Mr Albert CHENG.

31 members voted against the motion

Mr James TIEN, Ir Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew

Action

LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Patrick LAU, and Mr KWONG Chi-kin.

Three members abstained

Dr Joseph LEE, Mr CHIM Pui-chung, and Miss TAM Heung-man.

20. The Chairman declared that the motion proposed by Dr Fernando CHEUNG was negatived.

II. Review of the conduct of the 2004 Legislative Council election

(Electoral Affairs Commission Interim Report on the 2004 Legislative Council election held on 12 September 2004)

Statement of the Secretary for Constitutional Affairs concerning the Interim Report

Paper dated 10 November 2004 provided by the Registration and Electoral Office on the findings of the Interim Report

Paper dated 10 November 2004 provided by the Constitutional Affairs Bureau on the Administration's follow-up action on the Interim Report

LC Paper No. CB(2)204/04-05(02) - A list of questions raised by Hon Albert Jinghan CHENG on the Electoral Affairs Commission's Interim Report on the 2004 Legislative Council election)

LC Paper No. CB(2)221/04-05(01) - Administration's response to the 13 questions raised by Hon Albert Jinghan CHENG

21. The Chairman said that Mr Albert CHENG had raised 14 questions relating to the Electoral Affairs Commission (EAC) Interim Report on the 2004 Legislative Council election (Interim Report), and the Administration had provided its response to 13 of these questions. He invited Senior Assistant Legal Adviser 2 (SALA2) to respond to the last question.

22. SALA2 explained that the requirement for EAC to submit a report to CE and the procedure for lodging an election petition were set out separately in the EAC Ordinance (Cap. 541) and the Legislative Council Ordinance (Cap. 542) respectively. The Interim Report would have no bearing on the lodging of an election petition to court.

Action

Briefing by SCA

23. At the invitation of the Chairman, SCA said that the Interim Report, which was made public on 10 November 2004, gave an account of the progress of EAC's investigation into the various problems regarding the arrangements for polling day and its findings so far. It affirmed that the electoral process was conducted in an open, fair and honest manner. Although the problems which occurred on the polling day had not affected the integrity of the election, there were clearly inadequacies arising from a number of administrative and planning errors relating to the practical arrangements for the election. SCA said that he had expressed apologies to the public and candidates for the inconvenience caused by these problems. The relevant government departments which had assisted in arranging the election had learned valuable lessons and would seriously consider how the electoral arrangements could be improved in future. SCA added that the Chief Electoral Officer (CEO) would later brief members on the Interim Report.

24. SCA further said that the various problems identified in the Interim Report revealed that there was clearly room for improvement in the planning and conduct of election. CE had already announced on 10 November 2004 that an Independent Committee of Experts (the Experts Committee) would be set up to review the management, planning and conduct of elections and to make recommendations on improvement measures. The terms of reference of the Experts Committee had already been distributed to LegCo Members on 10 November 2004. SCA briefly described the composition and work of the Experts Committee as set out in his statement made to the Council on 10 November 2004.

Briefing by CEO

25. CEO said that the Interim Report had revealed a number of administrative and planning errors relating to the practical arrangements for the election. On behalf of EAC, he expressed deep regret for the problems and inadequacies relating to the conduct of the election and tendered its apology for the inconvenience caused to the public, the electorate, the candidates and their agents. CEO briefed members on the major investigation findings and the proposed measures to improve the arrangements for future elections, as set out in the Interim Report.

26. CEO further said that EAC welcomed the decision of CE to set up the Experts Committee and would fully co-operate with it. Meanwhile, EAC was continuing its investigation into the uncompleted complaint cases as well as other outstanding issues. It would later submit its final report to CE. Having considered the investigation findings so far, EAC was satisfied that the integrity of the election had been upheld.

Action

27. CEO said that there were also complaint cases relating to the overcrowding in the Press Centre. He explained that one of the criteria in selecting the venue for the Press Centre was its availability for two consecutive Sundays in the event of possible postponement of the election from 12 September 2004 to 19 September 2004 due to unforeseeable circumstances such as inclement weather. The venue was selected as it fit the requirement but it was smaller than what Registration and Electoral Office (REO) would have preferred. REO had made efforts to arrange as many seats as possible in the Press Centre for the media, candidates and their agents. However, the problem of overcrowding was aggravated by the delay in the declaration of election results for geographical constituencies because of the malfunctioning of the computer system. CEO apologized for the inconvenience caused to the affected persons.

Issues raised by members

28. Mr Ronny TONG said that last week, the Secretary for Justice (SJ) had called him on behalf of CE saying that the Administration was aware that Members belonging to the Article 45 Concern Group were concerned about the terms of reference of the Experts Committee, and that it would welcome suggestions from them. Mr TONG asked SCA whether the Administration would consider amending the terms of reference of the Experts Committee.

29. SCA said that the Experts Committee would review the management, planning and conduct of elections, and to make recommendations on improvement measures. While the Administration considered the existing terms of reference of the Experts Committee appropriate, it was prepared to listen to the views of Members, if any.

30. Ms Emily LAU, Mr LEE Wing-tat, Ms Margaret NG and Dr YEUNG Sum pointed out that many problems of the 2004 LegCo election reflected inadequacies in the planning and decision-making process by officers at the management level. They had previously expressed the view that the investigation into the conduct of the 2004 LegCo election should be conducted by an independent body, given the role of EAC in conducting the election. They enquired how the Experts Committee would assess the question of the accountability of the Government and EAC, including SCA and the Chairman of EAC, in the conduct of the 2004 LegCo election. They held the view that the terms of reference of the Experts Committee should include the examination of the performance and accountability of persons and officials at policy-making and management levels.

31. SCA said that EAC was an independent statutory body responsible for the conduct and supervision of elections. The role of REO was to assist EAC in carrying out its statutory functions. It was a statutory requirement for EAC to submit a report on an election to CE and to consider any complaints received in

Action

connection with that election. As there were inadequacies relating to the arrangements made for the 2004 LegCo election, CE had decided to set up the Experts Committee. The various problems identified in the Interim Report, including late delivery of additional ballot boxes, lack of contingency planning and inaccurate voter turnout figures, revealed that there were inadequacies in management, planning and conduct of the election. The Administration had therefore, proposed that the Experts Committee would consist of three members with relevant experience in legal, management and logistics, and information technology matters.

32. SCA further said that on the basis of the Interim Report and Final Report of EAC, the Experts Committee would assess the management responsibilities for the arrangements for the 2004 LegCo election and would consider how practical arrangements for future elections could be improved. The Committee would submit a report to CE about three months after it had commenced its work. Subject to the recommendations of the Experts Committee, CE would decide on the follow-up actions required.

33. Ms Margaret NG further asked whether SCA, being the relevant principal official, should bear any responsibility for the mistakes in the management and planning of the election.

34. SCA said that he and the EAC Chairman had, on different occasions since the election on 12 September 2004, apologized to the public and candidates for the problems with the arrangements on the polling day. While CAB would not interfere with EAC on matters relating to the conduct of elections, CAB had the responsibility to propose, where necessary, new policy and legislative proposals relating to elections for the consideration of LegCo and EAC. For instance, the proposal to provide partial financial support to candidates running for the 2004 LegCo election at the rate of \$10 per valid vote was initiated by CAB. However, it would be the responsibility of EAC to put into implementation any approved policy and legislative proposals. SCA added that he was accountable to LegCo and the public for matters falling within his policy portfolio.

35. Mr LAU Kong-wah referred members to paragraphs 2.7 of the Interim Report which stated that “the use of papers of ordinary thickness for the preparatory tests and the occasional shaking requirement had not been made known to the senior management of the REO when they were informed of the content capacity of the ballot box”. He pointed out that the Interim Report appeared to have put the blame on staff at the working level. In his view, staff at the senior management level could not shirk their responsibility of not conducting further test for capacity of the paper subsequently adopted for use as the ballot paper. Mr LAU asked about the ranking of the “senior management of the REO” referred to in the paragraph.

Action

36. SCA said that the Experts Committee would assess the management responsibilities for the arrangements made for the 2004 LegCo election, irrespective of the ranking of the officers involved. He considered it inappropriate at this stage to comment on individual cases. SCA further said that the report of the Experts Committee would be provided to the Civil Service Bureau for consideration of any follow up action, if required. CEO said that he and his deputy were both involved in the tests conducted. Their main consideration at the time was about the design of the ballot box, but not the thickness of the ballot paper.

37. Mr LEE Wing-tat said that policy decisions made by the Chairman and members of EAC would be carried out by civil servants including CEO. For example, the deployment and duty roster of civil servants working in counting and polling stations was a matter for policy decision as it had financial implications. Given the transfer of Mr LI Wing, CEO, Mr LEE expressed concern that civil servants would become the scapegoat in the incident. Mr LEE asked whether the review of the Experts Committee would cover the Chairman and members of EAC.

38. SCA said that one of the tasks of the Experts Committee was to make an assessment of the management responsibilities for the conduct of the 2004 LegCo election. It would examine the role, functions and performance of the parties concerned, including the Government, EAC and REO, without limiting to any particular category of persons.

39. Mr LEE Wing-tat said that the number of complaint cases set out in the Interim Report was lower than that referred to EAC by the Democratic Party. He asked how the statistics were compiled. CEO said that a file would be opened for each complaint case. EAC would investigate all complaint cases received and give a consolidated reply to the complainants. Mr LEE said that his main concern was that the complaint cases should not be categorized in a way so that its number would be compressed artificially. In his view, the number of complaint cases set out in the Interim Report was underestimated.

40. Mr Martin LEE said that according to some senior civil servants as reported in press reports, civil servants who participated in the conduct of the past elections worked shorter hours because there were two shifts, i.e. one group of staff for polling duties and another for counting duties. Given the arrangement to combine counting and polling stations for the 2004 LegCo election, they were required to work one shift through the poll and the count. As long working hours would cause fatigue and human errors, experienced civil servants were deterred from participating in the conduct of the 2004 LegCo election. As a result, EAC had recruited inexperienced civil servants. Mr LEE asked whether the Administration agreed to the analysis made in the press reports. He also asked who made the decision that the two-shift system should

Action

be replaced by a one-shift system and whether it was for the purpose of saving money. Mr LEE further said that as a responsible principal official, SCA should be accountable for the election blunders and had no choice but to step down from the post. He considered that being apologetic was insufficient to address the concerns of the public.

41. SCA said that the decision to adopt a one-shift system was made by EAC. In the light of experience of the 2003 District Councils election, EAC had decided to decentralize vote counting to individual counting stations for the 2004 LegCo geographical constituency elections. SCA further said that the total funds earmarked for the 2004 LegCo election was \$270 million, which was slightly more than that for the 2000 LegCo election. While the expenses for publicity had decreased from \$80 million in 2000 to about \$50 million in 2004, the expenses earmarked for practical arrangements (including the honoraria for polling staff) had increased from \$180 million in 2000 to over \$200 million in 2004. There was no question of the Administration trying to save money by reducing the number of working shift of the electoral staff.

42. SCA added that while CAB was not involved in the practical arrangements for the 2004 LegCo election, where appropriate it would offer advice on the overall electoral arrangements. For instance, CAB had reminded EAC to provide sufficient training to Presiding Officers (PROs), to establish an effective communication network among the five geographical constituencies and the polling stations, and to recruit more PROs in view of the long working hours, etc. SCA reiterated that he was accountable to LegCo and the public for matters within his policy portfolio.

43. CEO recapped the reasons for EAC to adopt the combined polling and counting arrangements for the 2004 LegCo election. He said that in view of the longer working hours, the honorarium for PROs had been adjusted and they had been warned during training that they might have to work three to four hours beyond midnight. Unfortunately, the malfunctioning of the computer system on the polling day had called for an overall verification of all voter turnout data manually. This had caused delay in declaring the election results, and as a result, polling staff were required to work longer hours than expected. As regards staff recruitment, CEO said that the ratio of experienced and inexperienced staff working for the 2004 LegCo election was maintained at a reasonable level. The percentage of experienced to inexperienced staff was 80% to 20% for PROs and Deputy PROs, and 60-70% to 30-40% for staff at lower ranks.

44. Dr YEUNG Sum asked about the powers of the Experts Committee, its mode of operation, and whether the question of accountability would be addressed in its report. SCA said that the Experts Committee was a non-statutory independent committee. It did not have the power to summons witnesses, but it could invite the public and the relevant parties to give views. As

Action

regards the question of accountability, SCA said that CE would consider whether any follow up actions were required after the Experts Committee had submitted its report.

45. Mr Albert CHENG asked why the Administration had suddenly decided to set up the Experts Committee and who made such a decision. Referring to the announcement of the transfer of Mr LI Wing, CEO, to another department, Mr CHENG expressed concern whether Mr LI was the scapegoat of the election blunders. He commended Mr LI for his contribution to the smooth conduct of past elections.

46. SCA said that the election was basically conducted in an open, fair and honest manner. In view of the administrative and planning errors in the election, CE decided to set up the Experts Committee to review the management, planning and conduct of elections, and to make recommendations on improvement measures. As regards the transfer of Mr LI, SCA said that it was a normal arrangement under the civil service system. For staff at directorate grade, transfer of posting was usually planned well in advance, in some cases more than a year in advance. As Mr LI had taken up the post of CEO for almost seven years, it had been decided a year ago that he would be transferred to another department after the completion of the 2004 LegCo election. However, an announcement was only made recently. SCA added that the CEO post would be taken up by another officer who had had working experience in EAC. CEO confirmed that his transfer was in line with the usual arrangement for the Executive Officer grade.

47. As the meeting had passed the scheduled ending time, members agreed that the remaining items on the agenda be dealt with at the next meeting to be held on 20 December 2004.

48. The meeting ended at 6:35 pm.