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Legislative Council

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Panel on Constitutional Affairs

Background brief for meeting on 30 May 2005

Review of the conduct of the 2004 Legislative Council election

Purpose

This paper summarises the concerns of Members of the Legislative Council (LegCo) about the conduct of the 2004 LegCo election.

Background

2. The third term LegCo election was held on 12 September 2004. A number of new measures were introduced in this election with a view to improving and refining the electoral process. These measures included newly designed ballot papers and ballot boxes, decentralized counting of ballot papers, and use of Interactive Voice Response System.

3. On the polling day, various problems relating to the polling and counting arrangements arose and affected the smooth conduct of the election. These problems included insufficient supply of ballot boxes for geographical constituency (GC) elections and delay in the replenishment, use of stopgap measures in some polling stations pending the arrival of additional GC ballot boxes, overcrowdedness and prolonged queuing at some polling stations, long working hours of polling-cum-counting staff, eviction or exclusion of candidates or their agents from polling station, problem in compilation of voter turnout figures, delay in announcement of the election results without explanation, and ballot discrepancies in some functional constituencies (FCs).

4. Since the election, the Chairman of the Electoral Affairs Commission (EAC) and the Secretary for Constitutional Affairs (SCA) had on different occasions tendered apologies to the public and candidates for the inconvenience caused by the problems.

5. On 27 October 2004, Hon Margaret NG moved a motion on “Public enquiry on irregularities in the 2004 LegCo election” for debate in the Council.

6. On 8 November 2004, EAC submitted the “Interim Report on the 2004 Legislative Council Election Held on 12 September 2004” (the Interim Report) to the Chief Executive (CE).

7. At the Council meeting on 10 November 2004, SCA made a statement on the Interim Report. On the same day, CE announced that a non-statutory independent committee of experts would be set up to review the management, planning and conduct of elections, and to make recommendations on improvement measures.

8. On 11 December 2004, EAC submitted to CE the “Report on the 2004 Legislative Council Election Held on 12 September 2004” (the Report).

9. SCA made a statement on the Report at the Council meeting on 15 December 2004. On the same day, CE announced the appointment of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections (the Experts Committee). The Experts Committee comprises experienced members in, respectively, management and logistics, information technology and legal fields. The Experts Committee was tasked to review the management, planning and conduct of elections, to assess the management responsibilities for these arrangements and to make recommendations on improvement measures on the basis of the two EAC Reports and information obtained by the Experts Committee.

10. The Administration briefed the Panel on Constitutional Affairs on the EAC’s Interim Report and the Report at its meetings on 29 November and 20 December 2004 respectively.

EAC’s Interim Report

11. The Interim Report gave an account of the progress of investigation carried out by EAC and the findings in respect of the following major areas of complaints –

- (a) insufficient supply of ballot boxes and the propriety of the various contingency measures adopted (i.e. the opening of sealed ballot boxes to repack ballot papers and the use of cardboard boxes as ballot boxes) during the poll;
- (b) legality or otherwise of the contingency measures adopted;
- (c) ballot discrepancies in four FCs;
- (d) voter turnout figures and delay in announcing election results;
and

- (e) eviction or exclusion of candidates or their agents from polling stations.

12. Despite the confusion on the polling day, the Interim Report affirmed that the electoral process was conducted in an open, fair and honest manner. The Interim Report also identified a number of administrative and planning errors relating to the practical arrangements for the election, and had proposed measures to improve the arrangements for future elections.

EAC's Report

13. The Report gave an updated report on the findings of the uncompleted complaint cases as well as other outstanding issues mentioned in the Interim Report. The issues were –

- (a) printing of introductory leaflets of candidates;
- (b) failure in the Interactive Voice Response System;
- (c) error of reporting of counting results; and
- (d) other complaints cases.

14. The Report pointed out that in the light of the new measures introduced for the election, all the equipment and arrangements had been tested before the election but they were tested on a smaller scale than required. This had resulted in unforeseen problems affecting the smooth conduct of the poll in a number of polling stations. The Report suggested that apart from full testing of any newly introduced equipment and arrangements to ensure that they work, special care need to be taken to ensure their global satisfactory integration and performance. Suitable training for staff was also a must. Notwithstanding the problems in the arrangements on the polling day, the Report affirmed that the integrity of the LegCo election had not been affected. The Report also set out the EAC's recommendations on improvement measures for future elections.

Major issues discussed by Members

Independent commission of inquiry

15. Under section 8 of the Electoral Affairs Commission Ordinance (Cap. 541) (the Ordinance), EAC is required to make a report to CE within three months after the election. Some members considered that the investigation of the chaos on the polling day should be conducted by an independent commission of inquiry, given the role of EAC in conducting the election.

16. As mentioned in paragraph 5 above, at the Council meeting on 27 October 2004, Hon Margaret NG moved a motion urging the CE to appoint an independent Commission of Inquiry to investigate the irregularities and general confusion on the polling day of the 2004 LegCo election and make such recommendations as appropriate on improvement and disciplinary measures. The motion was negated.

Accountability

17. Some members expressed concern that the two EAC Reports had not addressed the question of accountability. They pointed out that the Reports were written in such a way that the mistakes in the conduct of the election were borne by staff at working level. These members held the view the Experts Committee should also examine the performance and accountability of persons and officials at the management level, including SCA, the Chairman and members of EAC, in the conduct of 2004 LegCo election, as the problems of the 2004 LegCo election reflected inadequacies in the planning and decision-making process by officers at that level.

18. The Administration explained that it was a statutory requirement for EAC to submit a report on an election to CE and consider any complaints received in connection with the election. Given the various problems identified in the EAC Reports, CE had appointed the Experts Committee to examine the role, functions and performance of the parties concerned, including the Government, EAC and Registration and Electoral Office (REO), without limiting to any particular category of persons. Subject to the recommendations of the Experts Committee, CE would decide on the follow-up actions required.

Vote counting arrangements

19. In the Report, EAC proposed that for better control and monitoring, consideration could be given to decentralizing the counting of GC votes to the regional level, with one counting station in each of the five GCs, or to the district level, with one counting station in each of the 18 districts. Some members considered that decentralized counting of votes should not be given up lightly, as the practice was open, transparent and expeditious. Given that the problems relating to the counting of GC votes were technical in nature, they suggested the problem could be overcome by enhancing the software of the information systems.

20. Some other members held the view that while decentralized counting had worked well for District Council elections, it might not be suitable for LegCo elections. They were inclined to support centralized counting for GC votes at future elections, given the large number of polling stations in a GC election and the various problems relating to recruitment and training of polling staff. If centralized counting was adopted in future, they requested that

information relating to voter turnout figures and counting results of candidates at individual polling stations should be made available.

21. The Administration assured members that consultation would be conducted on any new counting arrangements before implementation.

Matters relating to electoral staff

22. Members noted that following the combined polling and counting arrangements, the two-shift system adopted in past elections, under which two groups of staff were assigned to carry out polling duties and counting duties respectively, was replaced by the one-shift system in the 2004 LegCo election under which polling staff was required to work through the poll and the count. Some members expressed concern whether the polling staff could cope with the long working hours, and whether adequate training was provided to them on how to handle unexpected incidents during election.

23. REO advised that polling staff had been warned during training that they might have to work beyond midnight. Unfortunately, the malfunctioning of the computer system on the polling day had caused delay in declaring the election results, and as a result, polling staff had to work longer hours than expected.

Handling of ballot papers

24. A member expressed concern that EAC had not attached sufficient importance to the security of ballot papers and the verification process. The member pointed out that ballot papers were kept by polling staff in their homes before the polling day, and the counting of some of the FC votes commenced before all the FC ballot boxes were delivered.

25. REO explained that the arrangement for ballot papers to be kept in the custody of polling staff was due to operational need. With 501 polling stations involved in the 2004 LegCo election, there were practical difficulties for REO to arrange manpower and transportation for the delivery of ballot papers to all these stations before 7:30 am on the polling day. Entrusting a portion of the ballot papers to the polling staff concerned before the polling day had been an established practice. The remaining ballot papers had been delivered to the polling stations on the polling day. REO also confirmed that due to the late delivery of a few ballot boxes, counting for FC votes had commenced before all the ballot boxes were opened.

Legality of contingency measures

26. Some members had questioned whether the contingency measures adopted during the election, such as using cardboard boxes as ballot boxes, were legally in order.

27. REO explained that although the electoral legislation contained provisions which prevented interference with or opening of the ballot boxes in use, there was no provision to cover unexpected emergencies. By virtue of sections 4(b), 4(h) and 5(g) of the Ordinance, EAC considered that it had the power and authority to make arrangements and take appropriate measures which were necessary or expedient for the performance of its functions for the conduct of the election. Given that the opening of the ballot boxes and the use of cardboard boxes as ballot boxes were done in the presence of polling staff, election agents, polling agents, or police officers and the electors inside the polling stations at the time, the contingency measures adopted during election were legally in order.

Improving and developing the electoral process

28. Some members had suggested that the Administration should use more advanced technologies to improve and develop the electoral process. For instance, using electronic means for voting and verification of the identity of electors would minimize human errors. REO advised that feasibility studies in these areas had been conducted in the past, and the conclusion was that the process was complex, costly and not flawless. EAC maintained the view that manual verification and voting were more practical and reliable.

Other electoral arrangements

29. A member proposed that for future elections, advance polling should be arranged to facilitate electors who were not in Hong Kong on the polling day to vote. Another member held the view that Hong Kong residents working and residing in the Mainland should not be deprived of the right to vote. A member stressed that any proposed new improvement measures should not undermine the independent status of EAC or the user-friendliness of the existing electoral arrangements. The Administration and REO had taken note of those views.

30. At the Council meeting on 20 October 2004, a Member raised a question on "Accessibility of polling stations by the mobility-handicapped". The Administration had replied that 287 out of the 501 polling stations were "accessible polling stations" suitable for use by disabled persons. If a person with a disability was allocated to a polling station unsuitable for his use, he could make a request to the REO for reallocation to a special polling station in his constituency. The REO could also arrange for free Rehabus service for a disable person to commute to the relevant polling station.

Latest development

31. The Experts Committee published its report on 6 May 2005. The Panel will discuss the report at its next meeting on 30 May 2005.

Relevant papers

32. A list of relevant papers which are available on the LegCo website is in **Appendix**.

Council Business Division 2
Legislative Council Secretariat
26 May 2005

Review of the conduct of the 2004 Legislative Council election

Relevant Papers/Documents

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Panel on Constitutional Affairs	18 October 2004	Transcript of remarks by the Chairman of Electoral Affairs Commission at a press briefing on 15 September 2004 on polling arrangements for the 2004 LegCo election [LC Paper No. CB(2)49/04-05(03)]
		Paper provided by the Administration [LC Paper No. CB(2)52/04-05(01)]
Legislative Council	20 October 2004	Written question on "Accountability of polling stations by the mobility-handicapped" raised by Hon Fred LI Wah-ming [Hansard]
Legislative Council	27 October 2004	Motion on "Public inquiry on irregularities in the 2004 LegCo election" moved by Hon Margaret NG [Hansard]
Legislative Council	10 November 2004	Electoral Affairs Commission Interim Report on the 2004 Legislative Council Election held on 12 September 2004 (the Interim Report) [Interim Report]
		Statement of the Secretary for Constitutional Affairs concerning the Interim Report [Hansard]
		Paper provided by the Registration and Electoral Office on the findings of the Interim Report [Paper]

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
		Paper provided the Constitutional Affairs Bureau on the Administration's follow-up action on the Interim Report [Paper]
Panel on Constitutional Affairs	29 November 2004	A list of 13 questions raised by Hon Albert Jinghan CHENG on the Electoral Affairs Commission Interim Report on the 2004 Legislative Council Election [LC Paper No. CB(2)204/04-05(02)]
		Administration's reply to the questions raised by Hon Albert Jinghan CHENG on the Electoral Affairs Commission Interim Report on the 2004 Legislative Council Election [LC Paper No. CB(2)221/04-05(01)]
		Minutes of meeting [LC Paper No. CB(2)588/04-05]
Legislative Council	15 December 2004	Electoral Affairs Commission Report on the 2004 Legislative Council Election held on 12 September 2004 (the Report) [Report]
		Statement of the Secretary for Constitutional Affairs on the Report [Hansard]
Panel on Constitutional Affairs	20 December 2004	Paper provided by the Registration and Electoral Office on the Report [LC Paper No. CB(2)448/04-05(05)]
		Paper provided by Constitutional Affairs Bureau on "Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections" [LC Paper No. CB(2)448/04-05(06)]

	<p>Speech of the Chairman of Electoral Affairs Commission on the Report at the press conference on 15 December 2004 [LC Paper No. CB(2)448/04-05(07)]</p>
	<p>Chief Executive's statement on the appointment of members of the Independent Committee of Experts [LC Paper No. CB(2)448/04-05(08)]</p>
	<p>Press statement by the Chairman of the Independent Committee of Experts [LC Paper No. CB(2)448/04-05(09)]</p>
	<p>Letter dated 23 December 2004 from the Administration in response to the information requested by Hon Margaret NG concerning the number of "tendered" ballot papers issued in the 2000 and 2004 LegCo elections [LC Paper No. CB(2)506/04-05(01)]</p>
	<p>Letter dated 29 December 2004 from Hon Margaret NG in response to Administration's letter dated 23 December 2004 concerning the number of "tendered" ballot papers issued in the 2000 and 2004 LegCo elections [LC Paper No. CB(2)672/04-05(01)]</p>
	<p>Letter dated 14 January 2005 from the Administration in response to Hon Margaret NG's letter dated 29 December 2004 [LC Paper No. CB(2)672/04-05(02)]</p>
	<p>Minutes of meeting [LC Paper No. CB(2)825/04-05]</p>

Panel on Constitutional Affairs	30 May 2005	Report of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections published in May 2005 [Report]
		Press statement of the Acting Chief Executive concerning the Report of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections published in May 2005 [LC Paper No. CB(2)1498/04-05(01)]
		Statement of the Secretary for Constitutional Affairs concerning the Report of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections published in May 2005 [LC Paper No. CB(2)1498/04-05(02)]