

立法會
Legislative Council

LC Paper No. CB(2)2308/08-09
(These minutes have been seen
by the Administration)

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**Bills Committee on Village Representative Election Legislation
(Miscellaneous Amendments) Bill 2009**

**Minutes of meeting
on Friday, 8 June 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Yung-kan, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, SBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Tanya CHAN
Hon WONG Sing-chi
Hon Paul TSE Wai-chun

Public Officers attending : Home Affairs Department

Mr Kesson LEE
Deputy Director of Home Affairs (1) (Acting)

Mr Philip HAR
Senior Administrative Officer (1)

Mr MA Kit-chi
Chief Liaison Officer (1)²

Department of Justice

Ms Angie LI
Government Counsel

Clerk in attendance : Ms Betty FONG
Chief Council Secretary (2)2

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Janet SHUM
Senior Council Secretary (2)2

Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Election of Chairman

Mr IP Kwok-him was elected Chairman of the Bills Committee.

II. Meeting with the Administration

LC Paper No. CB(3)599/08-09 -- The Bill

File Ref : -- The Legislative Council Brief
HAD HQ CR/11/15/3SF2/(C) issued by the Home Affairs
Bureau in May 2009

LC Paper No. LS72/08-09 -- Legal Service Division Report
on the Bill

LC Paper No. CB(2)1772/08-09(01) -- Members' brief

LC Paper No. CB(2)1772/08-09(02) -- Marked-up copy of the
relevant provisions of
ordinances to be amended by
the Bill

LC Paper No. CB(2)1772/08-09(03) -- Background brief prepared by
the Legislative Council
Secretariat

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

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General principles for the listing of indigenous village

3. Referring to the two principles for including an indigenous village in the Schedules to the Village Representative Election Ordinance (VREO) (Cap. 576), viz. the relevant village should have been in existence in 1898 and a village representation system should have been established in the relevant village in 1999, Mr CHEUNG Hok-ming considered that the latter was unreasonable as it might have excluded those indigenous villages where a village representation system had been established before 1999 but was not in operation in 1999. He stressed that as an overriding principle, any village which was already in existence in 1898 and had a village representation system in or prior to 1999 should be included in the Schedules to VREO.

4. In the light of the proposed inclusion of Yuen Long Kau Hui (YLKH) in the Schedules to VREO, Mr CHEUNG Hok-ming and Mr Albert HO sought clarification whether the Administration had revised its principles for the inclusion of indigenous villages in the Schedules. Mr Albert HO further asked whether the Administration would include more villages in the Schedules to VREO upon presentation of valid evidence by residents of the relevant villages.

5. The Administration explained that it was the policy and legislative intent of the VREO to cover those indigenous villages which had been in existence in 1898 and included in the village representation system in 1999, the year when the last round of village election was held before the enactment of Cap. 576. The Administration would however exercise flexibility in considering each case and make a decision upon the provision of sufficient documentary proof by residents claiming the existence of a village representation system in their village before 1999. The Administration would study the evidence in the context of the history of the relevant village and seek comments from the Heung Yee Kuk (HYK) and residents of the relevant village. In other words, the Administration would not turn down requests for inclusion of villages in the Schedules solely due to the fact that the relevant village did not have a village representation system in 1999.

Establishment of village representation system

6. Mr CHEUNG Hok-ming pointed out that prior to the enactment of VREO in 2003, there was no statutory village representation system in the New Territories and village representatives (VRs) were elected according to practices which varied from village to village. He sought clarification from the Administration on the meaning of "village representation system" for the purpose of inclusion of an indigenous village in the Schedule to VREO. Mr Albert HO asked whether such a "village representation system" was an officially recognized system or an unofficial system adopted by residents, and whether the Administration would in general recognize a village representation

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system as long as sufficient evidence could be provided to prove the existence of a VR in the relevant village in the past, as in the case of YLKH. Mr HO opined that the standard adopted for YLKH should be consistently applied to other cases of similar nature in future.

7. The Administration responded that the village representation system in the New Territories before 1999 had evolved in the light of the different historical context. For the case of Lai Pek Shan, the existence of a village representation system in the village in 1999 was a fact established by a record which showed that a VR had existed in the village some 50 years before and by the District Officer (Tai Po)'s approval in 1999 of the revised constitution of the Tai Po Rural Committee admitting Lai Pek Shan as a member so that it could hold a VR election. The Administration reiterated that whether the relevant village met the principles for inclusion in the Schedules to VREO would depend on the strength of evidence provided by residents of the relevant village.

Proposed inclusion of two villages in the Schedules to VREO

8. Mr CHEUNG Hok-ming supported the proposed inclusion of the two villages in the Schedules to VREO but considered that the Administration should be consistent in its stance, so that other villages not included in the Schedules but were able in future to prove to have a village representation system established before 1999 (as in the case of YLKH) could be eligible for inclusion in the Schedules.

9. Mr Albert HO queried the Administration's change of stance in including YLKH in the Schedules to VREO despite its earlier position that YLKH was just a market town and the Shap Pat Heung Rural Committee (SPHRC) did not give support to the case. He further asked about the main concern of SPHRC and enquired how the Administration would address the issue raised. Mr HO declared interest as a legal representative of a Cheung Chau resident who had initiated judicial review proceedings against the decisions of the Administration on various matters relating to the Cheung Chau Rural Committee election, and asked for the reason for the Administration to turn down the request made by residents of Cheung Chau for including Cheung Chau in the Schedules to VREO. He opined that, similar to YLKH, Cheung Chau had been in existence in 1898 as a market town and there were written documents and maps showing the existence of village settlements in Cheung Chau.

10. The Administration responded that -

- (a) since the commencement of the VREO in 2003, residents of YLKH had made repeated requests to the Administration to include YLKH in the Schedules to VREO. However, residents

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of YLKH failed to prove that they had any form of village representation system in 1999. In late 2008, YLKH residents raised the request with some Legislative Council (LegCo) Members and the case was discussed at a meeting of the LegCo Panel on Home Affairs ("HA Panel") in January 2009. At the meeting, some residents of YLKH produced fresh evidence to prove that they had a VR during the Japanese Occupation. Having considered the evidence and the views of the HA Panel, the Administration was of the view that YLKH had a persuasive case unique to its own circumstances and should be included in the Schedules to VREO;

- (b) parties against the inclusion of YLKH in the Schedules to VREO should provide evidence to substantiate their argument. While SPHRC had previously petitioned against the claim made by YLKH residents that YLKH was recognized as an indigenous village, the Administration understood that SPHRC's intention was only to present the historical facts to LegCo. The Administration would continue to discuss this with SPHRC and HYK. Meanwhile, both YLKH and SPHRC understood the importance of maintaining a good relationship among members of the rural community;
- (c) residents' affairs of Cheung Chau were taken care of either by the Kaifong Association or Residents' Association prior to and after the Japanese Occupation. Since the establishment of the Cheung Chau Rural Committee in early 1960's, all its members, past and present, were Kaifong representatives elected by residents of Cheung Chau. There had never been any VRs in Cheung Chau nor had any evidence been provided to prove their existence; and
- (d) if Cheung Chau residents could provide evidence to prove the existence of a village representation system in Cheung Chau in the past, the Administration would consider the request in accordance with the principles for the inclusion of villages in the Schedules to VREO.

Boundary of villages

11. Mr Albert HO asked whether a re-sited area, demolished site or high rise settlements would be included in the boundary of a village (such as YLKH) in general, and whether the Administration had delineated a village boundary for YLKH. Mr HO considered that the Administration should have consulted the residents regarding the demarcation of boundaries for village constituencies prior to introducing the legislative amendments to avoid future disputes, and

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members of the Bills Committee should be furnished with such information during the deliberations of the Bill.

12. Mr CHEUNG Hok-ming said that the area of an existing village would be delineated by the Administration. He noted that the proposed maps of those existing villages included in the VREO would be posted up for public consultation some time before the commencement of the VR ordinary elections. As the VR ordinary elections in 2011 would be the first time for YLKH (and Lai Pek Shan), Mr CHUENG considered that the Administration could delineate the boundary of the two villages either before or after the enactment of the Bill. He asked if the Administration could provide the Bills Committee with a map to indicate the proposed boundary of YLKH (and Lai Pek Shan). He understood that YLKH was flanked by two other villages and it should not be difficult to draw up the boundary for YLKH.

13. The Administration responded that -

- (a) the proposed boundary of YLKH would delineate an area that was surrounded by other villages and there was no high rise building inside this area. A demolished village would not be included in the Schedules to VREO as an existing village;
- (b) there was no physical boundary for an indigenous village as it was a "village community" rather than a geographically-defined entity. Whereas an existing village was a geographically defined entity where only residents whose principal residential addresses were within the village boundary would be eligible to be registered as voters of the Resident Representative election; and
- (c) the Administration would follow the existing practice and consult the residents on the village boundaries of YLKH and Lai Pek Shan after the enactment of the Bill later this year. The Home Affairs Department (HAD) would post up maps of all existing villages including YLKH and Lai Pek Shan in the relevant District Offices, offices of relevant Rural Committees, village offices and notice boards in the relevant villages, and the finalized version of the maps would be available at the offices of the HAD and uploaded on HAD's website for public inspection.

Admin

14. In view of the arrangements mentioned in para. 13(c), the Chairman suggested and members agreed that it should suffice for the Administration to provide maps indicating the proposed boundary of YLKH and Lai Pek Shan for members' reference at this stage.

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Extension of time limit for lodging/handling claims, objections and reviews

15. In response to Mr Albert HO's enquiry, the Administration explained that the proposal aimed to extend the time frames; from seven to 14 days for the Revising Officer (RO) to rule on claims/objections; from two to four days for applying for a review of the RO's decision; from two to eight days for the handling of review cases by RO. The extension of the time limit would provide a more reasonable time frame for concerned parties to deal with those cases. Under the proposed time frame, the compilation and publication of the provisional register of electors would have to be advanced by about two weeks.

16. Mr Paul TSE enquired about the number of claims and objections received in the VR elections in 2003 and 2007 and whether manpower resources would be strengthened to relieve RO's heavy workload. The Administration advised that the total number of claims made in 2003 and 2007 were 145 and 213 respectively, whereas the number of objections to the registration in 2003 and 2007 were 2098 and 895 respectively. It was expected that the number of claims and objections would decline gradually over the years after the first VR ordinary election in 2003. The Administration further advised that it had consulted the Judiciary before putting forward the Bill and four ROs who were magistrates would be dedicated to handle the claims, objections and reviews in the VR elections. It would continue to liaise with the Judiciary to ensure that the manpower resources of ROs would be sufficient to cope with the workload arising from the claims, objections and reviews.

Conduct of VR election and increase of maximum penalty on offences concerning order at polling stations and secrecy of votes

17. Members noted that the Administration proposed to increase the maximum penalty of imprisonment from three to six months for offences concerning order at polling stations and secrecy of votes, to align it with that for the LegCo and District Council elections.

18. Noting that under the existing mechanism, persons providing false information in electoral registration for VR elections would not be subject to any penalty unless they had voted in the election, Mr Paul TSE considered that the Administration should be more stringent in taking enforcement action against such persons before the VR elections took place to enhance deterrent effect against those who deliberately breached the law. He added that this would also help to reduce the workload of ROs.

19. The Administration responded that the Electoral Registration Officer was empowered to determine the eligibility of the elector according to the VREO and take action against persons who gave information to an electoral officer that the person knew to be materially false or misleading. As for

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enforcement action against persons providing false statements in electoral registration, it would be difficult to prove the intention that the person concerned had knowingly or recklessly provided false or incorrect statements.

Admin

The Administration agreed to provide information on the figures of enforcement action against persons providing false information in electoral registration in relation to VR elections.

III. Date of next meeting

20. The Committee agreed that the next meeting should be scheduled for 25 June 2009 at 2:30 pm to receive views from deputations and members of the public on the Bill. An invitation for public views would be placed on the LegCo website.

21. The meeting ended at 5:35 pm.

Council Business Division 2
Legislative Council Secretariat
29 July 2009

**Proceedings of the meeting of the
Bills Committee on Village Representative Election Legislation
(Miscellaneous Amendments) Bill 2009
on Friday, 8 June 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000447	Mr Albert HO Mr WONG Yung-kan Mr CHEUNG Hok-ming Mr IP Kwok-him Mr LEE Wing-tat Mr WONG Sing-chi	Election of Chairman	
000448 – 000647	Chairman Admin	Briefing by the Administration on the proposed amendments in the Bill	
000648 – 001104	Chairman Ms Tanya CHAN LAU Wong-fat	<ul style="list-style-type: none"> - Organisation of future meetings and the way forward - Deputations be invited to attend the next meeting to be scheduled for 25 June 2009 	
001105 – 002139	Chairman Mr Albert HO Admin	<ul style="list-style-type: none"> - The need for consistency in implementing the principles for the listing of indigenous villages to the Schedules of Village Representation Election Ordinance (VREO) (Cap. 576) - Reasons for the exclusion of Yuen Long Kau Hui (YLKH) in the 2003 village representative (VR) election and the recent change of stance of the Administration to include YLKH in the Schedules to VREO - Reasons for turning down the request of Cheung Chau (CC) for inclusion in the Schedules to VREO - Declaration by Mr Albert HO of his involvement in a judicial review lodged by a CC resident against the decisions of the Administration on matters relating to the Cheung Chau Rural Committee election - Criteria for the assessment of evidence provided by other villages proving the existence of a VR system in the past - Inclusion of other villages to the Schedules upon presentation of valid evidence - The mode of village representation system in YLKH before 1999 	

Time marker	Speaker	Subject	Action required
002140 – 003034	Chairman Mr CHEUNG Hok-ming Admin	<ul style="list-style-type: none"> - Village representation systems in the New Territories before the enactment of VREO in 2003 - Meaning of the establishment of a “village system” in or before 1999 - The need to establish the principle that all indigenous villages proven to have a village representation system established in or before 1999 were eligible for inclusion in the Schedules of VREO in future - Legislative intent of the VREO 	
003035 – 003806	Chairman Mr Albert HO Admin	<ul style="list-style-type: none"> - Criteria in assessing counter evidence provided by Sap Pat Heung Rural Committee to argue against YLKH as an indigenous village - Enquiry as to whether a re-sited area, demolished site or high rise settlements would be included in the boundary of a village (such as YLKH) - Conceptualization of indigenous villages as “village communities” rather than a geographically-defined entity - Delineation of existing villages by geographical boundary 	
003807 - 004939	Mr CHEUNG Hok-min Admin Mr Albert HO Mr WONG Sing-chi Chairman	<ul style="list-style-type: none"> - The need to consult residents of villages about the delineation of the existing villages to be included to the Schedules before passing the Bill - Request for the Administration to provide a location map indicating the proposed boundaries of YLKH and Lai Pek Shan 	Adm to follow up
004940 – 005042	Chairman Admin	Proposal to make changes to village names	
005043 – 005234	Chairman Admin	Proposal to remove spent references to the first VR election in the Bill	

Time marker	Speaker	Subject	Action required
005235 – 005524	Mr Paul TSE Admin	<ul style="list-style-type: none">- The number of claims and objections received in the VR elections in 2003 and 2007- The need to strengthen manpower resources of the Judiciary to cope with the workload arising from claims and objections in VR elections- The need to enhance enforcement action against persons providing false statement in electoral registration before the VR elections took place- Request for the Administration to provide the figures of enforcement action taken against persons providing false information in electoral registration in relation to VR elections	Adm to provide a written response
005525 – 005717	Chairman	Time for next meeting	

Council Business Division 2
Legislative Council Secretariat
29 July 2009