

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2454/08-09  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/4/08

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

**Minutes of meeting  
on Thursday, 25 June 2009, at 2:30 pm  
in Conference Room A 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 LAU Wong-fat, GBM, GBS, JP  
Hon LEE Wing-tat  
Hon CHEUNG Hok-ming, SBS, JP  
Hon Tanya CHAN  
Hon WONG Sing-chi  
Hon Paul TSE Wai-chun
- Member attending** : Hon Albert CHAN Wai-yip
- Member absent** : Hon WONG Yung-kan, SBS, JP
- Public Officers attending** : Home Affairs Department  
Miss Adeline WONG  
Deputy Director of Home Affairs (1)  
  
Mr Kesson LEE  
Assistant Director of Home Affairs (1)

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

Department of Justice

Ms Angie LI  
Government Counsel

**Attendance by invitation** : Mr KWOK Cheuk-kin  
Resident of Cheung Chau

Mr LAI Tak-shing  
Resident of Tsing Yi Hui

Shap Pat Heung Rural Committee  
Mr YIP Chun-fat  
Vice-Chairman

Mr CHAN Kam-fat  
Resident of Fuk Yuen Wo Liu in Yuen Long

Mr KWAN Cheong-ying  
Resident of Yuen Long

Mr CHING Chan-ming  
Yuen Long District Councillor

Mr CHU Kin  
Resident of Cheung Chau

Mr Peter LAU Wai-cheung  
Member of Sai Kung District Council

Tsing Yi Rural Committee  
Mr TANG Kwok-kong  
Chairman

**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

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**I. Meeting with deputations and the Administration**

- LC Paper No. CB(2)1968/08-09(01) -- Administration's response to issues raised by members at the meeting on 8 June 2009
- 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(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

The Bills Committee received views from nine deputations/individuals on the Bill (index of proceedings attached at Annex).

2. Members noted the request of the deputations/individuals of Cheung Chau (CC), Tsing Yi Hui (TYH), Fuk Yuen Wo Liu (FYWL) and Yuen Long Kau Hui (YLKH) for the inclusion of the above villages/places in the Schedules to the Village Representative Election Ordinance (VREO) (Cap. 576) as indigenous villages so that the indigenous villagers might elect their village representatives (VRs) according to the VREO. Their main justifications were as follows -

- (a) the notice published in the Government Gazette on 15 July 1899 had indicated CC as a village/ sub-district and listed the names of members of the Committee of Cheung Chau, which proved that CC was a village and had VRs;

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- (b) ancestral graves and Tsz Tong (祠堂) found in CC proved the existence of indigenous inhabitants in CC;
- (c) CC, TYH, and FYWL were included in the List of Established Villages in the New Territories compiled in 1991 by Heung Yee Kuk (HYK) and the Administration, by virtue of which indigenous inhabitants of these villages/places were eligible for rent concession;
- (d) TYH was an indigenous village which existed in Tsing Yi in 1898 and had been included in the List of Established Villages in the New Territories. The role performed by the Kaifong representative of TYH was similar to that of a VR;
- (e) VR system was established in the late 80's in FYWL which had existed since 1859 as a branch of YLKH although not officially recognized by Shap Pat Heung Rural Committee (SPHRC) and the Yuen Long District Office; and
- (f) YLKH was an indigenous village and its indigenous inhabitants (178 persons) and residents (168 persons) should be given the right to elect VRs.

3. Members also noted the views of representatives of SPHRC and Tsing Yi Rural Committee (TYRC) as follows -

- (a) SPHRC had never passed any resolution to accept YLKH as its member. In fact, SPHRC had raised objection to the application of YLKH for admission to SPHRC as a member village because all along, YLKH had been regarded as a market town, not an indigenous village. Moreover, the so called village representative of YLKH in the 40's was appointed during the Japanese occupation as an agent rather than a representative elected by villagers; and
- (b) TYH (formerly known as Tsing Yi Main Street) was not a village but a market place with shops and restaurants in the past. The Kaifong representative of TYH on the TYRC represented the shop owners of TYH. No VR system had ever been established in TYH. TYRC would not accept the claim that TYH was an indigenous village unless significant documentary evidence could be produced to prove otherwise.

4. The Administration's response was summarized as follows -

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*Cheung Chau*

- (a) the Gazette notice (No 394) published on 15 July 1899 pursuant to the then Local Communities Ordinance aimed to divide the New Territories into eight districts and a number of sub-districts to facilitate administration. That Ordinance and Gazette notice were not related to the VR system and the Committee members of the sub-districts listed therein were not VRs. In fact, that Ordinance was repealed in October 1910 because it was found to have no practical effect;
- (b) the Block Lease of the land in the New Territories normally had entries of village names, besides the names of the land owners. The Block Lease of CC Island, however, did not contain any entry of village names;

*Tsing Yi Hui*

- (c) the Court of First Instance ruled in May 2005 that TYH was not an indigenous village, Mr Lai Tak-shing (the applicant of the TYH judicial review) was not an indigenous inhabitant of Tsing Yi, and the decision of the Secretary for Home Affairs (SHA) not to include TYH in the Schedules to the VREO was correctly made based on the fact that TYH was not an indigenous village. The Court of Appeal considered in its judgment of October 2006 that SHA would be bound by the findings of the Court of First Instance;
- (d) the role of the Kaifong representative on the TYRC representing shop owners of TYH was different from that of a VR;

*Fuk Yuen Wo Liu*

- (e) the List of Established Villages in the New Territories compiled in 1991 indicated that FYWL was branched off from YLKH. The village name of FYWL did not appear on the demarcation district sheet (D.D. sheet) made between 1899 and 1904 nor the Block Lease that came into effect in 1905. The geographical location of FYWL could not be ascertained;
- (f) regarding the claim of some Yuen Long residents surnamed CHAN (who owned the land D.D.120 Lot 1695) that FYWL came into being in 1895, government records showed that the land in D.D.120 was registered as "paddy field" in the Block Lease and was mainly for farming by villagers from elsewhere in

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Yuen Long at that time. Lot 1695 was only purchased by the CHANs at a public auction in 1910. The Administration could only confirm that the land concerned was in the present area of Tai Kei Leng, Shap Pat Heung. The claim of FYWL as a standalone village was also in doubt as no ancestral hall or customary system had been found;

*Yuen Long Kau Hui*

- (g) YLKH had produced fresh evidence to prove that it had a VR during the Japanese occupation at the meeting of the LegCo Panel on Home Affairs in January 2009. Having considered the evidence and the views of the 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 the VREO; and

*List of Established Villages in the New Territories*

- (h) The List of Established Villages in the New Territories was compiled mainly to define the established villages in the New Territories whose villagers were eligible for rent concession for their properties or lands. It did not mean that all villages on the List were indigenous villages.

Definition of village/ indigenous village

5. Mr LEE Wing-tat asked how it would be proved that a village/place was in material fact an indigenous village which existed in 1898. Mr Paul TSE considered that the Administration should be less presumptuous and keep an open mind in defining the term "village" (村) so as to allow VR election to be held in those "villages" which were in existence in 1898 but with most of the inhabitants engaged in trade instead of farming activities. Mr TSE asked whether the Administration would consider Cheung Chau Island as a village in its entirety.

6. The Administration responded that -

- (a) in determining whether a village was an indigenous village which existed in 1898, the Administration would check against the relevant D.D. sheet and Block Lease so as to ascertain if there were entries of the village name and lot numbers. Reference to these official records was also made by the Court in the past judicial review on claim relating to the indigenous status of a place/village. This apart, historical document provided by the

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residents concerned and declaration made by village elders might also be considered by the Court/the Administration, depending on the strength of the evidence; and

- (b) the VREO did not give a specific definition for "village". The VREO only provided that "village" included a community. The ordinary meaning of "village" would mean a relatively small group of houses or a small community within a rural area. The entire island of CC would be too big an area to be considered as a village.

Village representation system

7. Given that there was no statutory VR system before the enactment of the VREO, Mr Albert HO and Mr Paul TSE asked -

- (a) whether the Administration would recognise the establishment of VR system in a village should there be evidence to prove the existence of a person who had, de facto, performed a role similar to that of a VR (such as verification of villagers' status according to the ancestral records); and
- (b) how far the history relating to the establishment of a VR or VR system in a village should be traced. For example, whether it was possible to date back as early as the period of Japanese occupation in the 40's.

8. Mr Paul TSE further asked whether there was any direct relevance between the inclusion of an indigenous village in the relevant Schedules to the VREO and the eligibility of indigenous inhabitants of that village for small house grant.

9. The Administration said that -

- (a) the "VR system" in the New Territories in the past had evolved in the light of different historical context, where VRs of the relevant villages might be appointed or elected through different systems. A set of Model Rules for the Conduct of VR Elections was introduced by HYK in 1994 and adopted by a large number of indigenous villages in the VR election held in 1999 (i.e. the last election held before the enactment of the VREO). Under the Rules, an elected person required the prior approval of SHA before he assumed the VR office. For those villages where no VR was elected, affairs of indigenous inhabitants would be handled by the Chairman and Vice-Chairman of the relevant

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Rural Committee (RC). Pursuant to the ruling of the Court case in 2000 which held that certain arrangements in the 1999 VR election were inconsistent with the Hong Kong Bill of Rights Ordinance and Sex Discrimination Ordinance, the Administration had, in consultation with HYK and 27 RCs, formulated the VREO which was enacted in 2003 to put the VR election under a proper statutory framework;

- (b) the Administration would exercise flexibility in scrutinizing claims of the existence of a VR or VR system. Whether the relevant village met the principles for inclusion in the Schedules to the VREO would depend on the strength of evidence provided by the residents of the relevant village. In considering the claims of the existence of a de facto VR, the main prerequisite was that the role of the person concerned should correspond to that of a VR defined under the VREO; and
- (c) the inclusion of an indigenous village in the Schedules to the VREO had no direct relevance whatsoever as to whether the indigenous inhabitants of that village would be eligible for small house grants.

Electoral system in Cheung Chau

10. Deputations of CC considered that resident representatives of the Cheung Chau Rural Committee (CCRC) should not deal with affairs relating to the lawful traditional rights and interests of indigenous inhabitants. They also expressed concern that the traditional rights and interests of indigenous inhabitants were not properly protected under the existing electoral system in CC.

11. Mr LEE Wing-tat and Mr Albert HO expressed doubt as to whether it was appropriate to exclude CC from the VR electoral system in the rural area and authorise members of the CCRC who were mostly non-indigenous inhabitants to handle affairs of indigenous inhabitants of CC (such as verifying the indigenous status of the residents for the purpose of rent concession). Mr HO considered that as far as equity was concerned, the Administration should allow indigenous inhabitants of existing villages in CC to elect VRs to represent their interests, while maintaining the existing Kaifong system for non-village areas of CC which had been developed.

12. The Administration said that -

- (a) the Block Lease of CC did not have entries of any village names. Since it had not been proven that there had been indigenous



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villages in CC and CC had never had any VR or VR system, CC was not included in the Schedules to the VREO and the provisions of the VREO were thus not applicable to CC. As such, no indigenous inhabitant representative or resident representative had been elected for CC in accordance with the VREO;

- (b) CCRC currently comprised 39 elected Kaifong representatives. It had a long history and was very familiar with the places, persons and history of the CC community. When CCRC dealt with affairs relating to indigenous inhabitants, its Chairman and Vice-Chairman would make reference to the documents and evidence provided by the residents concerned, and if necessary, consult other rural elders; and
- (c) should residents of CC provide fresh evidence to prove the existence of indigenous village(s) and a VR system in CC in the past, the Administration would consider the strength of the evidence in the light of the two principles for the inclusion of villages in the Schedules to the VREO, namely, the relevant village had existed in 1898 (in the case of an indigenous village) and a VR system had been established in or before 1999.

13. Members requested the Administration to give consideration to CC residents' request for VR election to be held in CC and agreed that the issue could be further pursued by the Panel on Home Affairs later.

Village representative as a member of Rural Committee

14. Noting the stance of SPHRC as stated in paragraph 3(a), Mr CHEUNG Hok-ming asked (a) whether the acceptance of YLKH as a member village by SPHRC was a prerequisite for YLKH to be included in the Schedules to the VREO and to have VR election under the VREO; and (b) the criteria for determining which RC YLKH should join as a member.

15. Mr LAU Wong-fat asked whether the refusal of RC to accept a village as its member village under its constitution would have any significant effect or legal implication for a village to have its VR election to be held in accordance with the VREO. Mr Paul TSE asked about the capacity in which a VR should become a member of RC.

16. Mrs Sophie LEUNG questioned whether the appropriateness of the mandatory requirement for RCs to accept the elected VRs as their members had been considered by the Administration when the Village Representative Election Bill was introduced to the LegCo in 2002.

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17. The Administration responded that -
- (a) after the enactment of the Bill by the LegCo, YLKH would be able to elect its VRs as proposed under the Bill;
  - (b) section 60 of the VREO stipulated that the constitution of a RC should be construed in accordance with Part 8 of the VREO. Section 61 under Part 8 of the VREO prescribed that a VR, as an individual, was automatically a member of the RC in the area in which the village was situated. As YLKH was situated in Shap Pat Heung, the VRs to be elected would by law become exofficio members of SPHRC;
  - (c) as one of the objects of the introduction of the Village Representative Election Bill in 2002 was to preserve the long-adopted VR system, provision had been introduced to give effect to the then prevailing practice for RCs to include VRs of the designated area under their jurisdiction as their members; and
  - (d) the Administration would follow up by liaison and discussion with SPHRC on the membership issue pursuant to the enactment of the Bill.

Follow up

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18. The Chairman requested the Administration to provide written responses to address members' concern on the issues relating to CC, TYH and FYWL, including the question relating to the definition of "village".

19. As the definition of "village" was arguable and in view of the inconsistencies in the submissions made by the government, some deputations and some RCs, Mr Albert CHAN considered that the existing Schedules to the VREO might not be exhaustive. He suggested that the Administration should work with HYK and the RCs to review the relevant records so as to ascertain if any indigenous villages had not been included in the Schedules to the VREO. As it was difficult for villagers to prove the establishment of a VR system if it was established many decades before, the Administration should exercise some flexibility and make discretion to allow indigenous inhabitants of villages not included in the VREO to elect VRs.

20. The Administration said that it had conducted on-going consultation with HYK and the RCs on issues relating to the inclusion of villages in the Schedules to the VREO having regard to the two basic principles which were widely accepted. The Administration shared the view of HYK and said that it would endeavour to exercise flexibility to amend the Schedules to the VREO to

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include those indigenous villages which were proven to have existed in 1898 and established a VR system in 1999 or before on a case-by-case basis.

**II. Any other business**

21. Members agreed that the next meeting of the Bills Committee would be held on Friday, 10 July 2009, at 10:45 am.

22. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
8 September 2009

**Proceedings of the meeting of the  
Bills Committee on Village Representative Election Legislation  
(Miscellaneous Amendments) Bill 2009  
on Thursday, 25 June 2009, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000715	Chairman	Opening remarks	
000716 - 001231	Mr KWOK Cheuk-kin, resident of Cheung Chau (CC)	Presentation of views as presented in the written submission LC Paper No. CB(2)1968/08-09(02)	
001232- 001722	Mr LAI Tak-shing, resident of Tsing Yi Hui (TYH)	Presentation of views as presented in the written submission LC Paper No. CB(2)1968/08-09(03)	
001723 - 002232	Mr YIP Chun-fat, Shap Pat Heung Rural Committee (SPHRC)	Presentation of views as presented in the written submission LC Paper No. CB(2)1968/08-09(04)	
002233 - 002616	Mr CHAN Kam-fat, resident of Fuk Yuen Wo Liu (FYWL) in Yuen Long	Presentation of views as presented in the written submission LC Paper No. CB(2)1968/08-09(05)	
002617- 002917	Mr KWAN Cheong-ying, resident of Yuen Long	Presentation of views	
002918 - 003111	Mr CHING Chan-ming, Yuen Long District Councillor/Chairman of SPHRC	Presentation of views	
003112 - 003554	Mr CHU Kin, resident of CC	Presentation of views as presented in the written submission LC Paper No. CB(2)2109/08-09(01)	
003555 - 003632	Mr Peter LAU, Sai Kung District Councillor	Presentation of views	
003633 - 004145	Mr TANG Kwok-kong, Tsing Yi Rural Committee (TYRC)	Presentation of views	
004146 - 004935	Chairman Admin	Response to the views of the deputations/individuals	
004936 -005521	Chairman Mr LEE Wing-tat Admin	Means to prove the existence of an indigenous village which existed in 1898	
005522 - 005957	Chairman Mr CHEUNG Hok-ming Mr CHING Chan-ming Admin	- Stance of SPHRC in accepting the VR of Yuen Long Kau Hui (YLKH) to be elected as its member  - Criteria in deciding which RC a VR elected should become a member	

Time marker	Speaker	Subject	Action required
005958 - 010730	Chairman Mr Albert HO Admin Mr KWOK Cheuk-kin	<ul style="list-style-type: none"> <li>- Whether a VR system was established if a de facto VR was found to have existed in a specific village</li> <li>- The authority to handle affairs of indigenous inhabitants of a designated area without a VR</li> </ul>	
010731- 011508	Chairman Mr Paul TSE Admin	<ul style="list-style-type: none"> <li>- The time period for tracing the establishment of a VR system of a village before 1999</li> <li>- Inclusion of an indigenous village in the Schedules to VREO and its relevance to inhabitants' eligibility for small house grant</li> <li>- The capacity of VR being a member of RC</li> <li>- The prerequisite for a de facto VR to perform the role and functions of VRs</li> </ul>	
011509 - 011819	Chairman Mr LAU Wong-fat Admin	The legal implication for a RC refusing to accept a VR elected	
011820 - 012008	Chairman Mr KWOK Cheuk-kin Admin	Appropriateness for resident representatives of RC to handle affairs of indigenous inhabitants	
012009 - 012416	Chairman Mr LAI Tak-shing Admin Mr TANG Kwok-kong	Questions as to whether TYH was an indigenous village and the status of Mr LAI Tak-shing as an indigenous inhabitant of TYH	
012417 - 012930	Chairman Mr Albert CHAN Admin	<ul style="list-style-type: none"> <li>- Difficulty in proving the establishment of VR system in a village in the early decades</li> <li>- The Administration was requested to review the relevant records with Heung Yee Kuk and the RCs to identify indigenous villages which had been omitted</li> </ul>	<b>Adm to follow up</b>
012931 - 013357	Chairman Mrs Sophie LEUNG Admin	Concern about the mandatory requirement for RC to accept elected VRs as its member	
013358 - 013634	Mr CHU Kin Admin	Right of CC's indigenous inhabitants to elect VRs	
013635 – 013849	Chairman Mr CHAN Kam-fat Admin	Question as to whether FYWL was an indigenous village with a VR system in the early decades	

