

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1772/08-09(03)

Ref : CB2/BC/4/08

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

#### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper sets out the background of the Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009 (the Amendment Bill) and summarises major concerns and views of members and deputations on the legislative proposals.

#### **Background**

2. The Village Representative Election Ordinance (VREO) (Cap. 576) was enacted in February 2003 to ensure compliance of village representative (VR) elections with the requirements of the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Sex Discrimination Ordinance (Cap. 480) following the Court of Final Appeal's ruling on 22 December 2000 and to preserve the long-adopted village representation system.

3. Key elements of the VREO are as follows -

- (a) VR elections should be held for Indigenous Villages, Composite Indigenous Villages and Existing Villages<sup>1</sup> included in the village representation system in the New Territories in 1999;
- (b) there should be two types of VRs, namely Indigenous Inhabitant Representatives (IIRs) for Indigenous Villages or Composite Indigenous Villages, and Resident Representatives (RRs) for Existing Villages;

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<sup>1</sup> Indigenous Villages are those already in existence in 1898. They are listed in Schedule 2 to the VREO. Composite Indigenous Villages are villages that comprise more than one indigenous village whose indigenous inhabitants jointly elect their indigenous inhabitant representatives. They are listed in Schedule 3 to the VREO. Existing Villages are listed in Schedule 1 to the VREO. An Existing Village may also be an Indigenous Village.

- (c) the number of IIRs in 1999 (i.e. ranging from one to five) for an Indigenous Village or a Composite Indigenous Village would be retained while there would be one RR for each Existing Village; and
- (d) while IIRs are mainly responsible for reflecting views on the affairs of an Indigenous Village or a Composite Indigenous Village and dealing with all affairs relating to the lawful traditional rights and interests of indigenous inhabitants, the key function of RRs is to reflect the views on the affairs of an Existing Village on behalf of residents of that village.

4. Two village ordinary elections had been held in 2003 and 2007 respectively since enactment of the VREO. In the 2007-2008 Policy Agenda, the Government undertook to review and improve the arrangements for rural elections, in the light of the experience gained in the first two rounds of election, and work on the way forward for the next round of village ordinary election in 2011.

### **The Amendment Bill**

5. The Amendment Bill was published in the gazette on 15 May 2009 and introduced to the Legislative Council (LegCo) on 27 May 2009. The Bill's main proposals are to -

- (a) amend the VREO by including "Lai Pek Shan" and "Yuen Long Kau Hui" (YLKH) in the relevant Schedules for the purposes of VR elections;
- (b) make minor amendments to the names of certain villages;
- (c) extend the time limits for lodging and handling claims and appealing to Revising Officers (RO); and
- (d) increase the maximum penalty for offences concerning order at polling stations and secrecy of votes.

### **Views and concerns of members and deputations**

#### Meeting with the Administration

6. The Administration briefed the Panel on Home Affairs on the legislative proposals on 14 November 2008. Major views and concerns raised by members are set out in the ensuing paragraphs.

*General principles for the listing of indigenous villages*

7. Some members expressed concern that the requirement for an Indigenous Village to be included in the village representation system in 1999 in order to be listed in the Schedules to VREO might have excluded those Indigenous Villages where such a system had been established before 1999 but was not in operation in 1999. A member suggested that amendments should be made to VREO to allow more flexibility for the Secretary for Home Affairs to make necessary changes to the Schedules.

8. The Administration explained that for an Indigenous Village to be added to the Schedules, two criteria had to be met, viz. the village should have been in existence in 1898 and a village representation system should have been established in the village in 1999. In formulating these criteria, extensive consultation with the rural community including Heung Yee Kuk (HYK) and the Rural Committees had been conducted. The Administration further advised that if villages with a village representation system before 1999 were to be included in the Schedules, questions over the credibility of evidence would likely arise, in particular in respect of declarations asserting the historical existence of VRs decades before 1999. Any proposal to introduce significant changes to VREO would require wide public consultation and careful consideration.

*Monitoring false claims in voter registration*

9. A member considered that the mechanism for monitoring false claims in voter registration for VR elections was ineffective as it relied heavily on the public to raise objections<sup>2</sup> to the provisional registers and imposed no penalty unless the party making false claims voted in a VR election.

10. The Administration responded that this arrangement was similar to the practices in the Legislative Council (LegCo) and District Council (DC) elections, in which voter registration was operated on the basis of an "honour" system. The Administration further advised that a person who voted at an election knowing that he was not entitled to do so or after having recklessly provided an electoral officer with information which was materially false or misleading would have committed an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

*Residency requirement in RR elections*

11. Some members considered that it would be difficult to verify whether a person met the residency requirement in RR elections. A member considered that the requirement was against the Basic Law and complaints about false claims should be dealt with before rather than after the elections.

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<sup>2</sup> A person who considers that a registered person is not eligible to be registered may make an objection to the registration by lodging a notice with the Electoral Registration Officer.

12. The Administration advised that the requirement was to safeguard against corruptive vote-planting, and Electoral Registration Officers were empowered by legislation to obtain information from relevant authorities to ascertain applicants' eligibility for registration as electors. If challenged, a person had to prove that he had used his dwelling in a village as his principal residency for the requisite period prior to registration.

*Time limits for lodging/handling claims, objections and reviews*

13. A member suggested that 28 days should be allowed for ROs to rule on the claims and objections received in relation to the registration of electors, instead of the 14 days proposed by the Administration. Another member considered that the time limit for applying for a review on RO's rulings should be further extended beyond the four-day period proposed by the Administration to allow more time for the person concerned to seek legal advice.

14. The Administration responded that further extension of the time limit for RO's rulings on claims and objections would push the time frame for voter registration for VR election too close to that for the LegCo and District Council elections, which might cause confusion among the public and therefore should be avoided. As for the suggestion to extend the time limit for application for review on RO's rulings, the Administration considered that the four days proposed should be sufficient.

*Conduct of VR elections*

15. A member suggested that the Administration should post polling staff across districts to ensure their impartiality in monitoring the poll and strengthen publicity on the right of electors to cast votes under a secret ballot in future VR elections.

16. The Administration advised that polling staff were required to follow the relevant statutory requirements governing the conduct at polling stations. Should any person find irregularities inside the polling station, they could lodge complaints with the Presiding Officer of the polling station, Independent Commission Against Corruption or the Electoral Affairs Commission. The Administration undertook to step up promotional campaigns on future VR elections.

Meeting with deputations

17. The Panel met with deputations on 9 January 2009 to discuss issues relating to the listing of indigenous villages in the Schedules to VREO, in particular the requests for inclusion of YLKH and Cheung Chau in the Schedules. Members' views and the Administration's response, and the latest development in relation to their requests are highlighted in the ensuing paragraphs.

*Yuen Long Kau Hui*

18. Since the commencement of the VREO in 2003, residents of YLKH have made repeated requests to the Administration for its inclusion in the Schedules to VREO. According to the Administration, while YLKH was already in existence in 1898, it was a market town but not a village. The Shap Pat Heung Rural Committee (SPHRC) had also refused to admit YLKH into it as an indigenous village. In addition, residents of YLKH had failed to prove that they had any form of village representation system in 1999. As such, it had not been included in the Schedules during the drafting of VREO in 2002.

19. At the Panel meeting on 9 January 2009, YLKH residents produced new evidence to try to prove that there was a VR during the Japanese occupation (i.e. well before 1999). Members considered that since YLKH had already been in existence in 1898 and had demonstrated that it had a village representation system before 1999, it should be included in the Schedules to VREO. They urged the Administration to include YLKH in the Schedules. The Administration, after having further considered the evidence produced by YLKH residents and the views of the Panel and HYK, advised the Panel on 12 May 2009 that it would introduce legislative amendments to include YLKH in VREO.

20. In relation to YLKH, the Chairman of SPHRC wrote to the Panel on 31 March 2009 reiterating SPHRC's objection to admitting YLKH into the Committee as an indigenous village. A group of YLKH residents also wrote to the Panel on 21 May 2009 raising objection to the proposal to include YLKH in the Schedules. These residents considered that YLKH was not an indigenous village and the proposal was not the wish of most YLKH residents.

*Cheung Chau*

21. At the Panel meeting on 9 January 2009, a Cheung Chau resident queried the legality of the Cheung Chau Rural Committee (CCRC) election and held the view that the CCRC should be abolished as its members were not VRs but Kaifong representatives. The resident wrote to the Panel again in April and May 2009 claiming that the Government gazette published on 15 July 1899 could prove the status of Cheung Chau as a village and hence should be entitled to be listed in the Schedules to VREO. This view was in contrast to that of CCRC which had written to the Panel supporting the Administration's stance for not including Cheung Chau in the Schedules to VREO, and the maintenance of the status quo in election matters relating to CCRC.

22. The Administration advised the Panel on 6 May 2009 that the Rural Elections Review Working Group jointly formed by HYK and the Home Affairs Department had reviewed the case of Cheung Chau in November 2007. Noting that Cheung Chau was a market town and there had never been any VR, the Working Group was of the view that the status quo should be maintained. The Administration further advised that the new evidence produced by the Cheung Chau resident was not relevant to the VR election.

## **Relevant papers**

23. A list of relevant papers with their hyperlinks is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
5 June 2009

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## List of relevant papers

Committee	Paper	LC Paper No.
Meeting of the Panel on Home Affairs on 14 November 2008	Paper provided by the Administration on Village Representative Election (Amendment) Bill 2009	CB(2)239/08-09(01)
	Background brief prepared by the LegCo Secretariat on Village Representative Elections	CB(2)239/08-09(02)
	Minutes of meeting	CB(2)469/08-09
	The Administration's response on the issues related to Yuen Long Kau Hui	CB(2)391/08-09(01)
Meeting of the Panel on Home Affairs on 9 January 2009	Submission from Mr KWOK Cheuk-kin, resident of Cheung Chau (Chinese version only)	CB(2)580/08-09(02)
	Submission from Mr TAM Tai-ming and Mr KWAN Cheong-ying, residents of Yuen Long Kau Hui (Chinese version only)	CB(2)580/08-09(03)
	Submission from Shap Pat Heung Rural Committee (Chinese version only)	CB(2)603/08-09(01)
	Written submission from Cheung Chau Rural Committee (Chinese version only)	CB(2)621/08-09(01)
	Minutes of meeting	CB(2)1088/08-09
Further submissions from YLKH and Cheung Chau residents	Letter from Shap Pat Heung Rural Committee (SPHRC) dated 31 March 2009 clarifying that SPHRC had not accepted Yuen Long Kau Hui as a member (Chinese version only)	CB(2)1369/08-09(01)

Committee	Paper	LC Paper No.
	Letter dated 23 April 2009 from Mr KWOK Cheuk-kin, resident of Cheung Chau on issues relating to the Amendment Bill (Chinese version only)	CB(2)1506/08-09(01)
	Reply dated 6 May 2009 from the Administration to Mr KWOK Cheuk-kin on issues relating to the Amendment Bill (Chinese version only)	CB(2)1506/08-09(02)
	The Administration's response on issues related to Yuen Long Kau Hui and time limits for lodging/handling claims, objections and reviews	CB(2)1576/08-09(01)
	Letters from Mr KWOK Cheuk-kin dated 9 and 21 May 2009 reiterating that Cheung Chau was a village and hence should be entitled to be listed in the relevant Schedules of the Village Representative Election Ordinance (Chinese version only)	CB(2)1677/08-09(01) and (02)
	Submission from a group of residents of Yuen Long Kau Hui to the President of the Legislative Council raising objection against the claim of Yuen Long Kau Hui as an indigenous village (Chinese version only)	CB(2)1677/08-09(03)
	Letter dated 27 May 2009 from Clerk to Panel on Home Affairs to Mr KWOK Cheuk-kin (Chinese version only)	CB(2)1744/08-09(01)
---	LegCo Brief on Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009	---