

立法會
Legislative Council

LC Paper No. CB(2)469/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Friday, 14 November 2008, at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon CHAN Tanya (Deputy Chairman)
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon CHEUNG Hok-ming, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Yuk-man
Hon Paul TSE Wai-chun
- Members attending** : Hon LAU Wong-fat, GBM, GBS, JP
Hon Albert CHAN Wai-yip
- Member absent** : Hon WONG Yung-kan, SBS, JP

- Public Officers attending** : Home Affairs Bureau
Ms Florence HUI, JP
Under Secretary for Home Affairs
Home Affairs Department
Miss Adeline WONG
Deputy Director of Home Affairs (1)
Mr MA Kit-chi
Chief Liaison Officer (1)2
- Clerk in attendance** : Ms Betty FONG
Chief Council Secretary (2)2
- Staff in attendance** : Ms Janet SHUM
Senior Council Secretary (2)2
Ms Anna CHEUNG
Legislative Assistant (2)2

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- I. Confirmation of minutes**
[LC Paper No. CB(2)175/08-09]
- The minutes of the meeting held on 14 October 2008 were confirmed.
- II. Information paper(s) issued since the last meeting**
[LC Paper Nos. CB(2)146/08-09(01), CB(2)147/08-09(01) and CB(2)253/08-09(01)]
2. Members noted that the following papers had been issued since the last meeting -
- (a) the Administration's response about the inadequate provision of community halls and recreational facilities in Sha Tin District [LC Paper No. CB(2)146/08-09(01)];
 - (b) the Administration's response on difficulties encountered by District Councils in the tendering and management of minor works projects [LC Paper No. CB(2)147/8-09(01)]; and

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- (c) the Administration's paper on improvement works for Mong Kok Stadium [LC Paper No. CB(2)253/08-09(01)].

III. Items for discussion at the next meeting

[Appendices I and II to LC Paper No. CB(2)239/08-09]

3. Members noted that an informal meeting had been held between the Panel Chairman/Deputy Chairman and the Secretary for Home Affairs (SHA) on 3 November 2008 to discuss the work plan of the Panel for the current session, and the list of outstanding items for discussion had been revised accordingly.

Next regular meeting on 12 December 2008

4. Members agreed to discuss the following items -

- (a) procurement of third party risks insurance by owners' corporations and issues related to building management;
- (b) major upgrade of Multimedia Information System;
- (c) conversion of Yau Ma Tei Theatre and Red Brick Building into a Xiqu Activity Centre; and
- (d) improvement works for Mong Kok Stadium.

On agenda item (d), Ms Cyd HO requested the Administration to explain the policy and the criteria on the provision of telescreen/video wall at public venues (such as the Victoria Park) and whether such provision would be included in the improvement works for the Mong Kok Stadium.

5. Members also agreed that the next regular meeting would be extended by one hour, i.e. from 8:30 am to 11:30 am, to allow sufficient time for discussion of the agenda items.

IV. Village Representative Election (Amendment) Bill and other issues related to village representatives

[LC Paper Nos. CB(2)239/08-09(01) and (02)]

6. The Chairman informed members that the Administration would need more time to study and consider issues relating to the proposal to provide an allowance for village representatives, and hence was not ready to discuss the subject at the meeting. Members agreed that only the proposed amendments to the Village Representative Election Ordinance (VREO) (Cap. 576) would be

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discussed.

7. Under Secretary for Home Affairs (USHA) briefed members on the salient points of the Administration's paper setting out the proposals of the Village Representative Election (Amendment) Bill.

Monitoring of false claims in voter registration

8. Mr WONG Sing-chi considered that the existing mechanism for monitoring false claims in voter registration for Village Representative (VR) elections was ineffective in deterring persons from making such claims, since the mechanism was based mainly on public objection to the provisional registers and carried no penalty unless the person making such a claim had voted in the election. He asked whether penalty had ever been or would be imposed against persons who deliberately made false claims of their eligibility as voters, and urged the Administration to take stringent measures to plug the loopholes of the registration system.

9. USHA said that under the existing mechanism, the relevant provisional registers of VR elections would be displayed for inspection by members of the public who could make an objection to the registration. The fact that many members of the public had made use of the system to raise objections and claims in the 2007 VR elections indicated that the system could serve its purpose. Under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), any person who engaged in corrupt conduct at an election would have committed an offence and, if tried summarily, could be liable to a fine of \$200,000 and imprisonment for three years.

10. Deputy Director of Home Affairs (1) (DD(HA)) said that similar to the practices in the Legislative Council (LegCo) and District Council (DC) elections, voter registration for VR elections operated on the basis of an "honour" system. To monitor the process, any person who considered a person whose name appeared on the provisional registers ineligible for registration could make an objection. The Revising Officers (RO), who were Magistrates, would make rulings allowing or dismissing the objections. The Village Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576 Sub. Leg. A) provided that the person who had lodged a claim or objection, or the person in respect of whom the claim or objection was made, might apply for a review of the ruling made by RO. A person who voted at an election knowing that he was not entitled to do so or after having recklessly given to an electoral officer information that was materially false or misleading would have committed an offence under the Elections (Corrupt and Illegal Conduct) Ordinance. There were precedents of such convictions.

Residency requirement in Resident Representative election

11. Mr CHEUNG Man-kwong considered it problematic to require a

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person to reside in an existing village for at least three years immediately preceding the date of application for registration as an elector in the Resident Representative (RR) election. He pointed out that it was common for many people to have several places of residency simultaneously, and hence it would be difficult, if not impossible, to verify if they genuinely met the residency requirement for the purpose of participating in the RR election. Given this loophole and the small population in many villages, Mr CHEUNG was concerned that the RR election would be subject to manipulation, particularly if the provision of an allowance for VRs was introduced. He asked the Administration whether it had devised any measures to monitor the situation.

12. USHA responded that the residency requirement was applicable only to the RR election. She elaborated that to satisfy this requirement, a person should be living in a dwelling place in a village which constituted his sole or main home for at least three years immediately before the date of application for registration. The imposition of this extra requirement was to safeguard against corruptive practices, such as vote planting, in a small electorate.

13. In response to Mr CHEUNG's comments, DD(HA) informed the meeting that a person with more than one place of residency would be required to, if challenged, prove that he had used his dwelling in a village as his principal residency for three years prior to his registration as an elector in the RR election. In considering whether or not a dwelling place constituted that person's principal residential address, the time he spent in that dwelling place was one of the main factors. DD(HA) added that various mechanisms were in place to monitor false claims. These included making enquiries with registered voters in doubtful cases and verifying the relevant information with the appropriate authorities. The Electoral Registration Officer was empowered by legislation to obtain information from relevant authorities (e.g. the Housing Authority) to ascertain the eligibility of applicants for registration. In addition, there were established procedures for lodging complaints and objections.

14. Mr WONG Sing-chi held the view that the Administration should address the prevailing problem relating to verification of the identity of indigenous inhabitants in the Indigenous Inhabitant Representative (IIR) election and the residency of registered voters in the RR election. The Administration could consider working with Heung Yee Kuk (HYK) and the Rural Committees to define and draw up a list of indigenous inhabitants so as to minimize disputes which often arose in great number nearer the time of the IIR election.

15. USHA said that whether a person was considered as an indigenous inhabitant would be verified with the relevant indigenous village according to the village's ancestral records, relevant historical documents, etc. As for registered voters of RR election, the residency requirement aimed to forestall corruptive practices. Voters would be subject to regulations under the Elections (Corrupt and Illegal Conduct) Ordinance and a person engaging in

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corrupt or illegal conduct under the Ordinance would be liable to criminal offence.

16. Mr Albert CHAN considered that more proactive measures should be taken to deal with the problem of false claims on residency by registered voters. He considered that complaints of this nature should be handled as soon as possible before rather than after the election. He also considered that the residency requirements of RR election was against the Basic Law and unfair to non-indigenous residents of a village as no similar additional residency requirements had been set on voters in LegCo and DC elections.

Time limits for lodging/handling claims, objections and reviews

17. Mr Paul TSE declared that he was an indigenous inhabitant of Shap Pat Heung in Yuen Long. He said that disputes relating to the claim of a person as an indigenous inhabitant were often complicated as it would involve the tracing of historical records and documents. To allow sufficient time for RO to rule on the claims and objections received, he suggested relaxing the time limit to 28 days, instead of the proposed 14 days, after the deadline for lodging claims and objections. To accommodate the proposed extension of time, the Administration could advance the commencement of electoral registration process to enable an early compilation and publication of the provisional voter register and a longer period for processing claims and objections.

18. Referring to paragraph 13 of the Administration's paper, Mr CHEUNG Kwok-che considered that the proposal to relax the time limit for application of review on the RO's ruling on a claim or objection, i.e. from two to four days after the day on which the notification of the such ruling was sent, could be further relaxed to allow more time for the person concerned to seek legal advice.

19. USHA said that members' views would be relayed to the relevant parties, including the Judiciary and the Department of Justice for consideration. She added that in the 2007 VR elections, RO had handled a total of 1240 cases (895 objections, 213 claims and 132 review cases). The Administration would consider how the procedures relating to claims and objections could be further improved.

Listing of indigenous villages

20. Mr CHEUNG Hok-ming said that much improvement had been made in the operation of the last two VR elections pursuant to the enactment of VREO in 2003, which aimed to bring the conduct of VE elections under statutory control. To his understanding, apart from Lai Pek Shan, there were other indigenous villages which had not been included in the Schedules to VREO during the drafting of the legislation due to the fact that no VR system was found in those villages in 1999. He asked whether the Administration

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would consider including those villages in the Schedules to VREO to enable their conduct of VR elections. Mr CHEUNG considered that in principle, all indigenous villages which were in existence in 1898 should reserve the right to hold VR elections, regardless of whether they had ever had any VR system in 1999.

21. USHA pointed out that the legislative intent of VREO was to cover those indigenous villages included in the village representation system in the New Territories in 1999 when the last round of village election before the enactment of VREO was held, and to retain the number of IIRs for indigenous villages. In other words, for a village to be added to the Schedules to VREO, two criteria had to be met, namely, that the relevant village should have been in existence in 1898 (for villages to be added to Schedule 2, which contained a list of Indigenous Villages), and a village representation system had been established in the relevant village in 1999. In formulating these arrangements, extensive consultation with the rural community, including HYK and the Rural Committees, had been conducted. USHA added that, to the knowledge of the Administration, no other indigenous villages except Lai Pek Shan met the above criteria, and hence it was the only indigenous village proposed to be added to the Schedules to VREO.

22. Mr CHEUNG Hok-ming was worried that the requirement for an indigenous village to be included in the village representation system in 1999 might rule out those villages where such system had been established before 1999 but not in operation (e.g. no election was held due to various reasons) in that year. He considered that the arrangement was unfair and opined that the villages concerned should also be included in the Schedules to VREO.

23. DD(HA) clarified that villages without VRs in 1999 but had been included in the village representation system in 1999 could be considered for inclusion in the Schedules to VREO. The proposed addition of Lai Pek Shan, which had been included in the village representation system in 1999 but for which no VR was elected that year, to the Schedules was a case in point. She further highlighted that claims asserting the existence of VRs in a village in a certain period in the past should be substantiated by evidence, and if a village had not had any VR for decades before 1999, it was arguable whether that village still had a village representation system in 1999. DD(HA) reiterated that with the inclusion of Lai Pek Shan, all indigenous villages which were proven to have been included in the village representation system in 1999 would have been listed in the Schedules to VREO.

24. In response to Mr Paul TSE's enquiry on the reason for the omission of Lai Pek Shan in the Schedules to VREO, USHA explained that the Tai Po Rural Committee agreed in early 1999 to revise its constitution to include Lai Pek Shan as its member so that VR election could be held there. In June 1999, District Officer (Tai Po) had approved the revised constitution. However, due to an oversight, the old version of the constitution (which did not include Lai

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Pek Shan) was referred to when compiling the Schedules to VREO during the drafting of the legislation. The Administration noted the omission in the 2003 VR election and had proposed to consider the case in the review of the rural elections. The Administration had informed the Tai Po Rural Committee of the situation.

25. Mr CHEUNG Kwok-che enquired about the number of indigenous villages which were not represented by VRs. He further enquired how these villages could participate in VR elections and whether prior consent of HYK had to be sought.

26. USHA responded that a total of some 700 villages were listed in the Schedules of VREO. Indigenous inhabitants residing in scattered villages that were not included in the RR elections might participate in VR elections held in other indigenous villages.

27. Mr CHEUNG Hok-ming said that, according to the existing practice, village affairs of indigenous villages would be handled by the Rural Committee if no VR was elected in the first and second round of VR elections. He sought clarification on the context in which the arrangement USHA referred to in paragraph 26 would apply.

28. DD(HA) clarified that the indigenous villages referred to by Mr CHEUNG Hok-ming were villages included in the VREO. The affairs of indigenous inhabitants in these villages would be handled by the Rural Committee if no VR was elected in the elections. As for the villages mentioned by USHA, these were scattered villages not included in the village representation system and they were not within the delineated area for RR elections of any Existing Village. Residents of these villages who were indigenous villagers of Indigenous Villages included in Schedule 2 to the VREO might participate in the IIR elections of those Indigenous Villages.

Yuen Long Kau Hui

29. Mr Albert CHAN said that Yuen Long Kau Hui, which had been in existence for about two hundred years, should be considered as an indigenous village and added to the Schedules to VREO given that the last term of the relevant Rural Committee had given its support on the matter. Mr CHAN urged the Administration to respond to the issue prior to introducing the Village Representative Election (Amendment) Bill 2009 into LegCo. Mr CHEUNG Man-kwong shared Mr CHAN's view and suggested that inhabitants of Yuen Long Kau Hui should be invited to the meeting to express their views if so required.

30. USHA said that Yuen Long Kau Hui, despite its existence in 1898, was historically a market place and not an indigenous village. Moreover, Yuen Long Kau Hui had not been included in the village representation system in

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1999. To establish the fact that a village representation system did exist in a village in the past decades would require substantial evidence such as documentary proof. A verbal claim on the existence of VRs at a certain historical moment was considered to be insufficient.

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31. The Chairman requested the Administration to provide a written response on the issue related to Yuen Long Kau Hui so that members could consider how the matter could be further pursued.

(Post-meeting note: the Administration's response was issued to members vide LC Paper No. CB(2)391/08-09(01) on 2 December 2008.)

32. Mr Albert CHAN expressed concern about possible abuse of power by indigenous inhabitant representatives. He suggested that the Administration should participate in granting the burial right of indigenous inhabitants so as to avoid corrupt conduct in the management of affairs related to traditional rights of indigenous inhabitants. He also opined that there should be regulation over the management of the use of facilities of the village offices.

Conduct of VR elections

33. Ms Cyd HO enquired about the number of complaint cases related to the conduct of VR elections and the set up inside the polling stations. As electors might be worried about the confidentiality of their vote should the polling stations be manned by staff of the District Office who were acquainted with the candidates and electors, Ms HO asked the Administration about the deployment of polling staff at these stations.

34. USHA responded that no complaint about polling staff on illegal or corrupt conduct inside the polling stations had been received in the VR elections since 2003. She added that VR elections as well as LegCo and DC elections were all subject to similar electoral procedures, and the set up inside the polling stations in the respective elections were basically the same.

35. On the staffing issue, DD(HA) said that while staff of the relevant District Office manning the polling station might know the candidates, it was unlikely that they would know all voters of the village. Moreover, they were required to follow the relevant statutory requirements governing the conduct at polling stations. Candidates of VR elections, on the other hand, could appoint an election agent or polling agent who might station inside the polling station to observe the conduct of the poll and to detect irregularity at polling stations including the behaviour of the polling staff. Should any person find irregularities inside the polling station, they could lodge complaints with the Presiding Officer of the polling station, ICAC or the Electoral Affairs Commission.

36. In response, Ms Cyd HO suggested that the Administration should

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consider posting polling staff across districts to ensure their impartiality in monitoring the poll. She further asked whether the Administration would step up promotional campaign on VR elections to educate electors of their right to cast their vote under a secret ballot under the law. USHA responded in the affirmative.

Female participation in VR elections

37. Ms Emily LAU expressed concern about female participation in VR elections and asked about the number of female candidates and electors, the number of female VRs elected, and whether there was any complaint in which female voters were being threatened or pressurised to vote for particular candidates in these elections.

38. USHA responded that 47% of the electors of VR elections were female. Out of a total of 1630 candidates of VR elections in 2007, 35 were female; and out of a total of 1480 VR seats, 28 were filled by female. There were six reports of intimidation cases and none of them was lodged by female voters complaining about being threatened or pressurized during the elections.

39. Considering that VREO was enacted partly to ensure that electoral arrangements would uphold equality between the two sexes and in view of the unsatisfactory female participation in VR elections since 2003, Ms Emily LAU suggested that the Administration should study the reasons for the relatively low participation rate of female in VR elections and step up its effort to encourage higher female participation in the forthcoming VR elections. She requested and the Administration undertook to provide a paper to report on the measures taken by the Administration in this regard.

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40. USHA said that although 47% of the electors were female, the number of female candidates and elected VRs were considered low. As only two village ordinary elections had been held since the enactment of VREO in 2003, she hoped that there would be a rise in female participation in the future VR elections.

V. Any other business

41. There being no other business, the meeting ended at 9:45 am.

Council Business Division 2
Legislative Council Secretariat
11 December 2008