

# 立法會

## *Legislative Council*

LC Paper No. CB(2)239/08-09(02)

Ref : CB2/PL/HA

### **Panel on Home Affairs**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 14 November 2008**

### **Village Representative Elections**

#### **Purpose**

This paper provides background information on village representative elections and gives an account of past discussions on the subject matter held by Legislative Council (LegCo) Members.

#### **Background**

2. A system of village representation has evolved in the New Territories (NT) over the decades. Village Representatives (VRs) of a designated area are the members of the Rural Committee (RC) of that area. There are 27 RCs in total. The chairmen of RCs are ex-officio members of the relevant District Councils (DCs). The chairmen and vice-chairmen of RCs are Ex-Officio Councillors of Heung Yee Kuk.

3. Since August 1994, VR elections had been held once every four years in accordance with a set of election rules promulgated by Heung Yee Kuk. This is known as the Model Rules for the Conduct of Village Representative Elections.

4. In the 1999 VR elections, two non-indigenous villagers challenged the validity of the electoral arrangements for the office of VRs at their respective villages by judicial review proceedings. The main points of the judgement delivered by the Court of Final Appeal (CFA) on 22 December 2000 are that -

- (a) the VR electoral arrangements which deprived non-indigenous villagers of their right to vote or stand as candidates were unreasonable and inconsistent with Article 21(a) of the Hong Kong Bill of Rights Ordinance (Cap. 383) and involved unlawful discrimination on the ground of sex under the Sex Discrimination Ordinance (Cap. 480); and

- (b) the Secretary for Home Affairs was bound not to approve any person elect as VR under such arrangements.

5. After delivery of the CFA's judgement, the Administration recognised the need for reforming VR elections. Having reviewed the procedure and arrangements for rural elections, the Administration decided that the conduct of VR elections should be brought under statutory control to ensure that such elections would be conducted in line with the requirements of the Hong Kong Bill of Rights Ordinance and the Sex Discrimination Ordinance.

6. The Village Representative Election Bill was introduced into LegCo in October 2002, and the Village Representative Election Ordinance (Cap. 576) was gazetted and came into operation on 14 February 2003. In essence, the Ordinance provides for the office of VR, qualification of candidates and electors, conduct of election, election petitions, appointment and functions of electoral officers etc. To implement the VR elections, five sets of subsidiary legislations were gazetted and tabled in LegCo in the first half of 2003.

7. The first ordinary VR elections were held in 2003 and the term ended on 31 March 2007. The second ordinary VR elections were held in January/February 2007 to return VRs for the new four-year term from 1 April 2007 to 31 March 2011. After the rural elections in 2007, the Administration and Heung Yee Kuk jointly conducted a review of the rural elections. The review included matters such as the electoral arrangements for the VR elections, and the question of enacting legislation for the RC elections.

### **Electoral arrangements for VRs since 2003**

8. Under the electoral system implemented since 2003, there are two types of VRs, namely an Indigenous Inhabitant Representative representing indigenous inhabitants of an Indigenous Village<sup>1</sup> or a Composite Indigenous Village<sup>2</sup>, and a Resident Representative representing all residents of an Existing Village<sup>3</sup>. The tenure of office of VRs is four years.

#### *Indigenous Inhabitant Representatives*

9. The primary role of Indigenous Inhabitant Representatives is to reflect views on the affairs of an Indigenous Village or a Composite Indigenous Village on behalf of the indigenous inhabitants of that Village, and to deal with all affairs relating to the lawful traditional rights and interests, and the traditional way of life of those indigenous inhabitants. An Indigenous

---

<sup>1</sup> Indigenous villages are those already in existence in 1898. They are listed in Schedule 2 to the Village Representative Election Ordinance.

<sup>2</sup> 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 Village Representative Election Ordinance.

<sup>3</sup> Existing villages are listed in Schedule 1 to the Village Representative Election Ordinance.

Inhabitant Representative is returned by indigenous inhabitants of that Village and their spouse. These electors may live in the Village, in other parts of Hong Kong or abroad.

10. For an Indigenous Inhabitant Representative election, a person is eligible to be nominated as a candidate at an election for an Indigenous Village or a Composite Indigenous Village only, among other things, if he is an indigenous inhabitant of the Village. A person is not eligible to be registered as an elector for an Indigenous Village or a Composite Indigenous Village unless, among other things, he is an indigenous inhabitant of the Village, or a spouse of an indigenous inhabitant of the Village.

#### *Resident Representatives*

11. The major role of Resident Representatives is to reflect views on the affairs of an Existing Village on behalf of the residents of that Village. There will be one Resident Representative for each Existing Village. A Resident Representative will not deal with any affairs relating to the lawful traditional rights and interests of indigenous inhabitants. A Resident Representative is returned by residents (both indigenous and non-indigenous inhabitants) of an Existing Village, which is geographically-defined by the Administration for the purpose of VR Election. Each such village will be delineated with reference to a map which is available for public inspection at relevant District Offices.

12. For a Resident Representative election, a person is eligible to be nominated as a candidate at an election for an Existing Village only, among other things, if he has been a resident of the Village for the six years immediately preceding the nomination. A person is not eligible to be registered as an elector for an Existing Village unless, among other things, he has been resident of the Village for the three years immediately before applying to be registered.

#### **Past Discussions**

13. Major views and concerns expressed by LegCo members in their deliberations of the proposal on electoral arrangements for VR elections are summarised in the ensuing paragraphs.

14. The Panel on Home Affairs (The Panel) was briefed on the proposed arrangements for the conduct of VR elections on 14 June 2002. Members had divided views on the residency requirements for an elector and a candidate in Resident Representative elections. While some members queried whether such stringent residency requirements were compatible with the Hong Kong Bill of Rights Ordinance, a member expressed support for setting requirements on the minimum length of residence for an elector and a candidate in such elections. Some members also expressed concern that dispute might arise if the responsibilities of an Indigenous Inhabitant Representative and those of a Resident Representative were not clearly delineated.

15. At a special meeting of the Panel on 9 July 2002, members received views from concern groups and some District Council (DC) members. Members noted the strong objection and concerns from some DC members and some concern groups on various aspects of the proposed electoral arrangements, namely, the traditional rights and interests of indigenous inhabitants, "residency in village requirements" for electors and candidates of Resident Representative elections, voting right of spouses of indigenous inhabitants, and scope of responsibilities of the two types of VRs.

16. In response to the concerns raised by Panel members and deputations, the Administration advised that it had drawn up the proposal in accordance with two principles, namely compliance with the requirements of the judgment of the CFA delivered on 22 December 2000, as well as protection of the lawful traditional rights and interests of indigenous inhabitants of NT. The Administration also advised that the legislative proposal to be introduced was consistent with the human rights provisions of the Basic Law and the laws in Hong Kong as well as the International Covenant on Civil and Political Rights.

17. In response to the strong views expressed by members and deputations on the need for conducting extensive public consultation on the proposed electoral arrangements, the Administration had issued a consultation paper for public comments in August 2002. According to the comments received by the Administration, the public generally supported the proposed arrangements, although a few issues (such as the residency requirement for registration as an elector for the Resident Representative elections) remained controversial.

18. During members' deliberations of the Village Representative Election Bill, some members expressed concern that the Bill might not be consistent with the Hong Kong Bill of Rights Ordinance since under the proposed electoral arrangements, indigenous inhabitants who were residents in a village would have two votes (these persons are entitled to vote in both an Indigenous Inhabitant Representative election and a Resident Representative election), while non-indigenous villagers would only have one vote (these persons are entitled to vote in a Resident Representative election only).

19. In response, the Administration explained that indigenous villagers needed two types of VRs to effectively represent their different interests. An additional vote would be given to indigenous inhabitants so that they could elect Indigenous Inhabitant Representatives to ensure that their traditional rights and interests were protected. The Administration considered that the dual representation system is compatible with the International Covenant on Civil and Political Rights which provides that special electoral arrangements can be made for a particular group of people in order to ensure that they can be fairly and justly represented.

20. A member queried the compatibility of the Bill with the Heung Yee Kuk Ordinance. He pointed out that under the Ordinance, Heung Yee Kuk was interpreted as representing the whole population of NT, but the demarcation of boundaries for village constituencies as proposed in the Bill might result in

some residents in the villages of NT not being eligible to participate in the elections of VRs.

21. The Administration responded that an Indigenous Village was a community comprising the indigenous inhabitants of that Village. Such a community was not a geographically-defined entity. On the other hand, an Existing Village was a geographically-defined entity. Both indigenous and non-indigenous inhabitants living within the delineated area were residents of that Existing Village. The Administration pointed out that it would be possible that some residents living outside the boundaries of Existing Villages could not vote in the 2003 elections of VRs as it was impracticable to include isolated village houses within the delineated area of the boundary map. Moreover, the Administration had planned to review the village boundaries in time for the 2007 elections of VRs.

22. Some members considered that the proposal was irrational as it sought to cover the elections for indigenous inhabitants, residents in a Village and residents in the New Territories (NT) in one piece of legislation. On the other hand, some members were supportive of the arrangement as it would protect the traditional rights and interest of indigenous inhabitants and at the same time was consistent with the CFA judgement.

23. The Administration responded that the proposed electoral arrangements were the best option which could balance the interest of different groups of people, and at the same time were compatible with the laws of Hong Kong and the CFA judgement.

### **Latest Development**

24. The Administration has proposed to introduce a Village Representative Election (Amendment) Bill in the second half of the 2008-2009 legislative session. The object of the Bill is to amend the Village Representative Election Ordinance to implement the recommendations drawn up by the Rural Elections Review Working Group set up by the Home Affairs Department and Heung Yee Kuk for improving the arrangements for village representative elections. The Administration has proposed to discuss the proposal at the Panel meeting scheduled for 14 November 2008.

### **Relevant papers**

25. A list of relevant papers and minutes of meetings is in the **Appendix**. Softcopies of these documents are available on the LegCo website at <http://www.legco.gov.hk>.

Council Business Division 2  
Legislative Council Secretariat  
12 November 2008

## Panel on Home Affairs

## Relevant documents on Village Representative Elections

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
26.2.2001	Panel on Home Affairs	Discussion paper provided by the Administration on "Village Representative Elections"	CB(2)928/00-01(01) <a href="http://www.legco.gov.hk/yr00-01/english/panels/ha/papers/928e01.pdf">http://www.legco.gov.hk/yr00-01/english/panels/ha/papers/928e01.pdf</a>
		Minutes of meeting	CB(2)1758/00-01 <a href="http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha260201.pdf">http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha260201.pdf</a>
14.6.2002	Panel on Home Affairs	Discussion paper provided by the Administration on "Proposed Arrangements for the Conduct of Village Representative Elections"	CB(2)2250/01-02(03) <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0614cb2-2250-3e.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0614cb2-2250-3e.pdf</a>
		Background paper prepared by Legislative Council Secretariat on "Village Representative Elections"	CB(2)2250/01-02(02) <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0614cb2-2250-2e.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0614cb2-2250-2e.pdf</a>
		Minutes of meeting	CB(2)2551/01-02 <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020614.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020614.pdf</a>
9.7.2002	Panel on Home Affairs	Minutes of meeting	CB(2)2874/01-02 <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020709.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020709.pdf</a>
---	---	Administration's reply on 10 October 2002 on the results of the consultation on the proposed arrangements for the conduct of Village Representative elections	CB(2)68/02-03(01) <a href="http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0709cb2-68-1e.pdf">http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0709cb2-68-1e.pdf</a>

<b>Date of meeting</b>	<b>Meeting</b>	<b>Minutes/Paper</b>	<b>LC Paper No.</b>
12.2.2003	Council meeting	Report of the Bills Committee on Village Representative Election Bill to Council meeting on 12 February 2003	CB(2)1123/02-03 <a href="http://www.legco.gov.hk/yr02-03/english/bc/bc51/reports/bc510212cb2-1123-e.pdf">http://www.legco.gov.hk/yr02-03/english/bc/bc51/reports/bc510212cb2-1123-e.pdf</a>
14.3.2003	Panel on Home Affairs	Paper provided by the Administration on "2003 Village Representative Elections - Way forward"	CB(2)1288/02-03(01) <a href="http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0314cb2-1288-1e.pdf">http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0314cb2-1288-1e.pdf</a>
13.4.2007	Panel on Home Affairs	Information note provided by the Administration on "Rural Elections"	CB(2)1556/06-07(01) <a href="http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/hacb2-1556-1-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/hacb2-1556-1-e.pdf</a>
11.10.2007	Panel on Home Affairs	Minutes of meeting	CB(2)246/07-08 <a href="http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha071011.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha071011.pdf</a>

Council Business Division 2  
Legislative Council Secretariat  
12 November 2008