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Panel on Home Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 12 July 2013

Matters relating to rural elections

Purpose

This paper provides background information on the Village Representative ("VR") elections, and highlights the main concerns of Legislative Council ("LegCo") Members about matters relating to rural elections.

Background

2. According to the Administration, there are three levels of election in the villages of the New Territories, namely the election of VRs, Rural Committees ("RCs") and Heung Yee Kuk ("HYK"). In accordance with the Village Representative Election Ordinance (Cap. 576) ("VREO"), VRs are members of their respective RCs, of which the Chairmen and Vice-Chairmen are elected on a one-person-one-vote basis. The Chairmen of RCs are ex-officio members of the relevant District Councils. The Chairmen and Vice-Chairmen of RCs are ex-officio councillors of HYK. The Chairman and Vice-Chairman of HYK are also returned on a one-person-one-vote basis from the councillors of HYK. HYK functional constituency is one of the functional constituencies in LegCo election. The HYK functional constituency is composed of the Chairman and Vice-Chairmen of HYK and the ex-officio, special and co-opted councillors of the full Council of HYK.

3. In February 2003, VREO was enacted to bring the conduct of VR elections under statutory control to ensure compliance with the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Sex Discrimination Ordinance (Cap. 480). In October 2009, the Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009 was enacted to improve the

arrangements for rural elections (including the 2011 VR elections), including extending the time limits for lodging and handling claims, objections and reviews in relation to voter registration, revising the time frames concerning the registration of electors for VR elections and the compilation of registers of electors, and increasing the maximum penalty for offences concerning order at polling stations and secrecy of votes. Under VREO, VR elections are conducted every four years. Since 2003, three rounds of such elections, including the latest 2011 VR elections concluded on 23 January 2011, have been held.

4. Under VREO, VR elections are held for indigenous villages (comprising Indigenous Villages and Composite Indigenous Villages¹) already in existence in 1898, and existing village settlements (i.e. Existing Villages) already included in the village representation system in the New Territories in 1999 when the last round of VR elections was held before the enactment of VREO.

5. There are two types of VRs, namely Indigenous Inhabitant Representatives ("IIRs") for indigenous villages, and Resident Representatives ("RRs") for Existing Villages. The functions of an IIR are to reflect views on the affairs of an 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. The function of an RR is to reflect views on the affairs of an Existing Village on behalf of the residents of that village. There will be one RR for each Existing Village. An RR shall not deal with any affairs relating to the lawful traditional rights and interests of indigenous inhabitants.

2011 VR elections

6. According to the information on the website of the Home Affairs Department ("HAD"), there were a total of 1 484 seats in 709 villages for the 2011 VR elections, including 789 IIRs and 695 RRs. The eligibility requirements for electors and candidates, as well as the major outcomes of the 2003, 2007 and 2011 VR elections are in **Appendices I** and **II** respectively.

7. The 2011 VR elections allowed for the first time prisoners or remanded unconvicted persons, who had registered as electors, to vote at dedicated polling stations. A total of 42 such prisoners and persons had cast their votes.

¹ Composite Indigenous Villages are villages that comprise more than one indigenous village where the indigenous inhabitants jointly elect their Indigenous Inhabitant Representatives.

Members' concerns

8. The concerns expressed by LegCo Members at various forums, including the Panel on Home Affairs ("the HA Panel"), the Bills Committee on Village Representative Election Bill, the Bills Committee on Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009 and the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012, are summarized in the ensuing paragraphs.

Female participation

9. When receiving a briefing from the Administration on the outcomes of the 2011 VR elections at the HA Panel meeting on 8 April 2011, the Panel members were gravely concerned about the low female participation in VR elections. They urged the Administration to help break the male dominance in VR elections, and to implement measures to boost female participation in VR elections.

10. According to the Administration, it had all along encouraged more females to register as electors and run for VR elections. HAD had issued letters to HYK and women associations to solicit their assistance in encouraging more females to take part in the elections. The Administration had also taken into account the principle of gender mainstreaming in making publicity for the elections. The 2011 VR elections had shown improvement in female participation. Of the 182 000 registered electors, 47.3% were females. Compared to the 2003 and 2007 VR elections, the number of female registered voters for the 2011 VR elections had increased by 16.2% and 7.7% respectively. The number of female candidates rose by 11%, from 35 in 2007 to 39 in 2011. There were 30 female candidates who had won the 2011 VR elections, representing an increase of 7% over 2007. The Administration advised that it would closely monitor the rate of female participation in voter registration, candidate nomination and voter turn-out, as well as the number of female VRs elected in future VR elections.

Upsurge in the number of registered electors in some village constituencies

11. Concern was raised about the surge in the number of registered electors in some village constituencies in the 2011 VR elections when compared to those in 2003 and 2007. Members queried whether the Administration had any review mechanism for verifying the eligibility of electors.

12. The Administration explained that the increased registered electors were mainly indigenous inhabitants who, in relation to Indigenous Villages that existed in 1898, were persons descended through the male line from persons who were residents of those Villages in 1898. An indigenous inhabitant was

eligible to register as an elector in a VR election regardless of where he/she resided. The upsurge in the number of registered electors in 2011 was not abnormal, as indigenous inhabitants residing overseas might be interested in a particular VR election and therefore register to vote. The Administration assured members that the voter registration process had been under close monitoring. An applicant for registration as an elector was required to declare that the particulars provided, including the address, in the registration form were true and accurate. The registration form also stated clearly that any person who knowingly or recklessly made any false or incorrect statement or gave information which was materially false or misleading committed an offence under the law.

False claims in voter registration

13. There was a view that the mechanism for monitoring false claims in voter registration for VR elections was ineffective in deterring persons from making such claims, as it was mainly based on public objection to the provisional registers and carried no penalty unless the person making a false claim had voted in the election. The Administration was urged to take stringent measures to plug the loopholes of the registration system. Members considered that complaints against false claims should be handled before and not after the elections.

14. The Administration advised that similar to the practices in LegCo and District Council ("DC") elections, the voter registration for VR elections operated on the basis of an "honour" system. Under the existing mechanism, the relevant provisional voters' registers of VR elections would be made available for public inspection. Any person who questioned the eligibility of a person whose names appeared on the provisional register might raise objection through a legal proceeding. The Revising Officers ("ROs"), who were Magistrates, would make rulings allowing or dismissing such 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 RO's ruling. According to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), any 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 and could be liable to a fine of \$200,000 and imprisonment for three years.

15. Members were concerned about the problem relating to the verification of the status of indigenous inhabitants in IIR elections. Pointing out that the number of indigenous inhabitants often increased nearer the time of IIR elections, members urged the Administration to consider working with HYK

and RCs to define and draw up a list of indigenous inhabitants so as to minimize disputes. The Administration advised 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 and relevant historical documents, etc.

Residency requirement in RR elections

16. Concern was raised about the requirement for a person to reside in an Existing Village for at least three years immediately preceding the date of application for registration as an elector in RR elections. While it was common for many people to have several places of residency simultaneously, it would be difficult, if not impossible, to verify whether they had genuinely met the residency requirement. In some Members' views, the residency requirement was in breach of the Basic Law and unfair to non-indigenous residents of an Existing Village, as similar residency requirements were not imposed on voters in LegCo and DC elections.

17. According to the Administration, to satisfy the residency 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. This requirement applicable only to RR elections was to safeguard against corruptive practices, such as vote planting, in a small electorate. A person with more than one place of residency would be required, if challenged, to 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 an RR election. In considering whether a dwelling place constituted that person's principal residential address, the time he spent in that dwelling place was one of the main factors. In addition, various mechanisms were in place to monitor false claims, including 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.

Electoral system in Cheung Chau

18. In scrutinizing the Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009, some members of the Bills Committee queried the appropriateness for the Administration to exclude Cheung Chau from the VR electoral system in the rural area and authorize members of the Cheung Chau Rural Committee ("CCRC") who were mostly non-indigenous inhabitants to handle the affairs of indigenous inhabitants of Cheung Chau. These members also expressed concern about the existing electoral arrangement for CCRC, under which the Kaifong representatives were elected on the basis of

one single constituency (viz. the entire Cheung Chau Island). They considered that the Administration should divide Cheung Chau into a number of electoral districts so that representatives (including VRs for the village communities existing in Cheung Chau and Kaifong representatives for the developed areas in Cheung Chau) could be elected for the respective districts.

19. According to the Administration, Cheung Chau had been a market town and had never had any VR or village representation system. The Block Lease of Cheung Chau Island did not contain any entry of village names, and the List of Established Villages in the New Territories, which was compiled mainly to define the established villages in the New Territories whose villagers were eligible for rent concession for their properties or lands, had indicated Cheung Chau as a market town. Therefore, VREO was not applicable to Cheung Chau and the handling of affairs of indigenous inhabitants by CCRC did not contravene the provisions of VREO. Since the establishment of CCRC in the early 1960s, all its members, past and present, were Kaifong representatives. The Kaifong representatives were elected according to CCRC's constitution under which Kaifong representatives were elected by secret ballot on a one-person-one-vote basis to CCRC under the supervision of the District Officer (Island) as the Returning Officer.

20. There was a view that VRs and Kaifong representatives could co-exist and efforts should be made to work out a mutually acceptable arrangement regarding the representation of VRs and Kaifong representatives on CCRC. The Administration was requested to give consideration to the request of the Cheung Chau residents for VR election to be held in Cheung Chau.

Need to regulate RC elections by legislation

21. At the HA Panel meeting on 8 April 2011, the Administration advised that it would conduct a review on the 2011 VR elections, with a view to identifying room for improvement for the conduct of future VR elections. Some Panel members were of the view that given the importance of VRs and as VR and HYK elections had been brought under statutory control, the Administration should consider regulating RC elections by legislation. The Administration confirmed that its review would cover the feasibility of regulating RC elections by legislation.

HYK and RC elections

22. When scrutinizing the Electoral Legislation (Miscellaneous Amendments) Bill 2012, the Bills Committee members noted that under the existing provisions in ECICO, if a person failed to show printing details on a printed election advertisements ("EAs") or provide copies of EA with the Returning Officer not later than seven days after the publication, he committed

an offence and was liable on conviction to a fine of \$200,000 and to imprisonment for three years, if tried on indictment. On the other hand, any person who committed the offences in relation to all forms of EAs under the relevant the Electoral Affairs Commission ("EAC") regulations was liable on conviction to a fine of \$5,000 and to imprisonment for six months. Members further noted that the Bill proposed to add a new section to ECICO to the effect that Part 5 of ECICO would only apply to an election to elect members of HYK and an election to elect a person as the Chairman or Vice-Chairman or a member of the Executive Committee of a RC. Accordingly, the offence to punish non-compliance with the requirements in relation to EAs under section 34 of ECICO only applied to HYK and RC elections. Members were concerned that in respect of HYK and RC elections, the penalty level for non-compliance with the requirements in relation to EAs would be much higher.

23. The Administration explained that HYK and RC elections were presently not under the regulation of EAC. The Home Affairs Bureau which was the policy bureau for matters relating to HYK and RC elections would conduct a review regarding these elections.

Latest development

24. The Administration will brief the Panel on the results of the review of rural elections at the meeting on 12 July 2013.

Relevant papers

25. A list of the relevant papers on the LegCo's website is in **Appendix III**.

**Eligibility requirements for electors and candidates for
Village Representative elections**

	Requirements	
	Indigenous Inhabitant Representative Election	Resident Representative Election
Elector	<ul style="list-style-type: none"> ➤ aged 18 or above; ➤ an <i>indigenous inhabitant</i>¹ of the Indigenous/Composite Indigenous Village, or a spouse of an indigenous inhabitant of the Village; and ➤ holds a recognized identity document 	<ul style="list-style-type: none"> ➤ aged 18 or above; ➤ a resident of the Existing Village; ➤ a <i>resident</i>² of the Village for the 3 years immediately before the date of application for registration; and ➤ a Hong Kong permanent resident
Candidate	<ul style="list-style-type: none"> ➤ an indigenous inhabitant of the Indigenous/Composite Indigenous Village; ➤ ordinarily resides in Hong Kong; ➤ elector for the Indigenous or Composite Indigenous Village; ➤ aged 21 or above; ➤ a Hong Kong permanent resident; and ➤ nominated by at least 5 registered electors from that Village 	<ul style="list-style-type: none"> ➤ a resident of the Village for the 6 years immediately preceding the nomination; ➤ elector for the Existing Village; ➤ aged 21 or above; ➤ a Hong Kong permanent resident; and ➤ nominated by at least 5 registered electors from that Village

Source: Website of the Home Affairs Department at <http://www.had.gov.hk/vre/>

¹ Indigenous Inhabitant means, in relation to an Indigenous Village that existed in 1898 (whether or not the name the Village now has is the same name it had in 1898), (i) a person who was in 1898 a resident of the Village, or (ii) a person who is descended through the male line from a person mentioned in (i).

² Resident means, in relation to an Existing Village, a person whose principal residential address is in the Village. A principal residential address means the address of the dwelling place at which a person resides and which constitutes the person's sole or main home.

Appendix II

Major outcomes of the 2003, 2007 and 2011 VR elections

	2003	2007	2011
No. of villages	707	707	709 ¹
No. of seats	1,480	1,480	1,484 ¹
No. of registered voters	158,000	170,596 (47% were women)	182,702 (47% were women)
No. of candidates	1,638 (of which 29 were women)	1,627 (of which 35 were women)	1,752 (of which 39 were women)
No. of elected Village Representatives	1,291 (of which 17 were female and 931 returned uncontested)	1,320 (of which 28 were female and 996 returned uncontested)	1,358 (of which 30 were female and 944 returned uncontested)
No. of seats left vacant with no valid nomination	189	160	126
Overall voter turnout rate	73.84%	67.08%	63.56%

Sources: (a) Website of the Home Affairs Department at <http://www.had.gov.hk/vre>; and
(b) Supplementary information provided by Administration (LC Paper No. CB(2)1961/10-11(01))

¹ Pursuant to the enactment of the Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009 in November 2009, two villages (viz. Lai Pek Shen and Yuen Long Kau Hui) have been included in the Schedules to VREO for the purpose of Village Representative elections, with each being represented by two Village Representatives.

Appendix III

Relevant papers on Matters relating to rural elections

Committee	Date of meeting	Paper
Panel on Home Affairs	26.2.2001 (Item I)	Agenda Minutes
Panel on Home Affairs	14.6.2002 (Item V)	Agenda Minutes
Panel on Home Affairs	9.7.2002 (Item II)	Agenda Minutes
Council meeting	11.12.2002	Question No. 13 Official Record of Proceedings Pages 1844 - 1846
Bills Committee on Village Representative Election Bill	-	Report
Panel on Home Affairs	14.11.2008 (Item IV)	Agenda Minutes
Bills Committee on Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009	-	Report
Panel on Home Affairs	14.5.2010 (Item IV)	Agenda Minutes
Council meeting	30.3.2011	Question No. 19 Official Record of Proceedings Pages 8280 - 8284
Panel on Home Affairs	8.4.2011 (Item IV)	Agenda Minutes

Committee	Date of meeting	Paper
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2012	-	Report

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