

立法會
Legislative Council

LC Paper No. CB(2)520/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/98

Bills Committee on District Councils Bill

Minutes of Meeting
held on Monday, 25 January 1999 at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members Present** :
- Hon Ambrose LAU Hon-chuen, JP (Chairman)
 - Hon James TIEN Pei-chun, JP
 - Hon David CHU Yu-lin
 - Hon Cyd HO Sau-lan
 - Hon LEE Wing-tat
 - Hon Lee Kai-ming, JP
 - Hon Fred LI Wah-ming
 - Hon Mrs Selina CHOW LIANG Shuk-ye, JP
 - Hon Ronald ARCULLI, JP
 - Hon CHEUNG Man-kwong
 - Hon CHAN Wing-chan
 - Hon CHAN Kam-lam
 - Hon SIN Chung-kai
 - Hon Andrew WONG Wang-fat, JP
 - Hon WONG Yung-kan
 - Hon Jasper TSANG Yok-sing, JP
 - Hon Howard YOUNG, JP
 - Hon YEUNG Yiu-chung
 - Hon LAU Wong-fat, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Dr Hon TANG Siu-tong, JP
 - Hon Andrew CHENG Kar-foo
 - Hon TAM Yiu-chung, JP
- Members Absent** :
- Dr Hon Raymond HO Chung-tai, JP
 - Hon Eric LI Ka-cheung, JP
 - Hon MA Fung-kwok

Hon Ambrose CHEUNG Wing-sum, JP
Hon Christine LOH
Dr Hon LEONG Che-hung, JP
Hon SZETO Wah

- Public Officers :**
- Attending**
- Mr Robin IP
Deputy Secretary for Constitutional Affairs 2
- Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs 3
- Mr Paul WONG
Principal Assistant Secretary for Constitutional Affairs
- Mr Augustine CHENG
Deputy Director of Home Affairs
- Mr James O' NEIL
Principal Government Counsel (Elections)
- Mrs N DISSANAYAKE
Senior Assistant Law Draftsman
- Mr Vidy CHEUNG
Senior Assistant Law Draftsman
- Miss Monica LAW
Senior Assistant Law Draftsman
- Clerk in Attendance :** Mrs Constance LI
Chief Assistant Secretary (2) 2
- Staff in Attendance :** Mrs Justina LAM
Assistant Secretary General 2
- Mr Jimmy MA
Legal Adviser
- Mr Arthur CHEUNG
Assistant Legal Adviser 5

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Membership of the Bills Committee

The Chairman informed members that Hon Eric LI had resigned from the Bills Committee.

II. Committee stage amendments to be moved by members
[LC Paper No. CB(2)1198/98-99]

2. The Chairman referred members to Mr Ronald ARCULLI's suggestion at the earlier meeting held in the morning, and invited members' views on the approach to consider the Committee stage amendments (CSAs) proposed by Members. Members belonging to the Democratic Party and Ms Emily LAU were of the view that the Bills Committee should discuss the CSAs in detail, consider the Administration's responses to these CSAs, and take a vote on whether any of these CSAs should be moved in the name of the Bills Committee.

3. Some other members disagreed with the approach. Messrs TAM Yiu-chung and CHAN Kam-lam said that given the time constraint for scrutiny of the Bill and the divergent views expressed by members over the policy issues of the Bill, the Bills Committee should only discuss the general principles of the CSAs. They considered it unnecessary for the Bills Committee to take a position on these CSAs as there was little scope for compromise or consensus among members over the controversial issues.

4. In response to the Chairman, Legal Adviser (LA) advised that subject to the Rules of Procedure, a Bills Committee could determine its own procedures and practices.

5. After some discussion, Mr LEE Wing-tat proposed the following motion -

"The Bills Committee should take a vote on whether the proposed CSAs should be moved by the Bills Committee if any of these was not accepted by the Administration. If the majority of members present supported the CSA, the CSA should be moved by the Bills Committee."

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6. Mr CHEUNG Man-kwong seconded the motion moved by Mr LEE Wing-tat. The Chairman then ordered a vote to be taken by a show of hands. Six members supported the motion, and 10 objected. The motion was not carried.

7. Mr TAM Yiu-chung then proposed the motion that the Bills Committee did not need to take a position on the CSAs proposed by Members, irrespective of whether these were accepted by the Administration. Mr CHAN Kam-lam seconded the motion. The Chairman then ordered a vote to be taken on the motion by a show of hands. 10 members supported the motion and six against. The motion was carried.

8. Mr Andrew WONG sought clarification and the Chairman advised that a CSA proposed by a Member but not supported by the Administration could still be discussed by the Bills Committee. The Administration would also be invited to respond to the CSAs proposed.

9. The Chairman then referred members to the summary of proposed Committee stage amendments prepared by the Legislative Council (LegCo) Secretariat [LC Paper No. CB(2)1198/98-99] and invited members to discuss the CSAs proposed by Members. The gist of discussion was summarized below.

CSAs proposed by the Frontier

[Paper No. CB(2)1160/98-99(02)]

10. Ms Cyd HO informed members that since the Democratic Party had proposed CSAs on the abolition of appointed and ex officio membership in District Councils (DCs), the Frontier would withdraw its similar amendments originally proposed in its paper [Paper No. CB(2)1160/98-99(02)].

Democratic Party's proposal on abolition of appointed and ex officio membership

[Paper Nos. CB(2)1124/98-99(01) and CB(2)1158/98-99(01)]

11. Mr LEE Wing-tat briefed members on the CSAs proposed by the Democratic Party on the abolition of appointed and ex officio membership in DCs [Paper No. CB(2)1158/98-99(01)]. Mr LEE said that the Democratic Party had expressed strong objection to the retention of appointed membership in DCs, as this was considered to be a retrograde step in democracy. The Democratic Party also disagreed with the Administration's argument that the appointed seats were to enhance participation of professionals and businessmen in district affairs. Mr LEE pointed out that some 30% - 40% of the successful candidates in the 1994 District Board elections were professionals or businessmen. That being the case, he considered that capable people who wished to contribute to district affairs should take part in DC election, or they could be appointed as co-opted members of DC Committees where necessary. It was the Democratic Party's

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view that only direct election could ensure accountability of DC members to the public.

12. Since about 30% - 40% of the successful candidates in the 1994 District Board election were professionals and businessmen, Mr LEE Wing-tat asked whether the Administration still maintained its view that retention of appointed membership was to strike a balance in the composition of DC membership. Deputy Secretary for Constitutional Affairs (DS(CA)3) replied that to strike a balance in the composition of membership was only one of the considerations. She pointed out that the views gathered during the consultation on the Review of District Organizations had indicated a preference to the retention of appointed membership in DCs. Moreover, the retention of appointed seats would not undermine the proportion of elected seats which would be increased from 346 to 390. DS(CA)3 stressed that Secretary for Constitutional Affairs had already explained in his speech on moving the Bill for Second Reading at the Council Meeting on 16 December 1998 that appointed membership was to provide an additional channel for individuals who were interested in district affairs to serve the community.

13. Mr LEE Wing-tat referred to the proposed composition of the Islands DC which would include seven elected members, four appointed members and eight ex officio members (Rural Committees Chairmen). He pointed out that under this composition, the elected membership in Islands DC would become the minority. He asked whether the Administration would consider this a balanced composition. Deputy Director of Home Affairs (DD(HA)) responded that this was an exception as there were relatively more Rural Committees (RCs) within the boundaries of the Islands DC. He said that RC Chairmen were appointed as ex officio members because they were expected to reflect the views and interests of indigenous residents they represented. With regard to the number of elected seats, DD(HA) pointed out that it was computed on the basis of one elected seat to every 12 000 population. In this connection, Mr CHEUNG Man-kwong said that it was unfair to calculate the number of elected seats based on a fixed population ratio, while a disproportionate number of ex officio seats was provided for the indigenous villagers in the Islands District. Responding to Mr CHEUNG's concern about the proportion of elected members to appointed ex-officio members in the Islands DC, DD(HA) explained that some districts might have a slightly different composition due to their unique circumstances. However, the overall number of appointed members would represent about one-fifth of the total number of DC members, inclusive of ex officio members.

14. Mr LEE Wing-tat and Mr CHEUNG Man-kwong did not accept the explanation. They maintained the view that it was unreasonable and unacceptable that the total number of appointed and ex officio seats in a DC would outnumber the elected seats. Mr LI Wah-ming then asked whether the Administration had any plan to reduce the number of appointed seats or to

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abolish appointed seats altogether for the DC elections to be held in 2004. DS(CA)3 replied that the Administration did not have such intention at the present stage.

15. Referring to the Administration's responses to written submissions [Paper No. CB(2)1124/98-99(01)] in respect of the Democratic Party's proposal to abolish appointed and ex officio membership, Mr CHEUNG Man-kwong said that the Administration had failed to include the following important facts -

- (a) appointed membership had been abolished in the 1994 District Board elections;
- (b) the number of appointed seats for District Boards during the period from 1994 to 2000 had been increased; and
- (c) the appointed and ex officio members in some DCs would become the majority.

Mr CHEUNG remarked that the Administration had misrepresented the facts by concealing such important information. DS(CA)3 stressed that the Administration's response had only summarized the main points raised. She would consider providing supplementary information to include points raised by Mr CHEUNG.

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16. Mr LEE Wing-tat said that the Democratic Party did not agree to the ex officio membership for DCs. Members belonging to the Democratic Party was of the view that indigenous villagers could, as other residents in the districts, elect their representatives to DCs through direct election. The ex officio membership was unfair as it conferred a double voting right to the indigenous villagers. He informed members that many successful candidates of the 1994 District Board elections in the New Territories (NT) already had close connection with Heung Yee Kuk and RCs. He said that the Democratic Party opposed to the ex-officio membership of the Chairmen of RCs because some of them were returned by unfair elections in which the female indigenous villagers had been denied of their voting rights.

17. Responding to Mr LEE Wing-tat's concerns, DD(HA) said that the Administration and Heung Yee Kuk had agreed on a set of Model Rules in 1994 for Village Representative (VR) elections based on the principles of one-person-one-vote and equal voting rights for men and women. It had been agreed with Heung Yee Kuk that the District Officer would not endorse the status of an VR who was not elected in accordance with these principles. In this connection, Mr SIN Chung-kai referred to a recent complaint case concerning a VR election in Yuen Long where a new criterion was allegedly added to the Model Rules. The new criterion had prevented indigenous villagers who did not live in self-

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owned property from registration as voters for the VR election. The Yuen Long District Officer had however claimed that Home Affairs Department would not regulate VR elections as these were private elections. He therefore requested the Administration to provide information on the extent of compliance with the Model Rules in the VR elections.

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18. DD(HA) informed members that a new round of VR elections was underway and some villages had not completed the necessary election procedures yet. Mr SIN remarked that there was a possible conflict of interest as the incumbent VR had the authority of determining the list of eligible voters for the VR election. Mr SIN then asked whether VR elections fell within the regulation of the Corrupt and Illegal Practices Ordinance (Cap. 288). DD(HA) reiterated that VR elections were basically private elections subject to the Model Rules as agreed with Heung Yee Kuk. He undertook to check whether Cap. 288 also covered VR elections.

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19. Ms Emily LAU said that Members would definitely follow up the issues concerning VR elections. She then referred to the Initial Report on the Hong Kong Special Administrative Region under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to the Report, some 660 villages (or 94%) had already adopted the Model Rules in the VR elections and others were expected to follow in the near future. Ms LAU then asked and DD(HA) clarified that although the exceptions only involved a few villages which had not completed the necessary election procedures, all VR elections already held were in compliance with the Model Rules. DD(HA) reiterated that the Administration would continue to make its best efforts to facilitate the conduct of VR elections in accordance with the Model Rules. Dr TANG Siu-tong added that the information in the CEDAW Report only referred to the previous round of elections. He said that it was not unusual that there were disputes or disagreement in some villages, resulting in delays in holding the VR election. At the request of Mr CHEUNG Man-kwong, the Chairman advised the Administration to provide information on the number of VRs who had been elected in full compliance with the Model Rules.

20. Mr LI Wah-ming referred to the Administration's argument that ex officio membership was to represent interests of indigenous residents. He asked why the Administration considered that elected DC members in the NT districts could not represent the interests of indigenous villagers. DS(CA)3 reiterated that given the unique nature of rural affairs, appointment of RC Chairmen as ex officio members on DCs would be an effective measure to ensure that the views and interests of indigenous residents could be fully reflected.

21. Ms Emily LAU expressed strong dissatisfaction that the Administration had not specified the number of ex officio members for each DC in Schedule 3 of the Bill. Deputy Secretary for Constitutional Affairs (DS(CA)2) said that

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clause 9(c) had stipulated that the RC Chairmen would become ex officio members of the respective DC. DD(HA) stressed that it had been a long standing arrangement for Chairmen of the 27 RCs to be ex officio members of District Boards in the NT. Mr SIN Chung-kai pointed out that some RCs in Tsuen Wan currently comprised villages in the Kwai Ching District, and that it would be necessary to provide a list of the RCs in each DC. Ms LAU considered that inclusion of the information on ex officio seats of each DC in Schedule 3 would give a clearer indication on the ratio of appointed/ex officio members to elected members in each DC. Mr CHEUNG Man-kwong and Mr LEE Wing-tat supported the suggestion. In view of members' concerns, DS(CA)2 undertook to consider the suggestion.

22. The Chairman then asked about the Administration's position on the CSAs proposed by the Democratic Party. DS(CA)3 responded that the Administration had clearly explained its position on appointed and ex officio membership on many occasions. The Administration would not accept the Democratic Party's proposed CSAs.

The Democratic Party's proposal on eligibility for candidature
[Paper Nos. CB(2)1158/98-99(04) and CB(2)1158/98-99(10)]

23. Mr LEE Wing-tat briefed members on the Democratic Party's proposal to delete the three years' residency requirements and the requirement to uphold the Basic Law as eligibility criteria for candidature [Paper No. CB(2)1158/98-99(04)]. Mr LEE was concerned that the residency requirement proposed in the Bill would be open to interpretation.

24. Responding to the Chairman, DS(CA)2 said that the residency requirement for DC candidates was similar to that in the Legislative Council Ordinance. Clause 20(1)(e) of the Bill proposed that a person had to be ordinarily resided in Hong Kong for the three years immediately preceding the nomination, because a DC member must be familiar with the affairs in his District in order to advise the Government. He pointed out that DC electors also had to be ordinarily resided in Hong Kong. Mr LEE Wing-tat did not agree with the Administration's argument. He was of the view that it should be for the electors to decide who should represent their views in the District. Moreover, there was no statutory requirement that a candidate for DC election must reside in that particular District. DS(CA)2 advised that a candidate must be nominated by a prescribed number of DC electors in that District.

25. In response to Ms Emily LAU's enquiry about the criteria adopted to determine the period that a person had ordinarily resided in Hong Kong, Principal Government Counsel said that ordinary residency was not determined by the number of days residing in Hong Kong in a year. It would depend on the circumstances of each case. The primary consideration was whether the person

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remained settled in Hong Kong, and the period of ordinary residency could include temporary absence from Hong Kong for the purposes of study or business. In this regard, LA advised that in determining whether a person had ordinarily resided in Hong Kong for the purpose of clause 20(1)(e), consideration would be given to the reason of that person's absence from Hong Kong during the preceding three years. He supplemented that from a legal point of view, a person could reside in more than one country. Mr LEE Wing-tat then asked and LA replied that a person holding a passport of any other country did not necessarily mean that the person had not ordinarily resided in Hong Kong. In response to Mr LEE, DS(HA) responded that the Administration could consider recommending to the Electoral Affairs Commission to set up a nomination committee, similar to that for LegCo election, to advise prospective candidates on their eligibility for DC elections.

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26. As regards the candidate's declaration for upholding the Basic Law, DS(HA)2 referred members to the Administration's responses to concerns raised at the meeting on 22 January 1999 [Paper No. CB(2)1158/98-99(10)]. He said that the requirement was reasonable because the same requirement applied to all LegCo Members and Provisional District Board members.

III. Date of next meeting

27. Members agreed that the Bills Committee would continue to discuss the CSAs proposed by the Democratic Party and other Members, at the next meeting scheduled for Tuesday, 26 January 1999 at 8:30 am.

28. The meeting ended at 6:50 pm

Legislative Council Secretariat

1 December 1999