

Administration's Response to Concerns raised on 3 March 1999
by Members of the Bills Committee
on Elections (Corrupt and Illegal Conduct) Bill

C1 : On applications to Government relating to the rights of indigenous villagers, to by VRs are a advise whether the majority of applications with statutory declarations made approved. Please provide relevant figures.

A1 : The declaration made by a VR is only one kind of information for consideration. In considering an application, the departments concerned will also consider all other available information such as information provided by the village elders or other villagers in response to the relevant notice posted in the village. The Home Affairs Department does not have any statistics on how many applications are approved based purely on the statutory declarations made by VRs.

C2 : On the "Model Rules" which govern the procedures of VR elections, to advise whether there is any legal/constitutional basis on which villagers/Rural Committees (RCs) come to accept that such Rules should be followed in VR elections.

A2 : Please see paper at Annex.

C3 : On the "working groups" (WG) set up by villagers for further investigation of comments on the provisional electoral roll, to advise -

- (i) who appoint the WG and its composition;**
- (ii) procedure to resolve divergent views within the WG;**
- (iii) how DO will decide whether the comments received should be referred to RCs or WG; and**
- (iv) the role of DO in the investigation process.**

A3 : Please see paper at Annex.

- C4 : On the Administration’s advice that VR elections are subject to the purview of other Ordinances, to provide information on the relevant provisions of these Ordinances, in particular those relating to corrupt conduct specified in the Bill, e.g. to use force or duress against another person or to provide others with refreshments and entertainment at election.**
- A4 : There are a number of general offences covered by other ordinances which may be applicable to a candidate or an elector in a VR election. These include intimidation, assault, criminal damage to property and false declaration under the Crimes Ordinance; different types of assaults under the Offences Against the Person Ordinance; obtaining pecuniary advantage by deception under the Theft Ordinance and false imprisonment under the common law. Under the Prevention of Bribery Ordinance, it will be an offence for a VR candidate to offer advantages to a government servant in return for favour in the election. Also, the provisions dealing with soliciting or accepting an advantage, corrupt transactions with agents and possession of unexplained property can be applied to government servants involved in the VR elections.
- C5 : To advise on the mechanism for dealing with complaints lodged against VR elections and whether the villagers are aware of the mechanism.**
- A5 : Please see paper at Annex.
- C6 : On Clause 8 of the Bill, to advise the implications, if any, of the proposed replacement of the “intimidation” component of the CIPO with “use or threaten to use force or duress”, such as whether it would widen or narrow the original scope, or make it easier or more difficult to enforce the provisions.**
- A6 : As explained at the meeting, the effect of the new provisions is the same as that of the existing provisions of the Corrupt and Illegal Practice Ordinance. The decision not to use the term “intimidation” has no implication other than to improve clarity and comprehensibility of the legislation.

C7 : On Clause 17 of the Bill, to respond to members' view that clear criteria should be set in classifying conduct to deface ballot papers as corrupt conduct.

A7 : The relevant provision aims to prohibit a person from defacing a ballot paper without lawful authority. An elector has the lawful authority to mark a ballot paper. He may mark it in any way he pleases. If the elector chooses not to mark it in the prescribed manner, or to write anything or identifying symbol, all that he risks is having his vote not counted as valid. He would not be caught by or commit an offence under the defacement provision.

If the marking of an identifying symbol is due to the acceptance of a bribe for voting for a particular person, the elector may be caught by other provisions of the Bill (e.g. the offence of corrupt conduct to bribe electors under Clause 11).

Constitutional Affairs Bureau

8 March 1999

**Supplementary Information on
Village Representative Elections**

At the second meeting of the Bills Committee on the Elections (Corrupt and Illegal Conduct) Bill on 3 March 1999, Members requested supplementary information on the Village Representative elections.

2. Village Representative (VR) elections are internal elections within the rural community. There are no legislative provisions or mandatory rules governing the conduct of VR elections. At present, all VR elections are conducted in accordance with the “Model Rules” promulgated by Heung Yee Kuk in August 1994. The “Model Rules” is only a set of guidelines without any legal basis.

3. After the promulgation of the “Model Rules”, Rural Committees (RC) had held serious discussion about the adoption and implementation of the rules. Necessary adaptation of the rules to cope with traditions of the area had been made already. However, to respect local customs, villagers have flexibility to adapt the rules in accordance with the customs of the village so long as these rules are not in conflict with the Model Rules and the principle to conduct fair and open elections. In fact, villagers will seek RC’s prior consent to their adaptations. Should there be disputes over the adaptations, RC will consider all the comments in the light of the established traditions.

4. Section 2 of the Model Rules states that VRs shall hold office for 4 years with elections coinciding with those for their respective RCs. In this regard, villagers should hold their VR elections prior to the RC elections. In order to ensure the smooth running of these elections, RCs, with District Offices’ assistance, will initiate the preparation of VR elections.

5. During the election exercises, villagers may provide all their comments to District Offices (DOs), RCs or their incumbent VRs. These comments, including those regarding the provisional electoral rolls, will be referred to RCs or the working groups set up by villagers for examination. The working groups set up by villagers usually comprise the Chairman and some executive committee members of RCs, the incumbent VRs, villager elders and other villagers, etc. DOs will provide administrative assistance to facilitate the liaison and may attend the meeting as observers if necessary.

6. When the provision electoral roll has been compiled, DOs will post it in the concerned village area for public examination. It will also be specified that villagers should write to DOs with substantive evidence within the examination period if they have comments on the provisional electoral roll. After the examination period, DOs will refer all the comments to RCs or the working groups as soon as possible for further investigation. The comments will be considered in accordance with the fixed election rules and local customs.

7. Having considered the comments carefully, RCs or the working groups will inform DOs of the results. DOs will then revert to the villagers concerned and finalise the electoral roll accordingly.

Home Affairs Department

8 March 1999