

**Response to Issues Raised by the Subcommittee on  
subsidiary legislation relating to District Councils election  
at the meeting on 10 June 1999**

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**C1: The number of complaint cases and prosecutions where candidates had failed to submit or submit before the required period to the Returning Officer copies of election advertisements in the 1994 District Boards election.**

A1: In the 1994 District Board elections, there were 11 complaints in which candidates failed to deposit copies of election advertisements with the Returning Officers before they are displayed. As a result, the then Boundary and Election Commission issued warning to one candidate and referred two complaints to the ICAC and the police for further action respectively. According to our understanding, no candidate was prosecuted.

**C2: Whether canvassing of vote is allowed on polling day in foreign jurisdictions such as USA, UK, Canada, Australia, France etc. and what activities are allowed of the candidates no polling day in these countries.**

A2: According to the information we obtained, many countries do not prohibit the canvassing of votes on polling day. They include the United States, United Kingdom, Canada, Australia, Belgium and Netherlands.

The countries known to prohibit the canvassing of votes on polling day include Japan, Singapore, Taiwan and France. For example, in Japan, all canvassing activities by candidates are prohibited on polling day except telephone appeals and display of posters on sign boards provided by the Government in public places. In Singapore, the only form of canvassing activities by candidates allowed is the display of posters and banners.

**C3: Whether a ban on canvassing of vote on polling day violates the provisions of the ICCPR in relation to freedom of expression and whether the signatories to the ICCPR which have adopted such a ban have violated the provisions of ICCPR.**

A3: As explained at the meeting, we consider that candidates should be allowed to choose, according to their own needs, when and how to carry out canvassing activities, so long as they would not undermine the fairness of the election or cause undue disturbance to the electors. Experience of past elections shows that canvassing activities are generally carried out in an orderly manner. We do not see any justification to ban all canvassing activities on polling day.

If some candidates consider it unnecessary to canvass vote on polling day, they are free to decide not to do so. For those candidates who consider it necessary to canvass vote, they can carry out various canvassing activities according to their own practical needs, provided that they comply with the regulation and guidelines on canvassing of votes issued by the Electoral Affairs Commission. We do not agree that we should prohibit other candidates from carrying out canvassing activities if some candidates do not wish to carry out canvassing activities on polling day.

We are also worried that such a ban may affect on the freedom of expression which is a fundamental right guaranteed in the ICCPR. To be lawful, any restriction imposed on the protected freedom must be necessary and proportionate to the harm which it purportedly addresses. It would be up to the proposer to provide a justification for the necessity and proportionality of such a restriction. We are not clear about the justifications based on which some countries have adopted such a ban and whether they have entered any reservations when becoming signatories to the ICCPR. Hence, we are not in a position to comment on their policies.

**C4: Whether the area of a “no canvassing zone” outside the polling station of a constituency could be the same as the area of that constituency.**

A4: Any amendment to the Regulation would need to fall within the ambit of the regulation making power which is provided in Section 7 of the Electoral Affairs Ordinance (Cap 541). The existing provisions in Sections 43 and 44 of the Regulation governing no canvassing zones and no staying zones around a polling station clearly fall within the scope of Subsection 7(1)(d)(v) of the Ordinance which empowers the making of regulations to provide for the supervision of polling stations and regulation of the ballot.

The effect of extending a no canvassing zone to cover the whole constituency will lead to a territory-wide ban. This would go further than the scope of Subsection 7(1)(d)(v). There is no other subsection in the Ordinance which specifically empowers such a ban. From the perspective of vires if a territory-wide ban on canvassing were to be introduced by regulation and be effective, it would be necessary to have a clear empowering provision in the primary legislation.

**C5: The number of complaint cases in respect of “vote planting” by candidates since 1994.**

A5: The total number of complaints concerning vote planting in previous elections since 1994 is 97, 10 of which were substantiated. The ICAC and the Police had prosecuted 66 persons for this offence.

**C6: The number of complaint cases in respect of polling officers who failed to treat candidates impartially since 1994 and the penalty for such an act.**

A6. The number of complaints concerning polling officers who failed to treat candidates impartially in previous elections since 1994 is 38. After investigation, only 3 cases were substantiated. In two of the substantiated cases, the polling officers concerned were reprimanded and warned respectively. They will not be appointed as polling officers again in future elections.

Constitutional Affairs Bureau  
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