

立法會
Legislative Council

LC Paper No. CB(2)366/02-03
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/02

**Bills Committee on
Village Representative Election Bill**

**Minutes of meeting
held on Tuesday, 22 October 2002 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon IP Kwok-him, JP (Chairman)
Dr Hon David CHU Yu-lin, JP
Hon CHAN Kwok-keung
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi

Member Absent : Hon TAM Yiu-chung, GBS, JP

Public Officers Attending : Mr Stephen FISHER
Deputy Secretary for Home Affairs (2)

Mr Y C CHAN
Principal Assistant Secretary for Home Affairs (Special
Duties)

Ms Janet WONG
Acting Director of Home Affairs

Ms Monica CHEN
Assistant Director of Home Affairs (1)

Mr Lawrence PENG
Acting Senior Assistant Law Draftsman
Department of Justice

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Lolita SHEK
Senior Assistant Secretary (2)7

Action

I. Election of Chairman

Dr David CHU, as presiding member of the meeting, called for nominations for the chairmanship of the Committee.

2. Mr IP Kwok-him was nominated by Dr TANG Siu-tong and the nomination was seconded by Mr WONG Yung-kan. Mr IP Kwok-him accepted the nomination. Mr Albert CHAN was nominated by Mr WONG Sing-chi and the nomination was seconded by Mr Andrew WONG. Mr Albert CHAN accepted the nomination.

3. Since there were two nominations, Dr David CHU announced a vote by secret ballot. As the two nominees received the same number of votes, Dr David CHU drew the lots to decide how he should give the casting vote in respect of the two nominees. In accordance with the lot drawn, Dr David CHU gave the casting vote to Mr IP Kwok-him and declared that Mr IP Kwok-him elected as Chairman of the Committee. Mr IP Kwok-him took over the chair.

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II. Meeting with the Administration

[The Bill; the Legislative Council (LegCo) Brief on the Bill; and LC Paper Nos. LS3/02-03 and CB(2)115/02-03]

4. The Committee deliberated (index of proceedings attached at **Annex**).

5. Dr TANG Siu-tong declared interest as an indigenous inhabitant and Ex-officio Executive Councillor of Heung Yee Kuk. Dr TANG said that he was very angry and disappointed that the Government had introduced the Bill despite the fact that it had not conducted sufficient public consultation and there was strong objection to the proposed electoral arrangements from villagers of the New Territories (NT). He made the following comments -

- (a) the Bill might not be consistent with the Bill of Rights since under the electoral arrangements proposed in the Bill, indigenous inhabitants would have two votes whereas non-indigenous inhabitants would only have one vote;
- (b) the Bill might not be consistent with the Heung Yee Kuk Ordinance under which 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 ineligible to participate in Village Representative (VR) elections;
- (c) the Administration should provide for members' reference a copy of the legal advice it had obtained to confirm the legality of the Bill;
- (d) indigenous inhabitants should be allowed to manage their own village affairs. To protect the traditional rights and interests of indigenous inhabitants and at the same time comply with the judgment of the Court of Final Appeal (CFA), the Government should amend the Heung Yee Kuk Ordinance so that Heung Yee Kuk would represent indigenous inhabitants of NT only, and elections for representatives of indigenous inhabitants, who would become members of Rural Committees (RCs) and Heung Yee Kuk, would remain as clansmen elections. These elections should be separated from those for representatives of all residents of NT at District Councils (DCs) who might be elected by universal suffrage by all residents of NT; and

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- (e) since VRs were not paid and did not enjoy any special rights, civil servants should be allowed to be nominated as candidates for VR elections.

6. Mr LAU Wong-fat informed members that Councillors of Heung Yee Kuk voted on the Bill at a special meeting on 8 October 2002 with 105 voted for and 13 against the Bill. He said that Heung Yee Kuk supported the Bill which was able to protect the traditional rights and interests of indigenous inhabitants of NT and at the same time consistent with the CFA judgment. As regards civil servants' participation in VR elections, Mr LAU agreed with Dr TANG Siu-tong that they should be eligible to be nominated as candidates for the elections.

7. Mr Andrew CHENG, Mr Albert CHAN and Mr WONG Sing-chi queried whether the stringent residency requirements for voters and candidates for Resident Representative elections were compatible with the Bill of Rights. Mr CHENG and Mr CHAN considered that the handling of affairs relating to the traditional rights and interests, in particular pecuniary interests, of indigenous inhabitants should clearly be separated from that of district affairs. They supported the proposal from Dr TANG Siu-tong that elections for representatives of indigenous inhabitants should be considered separately from those for representatives of all residents of NT. While indigenous inhabitants might be allowed to conduct their own elections for their own representatives, representatives of all NT residents should be elected by universal suffrage by all residents of NT. They suggested that the Bill should be amended accordingly.

8. Deputy Secretary for Home Affairs (2) (DS(HA)2) explained that the term of office of all incumbent VRs would be expired by 31 March 2003. It was therefore a matter of urgency that the scrutiny of the Bill had to be completed and the Bill enacted by end of 2002 or early 2003 so that the term of office of VRs could be extended to end of June 2003 and a revised set of electoral arrangements which were consistent with the laws in Hong Kong and the CFA judgment could be implemented before 31 March 2003. DS(HA)2 added that an additional vote was given to indigenous inhabitants so that they could elect the Indigenous Inhabitant Representatives to ensure that their traditional rights and interests were protected. This arrangement was compatible with the International Covenant on Civil and Political Rights which provided that special electoral arrangements could be made for a particular group of people in order to ensure that they could be fairly and justly represented. He reiterated that the Bill was compatible with the Bill of Rights.

9. DS(HA)2 continued to point out that under the existing electoral arrangements, some of the VR elections had already been opened to non-indigenous inhabitants who could also become members of RCs and Heung Yee

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Kuk. Therefore, to amend the Heung Yee Kuk Ordinance so that Heung Yee Kuk would represent indigenous inhabitants only would be a retrograde step. He stressed that the set of electoral arrangements proposed in the Bill was the best option which could balance the interests of different groups of people and at the same time was compatible with the laws of Hong Kong and the CFA judgment. Given the urgency of the matter, there would not be sufficient time to amend the Bill drastically to introduce the elections for representatives of all residents of NT by universal suffrage as proposed by some members. However, he assured members that a comprehensive review would be conducted on VR elections after the elections in 2003 and their proposals would be duly considered during the review.

Adm

10. The Administration was requested to provide a written response to the following issues -

Legality of the Bill

- (a) details of the basis on which the Bill was drawn and the legal advice obtained by the Government on the Bill, which confirmed that the Bill was consistent with the laws in Hong Kong and the judgment delivered by CFA on 22 December 2000;
- (b) whether the demarcation of boundaries for village constituencies, which might result in some residents in the villages of NT ineligible to participate in VR elections, was consistent with the Heung Yee Kuk Ordinance under which Heung Yee Kuk was interpreted as representing the whole population of NT;
- (c) whether the following proposed arrangements in the Bill were consistent with the Bill of Rights -
 - (i) indigenous inhabitants would have two votes whereas non-indigenous inhabitants would only have one vote; and
 - (ii) residency requirements of three years and six years were imposed on voters and candidates respectively for Resident Representative elections;

Residency requirements for voters and candidates for Resident Representative elections

- (d) why the residency requirement for candidates for Resident Representative elections had been raised from five years to six years;

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- (e) whether similar residency requirements were imposed on voters and candidates under the existing arrangements for LegCo and DC elections, and if so, whether these requirements were consistent with the Bill of Rights and international human rights treaties;
- (f) the impact of the proposed residency requirements on the voting rights of residents of NT given some non-indigenous residents had just moved out of the villages and might become ineligible to vote in Resident Representative elections after the enactment of the Bill;

Villages of NT

- (g) provision of separate lists of villages from the villages listed in Schedules 1 to 3 of the Bill –
 - (i) which no longer existed physically;
 - (ii) which did not have boundaries;
 - (iii) which had been relocated and with most of the houses sold to non-indigenous residents; and
 - (iv) where most of the non-indigenous residents would become ineligible to be registered as voters or nominated as candidates for Resident Representative elections if the residency requirements proposed in the Bill were to be adopted;
- (h) how the villages mentioned in (g) above would be dealt with under the electoral arrangements proposed in the Bill;
- (i) how village offices would be managed after the enactment of the Bill;

Types of VRs

- (j) how the traditional rights and interests of indigenous inhabitants of NT would be affected if there was only one type of VRs in each village who represented both the indigenous and non-indigenous residents and were elected by all residents in the village;

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- (k) whether the Government would attach more importance to the views of any one of the two types of VRs when consulted both VRs on different matters relating to village affairs;
- (l) whether VRs would receive allowance from the Government;

Amendments to the Bill proposed by some members

- (m) amending the Bill to the effect that civil servants would also be eligible to be nominated as candidates for VR elections since VRs were not paid and did not enjoy any special rights; and
- (n) amending the Heung Yee Kuk Ordinance to the effect that Heung Yee Kuk would represent indigenous inhabitants of NT only, and elections for representatives of indigenous inhabitants who would become members of Rural Committees (RCs) and Heung Yee Kuk would remain as clansmen elections which were separated from Resident Representative elections and governed by a different ordinance. At the same time, the Bill should be amended so that representatives of all residents in the villages of NT at DCs, who would be eligible to be elected as a LegCo Member, would be elected by universal suffrage by all residents of NT.

ALA

11. Assistant Legal Adviser was requested to advise whether the Bill was consistent with the Heung Yee Kuk Ordinance and the judgment delivered by CFA on 22 December 2000.

III. Any other business

Date of next meeting

12. The Committee agreed that a meeting would be held on Saturday, 16 November 2002 from 9 am to 12:30 pm to receive views from deputations on the Bill and that another meeting would be held on Friday, 22 November 2002 at 8:30 am to continue discussion of the Bill.

Public consultation

13. The Committee agreed that arrangements should be made for Heung Yee Kuk and the Association of New Territories Indigenous Residents to present their views on the Bill at the meeting on 16 November. The Committee further agreed that an invitation for public views should be placed on the LegCo website and a

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Adm press released should be issued. The Administration undertook to post up the invitation for submissions in NT District Offices of the Home Affairs Department. With the consent of RCs, this could also be displayed at their premises.

14. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
14 November 2002

Annex

**Proceedings of the meeting of the
Bills Committee on Village Representative Election Bill
on Tuesday, 22 October 2002 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000 - 0520	Dr David CHU Dr TANG Siu-tong Mr IP Kwok-him Mr WONG Sing-chi Mr Albert CHAN	Election of Chairman	
0521 - 1650	Chairman Admin	Introduction of the Bill	
1651 - 3339	Chairman Dr TANG Siu-tong Mr Andrew CHENG Mr Albert CHAN Mr WONG Sing-chi	Their views on the Bill	ALA4 (see para. 11 of the minutes)
3340 - 4259	Chairman Mr LAU Wong-fat Dr TANG Siu-tong Mr Andrew WONG	Views of Heung Yee Kuk on the Bill and voting on the Bill by Councillors of Heung Yee Kuk on 8 October 2002	
4300 - 4532	Chairman Mr Albert CHAN	Residency requirements for voters and candidates for Resident Representative elections	
4533 - 4806	Chairman Dr TANG Siu-tong Mr Andrew WONG	Voting on the Bill by Councillors of Heung Yee Kuk on 8 October 2002	
4807 - 5405	Chairman Mr Andrew WONG	The judgment of the Court of Final Appeal (CFA) delivered on 22 December 2000	

5406 - 010331	Chairman Admin	Admin's response to the concerns and issues raised by members	
01 0332 - 01 1254	Chairman Dr TANG Siu-tong Admin	Proposal to amend the Heung Yee Kuk Ordinance so that Heung Yee Kuk would represent indigenous inhabitants of the New Territories (NT) only	
01 1255 - 01 1435	Admin	Legal advice obtained on the Bill	
01 1436 - 01 2032	Chairman Mr Albert CHAN Admin	Proposal to amend the Bill to introduce elections for representatives of all residents of NT by universal suffrage	
01 2033 - 01 2233	Mr WONG Yung-kan	His views on the Bill	
01 2234 - 01 2701	Admin	Response to the concerns and issues raised by members	
01 2702 - 01 3502	Chairman Mr Andrew CHENG Admin	Proposal to separate elections for the two types of representatives and introduce elections for representatives of all residents of NT by universal suffrage	
01 3503 - 01 3957	Chairman Dr TANG Siu-tong Admin	Legal advice obtained on the Bill	
01 3958 - 01 4859	Chairman Mr Albert CHAN Admin	Proposal to separate elections for the two types of representatives and introduce elections for representatives of all residents of NT by universal suffrage	
01 4900 - 01 4947	Mr Andrew WONG	Provision of a copy of the legal advice obtained by Admin on the Bill	

01 4948 - 01 5711	Chairman Mr LAU Wong-fat Mr Albert CHAN Admin Dr TANG Siu-tong Mr Andrew WONG Mr WONG Yung-kan	Date of the next two meetings and invitation of submissions from deputations	Admin (see paras 10 and 13 of the minutes)
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**Note : The audio records of the above proceedings are kept at the
Legislative Council Library**

Council Business Division 2
Legislative Council Secretariat
14 November 2002