

**立法會**  
**Legislative Council**

LC Paper No. CB(2)690/02-03  
(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 Friday, 22 November 2002 at 8:30 am  
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  
Hon TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Albert CHAN Wai-yip  
Hon WONG Sing-chi

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

Ms Janet WONG  
Acting Director of Home Affairs

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

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Ms Monica CHEN  
Assistant Director of Home Affairs (1)

Mr Lawrence PENG  
Acting Senior Assistant Law Draftsman  
Department of Justice

Mr Alan CHONG  
Government Counsel  
Department of Justice

Mr Philip LAM Min-kei  
Chief Liaison Officer (NT)  
Home Affairs Department

**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

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**I. Meeting with the Administration**  
[LC Paper No. CB(2)329/02-03(01)]

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

2. Members noted the Administration's response to the concern and issues raised by members at the Bills Committee meeting on 22 October 2002.

Justification for indigenous inhabitants who were residents in a village having two votes in Village Representative (VR) elections  
[Annex A to LC Paper No. CB(2)329/02-03(01)]

3. Members noted that the Administration had used the three tests, necessity, rationality and proportionality tests, specified by Bokhary J in *The Queen v Man Wai-keung (No. 2)* [1992] 2 HKCLR 207 to justify the departure from literal equality in the treatment of indigenous inhabitants and non-indigenous inhabitants

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in VR elections, i.e., the former having two votes while the latter only one vote, in paragraphs 8 to 18 in Annex A to LC Paper No. CB(2)329/02-03(01). As requested by members, Deputy Secretary for Home Affairs (2) (DS(HA)2) supplemented the following information on the justification for the disparity of treatment –

- (a) as regards the necessity test, indigenous inhabitants had all along elected their own VRs to handle affairs relating to their traditional rights and interests, which, according to Article 40 of the Basic Law, should be protected. There was a genuine need for indigenous inhabitants who were residents in an Existing Village to have two types of VRs to represent their different interests: Indigenous Inhabitant Representative to represent their interests as indigenous inhabitants and Resident Representative to represent their interests as residents. It was therefore justifiable for them to have two votes in VR elections;
- (b) as regards the proportionality test, the Indigenous Inhabitant Representative and the Resident Representative had to be different persons. They would not form a village council or committee and hence need not "compete" directly with each other. Both would possess the same rights as members of the Rural Committee (RC) of the area in which the village was situated. Thus, the effect of any inequality was kept to a minimum at the village level and could be justified as rational and proportionate. In addition, the electoral arrangements proposed in the Bill would be reviewed in 2007 and improvements, if required, would be introduced to the rural election system;
- (c) if the electoral arrangements in the Bill were challenged at court, the principle of margin of appreciation would be considered by the court in making its ruling. The decision of the Administration would not be over-ridden as long as the set of electoral arrangements in the Bill was one of the sensible and reasonable options for VR election system; and

4. Dr TANG Siu-tong informed members that the legal advice he obtained indicated that the Bill was not consistent with the Bill of Rights. He added that there could be some overlaps in the functions of the two types of VRs and hence they, to a certain extent, would "compete" with one another. Dr TANG also queried whether it was relevant for the Administration to refer to the general test in *The Queen v Man Wai-keung (No. 2)* to justify its proposal to give two votes to indigenous inhabitants as it was a criminal case. Dr TANG expressed reservations

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about the legality of the Bill. He cautioned that Legislative Council (LegCo) Members would be held responsible if the Bill was passed and the electoral arrangements were challenged and overridden in future court cases.

5. Mr Andrew WONG opined that a certain degree of disparity of treatment in electoral arrangements might be acceptable as long as it was justifiable and the influence of each voter on the formation of the council concerned would be similar. He also pointed out that the scope of application of the principle of margin of appreciation might be limited.

Consistency of the Bill with the Heung Yee Kuk Ordinance  
[Annex B to LC Paper No. CB(2)329/02-03(01)]

6. Members noted the response from the Administration in Annex B to LC Paper No. CB(2)329/02-03(01) to members' concern whether the demarcation of boundaries for Existing Villages, which might result in some residents in the villages of the New Territories (NT) ineligible to participate in VR elections, was consistent with the Heung Yee Kuk Ordinance (Cap. 1097) under which Heung Yee Kuk was interpreted as representing the whole population of NT.

7. Dr TANG Siu-tong considered that to be consistent with the Heung Yee Kuk Ordinance, the Bill should include all residents of NT in the VR election system instead of those in the villages only. He also pointed out that if District Council (DC) elections could cover all residents in Hong Kong, there should not be any practical difficulties for the Administration to include all residents of NT in VR elections.

8. In response, DS(HA)2 clarified that the Heung Yee Kuk Ordinance and the Bill were two separate issues. He added that the former did not have an overriding effect over other legislation. The fact that Heung Yee Kuk was interpreted under the former to be representing all population in NT did not imply that VR elections had to cover all residents of NT. DS(HA)2 further explained that DC elections were different from VR elections. Demarcation of village boundaries was necessary for Resident Representative elections whereas voters for legCo/DC elections were assigned to constituencies according to their registered addresses. It would be impracticable to include in the Existing Village constituencies village houses that were far away from the villages.

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Residency requirements on voters and candidates for Resident Representative elections

[Annexes C to F to LC Paper No. CB(2)329/02-03(01)]

9. Mr Andrew CHENG referred members to the justifications put forth by the Administration in paragraphs 15 and 16 in Annex C to LC Paper No. CB(2)329/02-03(01) for the residency requirements on voters and candidates for Resident Representative elections. He said that he was extremely dissatisfied with the use of the phrase “sensible and fair-minded” to describe people who regarded the residency requirements as reasonable restrictions, which implied that those who objected to the requirements were “not sensible and fair-minded”. Both Mr Andrew CHENG and Mr Albert CHAN opined that the fact that the requirements were applicable to all could not justify their rationality and reasonableness. They held the view that the requirements were too strict and should be lowered so that they would be consistent with those in existing DC and LegCo elections. They informed members that the Democratic Party would propose an amendment to lower these requirements.

10. DS(HA)2 responded that the phrase “sensible and fair-minded” was quoted from the court case *The Queen v Man Wai-keung (No. 2)*. He further explained that VR elections were different from LegCo elections in that the constituencies of the former were smaller than those of the latter in terms of both area and population. It was necessary for both the voters and candidates in VR elections to establish their association with the village communities concerned and develop their sense of belonging to the villages so that voters could vote for the right VR candidates while the candidates would know the village as well as the residents there well enough to discharge the duties of VRs effectively. The residency requirements in VR elections should therefore be stricter than those in LegCo elections. DS(HA)2 added that if the requirements were challenged at court in future, the principle of margin of appreciation would be considered by the court.

11. Both Mr Andrew CHENG and Mr Albert CHAN maintained their view that the same requirements should be adopted for all public elections in which all candidates were required to be familiar with their constituencies. Mr TAM Yiu-chung, however, considered that the residency requirements proposed in the Bill were acceptable. Mr Andrew WONG opined that it was acceptable to impose residency restrictions on voters and candidates for public elections but those on the former should not be as strict as those on the latter. He also pointed out that VR elections, which were to a certain extent clansmen’s elections of the inhabitants of NT, were different from LegCo elections so that the restrictions on voters and candidates for these elections might not necessarily be the same.

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12. In response to members' questions, DHA clarified that a "resident" in an Existing Village referred to in the Bill meant a person whose principal residential address was in the Village, and "principal residential address" meant the address of the dwelling place at which the person resided and which constituted the person's sole or main home. In case of disputes, the amount of time a person stayed in the dwelling place would be used to determine whether that place was considered his principal residential address. DHA further explained that a resident might register as a voter in the Resident Representative election for an Existing Village if he met all the eligibility requirements. The Electoral Registration Officer would then compile and publish a provisional register of electors for the Village in accordance with the Electoral Affairs Commission Regulations. A person who was dissatisfied with a decision of the Electoral Registration Officer might appeal against the decision to a Revising Officer. A hearing of the appeal would be held during which the appellant would need to prove his case to the Revising Officer whose decision would be final. There was hence a good system in place to ensure the voting right of eligible voters be protected if justified.

13. Mr Andrew WONG, Dr TANG Siu-tong, Mr Albert CHAN and Mr WONG Sing-chi all pointed out that for practical reasons, some of the villagers had moved out of the villages to the vicinity of their work place. Many of them, however, still maintained their residences in and association with the villages. Most of them were born and had lived in the villages for a very long time and continued to make great contributions to the villages. However, these people would become ineligible to be registered as voters for VR elections in accordance with the definition of principal residential address of voters in the Bill. They anticipated that such definition would give rise to a lot of grievances and controversies which should be prevented by amending the Bill so that these people would be allowed to choose their residences in the villages concerned as their principal residential addresses and be allowed to register as voters for VR elections in the villages. Dr TANG Siu-tong added that although the determination of the Revising Officer was final, people might still seek judicial review at court.

Adm 14. The Administration was requested to provide a written response to the following issues –

*Justification for indigenous inhabitants who were residents in a village having two votes in VR elections*

- (a) detailed elaboration on its justification for disparity of treatment for indigenous inhabitants who were residents in a village having two votes in VR election;

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*Demarcation of boundaries for Existing Villages*

- (b) set of guidelines and principles for demarcation of boundaries for Existing Villages;

*Residency requirements on voters and candidates for Resident Representative elections*

- (c) details of the court case to illustrate how the term “ordinarily resided” used in the residency requirement on candidates for DC and LegCo elections was interpreted;
- (d) amending the Bill to the effect that the residency requirements on voters and candidates for Resident Representatives elections would be consistent with those for DC and LegCo elections; and
- (e) amending the Bill to the effect that a person with a residence in and close association with an Existing Village would be allowed to choose to use his residence in the Village as his principal residential address for the purpose of voter registration for the VR election in the Village.

- ALA 15. Assistant Legal Adviser undertook to provide details of the court case *The Queen v Man Wai-keung (No. 2)* for members’ reference.

**II. Any other business**

16. The next meeting of the Bills Committee would be held on Wednesday, 4 December 2002 at 8:30 am.

17. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2  
Legislative Council Secretariat  
18 December 2002

**Proceedings of the meeting of the  
Bills Committee on Village Representative Election Bill  
on Friday, 22 November 2002 at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
0000 - 1357	Chairman Admin Dr TANG Siu-tong ALA4	<u>Annex A to LC Paper No. CB(2)329/02-03(01)</u> Justification provided by the Admin for the disparity of treatment for some indigenous inhabitants having two votes in Village Representative (VR) election	
1358 - 2444	Chairman Admin Dr TANG Siu-tong ALA4	<u>Annex B to LC Paper No. CB(2)329/02-03(01)</u> Admin's response to members' concern whether the demarcation of boundaries for Existing Villages, which might result in some residents in the villages of the New Territories (NT) ineligible to participate in VR elections, was consistent with the Heung Yee Kuk Ordinance (Cap. 1097)	<b>Admin</b> (see para. 14(b) of the minutes)
2445 - 4330	Chairman Mr Andrew WONG ALA4 Admin Dr TANG Siu-tong	<u>Annex A to LC Paper No. CB(2)329/02-03(01)</u> Details of the court case <i>The Queen v Man Wai-keung (No. 2)</i> Overriding effect of the Bill of Rights	<b>ALA</b> (see para. 15 of the minutes)
4331 - 4556	Chairman Mr Andrew CHENG Admin	Justification provided by the Admin for the disparity of treatment for some indigenous inhabitants having two votes in VR election	<b>Admin</b> (see para. 14(a) of the minutes)
4557 - 5011	Chairman Dr TANG Siu-tong Admin	<u>Annex B to LC Paper No. CB(2)329/02-03(01)</u> Residents covered by VR elections and District Council elections	



5012 - 5834	Mr Andrew WONG Admin ALA4 Chairman Dr TANG Siu-tong	<u>Annex A to LC Paper No. CB(2)329/02-03(01)</u> Scope of application of the principle of margin of appreciation	
5835 - 010410	Chairman Admin	<u>Annex C to LC Paper No. CB(2)329/02-03(01)</u> Justifications for the residency requirements on voters and candidates for Resident Representative elections	
010411 - 010530	Chairman Mr Andrew WONG Admin	<u>Annex B to LC Paper No. CB(2)329/02-03(01)</u> Heung Yee Kuk Ordinance	
010531 - 010848	Chairman Dr TANG Siu-tong Admin	<u>Annex C to LC Paper No. CB(2)329/02-03(01)</u> Overlap in the responsibilities of the two types of VR	
010849 - 012927	Chairman Mr Andrew CHENG Admin Mr TAM Yiu-chung Mr Andrew WONG	Residency requirements on voters and candidates for Resident Representative elections	<b>Admin (see para. 14(c) of the minutes)</b>
012928 - 020944	Chairman Mr TAM Yiu-chung Admin Mr Andrew WONG Dr TANG Siu-tong Mr Albert CHAN Mr WONG Sing-chi	Definition of the "principal residential address" of a resident in the Bill	<b>Admin (see para. 14(d) and (e) of the minutes)</b>
020945 - 021023	Chairman	Date of next meeting	

**Note : The audio records of the above proceedings are kept at the LegCo Library**

Council Business Division 2  
Legislative Council Secretariat  
18 December 2002