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8 November 2002

Clerk to Bills Committee
(Attn.: Miss Lolita Shek)
Bills Committee on Village Representative
Election Bill
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Miss Shek,

Bills Committee on Village Representative Election Bill

Thank you for your letter of 25 October 2002.

Our comments on the concerns and issues raised by Members at the Bills Committee meeting held on 22 October 2002 (as listed in paragraph 10(a) to (n) of the draft minutes of the meeting) are set out in the following annexes:

- (a) Annex A - "Why is it justifiable for some indigenous inhabitants to have two votes?";
- (b) Annex B - "Is the Village Representative Election Bill consistent with the Heung Yee Kuk Ordinance?";
- (c) Annex C - "Are the proposed arrangements in the Village Representative Election Bill consistent with the Hong Kong Bill of Rights?";

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- (d) Annex D - "Why is the residency requirement for nomination as a candidate in a Resident Representative election set at six years?";
- (e) Annex E - "Are the residency requirements for electors and candidates in Resident Representative elections consistent with the Hong Kong Bill of Rights and the International Covenant on Civil and Political Rights?";
- (f) Annex F - "Residency in a village and the right to vote in a Resident Representative election";
- (g) Annex G - "Indigenous Villages and Existing Villages";
- (h) Annex H - "Electoral arrangements in respect of Indigenous Villages and Existing Villages";
- (i) Annex I - "Management and use of village offices";
- (j) Annex J - "Why is there a need for an Indigenous Inhabitant Representative?";
- (k) Annex K - "Functions of the two types of Village Representatives";
- (l) Annex L - "Proposed allowance for Village Representatives";
- (m) Annex M - "Why are civil servants not allowed to run for the office of Village Representative?"; and
- (n) Annex N - "Alternative models for Village Representative elections".

- 3 -

Please let me know if you have any further queries.

Yours sincerely,

(Stephen Fisher)
for Secretary for Home Affairs

c.c. DHA (Attn.: Miss Monica Chen)
D of J (Attn.: Mr. Lawrence Peng)

**Why is it justifiable
for some indigenous inhabitants to have two votes?**

Concern/Issue

1. The Administration is asked to advise whether the proposed arrangements for Village Representative elections as set out in the Village Representative Election Bill are consistent with the laws in Hong Kong and the judgment delivered by the Court of Final Appeal on 22 December 2000. More specifically, the Administration is asked to justify why indigenous inhabitants who are resident in a village could have two votes.

Response

2. The need for new arrangements for the conduct of Village Representative elections has arisen as a result of the decision of the Court of Final Appeal in the case of Secretary for Justice v Chan Wah and others (FACV Nos 11 and 13 of 2000).
3. Mr. Chan Wah of Po Toi O in Sai Kung and Mr. Tse Kwan Sang of Shek Wu Tong in Yuen Long challenged the validity of the electoral arrangements for the posts of village representatives of these two villages by judicial review proceedings. Both Mr. Chan and Mr. Tse were born and brought up in these two villages and have lived there all their lives. Furthermore, Mr. Chan is married to an indigenous inhabitant. Under the electoral arrangements made in 1999 for the posts of village representatives of these two villages, Mr. Chan was excluded as a voter and Mr. Tse was excluded from standing as a candidate on the ground they are not indigenous inhabitants (i.e., persons who can establish patrilineal descent from an ancestor who was a resident of a village that was in existence in the New Territories in 1898).
4. The 1999 electoral arrangements used in Shek Wu Tong were ruled by the Court of Final Appeal on 22 December 2000 to be inconsistent with Article 21(a) of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap 383), and the arrangements used in Po Toi O were ruled to be

inconsistent with both Article 21(a) of the Hong Kong Bill of Rights and section 35(3) of the Sex Discrimination Ordinance (Cap 480). Many other indigenous villages used similar arrangements in the 1999 village representative elections.

5. The Court of Final Appeal also ruled that the Secretary for Home Affairs, in deciding whether to approve an elected Village Representative, has to consider whether the person elected to represent a village was elected in accordance with electoral arrangements which are consistent with the Bill of Rights and the Sex Discrimination Ordinance.
6. The Village Representative Election Bill is consistent with Article 21(a) of the Hong Kong Bill of Rights and section 35(3) of the Sex Discrimination Ordinance. The main elements of the proposed electoral arrangements under the Bill are as follows:

(A) General

- (a) Village Representative elections should be held for indigenous villages (Indigenous Villages or Composite Indigenous Villages) and existing village settlements (Existing Villages) now included in the village representation system in the New Territories;
- (b) all Village Representatives should be elected;
- (c) all Village Representatives should be members of the Rural Committee of the area in which the Village is located;
- (d) a candidate for the office of village representative should be nominated by at least five registered electors;

(B) Types of Village Representatives

- (e) there should be two types of Village Representatives:-
 - (i) an Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village;
and
 - (ii) a Resident Representative for an Existing Village;

- (f) an Indigenous Inhabitant Representative (or Representatives) for an Indigenous Village or a Composite Indigenous Village should be elected by an electorate comprising the indigenous inhabitants of the Village;
- (g) the functions of an Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village are to reflect views on the affairs of the Village (including the affairs of the Existing Village concerned) on behalf of the indigenous inhabitants of the Village and to deal with all affairs relating to the lawful traditional rights and interests, and the traditional way of life of those indigenous inhabitants;
- (h) a Resident Representative for an Existing Village should be elected by an electorate comprising the residents living in the Village;
- (i) the function of a Resident Representative for an Existing Village is to reflect views on affairs of the Village on behalf of the residents of the Village; a Resident Representative should not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants;
- (j) a person could register as an elector for both an Indigenous Village (or a Composite Indigenous Village) and an Existing Village, if he or she is both an indigenous inhabitant of the Indigenous Village and a resident in the Existing Village;
- (k) no person should be allowed to stand as a candidate in more than one Village at the same time;

(C) Number of Village Representatives

- (l) the current number of Indigenous Inhabitant Representatives (ranging from one to five) for an Indigenous Village or a Composite Indigenous Village would be retained; and
- (m) there would be one Resident Representative for an Existing Village.

7. One of the major criticisms of the proposed electoral arrangements is that this is a departure from identical treatment for all villagers (one person, one vote). The sticking point for some non-indigenous villagers is that indigenous villagers who are resident in an Existing Village would have two votes. The question now is: can such a departure from identical treatment be justified.
8. On the question of whether any disparity of treatment can be justified, Bokhary J (as he then was) said in case of *The Queen v Man Wai-keung (No.2)* [1992] 2 HKCLR 207 (at p. 217) that:

"Clearly, there is no requirement of literal equality in the sense of unrelentingly identical treatment always. For such rigidity would subvert rather than promote true even-handedness. So that, in certain circumstances, a departure from literal equality would be a legitimate course and, indeed, the only legitimate course. But the starting point is identical treatment. And any departure therefrom must be justified. To justify such a departure it must be shown: one, that sensible and fair-minded people would recognize a genuine need for some difference of treatment; two, that the difference embodied in the particular departure selected to meet that need is itself rational; and, three, that such departure is proportionate to such need."

9. We are of the view that the departure from the principle of identical treatment for all villagers is justified. There is a genuine need for dual representation (i.e., an Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village and a Resident Representative for an Existing Village). The proposal is also rational and proportionate to the need for dual representation.
10. Since indigenous inhabitants and residents have different interests, it is reasonable for them to have separate representatives.
11. Sensible and fair-minded people looking at the proposed arrangements would recognize a need for some difference in treatment among the following categories of people :
 - (a) indigenous inhabitants who are resident in an Existing Village;
 - (b) indigenous inhabitants who are not resident in an Existing Village; and

- (c) residents in an Existing Village who are not indigenous inhabitants.
12. It is justifiable for indigenous inhabitants who are resident in an Existing Village to vote in both elections since they have to be represented by both the Indigenous Inhabitant Representative and the Resident Representative if they are to be represented effectively.
 13. The right to effective representation can be derived from Article 25(a) of the International Covenant of Civil and Political Rights itself, which protects every citizen without unreasonable restrictions the right to take part in the conduct of public affairs directly or through freely chosen representatives. This right is not only applicable to non-indigenous villagers but also to indigenous inhabitants.
 14. In order to be represented effectively, indigenous inhabitants who are resident in an Existing Village need two representatives to represent their interests as indigenous inhabitants and as residents.
 15. Under clause 22(4) of the Bill, a person is not eligible to be nominated as a candidate in more than one election. A person is also restricted by clause 22(3) from holding more than one Village Representative office. Thus, the effect of any inequality is kept to a minimum at the village level and can be justified as rational and proportionate.
 16. At the village level, the two types of Village Representatives would be presenting different interests. They do not "compete" directly with one another as they do not form a village council or committee.
 17. The Bill also contains a saving provision (clause 62(3)) to safeguard the right of participation in public life beyond the village level.
 18. The provisions of the Bill are consistent with the Sex Discrimination Ordinance. We have consulted the Equal Opportunities Commission on the gazetted Bill and the Commission agrees that the provisions of the Bill are consistent with the Sex Discrimination Ordinance.

Home Affairs Bureau

November 2002

**Is the Village Representative Election Bill
consistent with the Heung Yee Kuk Ordinance?**

Concern/Issue

1. The Administration is asked to advise whether the demarcation of boundaries for Existing Villages, which may result in some residents in the villages of the New Territories ineligible to participate in Village Representative elections, is consistent with the Heung Yee Kuk Ordinance (Cap 1097) under which the Heung Yee Kuk is interpreted as representing the whole population of the New Territories.

Response

2. A system of village representation has evolved in the New Territories over the decades. Village Representative elections were held in 1999 for about 700 villages. About 600 of these were indigenous villages and about 100 were non-indigenous villages or traditional community groups.
3. The main purposes of the Village Representative Election Bill are to provide for the establishment of the office of resident representative for an Existing Village; to provide for the establishment of the office of indigenous inhabitant representative for an Indigenous Village or a Composite Indigenous Village, and to provide for the elections of Resident Representatives and Indigenous Inhabitant Representatives.
4. Under the proposed arrangements for Village Representative elections, elections would be held for indigenous villages (Indigenous Villages or Composite Indigenous Villages) and existing village settlements (Existing Villages) now included in the village representation system in the New Territories. No new villages would be added. A set of general guidelines have been used to draw up the boundaries for Existing Villages.
5. An Indigenous Village is a community comprising the indigenous inhabitants of that Village. Such a community is not a geographically-defined entity. On the other hand, an Existing

Village is a geographically-defined entity. Both indigenous and non-indigenous villagers living within the delineated area are residents of that Existing Village.

6. It is possible that some residents living outside the boundaries of Existing Villages could not vote in the 2003 Village Representative elections. This could not be helped because it is impracticable to include isolated village houses in the locality within the delineated area of the boundary map.
7. Settlements which are not included in the present village representation system are not covered in the 2003 elections. However, we plan to review the boundaries in time for the next round of elections in 2007.
8. The Preamble of the Heung Yee Kuk Ordinance states that:

"WHEREAS --

- (a) the HEUNG YEE KUK has in the past served as a valuable advisory body to the Government on New Territories affairs and has been a forum where leaders of opinion in the Territories have been able to exchange views; and
- (b) it is now considered desirable that the HEUNG YEE KUK should become a statutory advisory body with a constitution so framed as to ensure that it will as far as possible be truly representative of informed and responsible opinion in the New Territories:"

9. It is the intention of the Ordinance that:
 - (a) the Kuk be turned into a statutory body;
 - (b) the Kuk should continue to be an advisory body; and
 - (c) the Kuk should as far as possible be truly representative of informed and responsible opinion in the New Territories.
10. We agree that if the Kuk is to be truly representative, it should represent all villagers in the New Territories, both indigenous and non-indigenous. However, this does not mean that every village

house in the New Territories should be included in the Village Representative elections. This would be impracticable.

11. The Village Representative has a role beyond the village as a result of the system of representative government in the New Territories. Village Representatives are members of the Rural Committee of the area in which the village is situated. Members of the Rural Committee (including Village Representatives and other members) elect the Chairman and Vice-Chairman of the Rural Committee from among themselves. There are altogether 27 Rural Committees in the New Territories.
12. Pursuant to the Heung Yee Kuk Ordinance, if a Village Representative is elected as the Chairman or Vice-Chairman of the Rural Committee, he will automatically be an Ex Officio Councillor of the Heung Yee Kuk Full Council. He can also be elected by the Ex Officio Councillors of three particular districts, namely Tai Po, Yuen Long and Southern District (the three traditional districts of the New Territories) to be a Special Councillor of the Full Council. If a Village Representative is elected as the Chairman of a Rural Committee, he becomes an Ex Officio Member of the Executive Committee of the Kuk. If he is elected as a Special Councillor or as a Vice-Chairman of an Rural Committee, he may be elected as an Ordinary Member of the Executive Committee of the Kuk.
13. However, it should be pointed out that being a member of a Rural Committee is only an "incidental" function of the Village Representative and not his only or even primary function.
14. To conclude, the fact that the Kuk should "as far as possible be truly representative of informed and responsible opinion in the New Territories" should not mean that Village Representative elections should include all residents in village-type settlements in the New Territories.

Home Affairs Bureau

November 2002

**Are the proposed arrangements in the
Village Representative Election Bill
consistent with the Hong Kong Bill of Rights?**

Question

1. The Administration is asked to advise whether the following proposed arrangements in the Village Representative Election Bill are consistent with the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap 383) :-
 - (a) indigenous inhabitants would have two votes whereas non-indigenous villagers would have only one; and
 - (b) a person is required to have resided in an Existing Village for three years in order to be registered as an elector in a Resident Representative election and to reside in the Village for six years in order to be nominated as a candidate?

Different Treatment for Indigenous Inhabitants

2. Under the Village Representative Election Bill, there is different treatment for the following three categories of villagers in the New Territories :-
 - (a) indigenous inhabitants who are resident in a village;
 - (b) indigenous inhabitants who are not resident in a village; and
 - (c) non-indigenous villagers.
3. Indigenous inhabitants who are resident in a village could vote in both an Indigenous Inhabitant Representative election and a Resident Representative election.
4. Indigenous inhabitants who are not resident in a village could only vote in an Indigenous Inhabitant Representative election.

5. Non-indigenous villagers could only vote in a Resident Representative election.
6. On the question of whether any disparity of treatment can be justified, Bokhary J (as he then was) said in *The Queen v Man Wai-keung* (No. 2) [1992] 2 HKCLR 207 at p. 217 that:

" Clearly, there is no requirement of literal equality in the sense of unrelentingly identical treatment always. For such rigidity would subvert rather than promote true even-handedness. So that, in certain circumstances, a departure from literal equality would be a legitimate course and, indeed, the only legitimate course. But the starting point is identical treatment. And any departure therefrom must be justified. To justify such a departure it must be shown: one, that sensible and fair-minded people would recognize a genuine need for some difference of treatment; two, that the difference embodied in the particular departure selected to meet that need is itself rational; and, three, that such departure is proportionate to such need."
7. According to the learned judge, there are three tests:
 - (a) a necessity test;
 - (b) a rationality test; and
 - (c) a proportionality test.
8. As regards the necessity test, there is a need for indigenous inhabitants who reside in a village to have two Village Representatives to represent their different interests : their interests as indigenous inhabitants and their interests as residents. Sensible and fair-minded people would recognize the need for "dual representation" for indigenous inhabitants living in a village in the New Territories.
9. As regards the rationality test, the question is whether sensible and fair-minded people would condemn the proposed arrangements as unreasonable. The proposed arrangements would make sense to such people. They would not condemn this dual representation as irrational. The proposed arrangements meet the requirements of the right to take part in the conduct of public affairs without unreasonable restrictions.

10. As regards the proportionality test, the dual representation system is not disproportionate because the two types of Village Representatives represent different interests. Furthermore, Village Representatives would not form a village council or committee where they need to "compete" with each other. The role of the two types of Village Representatives is mainly advisory.
11. The Administration is of the view that the proposed arrangements are consistent with the Bill of Rights.
12. Please also see Annex A "Why is it justifiable for some indigenous inhabitants to have two votes?".

Residency Requirements

13. Under clause 15(4) of the Bill, a person is not eligible to be registered as an elector for an Existing Village unless he -
 - " (a) is a resident of the Village;
 - (b) has been a resident of the Village for the 3 years immediately before applying to be registered;
 - (c) is an adult at the time of applying to be registered; and
 - (d) is a Hong Kong permanent resident."
14. Under clause 22(1) of the Bill, a person is eligible to be nominated as a candidate at an election for an Existing Village only if he -
 - " (a) is a resident of the Village;
 - (b) has been a resident of the Village for the 6 years immediately preceding the nomination;
 - (c) has reached 21 years of age;
 - (d) is registered, and eligible to be registered, as an elector for the Village;
 - (e) is not disqualified from voting at the election; and

- (f) is not disqualified from being nominated as a candidate at the election, or from being elected as a Resident Representative for the Village, by virtue of section 23 or any other law."
15. These eligibility requirements are applicable to all, i.e., both indigenous inhabitants and non-indigenous villagers. There is no disparity of treatment.
16. The residency requirements are set to ensure that the electors and the candidates have a "sense of belonging" to the Village. The requirements would not be regarded as unreasonable restrictions by sensible and fair-minded people. In fact, it can be argued that it is unreasonable for transient or short-term residents to have a say in the long-term interest and development of a village. As they are applicable to everyone, the residency requirements are not inconsistent with the Hong Kong Bill of Rights.

Home Affairs Bureau

November 2002

**Why is the residency requirement for nomination
as a candidate in a Resident Representative election set at six years?**

Question

1. Why was the residency requirement for nomination as candidates in Resident Representative elections raised from five years to six years after public consultation on the proposed arrangements for the conduct of Village Representative elections?

Response

2. It was proposed in the public consultation paper entitled "Proposed Arrangements for the Conduct of Village Representative Elections" that for a Resident Representative election, a person should have resided in a village for at least three years immediately preceding the nomination in order to be eligible for registration as an elector and for five years in order to be eligible for nomination as a candidate.
3. Many indigenous inhabitants suggested during the consultation exercise that the residency requirement for registration as an elector should be five years and that for nomination as a candidate be seven years. The Heung Yee Kuk and many Rural Committees also supported this proposal.
4. A residency requirement is to ensure that the person running for the office has a sufficient knowledge and understanding of the people living in the village and a sense of belonging to the community. A reasonably long period of time is required for the person to know the people and for the people to know him. The Administration is of the view that six years is a reasonable period of time for a person to develop a sense of belonging to a community.

5. Under clause 22(1) of the Village Representative Election Bill, a person is eligible to be nominated as a candidate at an election for an Existing Village only if the person "has been a resident of the Village for the 6 years immediately preceding the nomination".

Home Affairs Bureau

November 2002

**Are the residency requirements for electors
and candidates in Resident Representative elections
consistent with the Hong Kong Bill of Rights and the
International Covenant on Civil and Political Rights?**

Question

1. The Administration is asked to advise whether there are residency requirements for electors and candidates in Legislative Council and District Council elections similar to those for electors and candidates in Resident Representative elections. If not, whether the residency requirements for electors and candidates in Resident Representative elections are consistent with the Hong Kong Bill of Rights and international human rights conventions?

Response

2. A person is not eligible to be registered as an elector for a constituency in the Legislative Council and District Council elections unless he is a permanent resident in Hong Kong. The person also has to reside in Hong Kong. He is allocated a constituency in the Legislative Council and the District Board elections according to his residential address (i.e. his only or principal residence in Hong Kong).
3. Under section 37 of the Legislative Council Ordinance (Cap 542), a person is eligible to be nominated as a candidate at an election for a geographical or functional constituency or for election by the Election Committee, only if the person "has ordinarily resided in Hong Kong for the 3 years immediately preceding the nomination". There is no requirement for a candidate to be resident in the constituency that he is running for office.
4. Under section 20(1) of the District Councils Ordinance (Cap 547), a person is eligible to be nominated as a candidate at an election only if the person "has ordinarily resided in Hong Kong for the 3 years immediately preceding the nomination". Again, there is no requirement for a candidate to be resident in the constituency that he is running for office.

5. As can be seen above, the residency requirements imposed on electors and candidates under the Bill for Resident Representative elections are not found in the Legislative Council and District Council elections.
6. Under the Village Representative Election Bill, a "resident", in relation to an Existing Village, is defined as a person whose principal residential address is in the Village. The Bill defines "principal residential address", in relation to a person, as the address of the dwelling place at which the person resides and which constitutes the person's sole or main home. Thus, a person has to establish that his sole or main home is in the Village before he can be a resident of the Village. This requirement is a higher test than the requirement for a person to "have ordinarily resided" in the Village for a certain period of time. See also Annex D "Why is the residency requirement for nomination as a candidate in a Resident Representative election set at six years?".
7. The residency requirements for candidates in Resident Representative elections are consistent with the Hong Kong Bill of Rights and international human rights conventions.
8. There is identical treatment for both indigenous inhabitants and non-indigenous villagers. The residency requirements are justifiable because:
 - (a) there is a need to impose such a requirement to ensure that the electors and the candidates have a knowledge and understanding of the Village and a sense of belonging to the village community;
 - (b) the requirement is reasonable since it helps to prevent "vote planting" in a small geographical constituency; and
 - (c) the requirement is reasonable and balanced; it is neither too long nor too short.

Home Affairs Bureau

November 2002

**Residency in a village and the
right to vote in a Resident Representative election**

Concern/Issue

1. The Administration is asked to advise on the impact of the proposed residency requirements on the voting rights of residents of the New Territories given that some non-indigenous residents might have just moved out of a village and would thereby become ineligible to vote in the Resident Representative election after the enactment of the Village Representative Election Bill.

Response

2. Under clause 15(4)(a) of the Village Representative Election Bill, a person is not eligible to be registered as an elector for an Existing Village unless the person is, inter alia, a resident of the Village. This residency requirement applies to both indigenous inhabitants and non-indigenous villagers.
3. Under clause 15(3) of the Bill, the Electoral Registration Officer may not include a elector's name in a subsequent provisional register for an Existing Village if he "is satisfied on reasonable grounds that the person has not been a resident of the Village for the 3 years immediately before the compilation of the register". The Electoral Registration Officer would also omit the person's name from the final register for the Village.
4. Clause 17(4)(a) empowers the Electoral Registration Officer to strike out the names of the persons whom the Electoral Registration Officer is satisfied on reasonable grounds as being no longer eligible to have their names included in the final register for the Village.
5. If an elector for an Existing Village ceases to be a resident of the Village after registration, he is disqualified from voting under clause 14(a) of the Bill.

6. The right to vote in a Resident Representative election depends on residency in an Existing Village. If a person has moved out of a Village before registration of electors for that Village, he is not eligible to be registered as an elector.

Home Affairs Bureau

November 2002

Indigenous Villages and Existing Villages

Issues

1. The Administration is asked to provide the following lists on the basis of the villages listed in Schedules 1 to 3 of the Village Representative Election Bill -
 - (a) villages which no longer existed physically;
 - (b) villages which do not have boundaries;
 - (c) villages which have been relocated and where most of the houses in the new villages have been sold to non-indigenous residents;
 - (d) villages where most of the non-indigenous residents would be ineligible to register as electors or be nominated as candidates in Resident Representative elections if the residency requirements set out in the Bill are adopted.

Response

2. Under the Village Representative Election Bill, there are three types of villages:
 - (a) Existing Villages

there are 693 Existing Villages listed under Schedule 1 to the Bill;
 - (b) Indigenous Villages

there are 586 Indigenous Villages listed under Schedule 2 to the Bill; and
 - (c) Composite Indigenous Villages

there are 15 Composite Indigenous Villages listed under Schedule 3 to the Bill.

3. Existing Villages are village settlements which are currently included in the village representation system. They include both indigenous and non-indigenous villages.
4. Very briefly, Indigenous Villages include :-
 - (a) villages which existed in the New Territories in 1898;
 - (b) resited settlements of villages which existed in the New Territories in 1898;
 - (c) villages branched off from villages which existed in the New Territories in 1898.
5. Composite Indigenous Villages are entities which include a number of indigenous villages, but are represented by one Village Representative.
6. As regards 1(a) above, not all Indigenous Villages are actual settlements. 14 of these Indigenous Villages do not exist on the ground. They include:

No. in Schedule 2	Village	District	Rural Committee
30	Chung Mei San Tsuen	Tai Po	Tai Po
32	Chung Pui San Tsuen	Tai Po	Tai Po
51	Fung Shue Wo Tsuen	Kwai Tsing	Tsing Yi
98	Kam Chuk Pai San Tsuen	Tai Po	Tai Po
163	Long Ke	Sai Kung	Sai Kung
393	Siu Kau San Tsuen	Tai Po	Tai Po
410	Tai Kau San Tsuen	Tai Po	Tai Po
425	Tai Pak	Islands	Peng Chau
429	Tai Po Kau Hui	Tai Po	Tai Po
444	Tai Tsing Chau	Tsuen Wan	Ma Wan
446	Tai Uk Wai	Tsuen Wan	Tsuen Wan
529	Wan Tau Kok	Tai Po	Tai Po
530	Wang Ling Tau San Tsuen	Tai Po	Tai Po
568	Yi Pak	Islands	Peng Chau

7. As regards paragraph 1(b) above, all Indigenous Villages and Composite Indigenous Villages do not have boundaries. They are "village communities" which are not geographically-defined.
8. As regards paragraph 1(c) above, we do not have a complete list of resited villages. A few examples are the relocation of Shek Lei Pui to Hin Tin in 1926, Kau Sai to Kau Sai San Tsuen in 1952, Ma Liu Shui to Ma Liu Shui San Tsuen in 1963 and Fui Yiu Ha to Fui Yiu Ha San Tsuen in 1981. We do not have information on resited villages where most of the houses in the new villages have been sold to non-indigenous residents.
9. As regards paragraph 1(d) above, we do not have information on villages where most of the non-indigenous residents would be ineligible to register as electors or nominated as candidates in Resident Representative elections.

Home Affairs Bureau

November 2002

**Electoral arrangements in respect of
Indigenous Villages and Existing Villages**

Question

1. The Administration is asked to advise how: (a) indigenous villages which no longer existed; (b) indigenous villages which do not have boundaries; and (c) indigenous villages with a majority of non-indigenous villagers would be dealt with under the Village Representative Election Bill.

Response

2. Indigenous Villages, as conceptualized in the Village Representative Election Bill, are really "village communities". There is no need to delineate such village communities by physical boundaries. Indigenous Village are similar to "functional constituencies" in Legislative Council elections. They are not regarded as geographical constituencies.
3. If the Indigenous Inhabitants of an indigenous village still form a "village community", they are regarded as an Indigenous Village even if the original 1898 village no longer existed. Please also see Annex G "Indigenous Villages and Existing Villages".
4. An Existing Village (which is an indigenous village) with a majority of non-indigenous villagers would still elect a Resident Representative on a "one person, one vote" basis. There is no distinction between an Existing Village with a majority of indigenous inhabitants and an Existing Village with a majority of non-indigenous villagers.

Home Affairs Bureau

November 2002

Management and use of village offices

Question

1. The Administration is asked to advise how village offices would be managed and used if the Village Representative Election Bill is enacted?

Response

2. Some village offices are on private property, while others are on Government land. After the Village Representative Election Bill is enacted, village offices would be managed in the same way as they have been in the past. The Administration intends that such premises could be used by all Village Representatives of the village concerned. We will review the situation after the 2003 Village Representative elections.

Home Affairs Bureau

November 2002

**Why is there a need for an
Indigenous Inhabitant Representative?**

Question

1. The Administration is asked to advise how the traditional rights and interests of indigenous inhabitants of the New Territories would be affected if there was only one type of Village Representatives in each village and if a Village Representative was to be elected by all residents in the village and would represent both indigenous inhabitants and non-indigenous residents.

Response

2. Article 40 of the Basic Law states that :

"The lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region."
3. The lawful traditional rights and interests of indigenous inhabitants will not be affected by any provision in the Village Representative Election Bill.
4. The main reason for establishing the office of Indigenous Inhabitant Representative is to ensure that the interests of indigenous inhabitants are represented effectively.
5. According to an informal survey conducted by the Home Affairs Department in 1999 on the basis of information obtained from village representatives and village elders, there were 240,000 indigenous inhabitants represented by Village Representatives under the village representation system. Among these, 116,000 (48.3%) lived in villages in the New Territories, 54,000 (22.5%) lived in Hong Kong outside villages and 70,000 (29.2%) lived overseas. If there was only one type of Village Representatives elected by all village residents, 51.7% of the indigenous inhabitants (i.e., indigenous inhabitants not living in a village in the New Territories) would lose their right to vote.

6. Accordingly, there is a real need to have Indigenous Inhabitant Representatives to represent both indigenous inhabitants who lived in villages in the New Territories and those who lived outside these villages.

Home Affairs Bureau

November 2002

Functions of the two types of Village Representatives

Question

1. The Administration is asked to advise whether it would attach more importance to the views of one type of Village Representatives when consulting both types of Village Representatives on matters relating to village affairs.

Response

2. The Government would accord equal importance to the views of both Indigenous Inhabitant Representatives and Resident Representatives. Both types of representatives are Village Representatives.
3. The two types of Village Representatives have different functions.
4. Under clause 6(4) of the Village Representative Election Bill, the functions of an Indigenous Inhabitant Representative for an Indigenous Village or a Composite Indigenous Village are -
 - " (a) to reflect views on the affairs of the Village on behalf of the indigenous inhabitants of the Village; and
 - (b) to deal with all affairs relating to the lawful traditional rights and interests, and the traditional way of life, of those indigenous inhabitants."
5. Under clause 5(3) of the Bill, the function of a Resident Representative for an Existing Village is to reflect views on the affairs of the Village on behalf of the residents of the Village. A Resident Representative shall not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants.
6. At the village level, there could be some overlap in the functions of the two types of representatives. However, they would be representing different interests.

Home Affairs Bureau

November 2002

Proposed allowance for Village Representatives

Question

1. Would the Government pay an allowance to Village Representatives?

Response

2. The Administration has not made provision for the payment of an allowance to Village Representatives. We will consider this proposal.

Home Affairs Bureau

November 2002

**Why are civil servants not allowed
to run for the office of Village Representative?**

Question

1. The Administration is asked to advise why civil servants would not be eligible to be nominated as candidates in Village Representative elections.

Response

2. Civil servants are not allowed to run for public offices in Hong Kong while they remain as civil servants.
3. Under the District Councils Ordinance (Cap 547), a member, including an appointed, an ex officio and an elected member, is disqualified from holding office if the member becomes a civil servant.
4. Article 79 of the Basic Law provides that the President of the Legislative Council shall declare that a member of the Legislative Council is no longer qualified for the office when, inter alia, he accepts a government appointment and becomes a civil servant.
5. Similarly, clause 9(1)(a) of the Village Representative Election Bill provides that a person elected as a Village Representative is disqualified from holding office if the person is a prescribed public officer (including a civil servant).
6. The purpose of this restriction is to ensure that a person holding the office of Village Representative is not subject to :
 - (a) role conflict;
 - (b) divided loyalties; or
 - (c) conflict of interests.

7. It is normal practice in other jurisdictions that civil servants are not allowed to run for or hold an elected public office.

Home Affairs Bureau

November 2002

Alternative models for Village Representative elections

Question

1. The Administration is asked to advise:
 - (a) why the "wholly indigenous inhabitants model" was not adopted;
 - (b) why the "one person, one vote" model was not adopted; and
 - (c) whether it is possible to have a mixed system whereby the "wholly indigenous inhabitants model" existed side by side with a system under which ex officio District Council members would be elected by universal suffrage by all residents in the New Territories and the Legislative Council member returned by the Heung Yee Kuk functional constituency would be elected by the ex officio District Council members ("separate elections model").

Response

- (a) Wholly indigenous inhabitants model
2. Village representatives at present represent both indigenous villagers and non-indigenous villagers. In the 1999 village representative elections, some indigenous villages allowed non-indigenous villagers to vote. It would be a retrograde step to restrict Village Representative elections to indigenous inhabitants only.
3. Furthermore, the "wholly indigenous inhabitants model" would mean restricting the representativeness of the Rural Committees and the Heung Yee Kuk to indigenous inhabitants only. Non-indigenous villages would no longer be represented on Rural Committees. This is also a retrograde step.
4. The Heung Yee Kuk and most Rural Committees are against this model.

5. This proposal would require major amendments to the Heung Yee Kuk Ordinance (Cap 1097) and would call into question the need for the ex-officio District Council seats.

(b) "One person, one vote" model

6. The traditional way of life is still strong in indigenous villages in the New Territories. Furthermore, indigenous inhabitants have certain traditional rights. Under Article 40 of the Basic Law, the lawful traditional rights and interests of indigenous inhabitants should be protected.
7. The "one person, one vote model" would mean that indigenous inhabitants would no longer have their own village representatives to represent them and to deal with matters relating to their traditional rights and interests, such as small houses and hillside burials. This would be unfair for them.
8. The Heung Yee Kuk and most of the Rural Committees are against this proposal.
9. Our proposals represent a significant step forward. Reforms should be gradual and orderly.

(c) Separate elections model

10. This model is complicated and impracticable. It is not the best way to achieve the two main objectives of the Village Representative Election Bill which are :
 - (a) that the proposed arrangements should comply with the ruling of the Court of Final Appeal; and
 - (b) that indigenous inhabitants should have their own representatives to represent their lawful traditional rights and interests.

Home Affairs Bureau

November 2002