

立法會

Legislative Council

LC Paper No. LS 3/02-03

**Paper for the House Committee Meeting
on 11 October 2002**

Legal Service Division Report on Village Representative Election Bill

I. SUMMARY

- 1. Objects of the Bill** To provide for the elections of Resident Representatives for Existing Villages and Indigenous Inhabitant Representatives for Indigenous Villages or Composite Indigenous Villages.
- 2. Comments** The Bill provides for office of Village Representative, qualification of candidates and electors, conduct of election, election petitions, appointment and functions of electoral officers, and other related and consequential amendments.
- 3. Public Consultation** The Administration has consulted various affected institutions, including Heung Yee Kuk and interest groups.
- 4. Consultation with
LegCo Panel(s)/
Committee(s)** At its meeting on 14 June 2002, the Panel on Home Affairs received a briefing from the Administration on the proposed arrangements for the conduct of Village Representative elections, and also listened to views from representatives of Heung Yee Kuk. The Panel also met with other deputations at a special meeting on 9 July 2002.
- 5. Conclusion** In view of the controversial issues involved and the representations made by different deputations, it is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Object(s) of the Bill

To provide for—

- (a) the establishment of the office of resident representative for an Existing Village;
- (b) the establishment of the office of indigenous inhabitant representative for an Indigenous Village or a Composite Indigenous Village;
- (c) the elections of Resident Representatives and Indigenous Inhabitant Representatives; and
- (d) related and consequential amendments.

LegCo Brief Reference

- 2. S/F(2) in HAB/CR 1/20/154 Pt. 6 issued by the Home Affairs Bureau on 25 September 2002.

Date of First Reading

- 3. 9 October 2002.

Background

4. Two non-indigenous villagers challenged the validity of the 1999 electoral arrangements for the position of village representative at their respective villages by judicial review proceedings. In respect of the challenge, the Court of Final Appeal held, among other things, that—

- (a) exclusion of non-indigenous villagers from voting or standing for election at village representative elections was contrary to the right to participate in public affairs (article 21(a) of the Hong Kong Bill of Rights Ordinance (Cap. 383));
- (b) electoral arrangement under which non-indigenous women married to indigenous men had the right to vote but non-indigenous men married to indigenous women were excluded from voting, contravened section 35 of the Sex Discrimination Ordinance (Cap. 480).

The case is Secretary for Justice & Others and Chan Wah & Others [2000]3HKLRD641. Members may obtain a copy of the report from the Legal Service Division.

Comments

5. The Bill proposes to establish, for an Existing Village (defined in the Bill), the office of resident representative with effect from 1.7.2003. There will be one Resident Representative for an Existing Village. The function of a Resident Representative is to reflect views on the affairs of the Existing Village on behalf of the residents of the Village. A Resident Representative will not deal with any affair relating to the lawful traditional rights and interests of indigenous inhabitants. A person is not eligible to be registered as an elector for an Existing Village unless, among other things, he has been resident of the Village for the three years immediately before applying to be registered. A person is eligible to be nominated as a candidate at an election for an Existing Village only, among other things, if he has been a resident of the Village for the six years immediately preceding the nomination.

6. The Bill also proposes to establish, for an Indigenous Village (defined in the Bill), the office of indigenous inhabitant representative with effect from 1.7.2003. There is also established for a Composite Indigenous Village (defined in the Bill) the office of indigenous inhabitant representative with effect from the same date. Both Indigenous Village and Composite Indigenous Village consist of indigenous inhabitants but a Composite Indigenous Village is composed of two or more indigenous villages. There will be one to five Indigenous Inhabitant Representatives for an Indigenous Village or a Composite Indigenous Village. A person is not eligible to be registered as an elector for an Indigenous Village or a Composite Indigenous Village unless, among other things, he is an indigenous inhabitant (defined in the Bill) of the Village, or a spouse of an indigenous inhabitant of the Village. A person could register as an elector for both an Indigenous Village (or a Composite Indigenous Village) and an Existing Village, if he is both an indigenous inhabitant of the Indigenous Village and a resident in the Existing Village. A person is eligible to be nominated as a candidate at an election for an Indigenous Village or a Composite Indigenous Village only, among other things, if he is an indigenous inhabitant of the Village.

7. All Village Representatives will be members of the Rural Committee of the area in which the Village is located and certain Village Representatives will also be members of Heung Yee Kuk. In order to tie in with the term of office of the Rural Committee members and that of the Heung Yee Kuk members, Village Representatives will hold office for four years from 1 April after the election, except that the Village Representatives returned at an election in 2003 will hold office for three years and nine months from 1 July 2003.

8. The Bill also provides for the conduct of election, election petitions, appointment and functions of the Electoral Registration Officer, Returning Officers and Revising Officer, and other related and consequential amendments.

Public Consultation

9. According to the LegCo Brief, the Administration has consulted the Heung Yee Kuk, District Councils in the New Territories and the Rural Committees on the proposals. It has also consulted the Legislative Council Panel on Home Affairs. It has met and discussed with the Association for the Promotion of the Rights of New Territories Residents (representing non-indigenous residents) and the Association of New Territories Indigenous Residents.

10. Two open forums were organized for residents in the New Territories.

Consultation with the LegCo Panel

11. The Panel on Home Affairs was briefed on the proposed arrangement for the conduct of Village Representative elections at its meeting on 14 June 2002. Members had divided views on the residency requirements of three years for a voter and five years for a candidate for Resident Representative elections under the proposed arrangements. While some members queried whether such stringent residency requirements were compatible with the Bill of Rights, a member expressed support for setting requirements on the minimum length of residence for a voter and a candidate in Resident Representative elections. Some members considered that the spouses of indigenous inhabitants should be entitled to vote in an Indigenous Inhabitant Representative election in their residing village. They also expressed concern that dispute might arise if the responsibilities of an Indigenous Inhabitant Representative and those of a Resident Representative were not clearly delineated.

12. Four representatives of Heung Yee Kuk also attended the Panel meeting on 14 June 2002. The three representatives who spoke at the meeting expressed strong objection to the proposed arrangements for the conduct of Village Representative elections. They considered that the Government had caused segregation and conflicts among the villagers by introducing non-indigenous Resident Representatives to manage the affairs of indigenous inhabitants under the proposed arrangements.

13. Members also noted that the chairmen of the 27 Rural Committees had been consulted and a majority of the Rural Committee chairmen specifically suggested the following revisions to the proposed arrangements—

- (a) a person should be required to reside in the village concerned for at least five years and seven years to be qualified to be registered as a voter or

nominated as a candidate respectively in a Resident Representative election; and

- (b) non-indigenous wives of indigenous inhabitants should be eligible to be registered as voters and vote in the Indigenous Inhabitant Representative elections in the indigenous villages of their husbands.

14. The Panel also received views from concern groups and some District Council members at its special meeting on 9 July 2002. Members noted the strong objection from some concern groups and some District Council members to the proposed electoral arrangements. Their views are summarised as follows -

- (a) the Government should respect the traditional rights and interests of indigenous inhabitants of the New Territories which were protected by Article 40 of the Basic Law;
- (b) a person should be required to reside in the village concerned for at least five years and seven years to be qualified to be registered as a voter and nominated as a candidate respectively for a Resident Representative election;
- (c) wives of indigenous inhabitants should be given the right to vote in the Indigenous Inhabitant Representative elections in their husbands' villages;
- (d) Indigenous Inhabitant Representatives should handle affairs related to both indigenous and non-indigenous villagers; and
- (e) the Government should visit every village and consult the villagers, instead of just consulting Heung Yee Kuk.

15. Members also noted the following views of a non-indigenous residents group—

- (a) only Residents Representatives who were elected by all residents of the New Territories should be eligible to be elected as chairmen of Rural Committees, as they as Councillors of Heung Yee Kuk were in turn eligible to be elected as a Member of the Legislative Council;
- (b) the proposed electoral arrangements were unfair to non-indigenous residents since indigenous inhabitants would have two votes, whereas non-indigenous residents would only have one vote; and
- (c) the proposed residency requirements for voters and candidates for Resident Representative elections were too high and unfair to non-indigenous residents.

16. Given the complicated and controversial nature of the matter, members were of a strong view that the Administration should conduct extensive public consultation and listen to public views before finalising the arrangements for the conduct of Village Representative elections.

Conclusion

17. In view of the controversial issues involved and the representations made by different deputations, it is recommended that a Bills Committee be formed to study the Bill in detail. In the meantime, the Legal Service Division will be continuing with the scrutiny of the legal and drafting aspects of the Bill.

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Bill/B/1/02-03