

**Electoral Affairs Commission Interim Report
on the 2004 Legislative Council Election**

**Statement by the Secretary for Constitutional Affairs at the
Legislative Council Meeting held on 10 November 2004**

Madam President,

The third term Legislative Council (LegCo) Election was held on 12 September. Although there were some problems with the arrangements on the day, the election was basically conducted smoothly, and the principle of open, fair and honest election was not compromised.

The EAC made public today the Interim Report on the 2004 LegCo Election. The Report gives an account of the progress of the Commission's investigation into the various problems regarding the arrangements for polling day and its findings so far. The EAC has just held a press conference to give a detailed briefing on the findings of the Interim Report.

In view of public concern on this matter, I would like to take the opportunity of the Council's sitting today to brief Members on the content of the EAC Interim Report and the follow up measures which would be taken by the Government.

In overall terms, the EAC Interim Report affirms that the electoral process was conducted in an open, fair and honest manner. The problems which occurred on polling day had not affected the integrity of the election.

Nevertheless, there were clearly inadequacies relating to the arrangements made for this election. I would like to take this opportunity to apologize once again to the public and candidates for the inconvenience caused by the problems relating to the practical arrangements.

Regarding the problems relating to the electoral arrangements which the public is particularly concerned about, I would now briefly explain the investigation findings as contained in the Interim Report.

Insufficient Supply of Ballot Boxes

As explained by the EAC Chairman earlier, the problem of insufficient supply of ballot boxes on polling day arose mainly because of a wrong estimate made by the Registration and Electoral Office (REO) on the capacity of the ballot boxes.

The investigation findings of the EAC indicate that a major problem leading to the over-estimation of the ballot box capacity was that, when the REO conducted the tests for the capacity of the ballot boxes, ordinary paper was used, instead of the thicker paper eventually adopted for the ballot paper. Further, the REO had not envisaged that electors would in practice fold the ballot papers in many different ways. Thus, the ballot papers inserted into the ballot box did not invariably pile up neatly as originally expected.

On polling day, when the REO learnt from the Presiding Officers (PROs) that the capacity of the ballot box was smaller than expected and that the supply of ballot boxes was inadequate, the REO started to transport the ballot boxes kept in reserve in the four depots to the polling stations in need. Since many polling stations requested additional polling boxes, the REO decided to resort also to the old ballot boxes kept in one of the depots for replenishment. The Hong Kong Police Force also assisted in delivering the additional ballot boxes.

The REO had drawn up a replenishment plan beforehand, but the plan only catered for a scenario under which a few polling stations might encounter the problem of shortage of ballot boxes. The plan was inadequate to address a situation in which a majority of the polling stations encountered the shortage problem.

In the light of experience from this election, the EAC will thoroughly review the design of the ballot box and other electoral equipment. Any newly designed equipment will be thoroughly tested by various means, including real life trial use.

The EAC also considers it necessary to review the logistics and contingency measures in the supply of election materials and equipment. A special contingency plan to cater for unexpected scenarios should be drawn up. The EAC also recommends that consideration be given to deploying more senior staff to be in charge at the Central Command Centre so that emergencies could be handled more effectively.

Opening of Ballot Boxes

As regards the instruction given by the EAC to PROs to open ballot boxes if necessary, the EAC notes that there have been concerns about the legality of this contingency measure. Views have been expressed that the measure is in breach of the relevant provisions of legislation which provide that ballot boxes should be kept locked. There have also been comments that under the law, a person engages in corrupt conduct at an election if the person, without lawful authority, opens a ballot box in use at the election.

Having examined the relevant legislative provisions, the EAC has explained in detail in its Interim Report the legal basis for the contingency measures adopted.

The EAC is of the view that, according to the Electoral Affairs Commission Ordinance, the EAC has the power and authority to give instructions for expedient measures to be taken insofar as such measures ensure that the electoral process is open, fair and honest. Thus, in the unexpected circumstances of the shortage of ballot boxes that prevailed on polling day, the EAC was entitled to give the directive to PROs for ballot boxes to be opened so that the ballot papers cast could be rearranged, in order to make room for more ballot papers to be cast. The EAC also made clear in its directive that the opening of ballot boxes should be done in the presence of candidates or their agents, or in their absence, police officers, to ensure that the process was transparent and honest.

The findings of the investigation reveal that a total of 56 stations had opened a total of 210 ballot boxes before the arrival of additional ballot boxes. All of the polling stations had followed the directive of the EAC. The ballot boxes were opened in the presence of candidates, their agents or police officers. Thus, the EAC considers that the principle of open, fair and honest election had not been compromised.

Use of Cardboard Boxes as Ballot Boxes

The EAC has received complaints against the use of cardboard boxes as ballot boxes. The findings of the EAC investigation revealed that there were two cases in which Presiding Officers used cardboard boxes as ballot boxes before additional ballot boxes arrived at the polling stations.

In one of the cases, cardboard boxes were used with the agreement of the polling agents of three different candidates' lists. In the other case, the entire process of the casting of ballot papers into the cardboard box was conducted in the presence of a polling agent and a police officer. As regards the transfer of ballot papers from the cardboard boxes into the ballot boxes, the process was witnessed by polling agents or police officers in both cases.

The EAC takes the view that the measure of using cardboard boxes taken by the PRO, as the person in charge of polling station, was effective in ensuring that the polling process was not disrupted in the absence of any other immediate and better solution. The EAC considers that the integrity of the election was not affected, and that it was understandable for the PROs to have adopted the contingency measure.

Suspension of Operation of Polling Stations

There were complaints that the PRO of the polling station at Sheung Wan Post Office had suspended the operation of the polling station while awaiting the supply of additional ballot boxes. The result of EAC's investigation revealed that the PRO concerned did not close the polling station. He merely asked electors to leave and return an hour later to cast their votes. A few electors told the PRO that they would not be free to return, and they were allowed to cast their votes by pushing their ballot papers into the already full ballot boxes.

Under section 44(2) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the PRO may regulate the number of electors to be admitted to or exclude an elector from the polling station in order to ensure that polling takes place smoothly and efficiently. Given the circumstances of this case, the EAC considers it acceptable for the PRO to ask the electors to leave and return later in order to ensure the polling takes place smoothly.

The EAC found two similar cases, one in Tseung Kwan O and one in Shatin, in the course of the investigation. In both cases, the PROs did not ask the electors to leave but simply asked them to wait for the arrival of the new boxes. A few electors refused to wait and, according to the PRO's recollection, at least some of them chose to return later in the evening to cast their votes.

Eviction of Candidates' Agents from Polling Stations

The EAC has received complaints relating to the eviction or exclusion of candidates and their agents from polling stations when the stations were being converted into counting stations. As a result, the candidates and the agents could not witness the conversion process.

Electoral legislation and the Guidelines on Election-related Activities in respect of the LegCo elections ('the Guidelines') published by the EAC set out who may stay in a polling/counting station at the different stages of the polling and counting processes. A polling agent is allowed to stay in the polling station from shortly before the start of the poll until after the sealing of the flaps on the ballot boxes at the close of poll. On the other hand, candidates, their election agents and counting agents may stay in the polling station while it is closed for the preparation for the counting of votes.

While investigation of some of the cases is still ongoing, findings so far reveal that the complaint cases could be classified broadly into four types:

- First, cases in which no request had been made by agents to enter the polling station after the close of poll.
- Secondly, cases in which both polling and counting agents were admitted to observe the conversion process.
- Thirdly, cases in which PROs only allowed polling agents to stay in the polling stations but refused entry of counting agents. These cases were mainly caused by ambiguity in wording in the Operational Manual for PROs published by the REO. The EAC considers it necessary for the REO to improve on the Manual and to enhance the training programmes for the PROs and polling staff, in order to prevent similar problems in future.
- Only in cases which come under the fourth category were polling agents and counting agents not admitted for a period of time between close of poll and conversion. There are four cases under this category.

Detailed investigation findings of these four cases are set out in the Interim Report. The EAC disapproves what the PROs had done. Letters of caution have been issued to each of the PROs, pointing out the mistakes they had made. Based on the detailed investigation findings,

the EAC has come to the view that there should not be any reasonable ground to suspect that the integrity of the polling and counting processes had been adversely affected.

Ballot Discrepancy in Four Functional Constituencies

Some candidates from four functional constituencies (FCs), namely the Social Welfare FC, Labour FC, Accountancy FC and Health Services FC, complained that the number of ballot papers counted exceeded the number of voter turnout figures announced during the poll.

As explained by the EAC at a press conference on 15 September 2004, the hourly voter turnout figures announced during the poll were meant to be for reference by the media and the public only. As each polling station was required to calculate manually the voter turnout figures every hour and then report these figures manually to the central through the Interactive Voice Response System (IVRS), the possibility of errors in the process cannot be ruled out.

The REO has checked the ballot paper accounts and returns prepared by polling staff after the end of poll, and found that the number of actual ballot papers counted was in fact slightly fewer than the number of ballot papers believed to be in the ballot boxes as recorded in the ballot paper accounts. The EAC Chairman had already announced the relevant figures at the press conference on 15 September 2004. The EAC takes the view that this phenomenon is not irregular, as occasionally an elector may obtain a ballot paper, but instead of casting it into the ballot box, take it away. The EAC considers that the small discrepancies in the numbers of ballot papers are acceptable and should not give rise to concern.

Upon subsequent enquiries from a candidate of the Accountancy FC, the EAC has instructed the REO to re-check all relevant data of the four FCs. It was found that there were slight discrepancies between the verified numbers of ballot papers believed to be in ballot boxes, and the set of figures announced on 15 September 2004. However, in summary, similar to the findings announced on 15 September, the numbers of actual ballot papers counted were slightly fewer than the numbers of ballot papers believed to be in ballot boxes as recorded in the ballot paper accounts. The discrepancies ranged from one to three ballot papers. The EAC considers that these small discrepancies do not affect the accuracy of the ballot papers counted at the counting stage, and therefore do not affect the election results.

In the light of the experience of this election, the EAC and the REO will consider ways to improve on the accuracy of the hourly voter turnout figures and that of the ballot paper accounts. Further, to avoid misunderstanding and too much reliance being placed on the hourly voter turnout figures published during the poll, the EAC will consider adding an express reminder in future elections that the figures are for provisional reference only.

Concluding Remarks

To conclude, I would like to make three points.

- First, the Interim Report affirms that, generally speaking, the integrity of the election has not been affected.
- Secondly, the EAC has established in the Report the legality of the contingency measures adopted on polling day. According to the investigation findings, the contingency measures, including the opening of ballot boxes to repack the ballot papers and the use of cardboard boxes as ballot boxes, were all conducted in the presence of the agents of candidates or police officers. This ensures that the whole process was fair, open and honest.
- Thirdly, the various problems identified in the Interim Report reveal that there is clearly room for improvement in the planning and conduct of election. In view of this, the Chief Executive has announced earlier this afternoon that an Independent Committee of Experts will be set up to review the management, planning and conduct of elections, and to make recommendations on improvement measures.

The work of the Independent Committee of Experts will be both reflective and forward looking. On the one hand, there will be an assessment of management responsibilities for the arrangements made for this election. On the other hand, the Committee will consider how the electoral arrangements can be improved in future.

The Committee will gather views and make recommendations on a number of areas, including a review of how the REO may better support the EAC in carrying out its statutory functions in the conduct and supervision of elections

The Committee will also consider how the communication system and other arrangements for the counting of votes and the compilation and announcement of polling and counting figures can be improved.

The Independent Committee of Experts will consist of three members with relevant experience in legal, management and logistics, and information technology matters.

The Government will establish the Committee as soon as possible and will announce the membership of the Committee later.

The Committee will start work after the EAC has submitted the final report. It will submit a report to the Chief Executive in about three months.

The EAC will complete its remaining investigation work as soon as possible, and will submit the final report to the Chief Executive in December. We will make public this report, so that the public will have a comprehensive understanding of the investigation findings and recommendations of the EAC.

There were clearly administrative and planning errors in this election. After the EAC has submitted the final report, the Chief Executive's Office will pass the report to the Civil Service Bureau, which will consider the findings carefully, and decide as necessary on further follow up action to be taken.

The Interim and Final Reports by the EAC will provide an important basis for the Independent Committee of Experts to commence its work. At the same time, the Committee will listen to views from the public and parties concerned, including LegCo Members, with a view to offering advice and recommendations on the management, planning and conduct of elections.

We will learn from the experience of this election. We will consider the recommendations carefully and make improvements to the electoral arrangements in future. We are committed to ensuring that public elections in Hong Kong will continue to be held in an open, fair and honest manner.