

Legislative Council Panel on Constitutional Affairs

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

INTRODUCTION

This paper informs Members of the major findings and recommendations in the Electoral Affairs Commission (EAC) Final Report on the 2004 Legislative Council Election (the Final Report).

BACKGROUND

2. The third term Legislative Council (LegCo) Election was held on 12 September 2004. Section 8 of the Electoral Affairs Commission Ordinance requires, inter alia, that the EAC shall make a report to the Chief Executive, within three months after the election, on matters relating to that election in respect of which the Commission has any function under the Electoral Affairs Commission Ordinance or any other Ordinance. In view of public concern on the various problems regarding the practical arrangements of the 2004 LegCo election, the EAC submitted an Interim Report to the Chief Executive on 8 November 2004 to give an account of the progress of investigation carried out by the EAC and the findings in respect of the major areas of complaints. Findings of the Interim Report are set out in the Panel paper issued by the Registration and Electoral Office on 10 November 2004.

3. The EAC continued its investigation into the uncompleted complaint cases as well as other outstanding issues after the submission of the interim report. On 11 December 2004, the EAC submitted the Final Report to the Chief Executive. The Final Report describes how the EAC conducted and supervised the 2004 LegCo election, gives an updated report on the findings of the uncompleted complaint cases and outstanding issues mentioned in the Interim Report, and sets out the EAC's recommendations on improvement measures for future elections. Copies of the Final Report have been sent to the Legislative Council Secretariat for distribution to Members.

MAJOR FINDINGS OF THE REPORT

(A) Printing of Introductory Leaflets of Candidates (paragraphs 6.12 to 6.19 of the Final Report)

4. As in past elections, an introductory leaflet showing the election platforms and other information of the candidates of a particular constituency was sent to each elector of that constituency by the Registration and Electoral Office (REO) to facilitate the electors to make an informed choice when casting their votes. Printing of the leaflets was done by the Government Logistics Department (GLD) and three contractors engaged by GLD. The mailing process of the leaflets commenced on 17 August 2004, after the REO had completed its random checks on the leaflets which did not reveal any problem.

5. The hand-folding of the leaflets was contracted out by the GLD to 17 Non-Government Organizations (NGOs) arranged by the Social Welfare Department. During the hand-folding process, it was found that 12 leaflets were incorrectly bound such that the name and election platform of a candidate list did not appear on consecutive pages. Due to the uncertainty of the possible extent of the errors and the need to avoid causing confusion to the electors, the REO decided to withhold the mailing exercise immediately, and to conduct a full-scale check to be assisted by GLD and NGOs to look out for pagination errors before sending out the leaflets again. Additional expenses of about \$3.65 million were incurred arising from the incident.

6. The GLD's investigation report on the incident reveals the following:

- (a) out of a total of 3.31 million printed leaflets, 42 defective copies were found during the post-delivery full scale check conducted by the REO and the GLD. These defects were caused by occasional machine or inadvertent human errors;

- (b) the GLD did not consider that there were any unacceptable or significant errors in the printing or binding processes of the GLD and the three contractors as the defective copies did not occur in large numbers¹ or in a systematic manner; and
- (c) since the contractors had already produced 6,010 extra copies in their print-runs which more than covered the number of defective copies found, the GLD did not intend to claim damages against them, based on the normal trade practice to replace defective copies on a one-for-one basis.

7. The EAC, having examined the report and subsequent clarification from the GLD, accepted that the GLD had performed its work according to its normal quality control mechanism, and that the REO had taken prudent steps to ensure accuracy of all unmailed leaflets. The interests of candidates and electors were safeguarded. Nevertheless, the EAC and the REO regretted the inconvenience and confusion that might have been caused to the public, electors and candidates.

(B) Interactive Voice Response System

Failure of the System (paragraphs 11.13 to 11.27 and Appendix XIV of the Final Report)

8. The Interactive Voice Response System (IVRS) was deployed to collect electoral statistical figures, including hourly voter turnout figures and election results, through telephone calls from 501 polling stations on polling day. The prime contractor for the IVRS project was the Continuous Technologies International Limited (CTIL).

9. The malfunctioning of the IVRS on polling day gave rise to the

¹ According to the GLD, there are no acceptable or authoritative acceptable quality levels for printing matters in the local printing trade. The US Government Printing Office's Quality Assurance Through Attributes Program for Printing and Binding (used in Contract Terms) provided for a typical acceptable quality level of up to 1 critical defect and 5.5 non-critical defects per 100 items. The quantity of defective copies found in the leaflets was well within the standard.

delay and mistakes in the compilation of voter turnout statistics, as well as the consequential delay in the announcement of election results. At the direction of the EAC, a team of REO staff with information technology background had conducted an in-depth investigation into the issue. The findings of the investigation indicate that the following factors had led to the failure of the IVRS.

(a) Design of the System

10. There was a shortfall in the design of the software programme which seriously impaired the capacity and performance of the database server to retrieve records and perform calculation of the accumulated voter turnout figures. This programming error led to the cutting off of calls by the system before the whole calculation was completed.

(b) Testing Deficiencies

11. The test cases conducted prior to the live production on polling day did not represent the true live situation. Instead of testing on the basis of one geographical constituency (GC) and 17 contested functional constituencies (FCs) (or at least the actual average of 14 FCs) per polling station, the test cases to simulate the reporting process of each polling station were carried out on the basis of voter turnout figures for one GC and one FC only.

(c) Contingency Planning

12. The CTIL had adopted a 100% back-up in designing the hardware contingency for all major servers of the IVRS. However, a detailed contingency plan for software system was lacking. There should have been a contingency plan with a reasonable level of backup staff in case there is a need to shift part of the data collection to manual mode. Details of the plan were only formulated after problems were encountered on polling day.

Delay in the Announcement of Election Results (paragraphs 11.28 to 11.30 of the Final Report)

13. Sometime before the first GC completed its count, the EAC's attention was drawn to a 69% voter turnout rate as indicated by the IVRS computer system which far exceeded the initially announced figure. The EAC was informed by the REO staff responsible for verification of voter turnout data that this phenomenon occurred in the computer system because of the malfunctioning of the IVRS. Some polling stations had encountered problems when using the IVRS to report voter turnout figures. This made it necessary for the REO to conduct an overall verification of all voter turnout figures manually. The Commission's investigations have revealed that the inflated voter turnout rate was caused by the merging of the updated data (i.e. data verified manually) from the back up database with the old data in the online database (i.e. data supplied through the IVRS). During the merging process, the updated data and the old data co-existed in the database at the same time. It was only after the merge was completed and verified that the old data was purged from the online system. Thus, during the interval, the voter turnout displayed on the IVRS computer system was much higher than the actual figure. The announcement of results was delayed, because it was necessary to wait for the completion of the manual verification of the voter turnout figures to ensure that all relevant data were correct before the election results were announced.

Responsibilities (paragraphs 11.31 to 11.36 of the Final Report)

14. The EAC took the view that the root cause of the problems relating to the IVRS on polling day was the system design flaw which had been admitted by the CTIL. Further, the test plan developed by the CTIL was far from satisfactory, even though the basic requirement for the system to report the hourly voter turnout figures for at least one GC and up to 28 FCs had been clearly conveyed to CTIL. On the other hand, the responsible officers of the REO staff could have been more proactive in supervising CTIL, especially during the testing stage.

15. Based on the investigation findings, the REO will seek legal advice on appropriate follow up action with CTIL, including the question of possible compensation.

(C) Error of Reporting of Counting Results (paragraphs 11.50 to 11.55 of the Final Report)

16. In the course of the checking of the counting forms for all counting stations after the election, the REO discovered that the Deputy Presiding Officers (DPROs) of two counting stations, one in Ngau Tau Kok and the other in Tsuen Wan, had made mistakes due to their carelessness when they reported the counting results through the IVRS.

17. The counting forms to be filled by counting staff record the following information:

- (a) the number of valid votes counted for each candidate list before determination of the questionable ballot papers by the Presiding Officer (PRO);
- (b) the number of votes recorded on questionable ballot papers that were accepted by the PRO for each candidate list; and
- (c) the aggregate of the number of votes for paragraph 17(a) and (b) above for each candidate list.

Counting stations were required to report the data on paragraph 17(c) through the IVRS. The DPRO of the counting station in Ngau Tau Kok wrongly reported the data on paragraph 17(a) above instead. The verified valid votes for each list are set out in the Final Report, and are reproduced at **Annex A** for Members' easy reference. The relatively small discrepancies did not affect the election results.

18. As for the counting station in Tsuen Wan, the DPRO input an incorrect figure of "598" as the valid votes counted for one of the candidate lists while the correct number as shown on the counting form should be "593". The verified valid votes for each list are set out in the Final Report, and are reproduced at **Annex B** for Members' easy reference. The relatively small discrepancy did not affect the election results.

(D) Other Complaint Cases (paragraphs 10.5 to 10.10, Appendices VI to VIII of the Final Report)

19. The Interim Report gives an account of the progress of investigation carried out by the EAC in respect of the major areas of complaints, including cases involving the opening of ballot boxes during the poll and the eviction or exclusion of candidates or their agents from polling stations. After the publication of the Interim Report, the EAC continued with its investigation into the outstanding complaint cases. Updated summaries showing the investigation findings are at Appendices VI to VIII of the Final Report. As shown in Appendix VI of the Final Report, according to the latest information received by the REO, a total of 58 polling stations, instead of 56 as reported in the Interim Report, had opened ballot boxes to make room for insertion of ballot papers pending the arrival of additional ballot boxes.

RECOMMENDATIONS OF THE REPORT

20. The EAC has proposed a number of measures to improve the arrangements for future elections. The major recommendations are set out below. Other recommendations are summarized in **Annex C**.

- (a) **Introductory leaflets of candidates:** The EAC proposes that the introductory leaflets of candidates should be designed in such a way that each candidate list would bear its number and the election platform of each list will bear the same number. The leaflet should also contain page number. With these changes, any printing or binding error will be easily visible to the elector (paragraphs 14.3 to 14.6 of the Final Report).
- (b) **Alternative polling arrangement:** The EAC noticed a number of suggestions from the public that advance polling should be adopted. The EAC considers that this proposal can facilitate electors to exercise their voting rights and should be seriously considered by the Government (paragraphs 14.9 to 14.10 of the Final Report).

- (c) **Ballot boxes:** Experience on the polling day showed that the design of the new GC ballot boxes was flawed, as ballot papers inserted into it did not invariably fall flat and pile up neatly one over another as expected. Further, the capacity of the ballot boxes was overestimated. The EAC considers that the design of ballot boxes should be reviewed. Any newly designed equipment should be thoroughly tested by various means, including real life trial use (paragraphs 14.19 to 14.22).

- (d) **Ballot papers:** The EAC considers that the A3 size ballot papers for GCs showing photographs, emblems and other particulars of or relating to the candidates seem to have been well received. The EAC suggests that the same design should be retained but it should be tested to ensure that it is compatible with the design of ballot boxes. The requirement of folding GC ballot papers should also be retained to protect the secrecy of the vote. Consideration should be given to having the ballot paper folded before issue to electors and the option of pre-folding by machine should be examined (paragraphs 14.23 to 14.26 of the Final Report).

- (e) **Operation of the Central Command Centre (CCC):** The EAC proposes that one possible improvement option for the future is to have a three-tier structure for the replenishment of supplies and the provision of additional staff. The structure could comprise a CCC, five regional centres and 18 district centres. Each district centre will support and monitor the adequacy of manpower and supplies of the polling stations in that district. The proposed structure would avoid the situation where all the polling stations have to approach one single contact in case of emergency requiring additional supplies and manpower (paragraphs 14.27 to 14.32 of the Final Report).

- (f) **Compilation of voter turnout statistics:** In view of the various problems that occurred in using a computerized system to report and collect voter turnout statistics in the 2004 LegCo election, the EAC proposes that

consideration may be given to using other well-tested means or even reverting to the manual approach adopted in previous LegCo elections. Assistance of professional experts may need to be sought in reviewing the reporting methodology and procedures (paragraphs 14.33 to 14.34 of the Final Report).

- (g) **Eviction of candidates or their agents from polling stations:** The EAC considers it necessary for the REO to fully revamp the **Operational Manual** for the PROs to make the contents fully compliant with the provisions of the electoral legislation and the Guidelines on Election-related Activities. **Training programmes** for PROs and polling officials should also be strengthened. To motivate more civil servants with electoral experience to apply for the job of polling staff, consideration may be given to **shortening the working hours** of polling staff by having two shifts of staff to perform the polling and counting duties separately. Further, the **roles of polling and counting agents may be merged** to avoid confusion regarding the presence of agents during the conversion process. A notice showing the **contact details of the PRO** should be posted outside the polling station while it is closed for conversion to facilitate communication between polling staff and counting agents outside who want to get in to witness the conversion process (paragraphs 14.44 to 14.46 of the Final Report).

- (h) **Decentralized counting of votes:** In view of the large number of polling stations in a GC constituency, the EAC considers that the procedures for the decentralized counting of votes should be reviewed. Instead of conducting the counting at individual polling stations, consideration may be given to setting up a counting centre at each GC or district (paragraphs 14.47 to 14.48 of the Final Report).

- (i) **Coordination with other departments:** The EAC suggests that to achieve better coordination, a working group could be set up under the EAC to discuss the logistical arrangements of the election at the preparatory

stage. Further, consideration should be given to how the resources and expertise within the Administration could be better used to support the smooth conduct of elections more efficiently. For example, the REO may seek the assistance of the Civil Service Training and Development Institute in the training of polling and counting staff (paragraphs 14.51 to 14.52 of the Final Report).

CONCLUDING REMARKS

21. In the Final Report, the EAC expresses deep regret and tenders its sincere apology to the public, electors and candidates for the inconvenience and confusion caused by the problems during the election. The EAC also notes in the Final Report that for this election, a number of new measures were introduced with a view to improving and refining the electoral process, including the newly designed ballot papers and ballot boxes, the decentralized counting arrangement, and the use of IVRS. Although all the equipment and arrangements had been tested, they were tested on a smaller scale than required. This resulted in unforeseen problems affecting the smooth conduct of the poll in a number of polling stations. The Report suggests that apart from full testing of any newly introduced equipment and arrangements to ensure that they work, special care need to be taken to ensure their global satisfactory integration and performance. Suitable training for staff is also a must. The Report notes that these lessons are regrettably learnt at a high price. However, looking to the future, they are valuable assets for the development and improvement of the electoral processes in Hong Kong.

22. The EAC affirms that, notwithstanding the problems in the arrangements on polling day, the integrity of the LegCo election has not been affected. The EAC looks forward to working with the Independent Committee of Experts to be set up by the Chief Executive to review the management, planning and conduct of elections.

**Verified Valid Votes for Each Candidate List
at Polling Station (J3301) in Ngau Tau Kok**

Candidates List	Candidates	Number of valid votes counted for the station			Number of valid votes counted for the GC	
		Number reported to IVRS (a)	Actual number counted (b)	Discrepancy (b) - (a) (*)	Number announced by RO on the Election Day	Verified number after the Election Day
1	LI WAH MING WU CHI WAI HO WAI TO	862	915	53	56,409	56,462
2	CHAN KAM LAM CHOI CHUN WA CHAN TAK MING	729	847	118	55,188	55,306
3	CHENG ALBERT JINGHAN TO KWAN HANG ANDREW	1,286	1,341	55	73,424	73,479
4	LEUNG KAH KIT ALAN	782	796	14	56,161	56,175
5	CHAN YUEN HAN LAM MAN FAI TANG KA PIU	865	909	44	52,520	52,564
Total :		4,524	4,808	284	293,702	293,986

* The number is same as the number of votes recorded on the accepted questionable ballot papers.

**Verified Valid Votes for Each Candidate List
at Polling Station (K1401) in Tsuen Wan**

Candidates List	Candidates	Number of valid votes counted for the station			Number of valid votes counted for the GC	
		Number reported to IVRS (a)	Actual number counted (b)	Discrepancy (b) - (a)	Number announced by RO on the Election Day	Verified number after the Election Day
1	CHAN WAI YIP ALBERT	194	194	0	36,278	36,278
2	LEE WING TAT CHAN YUEN SUM	1,201	1,201	0	62,500	62,500
3	HO CHUN YAN CEHUNG YIN TUNG	51	51	0	62,342	62,342
4	LEUNG YIU CHUNG WAN SIU KIN ANDREW	359	359	0	59,033	59,033
5	CHOW PING TIM	19	19	0	1,725	1,725
6	CHAR SHIK NGOR STEPHEN	38	38	0	9,116	9,116
7	TAM YIU CHUNG CHEUNG HOK MING LEUNG CHE CHEUNG AU YEUNG PO CHUN TSUI FAN CHAN HAN FAN LO KWONG SHING ANDY NG KING WAH	598	593	- 5	115,256	115,251
8	NG TAK LEUNG	8	8	0	1,920	1,920
9	CHOW LIANG SHUK YEE SELINA TING WOO SHOU KENNETH	142	142	0	50,437	50,437
10	LUI HAU TUEN SIU SHING CHOI CHAN CHOI HI	13	13	0	4,511	4,511
11	LEE CHEUK YAN IP NGOK FUNG	159	159	0	45,725	45,725
12	YIM TIN SANG KONG FUNG YI TAI YIN CHIU KWUN TUNG WING	8	8	0	14,570	14,570
Total :		2,790	2,785	- 5	463,413	463,408

Other Recommendations in the Final Report

1. The Electoral Affairs Commission (EAC) considers it useful if future Government publicity programmes would put more emphasis on the voting systems, so that the general public may have a clearer picture of how the systems work. (paragraphs 14.7 to 14.8 of the Final Report).
2. Some candidates were dissatisfied with the logistics arrangements for the Press Centre at the Hong Kong International Trade and Exhibition Centre which was too crowded. Some also complained that they could not contact the EAC Chairman in the early morning of 13 September 2004. The EAC considers that the REO should identify a venue spacious enough to accommodate the candidates and their supporters in future elections. The REO should also remind their staff that when they receive specific requests from the candidates for meeting with the EAC or the Chief Electoral Officer (CEO), they should draw the attention of the EAC and the CEO to such requests. The EAC further recommends that the REO should make endeavour to ensure that the physical layout of the Press Centre would best facilitate the media in reporting future elections (paragraphs 14.11 to 14.18 of the Final Report).
3. A Presiding Officer (PRO) suggested that each issuing desk should be given a complete booklet of ballot papers for a functional constituency (FC). This arrangement obviates the need for the PRO to break the booklet into separate bundles for distribution to the various issuing desks, thus reducing the chance of making errors in the compilation of FC voter turnout statistics which is calculated by making reference to the number on the counterfoil. The EAC suggests that this proposal should be considered (paragraphs 14.35 to 14.36 of the Final Report).

4. The EAC suggests that the adequacy of space of each prospective polling station should be carefully assessed. The REO should also continue to make every effort to identify venues accessible to disabled persons for use as polling stations in future elections (paragraph 14.37 to 14.39 of the Final Report).
5. The EAC decided to remove the curtains in front of the voting compartments to address the public concern about the possible use of camera-equipped mobile telephones by the electors to take photographs of their marked ballot papers. Some electors were of the view that the removal of the curtains might affect the secrecy of the vote. The EAC considers that this arrangement should continue to be adopted in future elections, because it had worked well in facilitating the polling staff to observe the general conduct of electors inside the voting compartments. The table on which the elector places his ballot paper to mark his vote should be set in such a position that would cause his body to block the marking from being visible to persons outside the compartment (paragraphs 14.40 to 14.41 of the Final Report).
6. Under section 60 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council Election) Regulation, where a person representing himself to be a particular elector applies for any ballot paper after a person has been issued with a ballot paper earlier as such as elector, he will be issued with a ballot paper with the word "TENDERED" endorsed on the front. Such a ballot paper will be counted as an invalid vote. There were a few complaints that such an arrangement deprives the elector of his right to vote. The EAC considers that the existing arrangement should continue as it is impossible for the polling staff to ascertain on the spot whether a person has impersonated the elector, or whether the elector is trying to cast his vote twice. Those electors with grievances can report to the Police for investigation if necessary. Further, the REO should remind the polling staff that when crossing out the name of an elector on the register upon issuing of a ballot paper to the elector, another polling staff should check the name concerned to make sure that it is done correctly (paragraphs 14.42 to 14.43 of the Final Report).

7. In case decentralized counting arrangement at individual polling stations is to be adopted again in future LegCo elections, to avoid the situation where the polling-cum-counting staff have to wait for a long time to see whether a recount of the whole geographical constituency is required, consideration may be given to making it a statutory requirement for an automatic re-count to be conducted right after the first count is completed. This would ensure accuracy and reduce the necessity of a further recount (paragraphs 14.49 to 14.50 of the Final Report)
8. The EAC has amended the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation to increase the imprisonment term under section 45(2) (i.e. prohibiting a person to film or take photographs etc within a polling station) and section 96 (i.e. prohibiting a number of acts which may infringe the secrecy of votes) from three to six months in light of LegCo Members' concern on the secrecy of the vote. The EAC is of the view that similar amendments should be made to the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation when it is next updated (paragraphs 14.53 to 14.54 of the Final Report).
9. The Police published a leaflet before polling day to advise candidates and organizers of election-related activities on the safety issues that they should bear in mind when conducting such activities. The EAC will include the Police's advice in the next update of the guidelines for the LegCo elections (paragraphs 14.55 to 14.56 of the Final Report).
10. The EAC came across an enquiry on whether election advertisements were allowed to be shown on Roadshow under the relevant regulations. The Commissioner for Television and Entertainment Licensing has subsequently advised that under the Broadcasting Ordinance, Roadshow is not a commercial broadcaster and therefore the general prohibition on advertisements of political nature does not apply to Roadshow. The EAC will consider amending the guidelines for LegCo elections to clarify this point (paragraphs 14.57 to 14.58 of the

Final Report)

11. There was a complaint against a candidate for publishing his performance report on his website during the election period without complying with the requirements for an election advertisement. According to the advice of the Department of Justice, a printed performance report published by a candidate during the election period is regarded as an election advertisement under the Elections (Corrupt and Illegal Conduct) Ordinance no matter whether it has promoted his candidacy or not, whereas a performance report shown on a website of a candidate will only be regarded as an election advertisement if it is published for the purpose of promoting or prejudicing the election of a candidate. The EAC will amend the relevant sections of the guidelines for LegCo elections to reflect this point (paragraph 14.59 to 14.60 of the Final Report).