

立法會
Legislative Council

LC Paper No. CB(2)2455/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/BC/4/08

**Bills Committee on Village Representative Election Legislation
(Miscellaneous Amendments) Bill 2009**

**Minutes of meeting
on Friday, 10 July 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon WONG Yung-kan, SBS,
Hon LAU Wong-fat, GBM, GBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon Tanya CHAN
Hon WONG Sing-chi
Hon Paul TSE Wai-chun
- Members absent** : Hon Albert HO Chun-yan
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
- Public Officers attending** : Home Affairs Department
Miss Adeline WONG
Deputy Director of Home Affairs (1)

Mr Philip HAR
Assistant Director of Home Affairs (1) (Acting)

Ms Carmen KAN
Chief Liaison Officer (1) 2 (Acting)

Department of Justice

Ms Angie LI
Government Counsel

Clerk in attendance : Ms Betty FONG
Chief Council Secretary (2)2

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Janet SHUM
Senior Council Secretary (2)2

Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Meeting with the Administration

LC Paper No. CB(2)2156/08-09(01) -- Administration's response to issues raised by members at the meeting on 25 June 2009

LC Paper Nos. CB(2)2156/08-09(02) -- Two written submissions
& (03) from Mr KWOK Cheuk-kin, resident of Cheung Chau

LC Paper No. CB(2)2156/08-09(04) -- Written submission from Mr CHAN Kam-fat, resident of Fuk Yuen Wo Liu in Yuen Long

LC Paper No. CB(2)2175/08-09(01) -- Written submission from Tsing Yi Rural Committee

LC Paper No. CB(2)2175/08-09(02) -- Written submission from Mr LAI Tak-shing, resident of Tsing Yi Hui

LC Paper No. CB(2)2175/08-09(03) -- Written submission from Shap Pat Heung District Resident Association

LC Paper No. CB(3)599/08-09 -- The Bill

Action

- File Ref : HAD HQ CR/11/15/3SF2/(C) -- The Legislative Council Brief issued by the Home Affairs Bureau in May 2009
- LC Paper No. LS72/08-09 -- Legal Service Division Report on the Bill
- LC Paper No. CB(2)1772/08-09(02) -- Marked-up copy of the relevant provisions of ordinances to be amended by the Bill
- LC Paper No. CB(2)1772/08-09(03) -- Background brief prepared by the Legislative Council Secretariat

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

2. Members noted the Administration's response to the proposals and further submissions made by residents of Tsing Yi Hui (TYH), Fuk Yuen Wo Liu (FYWL) and Cheung Chau (CC) relating to the proposed inclusion of these places in the Schedules to the Village Representative Election Ordinance (VREO) (Cap. 576). The salient points made by the Administration are as follows -

- (a) in the judgement on the TYH judicial review case, the Court of First Instance ruled that TYH was not an indigenous village and considered that the decision of the Secretary for Home Affairs (SHA) not to include TYH in the Schedules to the VREO was correctly made based on the fact that TYH was not an indigenous village. The Court of Appeal further considered that even if the matter was to be remitted to SHA for reconsideration, he would be bound by the findings of the Court of First Instance;
- (b) the Lands Department advised in a letter dated 4 November 2002 to the Tsing Yi Rural Committee (TYRC) that the father of Mr LAI Tak-shing (the applicant of the TYH judicial review case) was an indigenous inhabitant of Ma Wan instead of Tsing Yi, and there was no strong evidence in Mr LAI's further submission which could prove that TYH was an indigenous village;
- (c) Ma Wan Main Street referred to in Mr LAI's further submission was included in the Schedules to the VREO because it had a village representation system in 1999. Moreover, the Block Lease that came into effect in 1905 indicated that the settlements

Action

in Ma Wan Main Street were mainly residential dwellings, whereas there were only a few residential dwellings in TYH. Furthermore, TYH had not had any village representation system ;

- (d) FYWL did not appear in the Block Lease and the Demarcation District (D. D.) sheet made between 1899 and 1904. The geographical location of FYWL could not be ascertained and there was insufficient evidence to prove that a village representation system was established in FYWL before 1999;
- (e) since CC had not had any village representative (VR) or village representation system, it was not included in the Schedules to the VREO and the VREO was not applicable to CC. The handling of affairs of indigenous inhabitants by the Cheung Chau Rural Committee (CCRC) did not contravene the provisions of the VREO; and
- (f) since the establishment of the CCRC in the early 1960s, all its members, past and present, were Kaifong representatives who were elected according to the constitution of the CCRC. The CCRC was composed of residents on the island (including indigenous inhabitants and others who had been residing in CC for a long time). When the CCRC dealt with affairs relating to indigenous inhabitants, its Chairman and Vice-Chairmen would make reference to the documents and evidence provided by the residents concerned and, if necessary, consult other rural elders. Whether the Rural Committee (RC) Chairman or Vice-Chairmen were indigenous inhabitants did not affect the exercise of their functions.

Electoral system in Cheung Chau

3. Mr LEE Wing-tat queried the appropriateness of the existing voting arrangement for the election of 39 Kaifong representatives to the CCRC on the basis of one single constituency (viz. the entire Cheung Chau Island). He remarked that such an arrangement differed from that adopted in the elections for other RCs, under which the villages under the jurisdiction of the respective RCs were in a way different electoral constituencies in that the VRs elected for the villages would become members of the respective RCs. Mr LEE held the view that the Administration should consider dividing CC into a number of electoral districts so that representatives (including VRs for the village communities existing in CC and Kaifong representatives for the developed areas in CC) could be elected for the respective districts.

Action

4. Mr CHEUNG Hok-ming said that similar to the elections for the other 26 RCs, the Kaifong representative election in CC was conducted according to the constitution of CCRC. There should be no question about the legality of the CCRC. Mr CHEUNG considered that VRs and Kaifong representatives could co-exist. Citing the example of the Tai Po Rural Committee, he said that apart from VRs, the RC also included other members such as representatives of Mutual Aid Committees/Owners' Corporations and representatives of Chambers of Commerce. He stressed that where there was sufficient evidence to prove the existence of indigenous villages in CC in 1898 and a VR system in 1999 or before, those villages should be entitled to elect VRs under the VREO, and efforts should be made to work out a mutually acceptable arrangement regarding the representation of VRs and Kaifong representatives in the CCRC.

5. The Administration responded that the existing CCRC constitution was formulated with regard to the local needs as well as CC's background and characteristics, and the Kaifong representatives of the CCRC were elected according to the constitution of the CCRC. Such electoral arrangement, which had operated effectively since its implementation in the 1960s, was generally accepted by CC residents. Regarding a CC resident's suggestion to divide CC into different electoral districts, the Administration had consulted CCRC which indicated that it preferred to maintain the status quo.

6. Mr LEE Wing-tat requested the Administration to provide information to show that the current electoral arrangement was generally accepted by CC residents. The Administration explained that the remark was made on the understanding that the current electoral system had been operating smoothly throughout the years and that there had been few requests for a change of the system.

Admin

Interpretation of village and market town

7. Mr LEE Wing-tat said that the fact that Ma Wan Main Street was regarded as an indigenous village for inclusion in the Schedules to the VREO had illustrated that it was possible for village communities to be developed within a market town over time in the course of a place's historical development. He queried the reason for not applying the same principle to TYH, which had a similar background. Mr LEE considered that whether a place should be defined as a village or market town should be assessed by objective criteria, and it would be against the legislative intent should such a definition be determined on the basis of subjective judgement of some individuals or authorities, such as RCs which in his view had an undue influence on such a decision.

Action

8. Mr CHEUNG Hok-ming said that whether TYH was an indigenous village was a controversial issue. Taking into account the grey areas in tracing the development and defining the past activities of places with a long history, he considered that the Administration should keep an open mind in considering whether TYH could be regarded as an indigenous village, as in the case of Ma Wan Main Street and Yuen Long Kau Hui. Despite the Court's ruling, the Administration should review further evidence/proof provided by the Tsing Yi residents in collaboration with the TYRC and Heung Yee Kuk (HYK), based on the two main principles for inclusion of a village to the Schedules to the VREO.

9. The Administration explained that the VREO did not give a definition for "village". Section 2 of the VREO only provided that "village" included a community. It was difficult to provide an absolute definition for village as the geographical environment, demographic composition and nature of activities of an area might have undergone changes in the course of its historical development. In assessing the claim of a place as an indigenous village for the purpose of VR election, the Administration would check against objective references, such as the Block Lease and the relevant D.D. sheet which would reveal the land use of the relevant places in 1898. Documental proof provided by residents would also be scrutinized. While reference would also be made to the advice of HYK and RCs, the strength and reliability of the documental proof and evidence put forward would be of paramount importance for a claim to be established. In response to members' query relating to the inclusion of Ma Wan Main Street and TYH in the Schedules to the VREO, the Administration reiterated its stance set out in paragraph 2 (c), and further advised that it would be very difficult to reconsider the case of TYH unless the present Court ruling was overruled in future.

ALA7

10. In view of the Administration's response on TYH in relation to the court ruling on the judicial review case, Assistant Legal Adviser 7 (ALA7) was requested to advise members on whether there was any scope for SHA to reconsider the case of TYH so that TYH might be included in the relevant Schedules to the VREO in future subject to presentation of sufficient proof in accordance with the two principles (viz. an indigenous village in existence in 1898 and the establishment of a village representation system in the village in 1999 or before).

Follow up on cases

11. Mr CHEUNG Hok-ming said that pursuant to the enactment of the Bill, HYK would continue to communicate with the relevant RCs and the Administration to follow up the cases of CC, TYH and FYWL as well as requests from other villages for inclusion in the Schedules to the VREO, on the basis of the two main principles. The Administration assured members that it would keep an open mind on the issue, based on the strength and reliability of the evidence provided by the residents concerned.

Action

III. Clause-by-clause examination of the Bill

12. The Committee completed the clause-by-clause examination of clauses 1 to 37 of the Bill and raised no objection to the Administration's proposal to move Committee Stage amendments (CSAs) to amend clause 2 and clause 16 of the Bill, details of which are set out in paragraphs 13 and 14.

Part 1 of the Bill (Preliminary): Clause 2

Admin

13. SHA would move a CSA to amend clause 2 of the Bill so that the Amendment Ordinance would come into operation on 9 November 2009 instead of 16 November 2009. The Administration explained that the advancement of the commencement date was to tie in with the legislative timetable for the introduction of other proposed amendments to section 89 of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) by another amendment regulation, pursuant to the passage of the Voting by Imprisoned Persons Bill by the Legislative Council on 24 June 2009. The change of the commencement date would have no implications on the VR election to be held in 2011.

Part 3 of the Bill (Appeal Regulation): Clause 16

14. According to ALA7, the statement "...a copy of a notice of claim or notice of objection is lodged with the Revising Officer ..." in section 2(5) of the Village Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576 sub. leg. A) could only reflect part of the process in the lodging of the notices concerned. There was a need to spell out the process more clearly to avoid misunderstanding in interpreting this provision. In response, the Administration would move a CSA to clause 16 of the Bill to amend section 2(5) of Cap. 576 sub. leg. A to specify that the aforesaid notices should be lodged under Part 5 of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K) in which the full procedures for lodging such notices were set out.

IV. Any other business

Legislative timetable

15. Members agreed that the Bills Committee should report to the House Committee on 9 October 2009 recommending that the Second Reading debate of the Bill be resumed at the Council meeting on 21 October 2009.

Action

16. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 2
Legislative Council Secretariat
8 September 2009

J:\cb2\BC\TEAM2\BC\BC(2008-2009)\bc54-VR\Minutes\bc540710-min-e.doc

**Proceedings of the meeting of the
Bills Committee on Village Representative Election Legislation
(Miscellaneous Amendments) Bill 2009
on Friday, 10 July 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000447	Chairman	Opening remarks	
000448 – 001226	Mr LEE Wing-tat Chairman Admin	The Administration's response to address members and deputations' concerns and views	
001227 – 002858	Chairman Mr LEE Wing-tat Admin	<ul style="list-style-type: none"> - Appropriateness of the Kaifong representative election system of Cheung Chau (CC) - The need to establish electoral constituencies in CC - Request for the Administration to provide information to ascertain that CC residents were satisfied with the status quo - The need to examine the historical development of a market town such as Tsing Yi Hui (TYH) within which village communities might have been formed - The need to establish objective criteria in interpreting the term "village" and avoid decision misled by subjective opinion - Reasons to categorise Ma Wan Main Street as an indigenous village and TYH as a market town 	The Admin to provide a written response
002859 – 004249	Chairman Mr CHEUNG Hok-ming Admin	<ul style="list-style-type: none"> - The need for the Administration and Heung Yee Kuk (HYK) to continue following up requests of residents of CC, TYH and Fok Yuen Wo Liu to include these places in the Schedules to the Village Representative Election Ordinance (Cap. 576) (VREO) pursuant to enactment of the Bill - Right of inhabitants of indigenous villages in CC to hold VR election in accordance with the two principles - Feasibility to elect both Kaifong representative and village representative in CC 	

Time marker	Speaker	Subject	Action required
		<ul style="list-style-type: none"> - The scope for the Secretary for Home Affairs (SHA) to follow up the case of TYH on which court decision had been made in relation to the status of TYH and the applicant of the judicial review - The need to keep an open mind in assessing the status of residents of TYH as there were precedence that the Rural Committee of a designated area would add in names of migrated indigenous inhabitants under its registry - Possibility for a market town to comprise village community in the course of its historical development - Request for Assistant Legislative Adviser 7 (ALA7) to study and advise member as to whether there was scope for SHA to reconsider the case of TYH 	ALA to provide information
004250 – 004653	Chairman Admin	<u>Clause-by-clause examination of the Bill</u> <u>Part 2</u> Amendments to Village Representative Election Ordinance Clause 3 Interpretation	
004654 – 004740	Chairman Admin	Clause 4 How long a Village Representative holds	
004741 – 004829	Chairman Admin	Clause 5 Who is entitled to vote at an election	
004830 – 005024	Chairman Admin	Clause 6 Who is eligible to be registered as an elector	
005025 – 005353	Chairman Admin	Clause 7 Electoral Registration Officer (ERO) to compile and publish registers of electors	
005354 – 005419	Chairman Admin	Clause 8 Secretary to specify dates for village ordinary elections	

Time marker	Speaker	Subject	Action required
005420 – 005446	Chairman Admin	Clause 9 Terms of office of an approved Village Representative	
005447 – 005520	Chairman Admin	Clause 10 Section added	
005521 –005809	Chairman Admin Mr CHEUNG Hok-ming	Clause 11,12&13 Existing Village Indigenous Village Composite Indigenous Village	
005810 – 010014	Chairman Admin	Clause 14 Schedule 5 added	
010015 – 010053	Chairman Admin	<u>Part 3</u> Amendments to Village Representative Election (Registration of Electors) (Appeals) Regulation Clause 15 Interpretation	
010054 –010629	Chairman Admin	Clause 16 Fixing a hearing date and notifying the appellant Proposed Committee Stage amendment (CSA) to section 2(5) of the Appeal Regulation	
010630 - 010718	Chairman Admin	Clause 17, 18 Revising Officers notify parties of outcome of appeal Electoral Registration officer to be notified of rulings	
010719 – 010751	Chairman Admin	Clause 19 Review of rulings by Revising Officer	
010752 – 010837	Chairman Admin	<u>Part 4</u> Amendments to Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation Clause 21 Interpretation	

Time marker	Speaker	Subject	Action required
010838 - 010917	Chairman Admin	Clause 22, 23 When to apply for registration in first provisional register and applications received after deadline When to apply for registration in provisional registers compiled after first provisional register	
010918 – 011011	Chairman Admin	Clause 24 ERO may require further particulars or proof	
011012 – 011039	Chairman Admin	Clause 25, 26,27 ERO may make inquiries about persons registered in existing final register ERO to prepare omissions list ERO to publish notice that omissions list is available for public inspection	
011040 – 011110	Chairman Admin	Clause 28 ERO to correct entries in existing final register when compiling next provisional register	
011111 – 011204	Chairman Admin	Clause 29 What is to be contained in provisional register	
011205 – 011227	Chairman Admin	Clause 30 ERO to publish notice that provisional register is available for public inspection	
011228 – 011242	Chairman Admin	Clause 31 Objection regarding registered person in provisional register	
011243 – 011337	Chairman Admin	Clause 32 How to lodge notice of claim	
011337-011405	Chairman Admin	Clause 33 ERO to correct entries in provisional register when compiling final register	
011406-011524	Chairman Admin	Clause 34, 35 ERO to correct entries in provisional register with approval of Revising Officer What is to be contained in final register	

Time marker	Speaker	Subject	Action required
011525-011557	Chairman Admin	Clause 36 ERO to publish notice of final register and to make final register available for public inspection	
011558-011651	Chairman Admin	<u>Part 5</u> Amendments to Electoral Procedure (Village Representative Election) Regulation Clause 37 Offence	
011652 – 011852	Admin	<u>Part 1</u> Preliminary Clause 2 CSA to be moved by the Administration to give effect to the commencement of the Bill on 9 November 2009 instead of 16 November 2009	Admin to follow up
011853 – 012221	ALA 7 Chairman Admin	- Request for ALA7 to study the English text of the marked-up version of the relevant provisions of the ordinances to be amended by the Bill - Legislative timetable - Resumption of the Second Reading debate of the Bill at the Council Meeting on 21 October 2009	ALA7 to follow up

Council Business Division 2
Legislative Council Secretariat
 8 September 2009