

立法會
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(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 June 2011, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man

**Members
absent** : Hon CHEUNG Man-kwong
Hon WONG Kwok-hing, MH
Hon LEUNG Kwok-hung
Hon Tanya CHAN

**Public Officers
attending** : Item III & IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Ms Anne TENG Yu-yan
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr LI Pak-hong
Chief Electoral Officer, Registration and Electoral Office

Mr Anthony CHAN Shiu-lun
Principal Electoral Officer, Registration and Electoral Office

Item V

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr LI Pak-hong
Chief Electoral Officer, Registration and Electoral Office

Mr Anthony CHAN Shiu-lun
Principal Electoral Officer, Registration and Electoral Office

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Wendy KAN
Assistant Legal Adviser 6

Miss Ivy LEONG
Senior Council Secretary (2)3

Action

I. Information papers issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)2111/10-11(01) and (02)]

2. Members agreed to discuss at the next regular meeting to be held on 18 July 2011 the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") –

- (a) Provisional recommendations on delineation of geographical constituencies in respect of the 2012 Legislative Council ("LegCo") Election;
- (b) Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Election Committee ("EC") Subsector Elections; and
- (c) Practical Arrangements for 2011 EC Subsector Elections.

III. Practical Arrangements for the 2011 District Council Election

[LC Paper Nos. CB(2)2086/10-11(01) and CB(2)2111/10-11(03)]

Action

Briefing by the Administration

3. SCMA said that the next District Council ("DC") ordinary election would be held on 6 November 2011. The Electoral Affairs Commission ("EAC") was making preparations for various electoral arrangements for the DC election. EAC had issued the Proposed Guidelines on Election-related Activities in respect of the DC election ("the Proposed Guidelines") for public consultation. The consultation period would end on 22 June 2011 and the final guidelines would be issued around September 2011.

4. Chief Electoral Officer of the Registration and Electoral Office ("CEO of REO") briefed members on the key electoral arrangements proposed by EAC for the 2011 DC election as set out in the Administration's paper [LC Paper No. CB(2)2086/10-11(01)].

5. Members noted the background brief prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2)2111/10-11(03)].

Discussion

Polling hours

6. Noting that the polling would be conducted from 7:30 am to 10:30 pm, Dr LAM Tai-fai enquired whether the Administration had any statistics showing the variation of voters' turnout rate throughout the polling hours. In anticipation of an increase in the number of electors in the coming DC election due to the creation of the five new DC functional constituency seats in the 2012 LegCo election, Dr LAM considered that adjustment in the polling hours could facilitate vote counting arrangements. Sharing Dr LAM's view, Mr IP Kwok-him and Mr LAU Kong-wah suggested that the Administration could consider reducing the duration of polling hours to facilitate vote counting arrangements and to save staffing resources. Mr LAU pointed out that the polling hours in other nearby countries or regions were much shorter than that in Hong Kong.

7. Mr Paul TSE was of the view that the Administration should study the voters' turnout rate in the last few hours of the polling period to ascertain the possible effect on electors. Taking into account the long working hours of polling staff, Mr TSE considered it reasonable to shorten the polling hours to 12 hours (i.e. from 7:30 am to 7:30 pm).

Action

8. Mr LEE Wing-tat, however, said that EAC had once proposed to shorten the polling hours but it had aroused much public concern. As many workers had to work very long hours even on Sundays, Mr LEE considered that it would be appropriate to maintain the existing polling hours. The Chairman recalled that EAC had previously proposed to shorten the polling hours but the proposal was not well-received. He, however, considered that the public might be receptive to a slight adjustment in the polling hours. He suggested that the Administration could consider making a moderate adjustment.

9. SCMA responded that the voters' turnout rate was fairly consistent throughout the polling hours. Based on a voting rate of 45%, the turnout rate of electors was around 3% per hour. He further advised that polling stations would be converted to counting stations after the poll ended at 10:30 pm. The Administration would ensure that there was sufficient manpower for the conversion and counting process. The Administration would consider whether the polling hours should be revised having regard to the views of members.

Access to polling stations

10. Noting from paragraph 6 of the Administration's paper that REO aimed to have at least 90% of the polling stations set up at venues accessible to electors with disabilities, Ms Emily LAU enquired about the availability of special arrangements in the remaining 10% of the polling stations to facilitate access to these stations by electors with disabilities. Pointing out that the location of some polling stations in the rural areas was quite remote, Mr CHEUNG Hok-ming asked whether the Administration would arrange rehabilitation buses to facilitate access by electors with disabilities to these polling stations.

11. CEO of REO said that REO had put in a lot of efforts in securing barrier-free venues for use as polling stations. In the 2010 LegCo by-election, 85% of the polling stations were set up at venues accessible to electors with disabilities, as compared to 50% for the past elections. REO aimed to have at least 90% of the polling stations set up at venues that were barrier-free in the coming DC election. In the long run, REO hoped that 100% of the polling stations would be accessible to electors with disabilities. He further said that upon receipt of the poll card, an elector could apply to REO for re-allocation to a special polling station five days before the polling day if the elector was allocated to a polling station not accessible to the

Action

disabled. The Administration could arrange rehabilitation buses for electors with disabilities to go to the polling station if necessary.

12. Mr IP Kwok-him asked how REO would balance between the accessibility of a venue and the provision of barrier-free access when identifying venues for use as polling stations. CEO of REO advised that in looking for a suitable venue for use as a polling station, REO would take into consideration the accessibility of the venue, the provision of barrier-free access, the accommodation and the availability of suitable facilities. REO would strike a balance among these factors to facilitate electors to vote. REO would also arrange for installation of ramps at suitable venues to improve accessibility where necessary.

Polling staff

13. Ms Emily LAU said that the Administration should only recruit civil servants as electoral staff on the polling day. To ensure elections were conducted in a fair and just manner, Ms LAU suggested that civil servants should not be arranged to carry out duties in the polling stations of the same district where they worked. Mr LAU Kong-wah considered that it would be more practicable to arrange polling staff to work in DC constituency areas ("DCCAs") other than the one where they lived. Ms LAU further opined that any person who provided assistance to an elector in voting in a polling station should be in the presence of a witness. Mr LEE Wing-tat stressed that persons who would be allowed to accompany elderly or persons with disabilities to the polling station to cast their votes should be clearly prescribed in the guidelines.

14. CEO of REO assured members that all electoral staff on duty on the polling day was civil servants. He said that according to the law, the Presiding Officer could mark a ballot paper for an elector who was unable to read or was incapacitated from voting due to blindness or other physical cause. The Presiding Officer should mark the ballot paper for the elector in the presence of a polling officer according to the choice of the elector. Under the existing law, only an elector or authorized representative was allowed to vote at a polling station. There was no provision which allowed accompanying persons to enter a polling station.

15. On the suggestion that civil servants should not be arranged to carry out duties in the polling stations of the same district where they worked, CEO of REO said that there might be practical difficulty in making such an

Action

arrangement due to the large number of staff (about 15,600 civil servants) required to work at 560 polling stations in the coming DC election. To address the issue of possible conflict of interest, REO would request polling staff to declare whether he or she had any close connection with the candidates in the constituency concerned. REO would give regard to that factor in the deployment of electoral officers. CEO of REO stressed that REO would consider carefully members' suggestions in relation to the deployment of polling staff in the upcoming elections.

16. Mr CHEUNG Hok-ming said that there had been complaints about the inconsistent practices adopted by some Presiding Officers in determining the validity of ballot papers in the past elections. Mr CHEUNG asked whether Presiding Officers were from senior ranks in the civil service and whether they had adequate experience in managing the polling/counting stations. CEO of REO responded that civil servants at Master Pay Scale 45 were eligible for applying as Presiding Officers. Past experience had shown that civil servants at that rank were capable of taking up the position of Presiding Officers.

17. Mr LAU Kong-wah enquired whether there was any standard practice in handling conflicts outside a polling station. CEO of REO responded that there were guidelines on resolving election-related conflicts on the polling day. REO would enhance training for Presiding Officers to ensure that consistent practices would be adopted among polling stations.

Independence of EAC

18. While noting that EAC was an independent body responsible for the conduct and supervision of elections, Ms Emily LAU opined that the public had always had an impression that EAC was under the purview of the Constitutional and Mainland Affairs Bureau ("CMAB"). Ms LAU considered that EAC should be allowed to carry out its functions independently. Mr WONG Yuk-man shared a similar view. He opined that EAC had never been exercising its functions independently.

19. SCMA stressed that EAC was a statutory and independent body established under the EAC Ordinance (Cap. 541) for the purpose of regulating the conduct of elections. SCMA advised that EAC comprised a Chairman, who was a Judge of the High Court, and two other members, who were a Senior Counsel and an academic respectively. The work of EAC also included the making of subsidiary legislation on electoral arrangements

Action

and electoral guidelines. REO only provided administrative support to EAC for implementing its functions. He explained that CMAB was responsible for making election-related ordinances and subsidiary legislation and formulating the related policies. EAC had all along been carrying out its statutory functions according to the law.

Address labels

20. Referring to paragraph 14 of the Administration's paper, Mr LAU Kong-wah and Ms Emily LAU enquired about the arrangements in printing of address labels to facilitate candidates in sending election advertisements ("EAs") to electors on a household basis.

21. CEO of REO advised that it had been an established practice of REO to provide each candidate with a set of address labels pertaining to the electors in the constituency. Under the present arrangement, the address labels were printed on an individual basis. To facilitate candidates who wished to send their EAs on a household basis, a mark "H" was currently printed on the address labels with two or more electors sharing the same address. Candidates might just send only one mail to the addresses marked "H". In order not to affect the right of individual electors to receive EAs, REO would continue with the existing practice to provide address labels on an individual basis to candidates.

Declaration of electronic EAs

22. Referring to paragraph 15 of the Administration's paper on the submission of electronic EAs, Mr WONG Yuk-man said that dissemination of EAs via social networking or communication websites was getting more popular and messages posted on these websites could change quite rapidly and frequently within a short period of time. It would be impractical to require candidates to deposit with REO every electronic EA posted on these websites by the end of the first working day following the day on which the EAs were displayed on the Internet. He queried whether candidates or the election agents were able to comply with the proposed requirement.

23. CEO of REO responded that subject to the enactment of necessary amendments to the relevant provisions of the EAC (Electoral Procedure) (DC) Regulation (Cap. 541F) and comments received from the public consultation exercise on the Proposed Guidelines, candidates would be allowed to submit electronic EAs and the required declaration electronically. Candidates would also be allowed to deposit with REO the declaration and

Action

electronic copies of the EAs by the end of the first working day following the day on which the concerned EAs were sent or displayed through social networking or communication websites on the Internet. REO would organize briefing sessions and formulate supplementary guidelines for candidates regarding the new arrangement.

24. Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") supplemented that according to the existing law, messages posted on the Internet (including Facebook and Twitter) by candidates to promote their candidacy would fall within the definition of EA and were subject to the prior declaration/submission requirement. During the scrutiny of the nine amendment regulations made under the EAC Ordinance, the relevant Subcommittee had discussed and expressed support for the proposed improvements to allow candidates to submit electronic EAs to REO by electronic means and to make ex post facto declaration. The Subcommittee had also discussed whether the electoral procedures could be further relaxed so that candidates would not be required to submit messages posted on social networking websites to REO in the future. The Administration had undertaken to study the issue separately and would revert to the Panel in due course.

25. Ms Miriam LAU was of the view that there should be clear guidelines setting out the relevant legislation in regulating electronic EAs including those messages sent through mobile phone short message services ("SMS") or other multimedia messaging services. She enquired whether the existing regulations in relation to electronic EAs would cover SMS.

26. CEO of REO advised that according to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), any material published for the purpose of promoting or prejudicing the election of a candidate or candidates in an election was an EA. SMS fell within the definition of an EA and candidates should make a relevant declaration to REO before distribution of the messages. Candidates were also required to declare any expenses incurred in the production of these messages. SCMA said that consideration would be given to reviewing the guidelines with a view to providing clear guidance to candidates on compliance with the relevant electoral legislation.

Electoral arrangements for electors in custody

27. Noting that the 2011 DC election was the first DC ordinary election in which dedicated polling stations ("DPSs") would be set up for registered

Action

electors imprisoned, remanded or detained by law enforcement agencies to vote, Mr Paul TSE enquired about the number of electors in custody who would cast their votes on the polling day. He also asked whether officers of the Correctional Services Department would be assigned as polling staff and how REO could ensure that polling was conducted fairly at DPSs. He further enquired how electors in custody could obtain information about the candidates.

28. SCMA said that arrangements had been made for registered electors imprisoned, remanded or detained by law enforcement agencies to cast votes at DPSs in the 2010 LegCo by-election. REO would review the procedures in the light of the operational experience to ensure that the poll at DPSs in penal institutions or police stations would be conducted smoothly in the upcoming DC election.

29. CEO of REO said that the number of electors in custody varied from time to time, according to past experience, the range would be within a few hundreds to a thousand. The operation of DPSs at the penal institutions would be more or less the same as ordinary polling stations except that the polling hours would be shorter. The polling staff on duty at DPSs would also be civil servants deployed by REO and would observe the provisions governing the secrecy of voting. He added that REO would send an introductory leaflet on the candidates to electors in custody before the polling day.

Central Command Centre

30. Referring to paragraph 17(a) of the Administration's paper, Ms Emily LAU enquired about the function of the Central Command Centre ("CCC") and whether it was open to outside visitors. Mr LEE Wing-tat asked whether a central media centre would be set up to facilitate the media and political parties to gather and disseminate information.

31. CEO of REO said that a CCC would be set up at REO's Caroline Hill Road Office on the polling day to oversee the conduct of the poll, collect and consolidate statistics, and provide central command and support services. Since the centre was mainly for internal operation, it would not be open to the public. He further said that REO had not set up a central media centre in the last election as vote counting had been decentralized to individual polling stations. Relevant information or press releases would be made available to the public through CCC.

Action

32. Referring to paragraph 17(e) of the Administration's paper, Ms Miriam LAU enquired about the purpose of setting up an emergency depot. CEO of REO responded that an emergency depot would be set up in each of the 18 administrative districts to provide quick replenishment of supplies, including ballot papers, to the polling stations where necessary. REO would draw up a comprehensive contingency plan to deal with various kinds of incidents on the polling day.

Electioneering activities

33. Mr Ronny TONG expressed dissatisfaction that while EAC proposed to regulate the broadcast of election-related programmes on the Internet, the Administration maintained that electioneering activities in private premises were not subject to regulation and EAC could only make a reprimand or censure in a public statement against the management body which did not adhere to the equal treatment principle in handling electioneering activities. He considered the arrangements unfair to the candidates. He asked whether EAC would impose more stringent regulation on prohibition of discriminatory treatment of candidates in private premises.

34. CEO of REO responded that the aim of the election guidelines was to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. There were guidelines to be observed by owners, management and organizations for handling applications for conduct of electioneering activities on the premises within their jurisdiction. They should adhere to the fair and equal treatment principle. In the event that a complaint was lodged against a management body for unequal treatment and was found to be justified, EAC could make a reprimand or censure in a public statement against the management body concerned. As regards the Proposed Guidelines relating to the broadcast of election-related programmes on the Internet, SCMA said that EAC would take into account the views received during the public consultation period and make necessary amendments before finalizing the guidelines.

Corrupt conduct in elections

35. Mr Ronny TONG referred to a recent case in which a former Member, Ms Mandy TAM was charged with engaging in corrupt conduct in the 2008 LegCo elections for offering an advantage, namely service in the form of a free seminar to other persons as an inducement for them to vote for her at the

Action

election. However, it was ruled that the offering of a free seminar to electors was not considered as an advantage and the magistrate remarked that the value of the free seminar was equivalent to a pack of paper handkerchief. In this respect, he enquired about the criteria for determining whether or not a candidate had offered an advantage to his or her electors. Mr TONG further referred to another election-related case in which the Court held that since the candidate had not declared his intention to run for the election, there was no need to count the expenses incurred in carrying out election-related activities as election expenses. He was concerned that a candidate could make use of such an obvious loophole by delaying the making of public declaration of his intention to run for the election. Mr TONG considered that the Proposed Guidelines should be revised in the light of these rulings.

36. Mr Ronny TONG also observed that many political parties had distributed lunch boxes of barbecued pork rice and/or offered discount in purchase of electrical appliances to their constituents. He said that the political parties or the candidates would not breach the law if such activities were not carried out during the election period. He opined that EAC should provide guidelines on whether such activities should be prohibited for a certain period before an election.

37. SCMA said that it would not be appropriate to comment on the two cases referred to by Mr Ronny TONG as the Department of Justice ("DoJ") had lodged an appeal against the ruling in respect of Ms Mandy TAM's case. For the second case, a judgment was handed down by the Court of Appeal and the parties involved might appeal to the Court of Final Appeal. He further said that there were clear guidelines which required all candidates to submit election returns to REO. All the election expenses incurred before, during or after an election, by the candidate for the purpose of promoting his or her election should be covered in the return. He added that political parties had been carrying out all sorts of activities to address the need of the low-income people. The Administration considered that there was no ground to regulate such activities provided that they were not carried out during the election period.

38. Mr LAU Kong-wah considered that the ruling on Ms Mandy TAM's case might have an adverse impact on the enforcement of the relevant electoral regulations/guidelines. He said that the Administration should dispel any doubt about the proper interpretation of what constituted an offer of advantage to electors.

Action

39. SCMA said that DoJ had lodged an appeal to the High Court against the ruling in respect of Ms Mandy TAM's case handed down by the Magistrates' Court, with a view to obtaining a clear interpretation on the important principles governing a fair election. He considered that candidates should continue to follow the electoral law and guidelines when participating in the upcoming elections.

IV. Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the District Council Election

[LC Paper Nos. CB(2)1881/10-11, CB(2)2086/10-11(02) and CB(2)2111/10-11(04)]

Briefing by the Administration

40. CEO of REO briefed members on the Proposed Guidelines issued by EAC and highlighted the major revisions as set out in the Administration's paper [LC Paper No. CB(2)2086/10-11(02)].

41. Members noted the background brief prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2)2111/10-11(04)].

Discussion

Broadcast of election-related programmes on the Internet

42. Ms Emily LAU expressed disagreement with the EAC's proposal to extend the "equal time" principle to the broadcast of election-related programmes on the Internet. She considered that it would not be feasible to comply with such regulations. Mr LEE Wing-tat shared a similar view saying that EAC should withdraw the proposal.

43. Mr WONG Yuk-man said that EAC should not and would not be able to regulate online electioneering programmes. He pointed out that as Internet programmes did not use public broadcasting band widths, anyone could upload programmes on the Internet. He considered that EAC had applied double standards in regulating election-related publicity given that EAC did not seek to regulate the media or the press which had its own stance and reported favorably on a particular candidate during the election period.

Action

44. Mrs Regina IP pointed out that media organizations in overseas countries had openly supported and reported favorably on a candidate. She considered that the editorial line of the media could be freely expressed and it was inappropriate to interfere with editorial decisions. As regards the proposal to extend the "equal time" principle to the broadcast of election-related programmes on the Internet, Mrs IP enquired about the original intent and practicability of EAC's proposal. She was of the view that as more candidates would be making use of the social networking websites to promote their candidacies and some websites were not hosted by candidates themselves, it would not be feasible for EAC to regulate these online programmes.

45. Dr Samson TAM shared a similar view. He said that it would be difficult to comply with the Proposed Guidelines. He asked whether EAC had made reference to any overseas experience in this regard. If EAC had decided to regulate the broadcast of election-related programmes on the Internet by licensed television and radio stations, he asked whether and how EAC would regulate the same of those service providers which were subsidiaries of the licensed television or radio stations.

46. Dr Priscilla LEUNG, however, expressed the view that all election broadcasting, irrespective of whether it was conducted by licensed television and radio stations, should be regulated under the same set of guidelines. Broadcasters should ensure that the "equal time" principle was applied to all candidates contesting the election.

47. CEO of REO said that according to the current guidelines, licensed television and radio stations should ensure that the "equal time" principle would be applied to all candidates in their election-related programmes. Based on this fair and equal treatment principle, EAC released the Proposed Guidelines for public consultation with a view to bringing up for discussion among members of the public whether election-related programmes broadcast on the Internet should also be covered by the guidelines. EAC had heard the opposing views expressed by some members of the public on the proposal and noted that there was practical difficulty in implementing the proposal. EAC was aware that unlike licensed television and radio stations,

Action

Internet programmes did not occupy public air time which was public resources. EAC would continue to listen to public views on the Proposed Guidelines and would consider carefully all the views received during the consultation period in a fair manner. He added that EAC would consider making amendments as appropriate before finalizing the guidelines.

48. Mr Paul TSE considered that paragraphs 10.2 and 10.3 of the Proposed Guidelines meant to elaborate on the principles licensed television and radio stations should comply with in the broadcast of election-related programmes and EAC did not intend to promulgate guidelines on regulating electioneering on the Internet. However, the relevant paragraphs of the Proposed Guidelines had given the impression that EAC was going to do so. Since the Proposed Guidelines had aroused public debate on the broadcast of election-related programmes on the Internet, he was of the view that EAC had made use of the opportunity to gauge public sentiment on the issue. Mr TSE opined that EAC should clarify its intention before the end of the public consultation period.

49. CEO of REO said that there had been useful discussions in the community on the chapter of the Proposed Guidelines relating to the broadcast of election-related programmes on the Internet. EAC would consider all the views received during the public consultation period and make necessary amendments before finalizing the guidelines.

Exit poll

50. Ms Emily LAU expressed dissatisfaction that EAC had failed to respond to the long-standing call of Members for regulating the conduct of exit polls. She asked whether EAC would revise the Proposed Guidelines to the effect that organizations were not allowed to use the exit poll results to plan the electioneering activities of candidates before the close of poll.

51. CEO of REO responded that REO in regulating the conduct of exit polls had all along struck a balance among freedom of speech, press freedom and academic freedom. Any organization intending to conduct exit polls would need to sign an undertaking to abide by its terms and guidelines governing the conduct of exit polls including not releasing the exit poll

Action

results before the close of poll. REO considered the existing arrangement appropriate. REO would review the arrangement in the future with a view to identifying any room for improvement.

52. Ms Emily LAU further queried why EAC did not stipulate clearly in the guidelines that organizations should not use exit poll results to assist candidates/political parties in planning their electioneering activities.

53. SCMA said that EAC had appealed to the organizations concerned in the guidelines to refrain from announcing the results of exit polls until after the close of poll. The media and academic institutions had followed the relevant guidelines in the past elections. He added that a candidate who commissioned an organization to conduct exit polls for electioneering purposes was required under existing laws to include the expenses incurred as part of the election expenses.

Electioneering activities

54. Mr LAU Kong-wah enquired whether the expenses incurred should be counted as the election expenses of a candidate in the event that a website was hosted by the candidate who continued to publicize his or her political views during the election period. CEO of REO replied in the affirmative. He further advised that to avoid unfair extra publicity for the candidate at the critical time, the guidelines requires a presenter or a regular contributor not to appear in any programme in his normal programme role after he had publicly declared his intention to stand for the election or during the election period if he became a candidate.

55. Mr LAU Kong-wah said that in the 2007 LegCo by-election, a media organization issued a special edition around dusk on the polling day reporting that a candidate was falling behind at the election. He considered that such conduct would promote the election of one candidate and prejudice the election of another candidate. However, if the candidate denied any involvement in these electioneering activities, there was no need for the candidate concerned to bear the expenses incurred, thus causing unfairness in an election.

Action

56. CEO of REO said that if a special edition of a newspaper had been launched to canvass votes for a candidate, it should be regarded as an EA. The expenses incurred should be counted towards the election expenses of the candidate concerned. He advised that according to ECICO, a person, other than a candidate or a candidate's election expense agent, engaged in illegal conduct at an election if the person incurred election expenses at or in connection with the election without the prior written authorisation of the candidate concerned.

57. Ms Emily LAU said that there was concern in the community as to whether the Chief Secretary for Administration had deployed public resources to prepare for the Chief Executive ("CE") electioneering campaign. She asked whether the Administration had inquired into the matter and whether more stringent guidelines on participation in election-related activities by civil servants and officials under the Political Appointment System would be drawn up to ensure that a politically appointed official taking part in any election-related activities would not constitute any actual or potential conflict of interest with the business of the Government or his own official duties.

58. SCMA responded that electoral guidelines had been revised in the light of the implementation of the Political Appointment System. These guidelines would also be updated before each election taking into account the operational experience and suggestions for improvements received. In the past DC, LegCo and CE elections, candidates concerned had followed the relevant electoral law and guidelines and would not use public resources for election campaigns. He believed that all candidates, be they public officials or not, would continue to follow the electoral law and guidelines when participating in the coming four elections, i.e. the DC and EC Subsector elections in 2011 and the LegCo and CE elections in 2012. Furthermore, all candidates were required under ECICO to declare all expenses, including those incurred in connection with the preparatory work of an election, in the election return to be submitted to REO.

59. Ms Emily LAU opined that civil servants should not participate in electioneering activities. She enquired whether there were clear guidelines, other than the electoral guidelines, advising the civil servants of their rights to refuse to participate in such activities.

60. SCMA said that civil servants had their rights as provided in the Basic Law and they might have their own political inclination. However, civil

Action

servants who wished to participate in electioneering activities in an election should observe the guidelines, regulations and rules issued by the Civil Service Bureau ("CSB"). Under the CSB guidelines currently in force, certain officers at a senior level and those who might be particularly susceptible to accusations of bias because of the nature of their duties, namely directorate officers, Administrative Officers, Police Officers and Information Officers should not openly support any candidate or be seen to lend support to a candidate. They should not participate in any form of electioneering. Apart from these officers, there was no objection in principle to individual civil servants supporting electioneering activities of a candidate provided that it would not give rise to any conflict of interest with their official duties, and that it would not involve the use of public resources.

V. Publicity for the 2011 District Council Election

[LC Paper Nos. CB(2)2111/10-11(05) and (06)]

Briefing by the Administration

61. DSCMA briefed members on the main features of the proposed publicity programme to promote the DC election to be held in November 2011 as set out in the Administration's paper [LC Paper No. CB(2)2111/10-11(05)].

62. Members noted the issues raised by members at the Panel meeting on 21 July 2003 in relation to the publicity for the 2003 DC election as set out in the extract from the relevant minutes [LC Paper No. CB(2)2111/10-11(06)].

Discussion

Election forums

63. Noting from paragraph 6 of the Administration's paper that election forums would be arranged in selected constituencies, Ms Emily LAU enquired about the criteria for selecting the constituencies and whether the Administration had received any complaints about unfairness in its arrangement. She further asked whether the election forums organized by the Radio Television Hong Kong ("RTHK") would be broadcast on the television.

64. DSCMA responded that RTHK would be responsible for carrying out a series of publicity programme, including the arrangement for election forums. Since there were over 400 DCCAs, it was not possible for RTHK

Action

to organize an election forum in each DCCA. According to past practice, election forums would be held in constituencies where keen competition among candidates was expected. The election forums would be mainly broadcast on the radio. Detailed arrangements for holding election forums were being finalized with RTHK. DSCMA added that RTHK had not received any complaints relating to the arrangements for election forums.

65. Ms Emily LAU said that some election forums organized by the District Office would be cancelled if one candidate was not available to attend. She enquired whether the Administration was aware of such arrangement which she considered inappropriate.

66. DSCMA clarified that the Home Affairs Department had not arranged any election forums. However, some media organizations other than RTHK might organize election forums for participation by contesting candidates. The Administration respected the practice adopted by individual organization for holding these forums.

Promotion of clean elections

67. Referring to Ms Mandy TAM's case, Mr Paul TSE said that the magistrate's ruling was not in line with the rulings in past election-related cases. He suggested that the Administration could draw up guidelines incorporating the rulings in respect of relevant cases for candidates' reference so that candidates could avoid breaking the law due to inadvertence.

68. DSCMA said that the Independent Commission Against Corruption ("ICAC") would organize publicity programme to promote clean elections. Briefings would also be organized to remind candidates of the importance of honest and clean elections. The Administration would discuss with ICAC the suggestion of Mr Paul TSE when designing publicity programme to promote clean elections.

VI. Any other business

69. The meeting ended at 5:25 pm.