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10 October 2002

Clerk to Panel
LegCo Panel on Home Affairs
(Attn.: Miss Lolita Shek)
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Miss Shek,

Village Representative Election Bill

Thank you for your letter of 7 October 2002.

We consulted the public on the proposed arrangements for the conduct of Village Representative elections from July to September this year. A consultation paper (copy at the Annex) was issued for public comments.

We consulted the Heung Yee Kuk, District Councils in the New Territories and the Rural Committees on the proposals. We also met the Association for the Promotion of the Rights of New Territories Residents (representing non-indigenous residents) and the Association of New Territories Indigenous Residents to discuss the new arrangements.

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

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Views on the proposed arrangement were divided. The Heung Yee Kuk supported the proposed arrangements, while the Association of New Territories Indigenous Residents did not. The 27 Rural Committees were divided on the issue. The majority supported the new arrangements, while the others opposed them.

Six of the nine New Territories District Councils, including Islands, Kwai Tsing, Sha Tin, Tai Po, Tsuen Wan and Tuen Mun District did not oppose the proposals. Yuen Long District Council did not support the new arrangements. North and Sai Kung District Councils circulated the consultation paper to their members, but did not discuss the proposals.

According to the comments received, the public generally supported the proposed arrangements, although a few points (such as the residency requirement for registration as an elector for the Resident Representative elections) remain controversial.

Yours sincerely,

(Stephen Fisher)
for Secretary for Home Affairs

c.c. Director of Home Affairs

Proposed Arrangements for the Conduct of
Village Representative Elections

Paper for Public Consultation

Purpose

This consultation paper sets out the proposed arrangements for the conduct of Village Representative elections to be held in 2003 and thereafter. Members of the public are invited to comment on the proposals.

Background

2. A system of village representation has developed in the New Territories over the decades. The arrangements for electing Village Representatives have also evolved over time.
3. Since August 1994, Village Representative elections are held every four years in accordance with a set of election rules promulgated by the Heung Yee Kuk, known as the Model Rules for the Conduct of Village Representative Elections, or the "Model Rules".
4. Electoral arrangements used in the Village Representative elections of two indigenous villages, namely, Po Toi O Village and Shek Wu Tong Village, were ruled by the courts to be inconsistent with Article 21(a) of the Bill of Rights in the Hong Kong Bill of Rights Ordinance (Cap 383) and section 35(3) of the Sex Discrimination Ordinance (Cap 480). These arrangements were based on the Model Rules.
5. The Court of Final Appeal ruled in December 2000 that the Secretary for Home Affairs, in deciding whether to approve an elected Village Representative, has to consider whether the person elected to represent a village was elected in accordance with electoral arrangements which are consistent with the Bill of Rights and the Sex Discrimination Ordinance.

6. The Government recognizes the need to reform Village Representative elections to ensure that they are free and fair. In view of the Court of Final Appeal's ruling, there have been calls on the Government to bring Village Representative elections under a statutory framework.

Review

7. A working group was set up in April 1999 to review the procedure and arrangements for rural elections. An interim report was made in October 1999. The report recommended that the conduct of Village Representative elections should be brought under statutory control. Having regard to the ruling of the Court of Final Appeal and public views, the Home Affairs Bureau has completed a further review on rural elections. It is recommended that legislation should be introduced to provide for and to regulate Village Representative elections.

8. The Government intends to introduce a Bill into the Legislative Council to provide for the conduct of Village Representative elections to be held in early 2003 and in subsequent years. The aim of the Bill is to ensure that Village Representative elections are conducted in line with the requirements of the Bill of Rights and the Sex Discrimination Ordinance.

Proposed Arrangements

9. The main elements of the proposed arrangements for Village Representative elections are as follows:

- (a) All Village Representatives should be elected.
- (b) Villages, including both indigenous and non-indigenous villages, which are now included in the village representation system in the New Territories should be covered by the new electoral arrangements.
- (c) Village Representatives should hold office for four years.
- (d) Village Representative elections should be held in the two to three months before the current term of Village Representatives expires.

- (e) There should be two types of Village Representatives, namely:
 - (i) an indigenous inhabitants representative representing indigenous inhabitants of an indigenous village; and
 - (ii) a residents representative representing all residents of a village.
- (f) A candidate should be nominated by at least five registered voters of the constituency.
- (g) No person should be allowed to stand as a candidate in more than one constituency.

Indigenous Inhabitants Representatives

10. Indigenous Inhabitants Representatives should be returned by indigenous village constituencies. An indigenous village constituency should consist of the indigenous inhabitants of that village. The current number of Village Representatives for individual indigenous villages should be maintained for the 2003 elections. A register of voters for each constituency should be compiled.

11. In the case of an indigenous village constituency, a person should be eligible to be registered as a voter and to vote if he/she:

- (a) is aged 18 or above;
- (b) is recognized by the Director of Home Affairs as an indigenous inhabitant of that indigenous village; and
- (c) possesses an acceptable identity document.

12. For an Indigenous Inhabitants Representative election, an indigenous inhabitant should be eligible to be nominated as a candidate if he/she:

- (a) is a registered voter of the constituency in which he/she is to be nominated;

- (b) is aged 21 or above;
- (c) is a permanent resident of Hong Kong;
- (d) is ordinarily resident in Hong Kong; and
- (e) is nominated by at least five registered voters from that constituency.

13. In the case of an Indigenous Inhabitants Representative election, the "first past the post" voting system should be used. The candidate who obtained the highest number of votes would be declared elected, then the one with the next highest and so on until all the vacancies are filled. If two or more of the candidates for a vacancy have an equal number of votes, the Returning Officer must determine the result of the election by drawing lots.

14. The primary role of the Indigenous Inhabitants Representative is to represent indigenous inhabitants on matters relating to the lawful traditional rights and interests of indigenous inhabitants and the traditional way of life in indigenous villages.

Residents Representatives

15. Residents Representatives should be returned by village constituencies which are geographically-defined. Each village constituency should be delineated with reference to a map which would be made available for public inspection. There should be one Residents Representative for each village constituency. A register of voters for each constituency should be compiled.

16. In the case of a village constituency, a person should be eligible to be registered as a voter and to vote if he/she:

- (a) is a resident within the area as defined by the constituency map;
- (b) is aged 18 or above;
- (c) is a permanent resident of Hong Kong; and

- (d) has ordinarily resident in that constituency for at least three years immediately preceding the date of his/her application to be registered as a voter.
17. For a Residents Representative election, a person shall be eligible to be nominated as a candidate if he/she:
- (a) is a registered voter of the constituency in which he/she is to be nominated;
 - (b) is a resident within the area as defined by the constituency map;
 - (c) is aged 21 or above;
 - (d) is a permanent resident of Hong Kong;
 - (e) has ordinarily resident in that constituency for at least five years immediately preceding the nomination; and
 - (f) is nominated by at least five registered voters in the constituency.
18. As in the case of an Indigenous Inhabitants Representative election, the "first past the post" voting system should be used for an Residents Representatives election. If two or more of the most successful candidates have an equal number of votes, the Returning Officer must determine the result of the election by drawing lots.
19. The primary role of the Residents Representative is to represent all residents in the village on matters relating to general village affairs.

Proposed Timetable

20. The following election timetable should, as far as possible, be followed:

60 days prior to polling day

Posting of the provisional register of voters in the village office, office of the relevant Rural Committee and the relevant District Office

40 days prior to polling day	Posting of the final register of votes in the above specified locations.
40 days prior to polling day	Nomination of candidates to commence.
30 days prior to polling day	Posting of the list of eligible candidates in the above specified locations.
15 days prior to polling day	Announcement of polling details, such as place and time of polling.

Outstanding Issues

21. It has been suggested that the wives of indigenous inhabitants should be allowed to be registered as voters in an indigenous village constituency. The Administration has no objection in principle to allow the spouses of indigenous inhabitants to vote in an Indigenous Inhabitants Representative election. However, any such arrangement must comply with the provisions of the Sex Discrimination Ordinance.

22. It has been proposed by some representatives of indigenous inhabitants that the residency requirement for registration as a voter and nomination as a candidate in a village constituency should be five years and seven years respectively. It has also been proposed by some other groups that the residency requirement for registration as a voter and nomination as a candidate should be one year and three years respectively. Further discussion on this issue is necessary.

The Way Forward

23. We plan to introduce a Village Representative Elections Bill into the Legislative Council shortly after the summer recess. However, we need to have the legislation in place by early next year in order to conduct the 2003 round of elections.

Comments Sought

24. Members of the public are invited to comment on the proposals and the issues outlined above. Please send your written comments on or before 30 September 2002 to:

Home Affairs Bureau
31/F Southorn Centre
130 Hennesy Road
Wan Chai
Hong Kong

or email account:

hab1@hab.gov.hk

Home Affairs Bureau
August 2002