

CHAPTER 6

THE PUBLIC REPRESENTATIONS; THE RECOMMENDATIONS: DECISIONS WITH REASONS

Section 1 : The Public Representations

6.1 The Commission announced the commencement of the public consultation in a press conference held on 1 September 1999. A press release was also issued on 20 September 1999, inviting the public to put forward their views, either through writing to the Commission or attending the public forum.

6.2 During the consultation period between 1 and 30 September 1999, the Commission received only 6 written representations on its provisional recommendations. They can be found in Appendix IV. The Commission also held a public forum on 27 September 1999 to hear representations from the public. Six persons attended the public forum and only 4 of them addressed the Commission. A summary of their views can be found in Appendix V. Given that the Commission has adopted the boundaries of the existing 5 GCs, the provisional recommendations have become non-controversial. The public's lukewarm response was therefore not unexpected.

6.3 The Commission had appealed to the public in its publicity materials for inviting representations that not only those who were dissatisfied, but also those who were satisfied with the Commission's provisional recommendations should come forward and make their views

known. This was for the purpose of ensuring that as many views on the provisional recommendations should be known to the Commission. If only representations opposing or criticising the provisional recommendations were sought and received, the Commission would have no way to gauge the degree of their acceptability to the public. The Commission may also alter its provisional recommendations consequent upon having considered representations which might contain a one-sided or wrong idea, not knowing whether the Commission's provisional recommendations are acceptable by those who have not expressed their views. Seeking approving voices is also to ensure that those who might be affected by any possible alteration made consequent upon an opposing representation would not be so affected without having an opportunity of addressing the Commission. It appears that the appeal bore some fruit because among the 10 representations, 4 expressed acceptance or approval of the provisional recommendations. The Commission was thus able to have an overall view of the public opinion on the matter to arrive at a balanced decision.

Section 2: Representations Supporting the Commission's Provisional Recommendations

6.4 The Hong Kong Democratic Foundation and a member of the public wrote in to support the Commission's provisional recommendations. They expressed the views that the provisional recommendations were fair and capable of ensuring a most satisfactory balance of representation in all 5 GCs. At the public forum on 27 September 1999, two participants made known their support. One of them also showed his appreciation of the constraints faced by the Commission i.e., there are to be 5 GCs each of which can have no less than 4 nor more than 6 seats.

6.5 It is worthy of note that there was not a single representation requesting modification of the boundaries of the PDCAs. It appeared that the community accepted the Commission's approach of keeping the boundaries of the existing GCs intact.

Section 3: Representations Making General Propositions and Proposals

6.6 Two representations – one written and one oral – proposed that the number of GCs should be increased from 5 to 6. Another oral representation suggested compulsory voting in Hong Kong. These representations were outside the jurisdiction of the Commission. This was despite the fact that the Commission had on many occasions informed the public of the functions of the Commission and the criteria that the Commission had to follow in the delineation of LCCAs. In respect of any electoral matters, it seems natural that members of the public would relate them to the Commission regardless of whether they are within the ambit of the Commission. The Commission will explore avenues in order to ensure that the public understands the relevant statutory criteria for delineating LCCAs e.g., issuing an explanatory note on the statutory criteria as part of the consultation document, in future consultation exercise.

Section 4: Representations Objecting to the Commission's Provisional Recommendations and the Commission's Responses

The Whole of the New Territories vs. the Urban Areas

6.7 A Provisional Regional Council/Tai Po Provisional District Board member was not satisfied with the distribution of seats between the

whole of the New Territories (comprising New Territories West and New Territories East PDCA) and the urban areas (comprising the Hong Kong Island, Kowloon West and Kowloon East PDCA). He considered it unfair for the New Territories which had a population (3,348,400) close to that of the urban areas (3,388,500), to be given only 11 seats i.e., 2 seats less than the urban areas. He asked the Commission to distribute the 24 seats evenly between the New Territories and the urban areas. The Commission finds it difficult to accept this approach of dividing Hong Kong into two parts i.e., the New Territories and the urban areas for the purpose of apportioning the 24 seats. Adopting the approach would at least implicitly mean that the Commission approve of viewing the Hong Kong Special Administrative Region in this divisive manner, but worse still the Commission would be ultra vires to disregard the fact that the statutory criterion is 5-GC based and not 2-area based. According to section 18(1) of the Legislative Council Ordinance, for the second term of office of the LegCo there are to be 5 GCs for the purpose of returning members at elections for those GCs.

The New Territories East PDCA vs. the Hong Kong Island PDCA

6.8 Of the two representations which opposed the Commission's provisional recommendations, both dwelled on the number of seats proposed to be allocated to the New Territories East PDCA. Their main objection was that whereas New Territories East had 5 seats in the LegCo in 1998, it was not given any additional seat this time round despite the increase of its population. On the other hand, the number of seats proposed to be allocated now to Hong Kong Island and Kowloon East was increased from 4 to 5 and from 3 to 4 respectively in spite of the fact that their populations had decreased since 1998. That was, according to the representations,

contrary to the principle of equal representation. They were aggrieved by the unfairness towards the residents of New Territories East PDCA caused by only 5 seats being proposed for that constituency. One of the respondents, the Heung Yee Kuk, urged the Commission to allocate the seat it proposed to give to Hong Kong Island to the New Territories East. The Kuk also requested that the future development and population growth, and the much larger geographical coverage of New Territories East should be viewed as further considerations to justify the PDCA being represented on the LegCo by more members than Hong Kong Island.

6.9 The Commission considered these two representations very carefully and has come to the conclusion that they should be rejected for the reasons stated in the ensuing paragraphs.

6.10 Population. The representations were of the view that if Hong Kong Island and Kowloon East could be allocated one additional seat each despite their population decrease, then there was no reason why New Territories East that had an increase in population should not be given one more seat. The Commission does not think that it should agree to this view, which wrongly surmised that consideration had to be given to the changes in population in a particular GC between two election years in the demarcation process. This should not be the case. Section 20(6) of the EAC Ordinance provides that the Commission shall endeavour to estimate the population of Hong Kong or any proposed GC in the year in which the election to which its recommendations relate, is to be held. It is clear from the language of this section that for the purpose of demarcation, comparison of population has to be made among the populations of all the GCs in the same election year. When this approach is faithfully applied, it can be

seen from the following figures that in respect of the two election years of 1998 and 2000, there is absolutely no unfairness in the distribution of seats among the three GCs mentioned in the representations, namely, Hong Kong Island, Kowloon East and New Territories East:

	<u>1998 (Population Quota: 326,335)</u>			<u>2000 (Population Quota: 280,704)</u>		
	<u>Population</u>	<u>Quotient*</u>	<u>Seats</u>	<u>Population</u>	<u>Quotient*</u>	<u>Seats</u>
Hong Kong Island	1,360,700	4.17	4	1,343,400	4.79	5
Kowloon West	1,026,000	3.14	3	1,029,000	3.67	4
Kowloon East	1,046,200	3.21	3	1,016,100	3.62	4
New Territories West	1,682,800	5.16	5	1,804,900	6.43	6
New Territories East	1,411,000	4.32	5	1,543,500	5.50	5

* Quotient = Population divided by Population Quota

6.11 The Commission notices that while making comparison of the populations among Hong Kong Island, Kowloon East and New Territories East, the representations had ignored the fact that in 1998, New Territories East had a population deviation of -13.52%. Comparing with the population deviation of +4.24% for Hong Kong Island and +6.86% for Kowloon East at that time, this means that the number of seats allocated to the New Territories East in 1998 represented a much smaller population than those of the other two. It is unreasonable that the representations complain about the unfairness among these three GCs this time round but did not do so in 1998.

6.12 The Heung Yee Kuk also suggested to transfer the additional seat which the Commission proposed to give to Hong Kong Island to New Territories East. The Commission has noted that if the seat were to be so

transferred, the resultant population deviation for Hong Kong Island would become +19.65%, which falls outside the statutory 15% deviation permitted under section 20 (1)(b) of the EAC Ordinance.

6.13 Future development. One of the justifications given by the Heung Yee Kuk for an additional seat for New Territories East was that future development and population growth were expected in this PDCA. The Commission has realised however that future development and the resultant variation in population in one PDCA would lead to a corresponding change in population in other PDCAs which are unknown variables. For the sake of establishing a level playing field for the calculation of population distribution in each and every PDCA, a cut-off date for population forecast which for this demarcation exercise is 31 March 2000 must be adopted.

6.14 Geographical coverage. The representations considered that the large area covered by New Territories East PDCA should be taken into account in determining the number of seats to be allocated to New Territories East. The Commission agrees to this but feels that the predominant criterion must be population. The Commission has noted the difference in the wording used in the EAC Ordinance in regard to the population criterion [s 20(1)] on one hand and the physical feature of a GC on the other [s 20(3)]. The Commission shall **ensure** that the population criterion is to be complied with whereas it shall **have regard** to the physical feature of a GC. It is obvious to the Commission therefore that while due regard has to be paid to the physical feature of a GC, the preponderance is on ensuring that the population criterion is to be complied with.

Section 5: Names of Legislative Council Constituencies

6.15 No representations were received regarding the names, and reference code numbers, of the PDCAs proposed by the Commission.

Section 6: The Recommendations

6.16 After having carefully considered all the public representations, the Commission decided that there was no need to make any alteration to the provisional recommendations which have remained to be its final recommendations. The final recommendations in respect of the 5 LCCAs with the number of seats to each, their names and reference code numbers, the component DCCAs and their names with population details as well as the maps showing the boundaries of the recommended LCCAs are contained in **Volume 2** of this report.