

Section 1 – Introduction

Background

1.1 The Village Representative (“VR”) ordinary election was held on the Saturdays and Sundays of six consecutive weeks during the period from 12 July to 17 August 2003 with a view to filling 1,480 seats for 707 villages. A total of 1,291 candidates were returned from this election, comprising 526 Resident Representatives (“RRs”) and 765 Indigenous Inhabitant Representatives (“IIRs”). In respect of 180 villages, no nomination was received or the prospective candidates had failed to secure the requisite number of subscribers for their nominations.

1.2 Section 29(2) of the Village Representative Election Ordinance (“VREO”) provides that the Returning Officer (“RO”) shall declare that an election for a village has failed if no candidate was validly nominated for election for the village after the close of nominations. The declaration that elections had failed for the 180 villages was made on 30 June 2003.

The vacancies

1.3 A total of 196 vacancies have arisen after the conclusion of the ordinary election held in July and August last year. These vacancies are classified into three different groups as follows:

- (a) **83 vacancies** – comprising 74 RR and 9 IIR vacant seats in 80 villages. These vacancies have arisen because no one sought candidature for these seats;
- (b) **106 vacancies** – comprising 93 RR and 13 IIR vacant seats in 100 villages. Although there might be prospective candidates for these vacant seats, they could not secure the requisite number of subscribers (ie five) for their nominations because the total number of registered electors of the village was less than six; and
- (c) **7 vacancies** – comprising 5 RR and 2 IIR vacant seats in 7 villages. These vacancies have arisen because 5 elected representatives (4 RRs and 1 IIR) resigned from office after being elected; one RR refused to accept the elected office and one IIR was disqualified under section 9(1)(d) of the VREO.

1.4 Under section 21 of the VREO, a by-election had to be held to return candidates to fill the vacancies. With the agreement of the Electoral Affairs Commission (“EAC” or “Commission”), the Home Affairs Department (“HAD”), which is responsible for the conduct of VR elections, decided that a by-election should be held to return candidates to fill 90 vacancies in groups (a) and (c) in the first instance. A second round of by-election would be held in November 2004 to fill the vacancies in group (b) after the completion of the next round of voter registration, which would hopefully produce a sufficient number of

electors for subscribing candidate(s) for a by-election, because as required by law, the nomination of a candidate must be subscribed by 5 electors.

1.5 Taking into consideration that the last District Council ordinary election was held in November 2003 and the Lunar New Year period would fall in January 2004, the HAD planned to hold the first round of by-election sometime in February or March 2004. This would avoid confusing the villagers with two elections taking place around the same time. It would also avoid exposing prospective candidates to possible risks of breaching the relevant law on corrupt practices due to inadvertence as they would be frequently engaged in treating during the traditional festive season of the Lunar New Year.

Section 2 – Preparation

Polling date and nomination period

2.1 Pursuant to section 6 of the Electoral Procedure (Village Representative Election) Regulation, the Director of Home Affairs announced in the Gazette on 13 February 2004 the holding of a by-election for returning candidates to the 90 RR and IIR vacancies of the villages concerned, with the polling date of the by-election fixed for 28 March 2004 and the nomination period scheduled for 21 February to 5 March 2004.

Appointment of ROs, Assistant ROs and Assistant RO(Legal)

2.2 In accordance with section 54 of the VREO, the EAC appointed the District Officers of eight New Territories District Offices¹ as ROs and 13 Assistant Returning Officers (“AROs”) from among their staff and a Senior Government Counsel as ARO(Legal) on 3 February 2004. The appointment of ROs was published in the Gazette on 13 February 2004. A list of the ROs and AROs is shown at **Appendix I**.

¹ No vacancy arises in Kwai Tsing district over the relevant period. Therefore, District Officer (Kwai Tsing) was not appointed as RO in this round of by-election.

The briefing for ROs and AROs

2.3 To enable all parties concerned to be familiarised with the rules and operation of the by-election, the HAD prepared and issued operational manuals to the ROs/AROs as well as the polling and counting staff for reference.

2.4 A briefing for ROs and AROs was held on 10 February 2004 at the HAD Headquarters. The EAC Chairman, accompanied by representatives from the Independent Commission Against Corruption (“ICAC”), Department of Justice (“DoJ”) and the Chief Electoral Officer of the Registration and Electoral Office (“REO”) briefed those present on the electoral arrangements and reminded them of the salient provisions of electoral legislation and guidelines. About 40 staff members from the eight District Offices (ie North, Yuen Long, Tuen Mun, Tai Po, Sha Tin, Tsuen Wan, Islands and Sai Kung) attended the briefing. At the end of the briefing, there was a “questions and answers” session.

2.5 Taking into account the advice given by the Commission to some prospective candidates at the 2003 VR ordinary election, the EAC has amended paras 4.3 and 4.53 of the electoral guidelines to include the following updated provisions:

- (a) Para 4.3 – The performance report published or distributed during the election period by “a serving village representative” should also be regarded as an election advertisement (“EA”).

- (b) Para 4.53 – Publications issued in connection with certain activities by an organisation involving a candidate should not be regarded as an EA of the candidate concerned if the activity is organised from time to time either as part of the organisation’s normal functions, and/or according to the local tradition; is not related to the election; and the publication does not explicitly or implicitly promote or prejudice the election of a candidate in the election.

The amendment sheets containing the revised guidelines were sent to all parties concerned in late January 2004. The revised guidelines were issued to the candidates of the by-election during the nomination period.

2.6 In line with the EAC’s recommendation in the 2003 VR election report, the HAD has produced candidates’ introductory leaflets to provide registered electors with information on the relevant personal particulars, election platform and photographs of candidates contesting in their villages to enable them to make an informed choice on the polling day. Introductory leaflets were produced for all the validly nominated candidates, except one who had refused to provide information for the production of the leaflet.

2.7 A briefing for candidates to be conducted by the EAC Chairman with representatives from the ICAC, DoJ and the REO was scheduled for 8 March 2004 to be held in the Conference Room of Sha

Tin District Council at Sha Tin Government Offices. All validly nominated candidates were invited to attend the briefing.

Section 3 – Nominations and Election Results

The nominations

3.1 At the close of nomination on 5 March 2004 the ROs received a total of 34 nominations, of which 33 were confirmed valid and one was withdrawn.

Election results

3.2 As each of the 26 RRs and 7 IIRs seats was contested by only one of the 33 validly nominated candidates, all the 33 candidates were thus returned uncontested.

3.3 Of the 90 vacant seats, 57 still remained vacant. The election results shown at **Appendices II and III** respectively were published in the Gazette on 12 March 2004.

3.4 As the by-election was uncontested, a notice stating that no poll would be conducted on 28 March 2004 was sent to each registered elector concerned with a copy of the relevant candidate's introductory leaflet. The electors of one indigenous village were not issued with the candidate's introductory leaflet as the candidate concerned had refused to provide the relevant information to the HAD for preparing the leaflet.

3.5 The briefing for candidates as mentioned in para 2.7 was cancelled.

Section 4 – Complaints

4.1 The complaints-handling period started on 21 February 2004, when the nomination period commenced, and should have ended on 12 May 2004 (ie 45 days after the polling date of 28 March 2004). Since the by-election was uncontested and had concluded on 5 March 2004, the ending date of the complaints-handling period was brought forward to 19 April 2004, ie 45 days after 5 March.

4.2 As in the last VR ordinary election the EAC, the ROs, the Police and the ICAC were responsible for handling complaints relating to the by-election.

4.3 No complaint case was received by any one of the parties during the complaints-handling period.

Section 5 – Review and Recommendations

5.1 The fact that only 33 nominations were received in the by-election, as against 90 vacant seats, indicated that the villagers concerned seemed to be unenthusiastic in seeking candidature for the vacant seats. The villagers' apparent sense of apathy towards participating in public elections would dampen the public's confidence in the representativeness of the VR electoral system.

5.2 **Recommendation:** The Commission notes that the HAD will undertake a major review on the electoral arrangements for the three-tier rural elections. It recommends that the HAD should address, in the context of the major review, the issue relating to the villagers' apparent lack of enthusiasm to participate in the VR elections and encourage them to serve their community as an elector and/or a representative of the people.

The second round of by-election

5.3 For those villages with less than six electors (as mentioned in para 1.3(b)), a by-election would be held in November 2004 upon the completion of the next round of voter registration exercise, which hopefully would produce a sufficient number of electors to subscribe nominations of candidates for the 106 vacant VR seats. However, given the experience in the 2003 election and the situation on the ground, the

HAD anticipated that some villages may still fail to obtain a sufficient number of electors by then.

5.4 **Recommendation:** The Commission agrees with DoJ's advice that if the number of electors in a certain village should remain below six after the next round of voter registration, it would not be necessary to conduct the second round of by-election for that village in November 2004.

The third and subsequent rounds of by-elections

5.5 To facilitate better planning for the third and subsequent rounds of by-elections, the EAC agrees with the HAD's suggestion to regularise the timing for holding future by-elections.

5.6 **Recommendation:** It is proposed to hold the third round of by-election in April/May 2005 to avoid the festive season of the Chinese New Year in February 2005. Any subsequent by-elections should be held twice a year in April/May and November/December unless there are special circumstances that warrant a departure from the scheduled time.

Section 6 – Acknowledgement

6.1 Although the by-election was uncontested, the Commission would like to thank the officers in the HAD, particularly those serving as ROs and AROs for their part in validating nominations and in making the necessary preparations for the by-election.

6.2 The Commission is also thankful to the REO for drafting this report.

Section 7 – The Way Ahead

7.1 The HAD is planning another by-election in November 2004 to return candidates to fill 113 vacancies, including 106 vacancies described in para 1.3(b); 5 vacancies which had arisen from resignation and 2 other vacancies arising from the death of incumbent VRs in February and March 2004.

7.2 Before the next round of by-election in November, the Commission is busily engaged in the preparation work for the 2004 Legislative Council Election scheduled for 12 September this year.

7.3 Though not much can be said of this by-election, the Commission would still like to recommend that this report should be made public, at a time when the Chief Executive thinks fit, to be in line with the long standing principle of maintaining a high level of transparency in elections.