

Section 1 – Introduction

Background

1.1 In accordance with section 21 of the Village Representative Election Ordinance, Cap 576 (“VREO”), after the ordinary election held in 2007, the Electoral Affairs Commission (“EAC”) made arrangements for the conduct of the third round of village representative by-election on 25 May 2008 to return 3 Village Representatives (“VRs”) for filling 1 Resident Representative (“RR”) and 2 Indigenous Inhabitant Representative (“IIR”) vacancies in 3 villages. The reason for conducting the by-election is set out in paragraph 1.3 below.

1.2 According to a recommendation made by the EAC in its *Report on the Village Representative By-election* held in March 2004, VR 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. Hence, the EAC arranged for the conduct of the third round of VR by-election on 25 May 2008 to return the vacancies which arose subsequent to the previous VR by-election held in January 2008.

The Vacancies

1.3 A total of 3 vacancies comprising 1 RR and 2 IIR seats had arisen in 3 villages after the conclusion of the second round of VR by-election in January 2008. The vacancies arose because the elected representatives had passed away. Pursuant to section 12 of the VREO, the Director of Home Affairs (“DHA”) declared the existence of these vacancies by a notice published in the Gazette on 30 November 2007, 28 December 2007 and 18 January 2008 respectively.

1.4 Three districts of the New Territories were involved in this by-election, namely, Sai Kung, Sha Tin and Yuen Long. A list showing details of the vacancies and the dates on which the vacancies were declared in the Gazette notice is at **Appendix I**.

Section 2 – Appointments

Polling Day and Nomination Period

2.1 Pursuant to section 6 of the Electoral Procedure (Village Representative Election) Regulation, Cap 541L (“EP (VRE) Reg”), the DHA published a notice in the Gazette on 11 April 2008, appointing 25 May 2008 as the polling day of the by-election and specifying the period from 16 to 29 April 2008, both dates inclusive, as the nomination period. The by-election aimed at returning VRs to fill 1 RR and 2 IIR vacancies in 3 villages. A breakdown of the number of RR and IIRs to be returned by District is shown in **Appendix II**.

Appointment of Returning Officers, Assistant Returning Officers and Assistant Returning Officer (Legal)

2.2 In accordance with section 54 of the VREO, the EAC appointed the District Officers (“DOs”) of the three New Territories District Offices concerned as Returning Officers (“ROs”) and 3 members of their staff as Assistant Returning Officers (“AROs”). A Senior Government Counsel was appointed as ARO(Legal). The appointment of ROs was published in the Gazette on 11 April 2008. A list of the ROs and AROs is shown at **Appendix III**.

Operational Manual for Returning Officers and Assistant Returning Officers

2.3 As the ROs and AROs were familiar with the electoral arrangements, it was considered unnecessary to conduct a briefing for them. Nevertheless, to enable all parties concerned to be familiarized with the rules and operation of the by-election, the Home Affairs Department (“HAD”) prepared and issued operational manuals to the ROs/AROs as well as the polling and counting staff for reference.

Training Session for Polling and Counting Staff

2.4 Staff of the HAD were deployed as polling and counting staff for the by-election. A training session was organized on 19 May 2008 for the staff who had been engaged to perform polling and counting duties and manning the command centre. It aimed at familiarizing the staff concerned with the rules and operational procedures and their respective tasks.

Section 3 – Publicity

3.1 Information on the by-election was published on the websites of the EAC and the HAD throughout the election period for general reference of candidates, electors and the public. Press releases were also issued to publicize the major events of the by-election, e.g. the nomination period and the polling day. These measures helped enhance the transparency of and public interest in the by-election.

3.2 Apart from the publicity measures mentioned in paragraph 3.1 above, the HAD had also placed advertisements on local newspapers to invite nominations for the by-election. The efforts were made in response to the EAC's recommendation in its *Report on the Village Representative By-election* held in January 2006 advising the HAD to strengthen the publicity programme in order to encourage greater participation of the villagers in the VR elections.

Section 4 – Nomination of Candidates

The Nomination Period

4.1 The nomination period started on 16 April and ended on 29 April 2008. Candidates handed in their nomination forms to the relevant RO in person. At the close of nomination, the ROs received a total of 7 nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the 7 nominations were valid. Of the 7 valid nominations, 2 were for the RR election, and 5 for the IIR elections.

Uncontested election

4.3 Having examined the nominations, the RO for Sai Kung District declared that Mr SIT Ka-cheung, the candidate for the IIR election of Tin Ha Wan, was returned uncontested as there was only one validly nominated candidate for this village. The name of the uncontested candidate who was returned in the by-election was published in the Gazette on 9 May 2008.

Contested elections

4.4 As the number of validly nominated candidates for Ng Ka Tsuen in Yuen Long and Wo Liu Hang in Sha Tin exceeded the number of RR and IIR to be returned for these two villages (i.e. 2 candidates contesting for the RR seat in Ng Ka Tsuen and 4 candidates contesting

for the IIR seat in Wo Liu Hang), a poll was held on 25 May 2008 for each of these two villages. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 9 May 2008.

Information for Candidates

4.5 The briefing for candidates, which was scheduled to be held on 3 May 2008 at the HAD Headquarters in Wan Chai, was cancelled since all candidates were unable to attend.

4.6 Although the candidates' briefing was cancelled, the candidates had been provided with the key information on the electoral legislation and guidelines when they submitted their nomination forms.

4.7 Arrangements were made by the ROs for drawing of lots, through which candidates were allocated with their candidate numbers and designated spots for displaying their election advertisements.

Section 5 – The Poll

Polling Day and Polling Hours

5.1 The polls were held on Sunday, 25 May 2008 in respect of the Existing Village and Indigenous Village named Ng Ka Tsuen and Wo Liu Hang respectively. The polling hours were from 12 noon to 7 pm in line with the arrangements for the 2007 ordinary election.

The Contingency Plan

5.2 To cope with any unforeseeable situations in which the poll at any of the designated polling station could not be proceeded smoothly for one reason or another (e.g. inclement weather conditions), the HAD had, for each of the contested villages, kept an alternative polling station in reserve. The notices of the locations of all polling and counting stations for the villages were gazetted by the DHA on 9 May 2008. These venues were also reserved for the same purpose on the fallback date on 1 June 2008 (i.e. the Sunday following the polling day). The arrangements in case of emergencies or inclement weather on the polling day were included in the Operational Manual for ROs and AROs as well as the Operational Manual for Polling and Counting Staff for reference of the officers concerned.

Logistical Arrangements

5.3 On the polling day, the designated polling stations were open for operation as scheduled. It was a fine day and there was no unexpected incident to impede the conduct of the elections, and so it was not necessary to open the alternative polling stations. A Central Command Centre was set up at the HAD Headquarters at Southorn Centre to oversee the operation of the polling and counting stations as

well as the district command centre and to co-ordinate the communication and dissemination of information for all parties concerned on the polling day.

5.4 In the REO Headquarters at Harbour Centre, a complaints centre, manned by the staff of the Complaints Unit of the EAC secretariat, was set up to receive and handle complaints from members of the public throughout the polling hours.

5.5 There were also designated ICAC and Police officers on duty to attend to complaints on the polling day.

Introductory Leaflets and Polling Notices to Electors

5.6 The HAD has produced candidates' introductory leaflets to provide registered electors with information on the relevant personal particulars, election platform and photographs of candidates to enable electors to make an informed choice on the polling day.

5.7 Over 10 days before the polling day, a polling notice, together with the relevant candidates' introductory leaflet, was sent to each of the electors concerned, notifying them of the date, time and location of the polling station. Notices were also sent to the electors in case where the candidate was returned uncontested. In this case the electors concerned were informed by the notice that they needed not attend the polling station to cast their votes.

5.8 A pamphlet prepared by the ICAC to promote clean elections was also sent to the electors.

Voter Turnout Rates

5.9 The total number of registered electors of the contested villages was 594. Of these, 385 electors (i.e. about 64.81%) cast their votes on the polling day. A detailed breakdown of the turnout rates by village is shown in **Appendix IV**.

Section 6 – The Count

Counting Station

6.1 There was one counting station for each district and each counting station was supervised by the RO concerned. The counting stations were situated right next to the polling stations in the same premises.

Counting Method

6.2 As there was only one vacancy in each of the villages concerned, manual counting was adopted.

Counting Arrangements

6.3 After the close of the polls, the ballot boxes were delivered from the polling stations to the counting stations for counting of votes. The ballot boxes arrived at the counting stations for Wo Liu Hang in Sha Tin District and Ng Ka Tsuen in Yuen Long District at around 7:05 pm and 7:25 pm respectively. Subsequently, the ROs concerned opened and emptied the ballot boxes for the count to commence.

6.4 The candidates, their agents and members of the public were allowed to observe the counting process.

6.5 As in the by-election held in May 2007, identification of questionable ballot papers was made at the same time when the number of ballot papers, as opposed to the number of votes marked on them, was verified against the ballot paper account. This saved one step and reduced the time needed for counting.

6.6 Counting staff then sorted the ballot papers into different transparent plastic boxes according to the votes marked thereon, before starting to count the number of votes obtained by each candidate. In respect of the election of Ng Ka Tsuen, 1 questionable ballot paper was rejected by the RO concerned because it was not marked in accordance with section 48(1) of the EP (VRE) Reg. There were also 6 invalid ballot papers which were unmarked. Therefore, the total number of ballot papers not counted was 7. As regards the election of Wo Liu Hang, no questionable ballot paper or invalid ballot paper (i.e. spoilt or unused ones) was identified.

Declaration of Results

6.7 The election result was declared at the counting station by the respective RO immediately after the completion of the count at about 7:15 pm for Wo Liu Hang and 8:00 pm for Ng Ka Tsuen. The results of these contested elections were promulgated in the Gazette published on 30 May 2008.

6.8 The full lists of successful and unsuccessful candidates including the uncontested villages are shown in **Appendices V(A)-(B)**.

EAC Visits

6.9 The EAC visited the polling stations on the polling day, and also observed the count for Ng Ka Tsuen at the counting station in Yuen Long. They found the polling and counting arrangements made at the stations generally satisfactory.

6.10 The Assistant Director of Home Affairs also joined the EAC in visiting the polling cum counting station in Sha Tin and Yuen Long Districts on the polling day.

Section 7 – The Complaints

Complaints-handling Period

7.1 The complaints-handling period started on 16 April (i.e. the commencement of the nomination period) and ended on 9 July 2008 (i.e. 45 days after the polling day of 25 May 2008).

Complaints-handling Parties

7.2 The parties involved in assisting the EAC to handle complaints included the Complaints Unit of the EAC secretariat, the ROs concerned, the Police, the ICAC and, on the polling day, the PROs.

7.3 The Complaints Unit of the EAC secretariat assumed the role of the co-ordinator for collating the complaint-related statistical information from the other parties and compiling a consolidated return for submission to the EAC on a weekly basis during the complaints-handling period.

Number and Nature of Complaints

7.4 By the end of the complaints-handling period, a total of 4 complaints were received by the ROs, Police and ICAC. The RO of Sha Tin District received a complaint concerning entitlement to vote and the RO of Yuen Long District received a complaint about nomination and candidature. A complaint concerning criminal damage was lodged with the Police and the ICAC received a complaint about bribery. Both the Complaints Unit of the EAC secretariat and the PROs did not receive any complaints on the polling day.

Section 8 – Review and Recommendation

8.1 This was the third VR by-election conducted under the supervision of the EAC after the second ordinary election held in 2007. Having carefully reviewed the preparation work for conducting the VR by-election, the EAC is satisfied that the election was generally smoothly conducted and the principle of fairness, openness and honesty had been upheld. The observation and recommendation made by the EAC after reviewing the by-election are set out in paragraphs 8.2 to 8.3 below.

Publicity Arrangements

8.2 The EAC was pleased to note that as a result of the HAD's sustained efforts to enhance the publicity of this by-election by placing advertisements in local newspapers to invite nominations for the by-election, 7 nominations were received in this by-election as against 3 vacant seats, showing a continuous improvement in the participation rate as compared with the previous rounds of by-elections. There was at least one candidate from each village and noticeably, Wo Liu Hang had 4 candidates competing for one seat.

8.3 **Recommendation:** The EAC recommends that the HAD should keep up its good work in encouraging the participation of villagers in VR elections through strengthened publicity measures and other appropriate means.

Section 9 – Acknowledgement

9.1 The EAC wishes to extend its gratitude towards the HAD for conducting the by-election, particularly those serving as ROs, AROs, PROs, polling and counting officers. The EAC is thankful to the various government departments for rendering their valuable assistance throughout the by-election, including the REO which was responsible for drafting this report, preparing the EAC visit programme and co-ordinating the handling of complaints for the by-election. The EAC is also grateful to the Police officers who conscientiously performed their duties in maintaining law and order in the by-election.

9.2 Last but not least, the EAC would like to express its appreciation to the electors who turned up to cast their votes at the polling station and all those who complied with the electoral legislation and guidelines.

Section 10 – The Way Ahead

10.1 The HAD is planning another by-election in November 2008 to return VRs to fill vacancies which have arisen and may arise subsequent to this VR By-election.

10.2 The EAC would like to recommend that this report be made public, at a time when the Chief Executive thinks fit, to uphold the principle of maintaining transparency of elections.