

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 fourth round of village representative by-election on 23 November 2008 to return two Village Representatives (“VRs”) for filling one Resident Representative (“RR”) and one Indigenous Inhabitant Representative (“IIR”) vacancies in two 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 fourth round of VR by-election on 23 November 2008 to return the vacancies which arose subsequent to the previous VR by-election held in May 2008.

The Vacancies

1.3 After the conclusion of the third round of VR by-election in May 2008, a total of two vacancies comprising one RR and one IIR seats had arisen in two villages because the elected RR had passed away and the elected IIR had resigned from his office after being elected. 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 18 April and 23 May 2008 respectively.

1.4 Two districts of the New Territories, namely Tsuen Wan and North, were involved in this by-election. 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, the DHA published a notice in the Gazette on 10 October 2008, appointing 23 November 2008 as the polling day of the by-election and specifying the period from 16 to 29 October 2008, both dates inclusive, as the nomination period. The by-election aimed at returning VRs to fill one RR and one IIR vacancies in two villages. A breakdown of the number of RR and IIR 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 two New Territories District Offices concerned as Returning Officers (“ROs”) and two 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 10 October 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 familiarised 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 organised on 18 November 2008 for the staff who had been engaged to perform polling and counting duties and manning the command centre. It aimed at familiarising 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 publicise 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 October and ended on 29 October 2008. Candidates handed in their nomination forms to the relevant RO in person. At the close of nomination, the ROs received a total of four nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the four nominations were valid. Of the four valid nominations, three were for the RR election, and one for the IIR election.

Uncontested election

4.3 Having examined the nominations, the RO for Tsuen Wan District declared that Mr WU Man-biu, the candidate for the IIR election of Chok Ko Wan and Pa Tau Kwu, 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 7 November 2008.

Contested election

4.4 Three candidates contested for one seat in the RR election of Hang Tau in North District. As the number of validly nominated candidates for the election exceeded the number of RR to be returned for this village, a poll was held on 23 November 2008. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 7 November 2008.

Information for Candidates

4.5 The briefing for candidates, which was scheduled to be held on 31 October 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 RO 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 poll was held on Sunday, 23 November 2008 in respect of the Existing Village named Hang Tau. The polling hours were from 12 noon to 7 p.m. 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 the designated polling station could not proceed smoothly for one reason or another (e.g. inclement weather conditions), the HAD had kept an alternative polling station in reserve. The notices of the locations of the polling and counting stations for the RR election of Hang Tau were gazetted by the DHA on 7 November 2008. These venues were also reserved for the same purpose on the fallback date on 30 November 2008. The arrangements in case of emergencies or inclement weather on the polling day were included in the Operational Manual for RO and ARO 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 station was open for operation as scheduled. It was a fine day and there was no unexpected incident to impede the conduct of the election, and so it was not necessary to open the alternative polling station. 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 had 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 of Hang Tau, notifying them of the date, time and location of the polling station. Notices were also sent to the electors of Chok Ko Wan and Pa Tau Kwu, informing them that they needed not cast their votes for the IIR election as the candidate concerned was returned uncontested.

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 village was 832. Of these, 486 electors (i.e. about 58.41%) cast their votes on the polling day. A detailed breakdown of the turnout rates by hour is shown in **Appendix IV**.

Section 6 – The Count

Counting Station

6.1 After the close of the poll, the polling station was converted into the counting station for the counting of votes. The counting station was supervised by the RO concerned.

Counting Method

6.2 As there was only one vacancy in the village concerned, manual counting was adopted.

Counting Arrangements

6.3 The conversion of the polling station into a counting station was completed at around 7:45 p.m. Subsequently, the RO 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 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. A total of 487 ballot papers were issued, including a new ballot paper which was re-issued by the Presiding Officer (“PRO”) to an elector to

replace his spoilt ballot paper upon his request. There were a total of five invalid ballot papers which comprised the aforesaid spoilt ballot paper, one unmarked ballot paper, one unused ballot paper kept by the PRO and two ballot papers containing votes for more than one candidate. These invalid ballot papers were not counted.

Declaration of Results

6.7 The election result was declared at the counting station by the RO immediately after the completion of the count at about 8:15 p.m. The results of the contested election was promulgated in the Gazette published on 28 November 2008.

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

EAC Visits

6.9 The EAC visited the polling station on the polling day, and also observed the count at the counting station. They found the polling and counting arrangements made at the station generally satisfactory.

6.10 The Assistant Director of Home Affairs (1) also joined the EAC in visiting the polling cum counting station on the polling day.

Section 7 – The Complaints

Complaints-handling Period

7.1 The complaints-handling period started on the day when the nomination period commenced on 16 October 2008 and ended 45 days after the polling day on 7 January 2009.

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 PRO.

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, one complaint about bribery in relation to voting was received by the ICAC. No complaints were received by other complaints-handling parties.

Section 8 – Review and Recommendation

8.1 This was the fourth 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.

Counting Arrangements

8.2 To avoid ballot papers falling off from the counting tables onto the floor when emptying the ballot box, the HAD introduced in this by-election a new arrangement of surrounding the counting table by plastic strips.

8.3 **Recommendation:** The EAC recommends that in view of the effectiveness of the aforesaid arrangement, it should be adopted in future elections.

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, PRO, 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 The EAC would also 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 May 2009 to return VRs to fill vacancies which have arisen 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 appropriate, to uphold the principle of maintaining transparency of elections.