

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 eighth round of the Village Representative By-election on 3 October 2010 to return three Village Representatives (“VRs”) for filling two Resident Representative (“RR”) and one Indigenous Inhabitant Representative (“IIR”) vacancies in three villages. The reasons for conducting the By-election are 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. The polling day of this By-election was brought forward to 3 October 2010 to avoid clashing with the nomination period of the 2011 Village Ordinary Election (“VOE”), which will commence in November 2010.

The Vacancies

1.3 After the conclusion of the seventh round of the VR By-election in June 2010, a total of three vacancies comprising two RR and one IIR seats had arisen in three villages. These vacancies are classified into two different groups as follows:

- (a) **two vacancies** – comprising one RR and one IIR vacant seats in two villages. These vacancies arose because the elected RR and IIR had passed away; and

- (b) **one vacancy** – one RR vacant seat in one village. The vacancy arose because the VR by-election held in June 2010 for returning a RR to fill the vacancy had failed.

1.4 Three Districts of the New Territories, namely Sai Kung, Sha Tin and Tai Po, were involved in this By-election. A list showing the 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 Director of Home Affairs (“DHA”) published a notice in the Gazette on 20 August 2010, appointing 3 October 2010 as the polling day of the By-election and specifying the period from 26 August to 8 September 2010, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill two RR and one IIR vacancies in three villages. A breakdown of the number of RRs and IIR to be returned by District is shown in **Appendix II**.

Appointment of Returning Officers, Assistant Returning Officers, Assistant Returning Officer (Ballot Paper Sorting Station) 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”), three members of their staff as Assistant Returning Officers (“AROs”) and a staff from Home Affairs Department (“HAD”) Headquarters was also appointed as ARO(Ballot Paper Sorting Station) being the officer-in-charge of the ballot paper sorting station. A Senior Government Counsel was appointed as ARO(Legal). The appointment of ROs was published in the Gazette on 20 August 2010. 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 HAD prepared and issued operational manuals to the ROs/AROs for reference.

Section 3 – Publicity

3.1 Information on the By-election was published on the websites of the EAC, the HAD and the ICAC 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 26 August and ended on 8 September 2010. Candidates handed in their nomination forms to the relevant ROs in person. At the close of the nomination period, the ROs received a total of three nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the three nominations were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that three candidates were uncontested, as there was only one validly nominated candidate for each of the villages concerned. The lists of candidates who were returned in the By-election were published in the Gazette on 17 September 2010 and are shown at **Appendix IV**.

4.4 The briefing for candidates, which was scheduled for 13 September 2010, was cancelled.

4.5 As the By-election was uncontested, notices were sent to electors concerned informing them that no poll would be conducted on 3 October 2010.

Section 5 – The Complaints

Complaints-handling Period

5.1 The complaints-handling period started on 26 August 2010 when the nomination period commenced, and should have ended on 17 November 2010 (i.e. 45 days after the polling day on 3 October 2010). Since the By-election was uncontested and concluded on 8 September 2010, the complaints-handling period was advanced to end on 23 October 2010 (i.e. 45 days after the end date of the nomination period on 8 September 2010).

Complaints-handling Parties

5.2 The parties involved in assisting the EAC to handle complaints included the EAC Secretariat, the ROs concerned, the Police and the ICAC. No complaint was received by any of the aforesaid parties during the complaints-handling period.

Section 6 – Review and Recommendation

6.1 This was the third round of VR By-election held after the commencement of the operation of the Voting by Imprisoned Persons Ordinance and the related amendment regulations made by the EAC in October 2009. As there was no need to set up dedicated polling stations (“DPSs”) in penal institutions in the previous two By-elections and this By-election, staff of the HAD has yet to have the opportunity to gain experience in the operation of such DPSs.

6.2 **Recommendation:** Given the large number of registered electors who will be eligible to vote in the coming 2011 VOE, it is highly likely that the HAD will have to set up DPSs in penal institutions. The EAC recommends that the HAD should continue liaising closely with the Correctional Services Department to draw up a detailed operational plan for the DPSs in penal institutions and provide sufficient training to the staff concerned to ensure that in the 2011 VOE, the DPSs in penal institutions would be operated smoothly.

Section 7 – Acknowledgement

7.1 The EAC wishes to extend its gratitude towards 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.

7.2 The EAC is thankful to the Correctional Services Department and other law enforcement agencies for their assistance rendered for the preparation of the By-election and the EAC Secretariat which was responsible for drafting this report and co-ordinating the handling of complaints for the By-election.

Section 8 – The Way Ahead

8.1 The HAD is planning the VOE scheduled for January 2011 to return 789 IIRs and 695 RRs for 709 villages.

8.2 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.