

## **Section 1 – Introduction**

### ***Background***

1.1 The 2011 Village Representative (“VR”) Election was held on the Sundays in four consecutive weeks during the period from 2 January to 23 January 2011 with a view to returning 1,484 VRs [695 Resident Representative (“RR”) and 789 Indigenous Inhabitant Representative (“IIR”)] in 709 villages. A total of 1,358 VRs (581 RRs and 777 IIRs) were returned. The elections for the remaining 126 VR seats (114 RRs and 12 IIRs) in 114 Existing Villages and 11 Indigenous Villages/Composite Indigenous Villages had failed as no nomination was received after the close of the nomination period. The Returning Officers (“ROs”) concerned declared the failure of the elections for these villages in the Gazette published on 10 December 2010 in accordance with Section 29(2) of the Village Representative Election Ordinance (Cap 576) (“VREO”).

1.2 1 RR resigned from the office of RR(designate) after the 2011 VR Election. Pursuant to section 12 of the VREO, the Director of Home Affairs (“DHA”) declared the existence of this vacancy by a notice published in the Gazette on 1 April 2011.

1.3 After the 2011 VR Election, it was found that the boundary of a village called Mui Shue Hang in Tai Po had been delineated incorrectly as the houses of the villagers fell outside the village boundary. In accordance with the delineated boundary, the elected RR and other registered electors were not residents of the village. As the elected RR was not eligible to be nominated as a candidate for the RR election of the village, he was disqualified from holding office in accordance with section 9(4) of the VREO on 11 February 2011. Pursuant to section 12 of the VREO, the DHA declared the existence of a RR vacancy in the village by a notice published in the Gazette on 11 February 2011. The re-delineated village boundary was promulgated on 23 May 2011. After

completion of the 2011 voter registration exercise based on the re-delineated village boundary, the existing registered electors (RR) of the village will be included in the 2011 Provisional Register to be published in August 2011 and, after the expiry of the claims and objections period in September 2011, in the 2011 Final Register to be published in October 2011. After that, a village by-election would be arranged for the village.

### ***Categories of Vacancies***

1.4 As set out in paragraphs 1.1 to 1.3 above, a total of 128 VR vacancies (116 RR and 12 IIR seats) had arisen in 116 Existing Villages and 11 Indigenous Villages/Composite Indigenous Villages after the 2011 VR Election. These vacancies are classified into 4 different groups as follows:

- (a) ***41 vacancies*** – comprising 35 RR and 6 IIR vacant seats in 35 Existing Villages and 6 Indigenous Villages. These vacancies had arisen because no one sought candidature for these seats in the 2011 VR Election (please see paragraph 1.1 above);
- (b) ***1 vacancy*** – comprising 1 RR vacant seat in 1 village. This vacancy had arisen because an elected RR resigned from office (please see paragraph 1.2 above);
- (c) ***85 vacancies*** – comprising 79 RR and 6 IIR vacant seats in 79 Existing Villages and 5 Indigenous Villages/Composite Indigenous Villages. The vacancies occurred because the total number of registered electors of the village was less than 6 (the requisite number of subscribers is 5 for a nomination) (please see paragraph 1.1 above); and
- (d) ***1 vacancy*** – comprising 1 RR vacant seat in 1 village. This vacancy had arisen from the disqualification of a newly

elected RR (please see paragraphs 1.3 above ).

1.5 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”), 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 the 42 vacancies (36 RR and 6 IIR) as mentioned in paragraph 1.4 (a) and (b) above in the first instance. A second round of by-election would be held in November 2011 to fill the vacancies set out in paragraph 1.4 (c) above only if the concerned Villages have sufficient number of electors for subscribing candidate(s) after the completion of the 2011 voter registration exercise in October 2011. The second round of by-election would also fill the vacancy mentioned in paragraph 1.4 (d) above when voter registration in respect of the re-delineated village boundary has been completed.

1.6 According to a recommendation made by the EAC in its Report on the VR By-election held in March 2004, village by-elections conducted thereafter should normally be held twice a year in April/May and November/December unless there are special circumstances that warrant a departure from the scheduled time. As the staff of the HAD were heavily engaged in conducting the Rural Committee Election held in February and March 2011 and the Heung Yee Kuk Election held on 1 June 2011, conducting the village by-election in April/ May 2011 was not recommended in view of the manpower constraints of the HAD. Hence, the first round of village by-election was scheduled for 12 June 2011.

1.7 7 Districts of the New Territories, namely Islands, North, Sai Kung, Tai Po, Tsuen Wan, Tuen Mun and Yuen Long were involved in this By-election. A list showing the details of the vacancies to be filled by this By-election 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 29 April 2011, appointing 12 June 2011 as the polling day of the By-election and specifying the period from 5 May to 18 May 2011, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill 36 RR and 6 IIR vacancies in 36 Existing Villages and 6 Indigenous Villages. A breakdown of the number of RRs 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”) and one Assistant District Officer of the seven New Territories District Offices concerned as Returning Officers (“ROs”), ten members of their staff as Assistant Returning Officers (“AROs”) and a staff from the Shatin District Office as ARO (Ballot Paper Sorting Station) who was 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 29 April 2011. A list of the ROs and AROs is shown at **Appendix III**.

### ***Operational Manual for Returning Officers and Assistant Returning Officers***

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 compliance. As the ROs and AROs were familiar with the

electoral arrangements, the HAD considered it unnecessary to conduct a briefing for them.

### **Section 3 – Publicity**

3.1 Information on the By-election was published on the websites of the EAC, the HAD and the Independent Commission Against Corruption (“ICAC”) throughout the election period for the 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 also placed advertisements in local newspapers to invite nominations for the By-election. Appeal letters were also issued to electors before the commencement of the nomination period.

## **Section 4 – Nomination of Candidates**

### ***The Nomination Period***

4.1 The nomination period started on 5 May and ended on 18 May 2011. 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 10 nominations.

### ***Validly Nominated Candidates***

#### *Validity*

4.2 After vetting the nominations, the ROs determined that all the 10 nominations (8 for the RR elections and 2 for the IIR elections) were valid.

#### *Uncontested elections*

4.3 As there was only one validly nominated candidate for each vacancy, the ROs declared that the 10 candidates were elected uncontested in 10 villages. The names of the candidates who were returned in the By-election were published in the Gazette on 27 May 2011 and are shown at **Appendix IV**.

#### *Elections that had failed*

4.4 As for the remaining 32 VR seats (28 RRs and 4 IIRs) in 28 Existing Villages and 4 Indigenous Villages, the ROs also declared that the elections in these villages had failed because no nomination was received at the close of the nomination period. The list of villages where the elections had failed was also published in the Gazette on 27 May 2011 by the ROs concerned and is shown at **Appendices V(A)** and **(B)**.

4.5 As no poll would have to be conducted, the briefing for candidates scheduled for 23 May 2011 was cancelled.

4.6 Where the VRs were returned uncontested or where the elections had failed, the electors concerned were informed by a notice that no poll would be conducted on 12 June 2011.



## **Section 5 – The Complaints**

### ***Complaints-handling Period***

5.1 The complaints-handling period started on 5 May 2011, when the nomination period commenced, and should have ended on 27 July 2011 (i.e. 45 days after the polling day on 12 June 2011). Since the By-election was uncontested and concluded on 18 May 2011, the complaints-handling period was advanced to end on 2 July 2011 (i.e. 45 days after the closing date of the nomination period on 18 May 2011).

### ***Complaints-handling Parties***

5.2 The parties involved in assisting the EAC to handle complaints included the Complaints Unit of 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 Recommendations**

6.1 The 10 validly nominated candidates were uncontested in this By-election as only one valid nomination was received for each of the 10 vacancies. On the other hand, the elections for 32 VR seats (28 RRs and 4 IIRs) in 28 Existing Villages and 4 Indigenous Villages had failed because no nomination was received at the close of the nomination period. This indicated a possibility that the villagers concerned were less than enthusiastic about competing as candidates for the vacant seats.

6.2 **Recommendation:** The EAC recommends that the HAD should make continuous efforts to encourage villagers to participate in the VR elections as candidates through strengthened publicity measures.

## **Section 7 – Acknowledgement**

7.1 Although the By-election was uncontested, the EAC wishes to extend its gratitude to the HAD, particularly those serving as ROs and AROs for their efforts expended in validating nominations and in making the necessary preparations for the By-election.

7.2 The EAC is thankful to the Registration and Electoral Office 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 for the conduct of another by-election in November 2011 to fill VR vacancies which have arisen but have not yet been filled in this By-election and those vacancies that may arise subsequent to this By-election.

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.