

立法會
Legislative Council

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LC Paper No. CB(2)2283/08-09
(These minutes have been seen
by the Administration)

Bills Committee on Voting by Imprisoned Persons Bill

Minutes of the third meeting
held on Monday, 8 June 2009, at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
- Members absent** : Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Hok-ming, SBS, JP
Dr Hon Samson TAM Wai-ho, JP
- Public Officers attending** : Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs
- Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs
- Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary (Constitutional and Mainland
Affairs)
- Mr Gary POON Wai-wing
Principal Assistant Secretary (Constitutional and Mainland
Affairs)

Mr Gilbert MO Sik-keung
Deputy Law Draftsman (Bilingual Drafting and Administration)

Miss Dorothy CHENG Tai-ngar
Senior Government Counsel

Miss Mandy NG Wing-man
Government Counsel

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer

Mr Eddie NG Sik-hay
Deputy Chief Electoral Officer (Operations)

Dr KWAN Ming-tak
Senior Superintendent (Penal Operations)

Attendance by invitation : Society for Community Organization

Mr TSOI Yiu-cheong, Richard
Community Organizer

Betterment for PENG CHAU

Mr WU Pat-lun, Felix
Spokesperson

Hong Kong Bar Association

Mr P Y LO

Mr Earl DENG

Civic Party

Mr Dennis KWOK
Vice Chairman, Constitution & Governance Branch

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)1622/08-09(03), CB(2)1762/08-09(01)-(02), CB(2)1812/08-09(01)-(03), CB(3)548/08-09 and LS82/08-09]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested to -

- (a) consider including in the Bill the option of allowing persons serving life imprisonment (lifers) to use prison address as the registered address for the purpose of voter registration;
- (b) advise whether precluding a lifer from using the prison address as his residential address for voter registration was unconstitutional;
- (c) reconsider the need to propose Committee Stage amendments to clause 4 and clause 5 of the Bill; and
- (d) provide a breakdown of the submissions received during the public consultation exercise on prisoners' voting right, including the number of submissions which supported the use of the last dwelling place of a prisoner as the principal residence in Hong Kong for the purpose of voter registration, the number of submissions which supported the use of prison address as the residential address of a prisoner for voter registration, and a breakdown of these statistics by organization, prisoner and lifer, if available.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1842/08-09 on 10 June 2009.)

3. The Bills Committee agreed that -

- (a) the Administration could issue a consultation letter to the Chairman of House Committee on 9 June 2009 advising her of the Administration's intention to resume Second Reading debate on the Bill at the Council meeting on 24 June 2009; and
- (b) the Chairman would make a verbal report to the House Committee on 12 June 2009, pending the conclusion of the deliberations of the Bills Committee at the next meeting on 11 June 2009.

Action

4. The meeting ended at 1:00 pm.

Council Business Division 2
Legislative Council Secretariat
24 July 2009

**Proceedings of the third meeting of the
Bills Committee on Voting by Imprisoned Persons Bill
on Monday, 8 June 2009, at 10:45 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000207 - 000603	Chairman Dr Margaret NG Clerk	Opening remarks	
000604 - 001143	Chairman Society for Community Organization (SOCO)	Presentation of views on the Bill by SOCO with the main points summarized below - (a) it supported merits of the Bill; and (b) it expressed concern about the practical voting arrangements for prisoners, especially access to election-related materials by prisoners.	
001144 - 001701	Chairman Betterment for PENG CHAU (BPC)	Presentation of views on the Bill by BPC with the main points summarized below - (a) it supported merits of the Bill; (b) it expressed concern about the practical voting arrangements for prisoners including the need to protect secrecy of votes, allowing election agents to observe the poll at debicated polling stations, and access to election-related materials; and (c) it did not support the use of prison address as the residential address of a prisoner for voter registration.	
001702 - 002353	Chairman Hong Kong Bar Association (Bar Association)	Presentation of views on the Bill by the Bar Association in addition to those set out in LC Paper No. CB(2)1762/08-09(01) - (a) it supported merits of the Bill; (b) in a recent judgment that "the Electoral Affairs Commission was quite entitled to come to the conclusion that Mr CHOI's prison cell in Stanley was not his dwelling place in Hong Kong at which he resided and which constituted his sole or main home at the time of application for change of address", the High Court had ruled that the administrative decision made by the Electoral Affairs Commission was reasonable. The Court, however, had not examined whether a prison could be regarded as the residence of a prisoner for the purpose of voter registration; and	

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		(c) a UK case law in 1858 had ruled that a place in which a person was detained involuntarily and temporarily could not be regarded as the dwelling place of that person, but the case was not related to electoral arrangements.	
002354 - 002714	Chairman Civic Party (CP)	Presentation of views on the Bill by CP with the main points summarized below - (a) it supported merits of the Bill; (b) it expressed concern about the practical voting arrangements for prisoners, especially effective communication between candidates and prisoners who were registered electors; and (c) a Hong Kong case law in 1990 had ruled that a temporary residence or a place for correspondence purpose could not be regarded as a dwelling place of a person.	
002715 – 002938	Chairman Bar Association	Supplementary information provided by the Bar Association that a UK case law had allowed a homeless person to treat his temporary residence as his residence.	
002939 - 004211	Chairman Ms Emily LAU SOCO CP Admin	Discussion with deputations and the Administration on how to ensure access to candidates' information by prisoners in order to make an informed decision at an election, e.g. distribution of candidates' introductory leaflets in prisons or by mail, provision of mailing labels to candidates who might send election-related materials to a prisoner's correspondence address in prison if the prisoner had opted in the voter registration form to receive such information in prison, access to electoral information through the mass media and the Internet, etc.	
004212 - 005117	Dr Margaret NG Chairman SOCO Bar Association BPC Admin	Deputations' views on practical voting arrangements for prisoners - (a) practical voting arrangements should be stipulated by way of subsidiary legislation rather than by administrative means; (b) prisoners should be able to access to electoral information and election-related materials as much as possible; (c) concern about the Administration's proposed restriction on the right of election agents to observe the poll at dedicated polling stations set up inside maximum security prisons; and	

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		(d) the Administration should conduct public consultation on the proposed practical voting arrangements for prisoners and review these arrangements after each election.	
005118 - 005538	Dr Margaret NG Chairman	Views of Dr Margaret NG that - (a) restricting election agents to observe the poll was a departure from the existing legal principle that an election agent could do everything on behalf of a candidate; (b) consideration should be given to simplify the voter registration form to allow a prisoner to receive election-related materials in his correspondence address in prison unless he had opted out such an arrangement; (c) the Administration should enhance promotion effort to make prisoners aware of their rights and implications brought about by the Bill; and (d) the Administration should improve the public consultation process, including the need to consult non-government organizations (NGOs) representing prisoners' interests on the practical voting arrangements.	
005539 - 010036	Admin Chairman Dr Margaret NG	Response of the Administration that - (a) it planned to introduce two sets of subsidiary legislation to regulate practical voting arrangements and voter registration into the Legislative Council (LegCo) on 24 June 2009, and 8 July 2009 respectively after enactment of the Bill; (b) it had proposed to restrict election agents to observe the poll at debicated polling stations set up inside maximum security prisons due to security reason. The Administration took note of Dr Margaret NG's and deputations' views in this regard and would address the question in the subsidiary legislation to be introduced; (c) it had proposed an opt-in system to protect the privacy of prisoners who might prefer not to use the prison as their correspondence address; and	Admin

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		<p>(d) it had received views from NGOs and prisoners during the public consultation exercise on prisoners' voting right. To enhance awareness of prisoners' right to vote, the Correctional Services Department (CSD) had established dialogues with NGOs on issues relating to prisoners' interests and made available copies of the Bill to prisoners. CSD would continue to post election-related materials on notice boards in penal institutions in future and would incorporate relevant programmes in its orientation programme for newly admitted prisoners.</p>	
010037 - 010443	Chairman ALA9	Briefing on the paper on "Use of prison address for electoral registration purposes" by ALA9 (LC Paper No.LS82/08-09)	
010444 - 011117	Chairman Admin	<p>Briefing by the Administration on the proposed Committee Stage amendment (CSA) to amend clause 4 and clause 5 of the Bill (LC Paper No. CB(2)1812/08-09(01))</p> <p>Briefing on the Administration's responses to issues raised by members at the meeting on 1 June 2009 and the submission from the Bar Association (LC Paper No. CB(2)1762/08-09(02))</p>	
011118 - 012822	Chairman Mr James TO Admin	<p>Issues raised by Mr James TO -</p> <p>(a) ALA9 came to a view in her paper that a prison might well qualify as one's residence or home for the purpose of voter registration in the case of an imprisoned person who was able to prove that he had no other registrable address and such view ran contrary to the Administration's view that a prison could not be qualified as the residence of a person;</p> <p>(b) whether the Administration's decision to preclude an imprisoned person from using his prison cell as the registered address for the purpose of voter registration was based on legal or policy considerations;</p> <p>(c) he disagreed with the Administration's view that it was difficult for a person serving life imprisonment (lifer) to have meaningful connection with the community in which the prison was situated, as community matters such as availability of convenient transportation for his visitors and air quality could be of concern to an imprisoned person;</p>	

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		<p>(d) if it was a policy decision to preclude a lifer from using his prison cell as the registered address for the purpose of voter registration, such a decision could be unconstitutional given that a lifer had the civil right to vote in a constituency he was closely connected with, particularly in a District Council (DC) election; and</p> <p>(e) while prisoners might be transferred from time to time from one prison to another, lifers were mainly detained in Stanley Prison and Shek Pik Prison with which they were more closely connected. The prison could be used as the registered address of a lifer for the purpose of voter registration if the Electoral Registration Officer (ERO) was satisfied on reasonable grounds that it was his only or principal residence in Hong Kong.</p> <p>Response of the Administration that -</p> <p>(a) in the case quoted by ALA9 in her paper, the prison was taken as the prisoner's usual or last known residence for the purpose of service of legal proceedings on him only. It was not related to voter registration. That said, there were similarities between the case and the Administration's proposed voting arrangement under which the prison address could be used as the correspondence address for prisoners to receive election-related materials;</p> <p>(b) the existing across-the-board restrictions on prisoners' right to vote had been ruled unconstitutional by the Court. In order to implement the court ruling and bearing in mind that the existing law did not regard the prison cell as a prisoner's residence for the purpose of voter registration, it was necessary to make provisions, i.e. proposed section 28(1A) and (1B) of the Bill, to enable prisoners to be registered with a prescribed address for such purpose.</p> <p>(c) the Administration's proposal would enable prisoners who did not maintain a home in Hong Kong and who could not provide any proof on their last dwelling place to register at a deemed residential address at which the persons had resided before as last recorded under the Registration of Persons Regulation; and</p>	

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		<p>(d) some deputations had also expressed the view that a prison could not be regarded as the dwelling place of a prisoner. The Administration would advise whether precluding a lifer from using the prison cell as his residential address for voter registration was unconstitutional.</p>	<p>Admin</p>
<p>012823 - 013739</p>	<p>Chairman Dr Margaret NG Admin</p>	<p>Views of Dr Margaret NG that -</p> <p>(a) while under common law and existing domestic law a prison generally could not be regarded as a residence, one had to consider whether in enacting a new piece of legislation, a prisoner especially if he was serving life imprisonment should be allowed to take prison as his residence;</p> <p>(b) the context in law for the current situation was a prisoner's right to vote. In exercising that right, the upper most principle was to give effect to the individual's will. The Administration should consider the applicable principle for the purpose of this ordinance was to maximize the choice of an individual subject to any insurmountable practical difficulties. In her view, prisoners, especially lifers, should be given the right to choose prisons as their residence for the purpose of voter registration;</p> <p>(c) she did not favour an arbitrary preclusion from using the prison as a prisoner's residential address, given that a lifer would be prepared to take prison as his residence for the rest of his life; and</p> <p>(d) she did not support the CSAs proposed by the Administration to amend clause 4 and clause 5 of the Bill as they would have the effect of reducing clarity of the existing law.</p> <p>Response of the Administration that -</p> <p>(a) it was open on whether clause 4 and clause 5 of the Bill should be amended. The CSAs were put forward in response to members' request at the last meeting;</p> <p>(b) under both the common law and existing law, prison was not regarded as a residence for a person. Deputations had given similar views at the meeting;</p>	

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		<p>(c) proposed section 28(1A) and (1B) sought to strike a balance by allowing imprisoned persons who did not maintain a home in Hong Kong and could not provide any proof on their last dwelling place to register at a deemed residential address at which the persons had resided before as last recorded under the Registration of Persons Regulation, while avoiding the risk of vote planting in order to ensure the integrity of an election; and</p> <p>(d) it considered that the existing proposal in the Bill, having balanced the various implications, was the appropriate way forward. There was no suggestion that the present proposal would affect the constitutional right of a prisoner to vote.</p>	
013740 - 013913	Dr Margaret NG Chairman Admin	<p>Views of Dr Margaret NG that -</p> <p>(a) the Administration should attach importance to the principle of giving voters maximum choice, rather than the principle of balancing the various implications; and</p> <p>(b) it would be surprising to consider that a lifer would have no connection with a prison in which he was resided.</p> <p>Response of the Administration that the choice of voters was not unlimited. ERO had to satisfy, among other things, that the residential address notified in a person's application for registration was the person's only or principal residence in Hong Kong.</p>	
013914 - 014615	Chairman Admin Ms Emily LAU	<p>The Administration was requested to provide a breakdown of the submissions received during the public consultation on prisoners' right to vote, including the number of submissions which supported the use of a person's last dwelling place in Hong Kong as the residential address for the purpose of voter registration, the number of submissions which supported the use of prison address as the residential address for voter registration, and a breakdown of these statistics by organisation, prisoner and lifer, if available.</p> <p>Response of the Administration to questions raised by Ms Emily LAU on paragraphs 4, 5 and 8 of the Hong Kong Human Rights Monitor's (HRM's) submission -</p> <p>(a) it would consider studying overseas experiences on the use of prison address as the residential address for the purpose of</p>	Admin

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		<p>voter registration and review the pros and cons of the proposed arrangements in proposed section 28(1A) and (1B) after the next LegCo and DC elections, as suggested by HRM;</p> <p>(b) for prisoners who maintained a home in Hong Kong outside the prison, they could be or had already been registered as electors in the recent voter registration exercise. Those who did not maintain a home in Hong Kong could be registered as an elector after enactment of the Bill;</p> <p>(c) the issues raised in paragraph 8 of HRM's submission regarding the electoral arrangements for homeless people, electors who worked in hospitals, etc. fell outside the scope of the Bill, but the Administration would examine these issues when reviewing the electoral arrangements for the next general election; and</p> <p>(d) 27 out of the 41 submissions received during the public consultation exercise indicated support for using the last dwelling place as the residential address for the purpose of voter registration, if prisoners did not maintain a home in Hong Kong.</p>	
014616 - 015002	Mr Paul TSE Chairman Admin	<p>Views of Mr Paul TSE that -</p> <p>(a) he had stressed at the last meeting that a prisoner should have the right to choose his prison cell as his residential address for the purpose of voter registration. To this end, the Administration should consider providing that option in the Bill, especially to lifers;</p> <p>(b) the Court's ruling on Mr CHOI's case was made on the basis that prisoners did not have the right to vote. Given that there was a change in policy, the ruling might not be applicable to the Bill;</p> <p>(c) although the majority of the views received during the public consultation exercise indicated support for using the last dwelling place as the residential address of a prisoner for the purpose of voter registration, it did not preclude the use of a prison address as the registered address of a prisoner for that purpose;</p> <p>(d) the Administration had expressed concern about the option of allowing prisoners in</p>	

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		<p>general to use the prison address as their registered address. If the option was restricted to lifers only, it should no longer be a concern of the Administration;</p> <p>(e) as regards the concern that prisoners might be transferred from one prison to another, consideration could be given to allow prisoners to apply for change of residential address as and when necessary; and</p> <p>(f) he shared the view of Dr Margaret NG that the proposed CSAs to amend clause 4 and clause 5 were not necessary.</p>	
015003 - 015315	Chairman Dr Priscilla LEUNG	<p>Views of Dr Priscilla LEUNG that -</p> <p>(a) she had exchanged views with NGOs and residents in a DC constituency and there were concerns that allowing prisoners to use prison address as the registered address for the purpose of voter registration might lead to an unduly high proportion of prisoners in a constituency with a small electorate, e.g. in a DC constituency; and</p> <p>(b) the Administration should gather more views from the community.</p>	
015316 - 015842	Chairman Mr WONG Yung-kan	<p>Views of Mr WONG Yung-kan -</p> <p>(a) he had reservations about using prison cell as the registered address for voter registration as there was the risk of vote planting; and</p> <p>(b) to ensure fairness in an election, no canvassing activities should be allowed during an election period by any visitors, irrespective of whether they were visiting the prison in their official capacities.</p> <p>Response of the Administration that -</p> <p>(a) subsidiary legislation would be introduced to regulate against canvassing activities by visitors during visits made in their official capacities to prisoners and persons held in custody; and</p> <p>(b) there were practical needs for persons to visit prisons in their official capacities, such as lawyers and social workers.</p>	

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015843 – 020107	Dr Margaret NG	<p>Views of Dr Margaret NG that -</p> <p>(a) Article 25 of the International Covenant on Civil and Political Rights provided that every citizen should have the right and opportunity and without unreasonable restrictions to vote in an election. She cautioned that any restrictions imposed on electors must be reasonable and proportionate;</p> <p>(b) given that a lifer would not have any meaningful connection with a place other than the prison, restricting him from using the prison as his residential address could be subject to judicial challenge; and</p> <p>(c) she would consider proposing a CSA to clause 5 if the Administration declined to provide an option to lifers in the Bill.</p>	
020108 – 021517	Chairman Admin Chairman Ms Emily LAU Dr Margaret NG Mr James TO Clerk	<p>The Administration was requested to -</p> <p>(a) reconsider the need to propose CSAs to amend clause 4 and clause 5 of the Bill; and</p> <p>(b) consider to include an option of allowing lifers to use prison address as his registered address for the purpose of voter registration.</p> <p>Discussion on the way forward</p>	Admin