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Chapter One: Background

Legislative Council Ordinance (Cap. 542)

1.01 The Legislative Council Ordinance ("LCO") governs, among other things, the registration of electors and conduct of elections for the Legislative Council ("LegCo") of the Hong Kong Special Administrative Region.

(A) Registration of Electors

- 1.02 As provided under section 48 of the LCO, only a registered elector is eligible to vote at a LegCo Election. A registered elector is a person whose name appears on the final register ("FR") of electors as compiled and published by the Electoral Registration Officer under the Ordinance.
- 1.03 All Hong Kong permanent residents aged 18 or above who ordinarily reside in Hong Kong may apply for registration as an elector. Eligible electors may submit the application at any time of the year. However, they need to apply before the statutory deadline of the year if they wish to have their names included in the FR to be published in that year. If the application is made after the deadline, their names will only be recorded in the FR to be published in the subsequent year.

(B) Disqualification from Registration as Electors

- 1.04 The LCO also provides for disqualification of persons from being registered as electors. Amongst other disqualification provisions, section 31(1)(a)-(c) of the Ordinance applies to persons convicted of certain types of crimes and to prisoners. A natural person is disqualified from being registered as an elector for a constituency if the person—
 - (a) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—

The statutory deadline is 16th July for a District Council election year, and 16th May for other years.

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- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
- (ii) received a free pardon; or
- (b) on the date of application for registration, is serving a sentence of imprisonment; or
- (c) without limiting paragraph (a), where the election is to be held or is held within 3 years after the date of the person's conviction, is or has been convicted:
 - (i) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
 - (iii) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).

(C) Disqualification from Voting

- 1.05 The LCO also sets out the circumstances under which a person is disqualified from voting. Section 53(5)(a)-(c) of the LCO specifies the disqualification provisions applicable to persons convicted of certain types of crimes and to prisoners. An elector is disqualified from voting if the elector—
 - (a) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or
 - (b) on the date of the election, is serving a sentence of imprisonment; or

- (c) without limiting paragraph (a), where the election is to be held or is held within 3 years after the date of the person's conviction, is or has been convicted:
 - (i) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
 - (iii) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).

The High Court's Judgment on Three Judicial Review Cases on Prisoners' Voting Right

1.06 In August 2008, the Court granted leave to three judicial review ("JR") applications which challenged the constitutionality of the existing across-the-board restrictions on prisoners' right to be registered as electors and to vote under the LCO. After hearing the cases in November 2008, the Court handed down its judgment ("main judgment") on the three JR cases on 8 December 2008. The Court considers that the existing general, automatic, and indiscriminate restrictions on prisoners' right to register as electors and to vote unconstitutional. Arrangements should be made to enable prisoners to vote on the election day. The Court also takes the view that arrangements should be made to enable remanded unconvicted persons to vote on the election day whilst being held in custody.

The High Court's Judgment on Relief Granted

1.07 Another hearing on the JR cases was held on 23 February 2009 during which the Court heard the submissions made by the parties on the appropriate relief (i.e. form of remedies) to be granted. On 11 March 2009, the Court handed down the judgment on the relief granted to the JR cases as summarised below—

- (a) the Court declares that the existing across-the-board restrictions on prisoners' right to be registered as electors and to vote under the LCO unconstitutional;
- (b) the Court also declares that the Electoral Affairs Commission ("EAC") has a statutory duty to make all necessary arrangements that are within its powers to provide prisoners and remanded unconvicted persons who are registered as electors and are either held in custody or serving sentences of imprisonment to vote on the election day; and
- (c) the Court grants a temporary suspension order in relation to its declaration relating to prisoners' voting right up to 31 October 2009.

Chapter Two: The Public Consultation Exercise

2.01 In order to take forward the main judgment, the Administration published the Consultation Document on Prisoners' Voting Right ("the Consultation Document") to consult the public on the policy options for relaxing the restrictions on the voting right of prisoners and on the practical voting arrangements on 9 February 2009.

Summary of Proposals and Policy Options in the Consultation Document

2.02 The proposals in the Consultation Document relating to the policy options on relaxing the ban on prisoners' voting right and the practical arrangements for prisoners and remanded unconvicted persons to exercise their voting right are summarised below—

(A) Policy Options on Prisoners' Right to be Registered as Electors

The proposal is to remove the disqualification of prisoners from applying to be registered as electors. In other words, eligible persons would not be disqualified from being registered as electors due to imprisonment.

(B) Policy Options on Prisoners' Voting Right

- (a) Option One is to remove the existing disqualification provisions in section 53(5)(a)-(b). The disqualification of persons convicted of election-related or bribery offences from voting under section 53(5)(c) will remain.
- (b) Option Two is to disqualify prisoners from voting if they are serving a sentence of imprisonment for a sufficiently long period (say, 10 years or over). The right to vote would resume upon completion of sentence and release from imprisonment.
- (c) Option Three is to disqualify prisoners from voting if they are serving a sentence of imprisonment for a sufficiently long period (say, 10 years or over) while enabling them to resume the right to vote when they

are serving the last few years of imprisonment (say, last five years).

(C) Practical Arrangements for Prisoners to Vote

Registered Address of Eligible Prisoners as Electors

- (a) For prisoners who have not yet been registered as electors before they serve their sentence of imprisonment, they may apply to be registered to the address of their home if they continue to maintain a sole or main home outside the prison.
- (b) For prisoners who have already been registered as electors before they serve their sentence of imprisonment, their registered addresses would follow the address of their sole or main home.
- (c) For registered and non-registered prisoners who no longer maintain any sole or main home outside the prison, their last dwelling-place in Hong Kong at which they resided before serving their sentence of imprisonment would be deemed to be their only or principal residence in Hong Kong for the purpose of voter registration.

Canvassing for Votes

- (d) Prisoners may receive electoral documents and election advertisements sent by post.
- (e) Prisoners may have access to the election-related information covered by the mass media such as newspapers, radio and television.

Practical Arrangements

- (f) To arrange mobile polling stations to visit prisons with eligible electors or to set up polling stations inside prisons.
- (g) To consider reasonable limitation on the polling hours for prisoners, and to regulate the flow of prisoners in the polling stations.

(D) Arrangements for Remanded Unconvicted Persons

(h) To work out arrangements for remanded unconvicted persons to cast their votes which would be similar to those for prisoners.

(E) Counting Arrangements

(i) Depending on the actual polling arrangement to be adopted, the EAC would need to work out the counting arrangements, including the arrangements for transferring the ballot papers to the relevant counting stations, to be mixed with other ballot papers to ensure the secrecy of votes, etc.

Proceedings of the Consultation Exercise

- 2.03 The six-week public consultation exercise on prisoners' voting right was conducted from 9 February 2009 to 23 March 2009. We placed newspaper advertisements and arranged Announcement of Public Interests and interviews on the radio to publicise the consultation exercise.
- 2.04 The public could obtain the Consultation Document from the Public Enquiries Services Centers of the Home Affairs Department, or download a soft copy of the Consultation Document from the website of the Constitutional and Mainland Affairs Bureau. Copies of the Consultation Document were also mailed to the major organizations interested in the issue of prisoners' voting right.
- 2.05 To publicise the consultation to prisoners and remanded unconvicted persons, the Correctional Services Department posted notices on the consultation exercise at conspicuous places in the penal institutions. Prisoners were provided with the Consultation Document upon request. We made further appeals to prisoners and remanded unconvicted persons through a radio programme catered for prisoners and their families. We also met with organizations interested in this issue to gather their views. The attendance list is at Annex I.

- 2.06 The Administration organised two forums on 6 March and 11 March 2009 at the Hong Kong Heritage Museum and the Hong Kong Central Library respectively. A summary of the opinions expressed in the two forums is at Annex II. A total of more than 280 district personalities, including members of District Councils, members of Area Committees, representatives of owners' corporations and mutual aid committees, students, professionals, and representatives of organizations, etc. participated in the forums.
- 2.07 An opinion poll was also conducted to further gauge the public's views.

Chapter Three: Results of the Public Consultation Exercise

3.01 During the consultation period, a total of 70 submissions were received². The collection of the submissions (except a few which requested confidentiality) is in the <u>Appendix</u>. The Appendix can be viewed at the Public Enquiry Service Centers of the Home Affairs Development or the Constitutional and Mainland Affairs Bureau website.

Policy Option on Relaxing the Restriction on Prisoners' Registration Right

3.02 A majority of the submissions received from the public consultation exercise supported removing the existing restrictions on prisoners' right to be registered as electors³. A majority of the opinions from the public forums and the meetings also supported relaxing the said restriction.

Prisoners' Right to Vote

3.03 A total of 34 out of the 70 submissions received (i.e. 49% of the submissions) supported Option One⁴. One submission (i.e. 1%) supported Option Two and two submissions (i.e. 3%) supported

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The Constitutional and Mainland Affairs Bureau received three more submissions on the Consultation Document shortly after the public consultation period ended.

A number of submissions indicated support for removing the existing disqualification of prisoners from voting, without giving any views on registration right. However, as they support allowing prisoners to vote, it would only be logical to presume that they also support allowing prisoners to register. For example, the Hong Kong Bar Association, the Society for Community Organization, the Law Society of Hong Kong, the Civic Party, Justice, the Hong Kong Section of the International Commission of Jurists, the Committee on Community Support for Rehabilitated Offenders and some other submissions supported the proposal to remove the disqualification of all prisoners from applying to be registered as a voter. The Society for Community Organization was of the view that the Administration should launch Voter Registration Campaign inside the penal institutions; please refer to Appendix (P045), (P17), (P52), (P04), (P46) and (P10) for details.

For example, the Hong Kong Bar Association, the Society for Community Organization, the Committee on Community Support for Rehabilitated Offenders and some other submissions supported Option One. They were of the view that the right to vote is a fundamental political right that should be enjoyed by all prisoners, regardless of the nature of crimes that they have committed and their length of sentence. The Hong Kong Bar Association and the Society for Community Organization also suggested that section 53(5)(c) of the LCO which disqualifies any person convicted of a corruption or election-related offence from voting is problematic. The Administration should also review the disqualification provisions in section 53(5)(c); please refer to Appendix (P45), (P17) and (P10) for details.

Option Three⁵. There were 17 submissions (i.e. 24%) which supported removing the existing disqualification provisions in section 53(5)(a)-(c) of the LCO⁶.

- 3.04 At the meetings held with the organizations interested in the voting issues ("consultation meetings"), prisoners' participants generally supported Option One. There were views that the right to vote is a fundamental human right and that all eligible prisoners should be allowed to be registered as electors and to vote. There were also views that to enable eligible prisoners to vote could facilitate their rehabilitation and reintegration into society. There were also proposals that the Administration should review section 53(5)(c) of the LCO which disqualify persons convicted of election-related or bribery offences from voting within three years after such conviction. As those convicted persons were already being penalized for the offences they had committed by, for example, serving their sentences of imprisonment, it would be unfair to impose additional penalty on them by depriving their voting right.
- 3.05 The result of the opinion survey is at Annex III. It indicated that a majority of the respondents (around 57%) supported that all prisoners should have the right to vote regardless of their length of sentence of imprisonment. This included those who supported Option One and those who supported removing the existing disqualification provisions in section 53(5)(a)-(c) of the LCO. Only around 34% of the respondents did not support allowing all prisoners to have the right to vote. This included those who supported Option Two and Option Three.
- 3.06 Opinions expressed in the public forums were more diverse. A considerable portion of the participants were of the view that all prisoners should retain their political rights and should be allowed to vote. On the other hand, quite a few of those who

The Liberal Party and another submission supported Option Three. They were of the view that enabling prisoners to vote when they are approaching the end of the term of their imprisonment might enhance their civic-mindedness and facilitate their reintegration into society; please refer to (P05) and (P34) for details.

For example, the Law Society of Hong Kong and the Civic Party supported removing the existing disqualification provisions in section 53(5)(a)-(c) of the LCO. They were of the view that there is no inevitable, obvious and direct relationship between disqualifying such persons from voting for three years after conviction and protecting the integrity of the legislation, and that it is in the society's interests to have all persons express their views and vote in regard to government policies and the persons chosen to participate in the governance of society; please refer to (P52) and (P04) for details.

expressed their views considered that prisoners should not be allowed to vote and suggested that the Government should appeal against the Court's judgment.

Practical Voting Arrangements for Prisoners and Remanded Unconvicted Persons

3.07 According to the submissions received and views gathered in the public forums and consultation meetings, the public generally supported the proposed practical voting arrangements for prisoners and remanded unconvicted persons set out in the Consultation Document as detailed in paragraphs 3.08 – 3.12 below.

(A) Registered Address of Eligible Prisoners as Electors

- On the registered address of eligible prisoners as electors, a majority of the public supported that prisoners should be registered to the address of their sole or main home if they continue to maintain a sole or main home outside the prison. For prisoners who do not maintain a sole or main home, a majority of the public expressed the view that their last dwelling-place in Hong Kong at which they resided before serving their sentence of imprisonment should be deemed to be their only or principal residence in Hong Kong for the purpose of voter registration⁷.
- 3.09 There were a few submissions which considered that the prison address should be the registered address for all prisoners⁸, and that for prisoners who do not maintain a sole or main home, either the address of the next-of-kin of the prisoner⁹ or the address of prison¹⁰ should be deemed to be the prisoners' only or

⁹ Please refer to (P24), (P36), (P18), (P40) and (P43) for details.

For those submissions which have expressed their views on the registered address of eligible prisoners as electors, most of them supported the proposals as outlined in the Consultation Document. These include the Hong Kong Bar Association, the Society for Community Organization, the Law Society of Hong Kong, the Civic Party, Justice, the Hong Kong Section of the International Commission of Jurists, the Committee on Community Support for Rehabilitated Offenders and the Liberal Party; please refer to (P45), (P17), (P52), (P04), (P46), (P10) and (P05) for details.

⁸ Please refer to (P16) and (P34) for details.

Please refer to (P11), (P18), (P24), (P36), (P55), (P40) and (P56) to (P65) for details.

principal residence in Hong Kong for the purpose of voter registration.

(B) Canvassing for Votes

3.10 Amongst the views received on canvassing for votes, most of them supported allowing prisoners to access election-related materials by post and through the mass media¹¹. Many of the views received on canvassing for votes had indicated reservation for allowing candidates to canvass in person inside prisons due to security concerns. Some submissions suggested that the Administration should make arrangements to ensure that prisoners could have access to the election advertisements¹². There were also a few submissions which considered that prisoners should be allowed to interact with candidates and that candidates should be allowed to canvass in person inside the penal institutions¹³.

(C) Practical Arrangements for Prisoners to Vote

On the practical voting arrangements for prisoners, most of the views gathered agreed that prisoners should vote in person either by arranging mobile polling stations to visit prisons with eligible electors or setting up polling stations inside prisons to with restrictions on polling hours and the admission of candidates and

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For those submissions which have expressed their views on the canvassing for votes, most of them supported the proposals as outlined in the Consultation Document. These include the Law Society of Hong Kong, the Committee on Community Support for Rehabilitated Offenders and the Liberal Party; please refer to (P52), (P10) and (P05) for details.

Please refer to (P27), (P21) and (P25) for details.

For example, the Democratic Party was of the view that the Administration has the responsibility to arrange channels for interaction between prisoners and candidates when the prisoners make such request.

For example, the Law Society of Hong Kong, the Committee on Community Support for Rehabilitated Offenders and the Liberal Party agreed that prisoners should vote in person by arranging mobile polling stations to visit prisons with eligible electors; please refer to (P52), (P10) and (P05) for details.

For example, the Law Society of Hong Kong, Justice, the Hong Kong Section of the International Commission of Jurists, the Committee on Community Support for Rehabilitated Offenders and the Liberal Party agreed that prisoners should vote in person by setting up polling stations inside prisons; please refer to (P52), (P46), (P10) and (P05) for details.

their polling agents to enter mobile polling stations or polling stations set up inside prisons¹⁶.

3.12 As regards the counting arrangement, a majority of the public who had expressed their views on the issue opined that the ballot papers cast by prisoners should be mixed with those cast by ordinary electors before the ballot papers are counted.

For example, Justice, the Hong Kong Section of the International Commission of Jurists and the Liberal Party agreed that there could be restriction on polling hours and the admission of candidates and their polling agents to enter polling stations or mobile polling stations set up inside prisons; please refer to (P46) and (P05) for details.

Chapter Four: Proposals on Relaxing the Restrictions on Prisoners' Right to be Registered as Electors and Voting Right

Prisoners' Right to be Registered as Electors

- 4.01 Under the existing provisions of the LCO, all prisoners are disqualified from being registered as electors and from voting. In the Court's judgment on the three JR cases on prisoners' voting right, the Court considers that the existing restrictions on registration under the LCO is difficult to justify in the sense that it applies regardless of whether the prisoner is expected to be released from prison by the time of the next election. Given that the existing provisions already disqualify a prisoner from voting, the ban on registration is superfluous.
- 4.02 In the light of the Court's judgment and the public's support, there is a clear case for removing section 31(1)(a)-(b) under the LCO which disqualify prisoners from being registered as electors.

Prisoners' Voting Right

- 4.03 The results of the public consultation exercise have demonstrated that the public largely support the removal of the existing disqualification provisions in section 53(5)(a)-(b) of the LCO, which disqualify all prisoners from voting.
- There were views that the right to vote is a fundamental political right that should be enjoyed by prisoners, regardless of the crimes they have committed. As prisoners are already penalized for the offences they have committed by serving their sentences of imprisonment, it is unfair to further penalize them by taking away their voting right. In the development of universal franchise, the goal is to allow all persons to vote, irrespective of their sex, race, social status, criminal record, etc. It is also in society's interest to have all persons express their views and vote in regard to government policies and the persons chosen to participate in the governance of society.

- 4.05 Options Two and Three specified in the Consultation Document suggest disqualifying prisoners based on the length of the sentence of imprisonment. While such restrictions can also be found in overseas jurisdictions, there were views that similar to a blanket disenfranchisement, disqualifying prisoners from voting based on the length of the sentence of imprisonment would result arbitrariness in the disqualification. Although such arrangement is less restrictive than a blanket exclusion of all prisoners from voting, the reasoning of distinguishing "serious offenders" from "less serious offenders" by way of the sentence of imprisonment is not entirely clear. It may be difficult to provide evidence to prove that prisoners serving a long-term sentence would undermine the integrity of the legislature if they are able to exercise the right to vote. The options of disqualifying prisoners from voting based on the length of the sentence of imprisonment may attract legal challenges in future.
- 4.06 Having regard to the above analysis, there is a clear case for removing the existing disqualification provisions under section 53(5)(a)-(b) of the LCO.

To Remove Existing Disqualification of Persons Convicted of Election-related or Bribery Offences

- 4.07 In the opinion survey, a vast majority of respondents supported the retention of the existing disqualification of persons convicted of election-related or bribery offences from voting under section 53(5)(c) of the LCO. There were views in the submissions and public forums that such restrictions could help safeguard the integrity of the elections.
- 4.08 However, a considerable number of submissions received and the views gathered at the consultation meetings had requested the removal of section 53(5)(c) of the LCO. The rationale is that the right to vote is a fundamental political right which should be enjoyed by every person. As persons convicted of election-related or bribery offences are already penalized for the

offences they have committed by, for example, serving their sentences of imprisonment, it is unfair to impose additional penalty on them by depriving their voting right. There is also no inevitable, obvious and direct relationship between protecting the integrity of the legislature and disqualifying persons convicted of election-related or bribery offences from voting for three years after conviction. It is considered that a person who commits such offences can still rationally consider and decide on political issues that all citizens face in the voting booth.

- 4.09 As there is a clear case for removing the disqualification of prisoners from voting irrespective of their length of sentences, the retention of the disqualification of persons convicted of election-related or bribery offences may give rise to consistency concerns, in particular given that some in the latter group may not be given imprisonment sentences. It is also noted that in a large number of overseas countries (including Austria, Sweden, Switzerland, Denmark, Ireland, Iceland, Finland, Canada, Japan, South Africa and Israel), there is no restriction on prisoners' voting right.
- 4.10 Having regard to the considerations set out above, there is good justification to remove section 53(5)(c) of the LCO.
- 4.11 Consequentially, there is a clear case for removing section 31(1)(c) of the LCO which disqualify persons convicted of election-related or bribery offences from being registered as electors within three years after such conviction.

Practical Voting Arrangements for Prisoners and Remanded Unconvicted Persons

4.12 As the results of the public consultation exercise have also reflected the public's general support of the proposed voting arrangements for prisoners and remanded unconvicted persons set out in paragraphs 3.08 to 3.12 above, we plan to implement those arrangements accordingly.

Annex I

List of Organizations Met to Discuss Prisoners' Voting Right

Hong Kong Christian Kun Sun Association

Hong Kong Human Rights Monitor

Society For Community Organization

The Society of Rehabilitation and Crime Prevention, Hong Kong

Member of Committee on Community Support for Rehabilitated Offenders

Summary on the First Forum on Prisoners' Voting Right

Date : 6 March 2009 (Friday) Time : 6:30 p.m. – 8:30 p.m.

Venue : Theatre, Hong Kong Heritage Museum,

1 Man Lam Road, Sha Tin, New Territories

Prisoners' Right to Vote

- 1. Some of the participants were of the view that the right to vote is a fundamental political right that should be enjoyed by all prisoners, regardless of the nature of the crimes they had committed and their length of sentence of imprisonment. Among those who took the view that all prisoners should have the right to vote, some considered that there is no inevitable, obvious and direct relationship between disqualifying persons convicted of election-related or bribery offences from voting for three years and protecting the integrity of the legislation.
- 2. Some of the participants held the opposite view. They believed that prisoners should not have the right to vote. Since many of the prisoners had infringed the rights of others by committing offences, it would be justifiable not to allow them to vote during their imprisonment. They considered that such disqualification provisions were appropriate in order to protect the integrity of the legislation.
- 3. There were also some participants who considered that whether the prisoners should be allowed to vote should depend on the nature of the crimes they had committed, or the length of their sentence of imprisonment. For participants who expressed the view that prisoners should be disqualified from voting based on their length of sentence of imprisonment, there were some who suggested that prisoners serving a sentence of imprisonment for three years or more should not be allowed to vote, while there were others who believed that five years or ten years of sentence of imprisonment would be a more appropriate cut-off for disqualifying a prisoner from voting.

Practical Voting Arrangements for Prisoners and Remanded Unconvicted Persons

- (A) Registered Address of Eligible Prisoners as Electors
- 4. All participants who expressed their views on whether the prison address should be used as the registered address for prisoners rejected this option. The participants noted that using the address of the prisons as a registered address might lead to an unduly high proportion of prisoners in the registered electorate of certain constituencies. They were in particular concerned about District Council Elections in which the registered electorate is small.
- 5. Most of the participants who expressed their views on the registered address of prisoners agreed that prisoners should be registered to the address of their sole or main home if they continue to maintain a sole or main home outside the prison. For prisoners who no longer maintain any sole or main home outside the prison, their last dwelling-place in Hong Kong at which they resided before serving their sentence of imprisonment would be deemed to be their only or principle residence in Hong Kong for the purpose of voter registration.

(B) Canvassing for Votes

6. Most of the participants who expressed their views on this issue indicated reservation over allowing candidates to canvass in person inside prisons. They were worried that certain persons who had more chances to approach prisoners, e.g. lawyers and social workers, might gain an advantage if they stand for election. Participants also indicated concerns about prison security if all candidates for all constituencies were allowed to enter prisons to canvass for votes especially in a District Council General Election.

(C) Polling Arrangements

7. Many participants worried about the resource implication if prisoners were escorted to cast their votes at their designated polling stations. Most of the participants agreed that it would be more appropriate to set up polling stations inside prisons for prisoners to cast their votes.

Summary on the Second Forum on Prisoners' Voting Right

Date : 11 March 2009 (Wednesday)

Time : 6:30 p.m. – 8:30 p.m.

Venue: Lecture Theatre, Hong Kong Central Library,

66 Causeway Road, Causeway Bay

Prisoners' Right to Vote

1. Some of the participants considered that prisoners should not have the right to vote, while others held the opposite view. Among those who supported relaxing the restrictions on prisoners' voting right, there were different opinions as to the extent to which prisoners' voting right should be relaxed. In general, participants were of the view that it would be appropriate to disqualify certain prisoners from voting either according to their length of sentence of imprisonment or based on explicit determination by the sentencing judge.

Practical Voting Arrangements for Prisoners and Remanded Unconvicted Persons

- (A) Registered Address of Eligible Prisoners as Electors
- 2. Most participants who expressed their views on the registered address of prisoners rejected the proposal to use the prison address as the registered address. They noted that using the address of the prisons as a registered address might lead to an unduly high proportion of prisoners in the registered electorate of certain constituencies. They were in particular concerned about District Council Elections in which the registered electorate is small.
- 3. Most of the participants who expressed their views on this issue agreed that prisoners should be registered to the address of their sole or main home if they continue to maintain a sole or main home outside the prison. For prisoners who no longer maintain any sole or main home outside the prison, their last dwelling-place in Hong Kong at which they resided before

serving their sentence of imprisonment should be deemed to be their only or principle residence in Hong Kong for the purpose of voter registration.

(B) Canvassing for Votes

4. Participants who expressed their views on canvassing for votes agreed that reasonable restrictions should be imposed on canvassing for votes inside prisons.

(C) Polling Arrangements

5. Participants generally considered that prisoners should not be escorted out to cast their votes at their designated polling stations.

< 有關在囚人士投票權 > 民意調查

[Q1] 請問你贊唔贊成在囚人士,不論刑期長短,都有投票資格?

		百分比					
					唔知道/		
		唔贊成	贊成	視乎情況	無意見	拒絕回答	總計
第1輪	12-16/3/2009	33.9	56.6	0.1	9.2	0.2	100.0
第 2 輪	19-23/3/2009	33.6	58.3		7.9	0.2	100.0

註: 第1輪及第2輪回應人數分別為1051及1117。

[Q2] (如非贊成不論刑期長短)咁你認為刑期幾耐?人應該?被監禁期間喪失投票資格?係三年或以上呀、五年或以上呀、十年或以上呀,抑或係其他(請註明)呢?

			百分比							
		所有在 囚人士 都無投 票資格	刑期 三年 或以上	刑期 五年 或以上	刑期 十年 或以上	其他 刑期	其他 (非刑期)	唔知道/ 無意見	拒絕 回答	總計
以非贊成	在囚人士不論	刑期長短	都有投	票資格的	人士為基	基數				
第1輪	12-16/3/2009	33.7	21.8	12.7	9.6	4.2	4.3	13.4	0.2	100.0
第2輪	19-23/3/2009	32.1	27.3	11.6	8.5	2.7	5.0	12.5	0.3	100.0
以整體公	眾為基數									
第1輪	12-16/3/2009	14.6	9.5	5.5	4.2	1.8	1.9	5.8	0.1	43.4
第2輪	19-23/3/2009	13.4	11.4	4.8	3.5	1.1	2.1	5.2	0.1	41.7

[Q3] (如非贊成不論刑期長短)請問你贊唔贊成? 佢? 刑期? 最後一年或者幾年,恢復番佢?? 投票資格?

				百分比		
				唔知道/	拒絕	
		唔贊成	贊成	無意見	回答	總計
以非贊成	在囚人士不論	刑期長短都有投	是票資格的人士	為基數		
第1輪	12-16/3/2009	53.1	38.6	8.0	0.2	100.0
第2輪	19-23/3/2009	56.6	34.4	9.0		100.0
以整體公	眾為基數					
第1輪	12-16/3/2009	23.1	16.7	3.5	0.1	43.4
第2輪	19-23/3/2009	23.6	14.3	3.8		41.7

[Q4] (如贊成刑期最後一年或者幾年恢復投票資格)咁你認為應該?刑期最後幾多年恢復番佢??投票資格呢?係最後一年呀、最後三年呀、最後五年呀,抑或係其他(請註明)呢?

			百分比						
					其他	其他			
		最後	最後	最後	(與刑期	(與刑期	唔知道/	拒絕	
		一年	三年	五年	有關)	無關)	無意見	回答	總計
以贊成刑	期最後一年或	幾年恢復	在囚人士	投票資格	的人士為	基數			
第1輪	12-16/3/2009	62.0	16.5	3.5	6.2	6.6	5.2		100.0
第2輪	19-23/3/2009	57.0	18.3	4.2	5.4	11.2	4.0		100.0
以整體公	眾為基數								
第1輪	12-16/3/2009	10.4	2.8	0.6	1.0	1.1	0.9		16.7
第2輪	19-23/3/2009	8.2	2.6	0.6	0.8	1.6	0.6	-	14.3

[Q5-Q6] 根據現時規定,被裁定干犯<選舉舞弊或者非法行為/《防止賄賂條例》>? 人,會喪失投票資格3年。你贊唔贊成保留呢個規定呢?

				百	分比		
					唔知道/		
第2輪	19-23/3/2009	唔贊成	贊成	其他	無意見	拒絕回答	總計
	」選舉舞弊或 法行為	7.5	86.8	1.2	4.4	0.1	100.0
[Q6] 干犯 條例	!《防止賄賂 』》	9.3	85.7	1.0	3.8	0.1	100.0
干犯選舉	舞弊或者非法	<u>行為</u>					
第1輪	12-16/3/2009	7.1	86.6	1.6	4.7		100.0
第2輪	19-23/3/2009	7.5	86.8	1.2	4.4	0.1	100.0
干犯《防.	止賄賂條例》						
第1輪	12-16/3/2009	9.8	84.2	1.2	4.8		100.0
第2輪	19-23/3/2009	9.3	85.7	1.0	3.8	0.1	100.0

有關在囚人士投票權的

公眾諮詢報告

Report on Public Consultation on Prisoners' Voting Right

附錄 公眾意見 Appendix Public Views

二零零九年四月 April 2009

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- 3. 公眾意見書 Public Submissions
- 4. 諮詢期結束後不久收到的公眾意見書
 Public Submissions received shortly after close of consultation period

前言

政府在 2009 年 2 月 9 日發表《有關在囚人士投票權的諮詢文件》,進行為期六星期的諮詢。諮詢期於 2009 年 3 月 23 日結束。

公眾意見書

- 2. 截至諮詢期完結,我們共收到 70 份回應諮詢文件的公眾意見書。這些意見書包括以下三類:
 - (a) 發件人並無要求保密身分的意見書,共有 52 份。這些意見書載列於本附錄。編印次序是盡量以發件人的中文稱謂筆劃次序排列,而以英文署名的意見書,則以發件人的英文稱謂字母排列。
 - (b) 發件人要求保密身分的意見書,共有 14 份,另有 3 份意見書,我們無法確認發件人是否同意把身分公開¹。這些意見書亦載列於本附錄,排列在第 2(a)段所述的意見書後。
 - (c) 另有 1 份意見書的發件人,要求把意見書保密處理。本附錄並沒有載列有關意見書。
- 3. 在 2009 年 3 月 23 日諮詢期完結後不久,我們收到了 3 份意見書,由於這些意見書在諮詢期完結後才收到,並不會納入本報告書的公眾意見分析內。這些意見書已分開載列於本附錄的最後部分,以供參考。

¹ 這些意見書在交來時,未有提供有效的回郵地址或傳真號碼。我們因而無法確認他們是否同意在載列他們的意見書時把身分公開。

未能進一步處理的傳真或電郵

4. 在諮詢期間收到屬於廣告性質的傳真,我們不會作進一步處理。此外,根據政府中央互聯網通訊閘系統給們發出的警告,所有傳送到為諮詢工作專設的電子郵箱的垃圾電郵或懷疑帶有病毒的電郵,我們都不會作進一步處理。

個人私隱的處理

5. 為了保障發件人的私隱,我們在編印意見書時,已將發件人的個人資料(例如:住址、電郵地址、身分證號碼和電話號碼等)刪除。上文第 2(b)段所述的意見書,發件人的署名已被刪除。

政制及內地事務局 2009 年 4 月

Foreword

The Government published the Consultation Document on Prisoners' Voting Right ("the Consultation Document") on 9 February 2009 for a six-week consultation which ended on 23 March 2009.

Public Submissions

- 2. At the close of the consultation period, we received a total of 70 written submissions in response to the Consultation Document. They comprise the following three categories.
 - (a) There are 52 submissions for which the senders have not requested anonymity of their identity. These submissions are contained in this Appendix. They are arranged, where possible, according to the number of strokes of the sender's name/title in Chinese and, where the name/title of the sender is in English only, the alphabetical order of the sender's name/title.
 - (b) There are 14 submissions for which the senders have requested anonymity of their identity, and 3 for which we are unable to ascertain whether the senders want their identity to be made known when their views are published ¹. They are also contained in Appendix, and are arranged after those under (a) above.
 - (c) There is 1 submission for which the sender has requested confidentiality of the submission. The submission is not included in the Appendix.
- 3. We received 3 submissions shortly after 23 March 2009. As these submissions were submitted after the close of the consultation period, they have not been reflected in the account of public views in the Report on Public Consultation on Prisoners' Voting Right. We have

For these submissions, the senders have not left any contact method. We are therefore unable to get in touch with them on our approach so that they may request anonymity if they so wish.

included them in a separate section at the end of this Appendix for public information.

Electronic mail and facsimile that cannot be further processed

4. Facsimiles received during the consultation period which where advertisements were not processed further. In addition, according to notifications issued to us by the Central Internet Gateway of the Hong Kong Special Administrative Region Government, electronic mails addressed to the consultation mailbox which were spam mail or were suspected of being virus infected were not processed further.

Handling of personal data

5. In order to safeguard privacy, we have removed senders' personal data, such as residential addresses, email addresses, identity card numbers and telephone numbers, where provided, when publishing their submissions in this Appendix. For submissions under paragraph 2(b) above, we have removed the names of the senders from the relevant submissions.

Constitutional and Mainland Affairs Bureau April 2009

公眾意見書索引 Index of Public Submissions

序號 Serial No.	名稱 Name/Title
P01	一市民
P02	文小姐
P03	孔昭華
P04	公民黨
P05	自由黨
P06	江燦良
P07	朱先生
P08	朱先生
P09	伍秀明
P10	社區參與助更生委員會
P11	李敬倫
P12	何逸雲
P13	吳錦全
P14	林志慶
P15	東九龍居民委員會
P16	姚金顯
P17	香港社區組織協會
P18	容家倫

序號 Serial No.	名稱 Name/Title
P19	陳女士
P20	陳得利
P21	陳健森
P22	陳榮濂
P23	陳權軍
P24	黃智滿
P25	傅錦恆
P26	(無名氏)
P27	(無名氏)
P28	(無名氏)
P29	(無名氏)
P30	(無名氏)
P31	(無名氏)
P32	(無名氏)
P33	葉永成
P34	楊位醒
P35	黎民
P36	黎怡華
P37	蔡全新
P38	蔡全新
P39	劉家明

序號 Serial No.	名稱 Name/Title
P40	歐陽志均
P41	盧頌德
P42	羅澤強
P43	Chan Nai Keung
P44	Choy Fuk Chai
P45	Hong Kong Bar Association
P46	JUSTICE, The Hong Kong Section of the International Commission of Jurists
P47	Hans Lutz
P48	Mak Siu Fan
P49	Harman Preet
P50	Gurung Santosh
P51	James D. Seymour
P52	The Law Society
P53	(來信人要求以不具名方式公開)
P54	(來信人要求以不具名方式公開)
P55	(來信人要求以不具名方式公開)
P56	(來信人要求以不具名方式公開)
P57	(來信人要求以不具名方式公開)
P58	(來信人要求以不具名方式公開)
P59	(來信人要求以不具名方式公開)
P60	(來信人要求以不具名方式公開)

序號 Serial No.	名稱 Name/Title
Serial No.	Name/Title
P61	(來信人要求以不具名方式公開)
P62	(來信人要求以不具名方式公開)
P63	(來信人要求以不具名方式公開)
P64	(來信人要求以不具名方式公開)
P65	(來信人要求以不具名方式公開)
P66	(The sender requested anonymity)
P67	(Unable to ascertain if the sender wanted the identity to go public)
P68	(Unable to ascertain if the sender wanted the identity to go public)
P69	(Unable to ascertain if the sender wanted the identity to go public)

From: mandy [mailto:

Sent: Friday, March 20, 2009 6:50 PM To: cmabenq@cmab.gov.hk

敬-者

本人極反對予在囚人士有投票權。犯罪人士本身犯下之罪行在不同程度下正正剝奪他人之權 利。在未能出獄之前, 理應受罰, 不明爲何勞司動眾, 雷霆救兵之陣勢, 爲在囚人士做這類事 情。香港人權已經過剩。醉酒駕駛做成嚴重交通意外,本港法官都特別仁慈,相比外國而言,判 刑甚輕。

]

况且, 那些議員講一句就容易, 要別人做就辛苦, 此吃力不討好之工作, 真難爲了公務員。萬一(走犯), 又話你們辦事不力啦!

本人極之反對,爲何我們的意見沒有被反映出來。

一市民 文小姐



孔昭華城東鄉華北

District Councilor HUNG Chiu-wah, Derek

香港下亞厘畢道 中區政府合署東座 356 室 政制及內地事務局(第 2 組) 傅真:2840 1976 本函編號:HDC090155

有關在囚人士投票權諮詢文件的意見

本人就政府有關在囚人士投票權的公眾諮詢,現提交如下建議予貴局參考:

- 1. 希望政府就法庭的三宗司法覆核個案的裁決(HCAL 79/2008,HCAL 83/2008 及 HCAL 82/2008),在囚人士投票權事宜上訴至終審法院,厘清有關在囚人士是 否有投票權的最終法律依據:
- 2. 假如終審法院確認在囚人上最終享有投票權,建議不應俱有追索權,即其效 力不應追溯至立法前的判決而行使有關權利。
- 3. 本人認為在囚人士享有投票權是不洽當的,因為當事人在犯罪前,應清楚意 識到現存法例對犯罪者會帶來懲罰,包括對人生自由有所限制和沒有投票權 等。
- 4. 針對遭羈留但未被定罪人士,本人覺得應享有個人的投票權利。因爲在法庭 未對當事人作出審判前,當事人假設仍屬無罪,不能夠褫奪這個公民最基本 的權利。
- 5. 希望貴局下次若有類似的公眾諮詢時,在提及一些國家現行囚犯享有投票權的例子同時,亦應列舉一些先進國家禁止囚犯享有投票權的例子,使市民能夠客觀地作出比較。
- 6. 本人認同並支持應給予在囚人士改過自新的機會,但不能以在獄中是否有投票權來衡量,希望在囚人士在獄中能夠徹底反省、提昇自己的技能,努力爲重投社會做好裝備,珍惜出獄後所享有的投票權。

孔昭華區議員 謹啓 2009年3月20日

副本抄送: 油尖旺民政處助理專員

超越:紫沙眼時的海沙縣與亞大國的李城內益。超越:2375-3788 海真:2375-8729 Emell:derek@dab.org.hk Address: Plat A., 676, Bo Furig Bldg., 39 Nalphong Rd., T.S.T., KLN., Hong Kong Tel: 2375-6788 Fax: 2375-8728



公民黨就〈有關在囚人士投票權的諮詢文件〉的立場書

引言

- 在高等法院就三宗有關在囚人士的司法覆核案件作出裁決前,現行的立法會選民登記和投票法例排除了以下人士在立法會選舉中登記做選民的權利;若果是已登記的選民,則剝奪其投票權(亦因此失去參選權):
- (i) 已在香港或任何其他地方被判處死刑或監禁,既未服刑或 未獲赦免;
- (ii) 在申請登記之日或選舉當日正因服刑而受監禁;及
- (ii) 被裁定觸犯以下罪行,而選舉將於其被定罪的日期後的3年 內舉行:
 - (a) 在違反〈選舉(舞弊及非法行爲)條例》(第 554 章) 的情況下作出舞弊或非法行爲;
 - (b) 《防止賄賂條例》(第 201 章)第 II 部所訂的罪行;及
 - (c) 根據《選舉管理委員會條例》(第 541 章)訂立及生效的條例所訂明的任何罪行。
- 2. 根據刑事訴訟程序條例(第 221 章),被判處緩刑人士,縱使刑罰未執行,在緩刑期間也會失去登記爲選民及投票的權利。而按照《長期監刑罰覆核條例》(第 524 章),有條件釋放的囚犯看來也屬上述的第一類,即既未服刑或未獲赦免的人士。
- 3. 三宗司法覆核案件分別涵蓋了那些沒有登記爲選民、挑戰有關登記限制的在囚人士、已登記成爲選民但被剝奪投票權故此挑戰有關限制的在囚人士,及一些未被定罪但遭羈押候審因而不能前往投票的人。
- 4. 法官質疑那些被扣押在勞教中心、懲教所、戒毒所、更生中心和小欖精神病治療中心的人是否該與那些已被判刑或正在服刑的人一樣受到禁制。法官拒絕處理這個問題,因爲代表律政司及選舉事務委員會的檢控官認爲他們並非被監禁或被判監禁。
- 5. 法官裁定有關剝奪投票權的法例條文抵觸《基本法》第 26



條及《香港人權法案條例》第 21 條。政府沒有清楚說明受質疑的條文的合法目的和解釋現存的限制如何對應和達到那些目的。再者,現時並無法例限制羈押人士的投票權,其不能投票純粹因爲他們正被羈押候審,這明顯侵犯了他們的投票權。法庭將於 2009 年 2 月 23 日就如何解決申訴人的權利作出裁決。

6. 政府已決定不會提出上訴,並開始就放寬在囚人士投票權限制的政策及有關區議會和鄉村選舉的選民登記和投票諮詢公眾。(《有關在囚人士投票權的諮詢文件》2009年2月)。

公民黨就在囚人士和羈押人士投票權的立場

- 7. 雖然遲來,但政府終於承認那些對登記爲選民的權利的限制,和未能爲那些被羈押候審人士作出投票安排,無論是過往或現在,都是無法辯解的。對此公民黨表示歡迎。同樣情況也發生在那些被判處有條件釋放的緩刑人士身上,他們的投票權利也受到專橫及全面的限制。
- 8. 雖然政府在法庭上辯稱有關法例只適用於在囚人士而不適 用於羈押在拘留所的人,但在諮詢文件中,政府並未提到會 否爲羈押人士作出投票安排。除了那些被羈押在小欖精神病 治療中心並被診斷爲精神有問題的人外,政府應爲其他被羈 押的人作出投票安排,因爲他們的情況和那些被還押候審的 人無異。
- 9. 公民黨認爲政府應撤除所有現存有關在囚人士投票權的限制,並且不應再增加任何新的限制。雖然法庭認爲立法機關可向在囚人士及其他人施加投票權的限制,但那些限制只可以爲達致某一個合法目的而設,並且是爲達致此一目的的相稱手段。直到此刻,當局還沒有爲限制在囚人士的投票權提出任何合法目的。公民黨認爲政府在強行設訂任何限制前,必須提出充分的理由和論據,否則只會招來更多司法覆核的訴訟。假若提不出合法目標,政府便不應強加任何限制。
- 10. 有論點認爲應限制那些因觸犯與選舉有關或防賄條例罪行 而被定罪的人在被定罪後三年內不得投票,其理據是這個限



制有利於維護立法機關的誠信;然而,我們看不到限制該類 被定罪人士在定罪後三年內不得投票,和維持立法機關的誠 信有何必然、明顯和直接的關係。

在囚人士及其他受羈押人士行駛投票權的安排

11. 公民黨認爲政府須爲在囚人士和遭羈押人士在選舉日作出 投票安排,此等安排須確保選票得到周全保密,及如有需 要,考慮採取特別措施以保證投票人可享有與與其他一般投 資人享有的保護,就如他們不曾被羈押一樣,以及能夠以自 由意志及判斷去投票。

2009年2月 公民黨



Position Statement of Civic Party on "The Consultation Document on Prisoners' Right to Vote"

Introduction

- 1. Before the High Court handed down its judgment on the three judicial review cases on 8 December 2008, the legislative provisions governing the right for Legislative Council elections to register as an elector and the right to vote precluded the following persons from registering to vote and, if already registered, from being eligible to vote (and therefore to stand for election):
 - (i) persons who have been sentenced to death or imprisonment in Hong Kong or elsewhere and who have not either served the sentence or been pardoned
 - (ii) persons serving a sentence of imprisonment on the date of application to register as an elector or on the date of election
 - (ii) persons who within 3 years prior to an election have been convicted of
 - (a) having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)
 - (b) an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201)
 - (c) any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541)
- 2. By virtue of s 109B(5)(a) of the Criminal Procedure Ordinance (Cap 221), a person who has been given a suspended sentence in Hong Kong which has not been activated is disqualified from registration as an elector and from voting in elections during the operational period of the suspended sentence. A prisoner given a conditional release pursuant to the provisions of the Long-term Prison Sentences Review Ordinance (Cap 524) also appears to be within the first sub-group, as a person who has neither served his full sentence nor received a free pardon.
- 3. The 3 cases covered the position of a serving prisoner who was not registered and who challenged the restriction on registering as an elector, the position of a serving prisoner who was registered but who was precluded from voting and therefore challenged the restriction on voting and the position of persons not convicted of any offence but who



were physically detained on remand before trial and therefore unable to vote on polling day.

- 4. The Judge questioned whether those who were sentenced to detention in detention centres, training centres, drug addiction treatment centres, rehabilitation centres and Siu Lam Psychiatric Centre were also within the prohibition as being sentenced to imprisonment or serving terms of imprisonment. The Judge declined to deal with the issue as Counsel appearing for the Secretary for Justice and the Electoral Affairs Commission took the position that they were not imprisoned or sentenced to imprisonment.
- 5. The Judge came to the conclusion that the disenfranchisement provisions concerned contravened the fundamental right to vote constitutionally guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights. The Government had not stated clearly what were the legitimate aims of the provisions in question and had not justified the restrictions as being proportionate to the achievement of those aims. Further, as there were no provisions restricting the right to vote of persons on remand, the restriction was purely the result of their being detained pending trial and clearly infringed their right to vote. The remedy to be granted to the applicants is to be decided on 23 February 2009.
- The Government has decided not to appeal and is now consulting the
 public on various options for amending the legislation in question and
 the corresponding provisions governing registration and voting for
 District Council and Village elections (Consultation Document on
 Prisoners' Voting Right February 2009).

<u>CP's Position on Voting Rights of Prisoners and others sentenced to</u> detention

7. CP welcomes the belated recognition by the Government that the identified restrictions on the right to register as an elector and the failure to make voting arrangements for those detained on remand pending trial were and are indefensible. The same applies to an arbitrary and blanket restriction on the right to vote applied also to those serving a



suspended sentence and on conditional release.

- 8. Although the Government's position in court was that the legislative provisions did not apply to persons who were sentenced to custody in places of detention other than prisons, the Government has said nothing in the Consultation Document about whether arrangements will be made for such detainees to vote. Apart from those who are detained in Siu Lam Psychiatric Centre and who have been diagnosed as suffering from mental incapacity, arrangements should be made for all detainees to vote as their position is the same as persons on remand.
- 9. Civic Party considers that the Government should remove all existing restrictions on prisoners' right to vote and should not impose any further restriction. Although the Court considered that the legislature could impose restrictions on the voting rights of prisoners and other people, any restrictions can only be imposed to achieve a legitimate aim and must be proportionate to achieving that aim. The Administration has even now not advanced any aim which would be served by restricting the rights of prisoners to vote. Civic Party considers that the Government must provide sufficient grounds and good reasons before imposing any restrictions; otherwise, there will be more judicial reviews to come. As no legitimate aim has been advanced, no restrictions should be imposed.
- 10. In support of restricting the right of persons convicted of election-related or bribery offences from voting within 3 years after conviction, it is argued that disqualification will help to protect the integrity of the legislature. However, we see no inevitable, obvious, direct relationship between disqualifying such persons from voting for 3 years after conviction and protecting the integrity of the legislature.

Arrangements for Prisoners and other Detained Persons to Exercise their Voting Right

11. Civic Party considers that the Government must make arrangements for prisoners and other persons in custody (apart from those suffering from mental incapacity) to vote on election day which will ensure the secrecy



of the ballot and if necessary, to consider what special procedures are adopted to ensure that voters enjoy the same protection as they would if they were not detained and are able to exercise their free will and judgment in exercising their vote.

February 2009 Civic Party



致: 政制及內地事務局

由: 自由黨

頁數: 4頁(連此頁)

自由黨就《有關在囚人士投票權的諮詢文件》之回應

謹附上自由黨就《有關在囚人士投票權的諮詢文件》的回應文件。如有查詢,請聯絡吳小姐 (電話:)。

自由黨



自由黨就 (有關在囚人士投票權的諮詢文件) 之回應

前冒

在法庭裁定在囚人士一律喪失登記和投票資格的現有規定違憲後,當局 發出「有關在囚人士投票權的諮詢文件」進行公眾諮詢,就此,自由黨 的回應如下:

一、在囚人士投票權的政策方案

投票權是一項重要的政治權利,但參考外國經驗,各個社會對於在囚人士的投票權的處理及安排,並沒有一個統一的標準,例如日本、加拿大、瑞士等國家均沒有對在囚人士的投票權施加限制;在德國、法國、挪威等國家法庭可明令部分在囚人士喪失投票權,作爲監禁以外的附加懲罰;新加坡、澳洲、比利時等則規定在囚人士如被判監超過某個年限,即喪失登記成爲選民或投票的資格。

《基本法》第二十六條明確規定:「香港特別行政區永久性居民依法享有選舉權和被選舉權。」我們認為,香港在制定有關在囚人士的投票權的政策方案時,大前提必須是要符合《基本法》、盡力保障港人這項重要的政治權利,同時應按本港的社會制度及情況、民意取向等考慮因素,作出最合適的處理及安排。

因應法庭去年底就三宗司覆核個案所作的有關在囚人士投票權的裁決,當局在諮詢文件提出了三個放寬在囚人士投票權限制的政策方案以供公眾考慮。方案一是移除在囚人士在《立法會條例》第53(5)(a)至(b)條喪失投票資格的現有規定,讓因服刑而受監禁的人士行享有投票權利;被裁定干犯與選舉有關的罪行或賄賂罪行而根據第53(5)(c)條喪失投票資格的

規定將會保留。方案二是取消長期服刑(例如十年或以上)的在囚人士的投票資格。方案三是取消長期服刑(例如十年或以上)的在囚人士的投票資格,但准許在囚人士在刑期最後幾年(例如最後五年)恢復投票權。

在審視有關方案時,我們考慮到方案一容許差不多所有在囚人士不論干犯何等罪行都可以投票,在社會上頗具爭議性,而方案二一律取消因干犯嚴重罪行而被判長期服刑的在囚人士的投票權,又無助於加強在囚人士出獄後融入社會,不太理想。故此,自由黨較認同諮詢文件方案三的建議,並相信這個折衷性方案,將較爲可以在取消干犯嚴重罪行人士投票權,與協助在囚人士更生之間取得平衡。

二、在囚人士行使投票權的實務安排

在合資格成爲選民的在囚人士登記地址方面,海外的處理方式亦不盡相同的,例如在入獄前尚未登記成爲選民的在囚人士,加拿大及澳洲准許他們以最近親的地址登記,而德國及比利時則讓他們以監獄的地址登記。

就此,爲選取較簡便及易於執行,兼且會引致較少爭議的方案,我們同意諮詢文件所建議,服刑前尚未登記爲選民的在囚人士,如在監獄外繼續保留唯一或主要的家居,可申請按該居所的地址登記。同樣,在服刑前已登記爲選民的在囚人士,他們應該可以沿用其原本登記的唯一或主要的家居地址,作爲選民登記地址。

至於在監獄外再無保留任何唯一或主要的居所的在囚人士(不論是否已登記爲選民),我們同意其入獄服刑前在香港的最後居住地方,會被視爲在香港的唯一或主要住址,用於選民登記。

在拉票活動方面,我們認為,在囚人士如其他選民一樣,應可以合理地取得選舉資料,故在囚人士應該可以選擇在登記地址或通訊地址(正在服刑的懲教院所)收到郵遞的選舉文件及選舉廣告。同樣,在囚人士亦應可經由報紙、電台和電視等傳媒渠道,取得與選舉有關的資訊,懲教

署並應制定安排,協助在囚人士取得有關資訊。

鑑於在囚人士的日常活動是受到限制的,我們認為,當局亦應推出配套的安排及措施,令在囚人士的投票活動可順利進行。就此,海外國家為在囚人士制訂的投票安排亦各有不同:在加拿大及澳洲等國家,在囚人士可親身前往投票站或在監獄內設置的流動投票站投票,或選擇以郵遞方式投票;德國的在囚人士則只可以郵遞方式投票;比利時、法國等的在囚人士則只能委派代表投票。

在本港,我們認為在條件許可下,當局應該為在囚人士設置在獄內投票的安排,包括在投票日安排流動投票站前往那些有合資格選民的監獄, 或在監獄內設立投票站。

對於諮詢文件建議應基於保安理由,考慮就在囚人士的投票時間、投票站內流通的安排等,設立一些合理限制,我們基本上同意。

對於當局正制訂遭關押但未被定罪人士的投票安排,並表示將會與在囚人士的投票安排相類似,我們基本上同意。

與此同時,我們認爲選舉管理委員會視乎實際採納的投票安排,制訂點 票安排,包括安排移送選票到相關點票站及與其他選票混合,以確保投 票保密等措施。

總結

選舉權是受到《基本法》保障的,政府是有不可推卸的責任維護港人這項重要的基本權利。且法庭已經裁定現行對在囚人士劃一的投票權限制違反人權及違憲,我們促請政府及有關方面在完成今次諮詢及聽取民意後,盡早爲在囚人士制訂合憲的投票規定及安排,讓當中合資格的選民可依法行使投票權。

政制事務局局是:

在囚人仕投票權咨詢 本人主張,取消在囚人仕年 有投票權利的限制:

- (一) 囚犯服刑,失去自由,已是對所犯的罪付出了懲罰的回報。取消投票權是加於他們的雙重懲罰。
- (三) 囚犯應享有「自由」以外的一切人權,包括日常作息、娛樂、學習、體育,甚至結婚,生孩子。投票權乃文明社會基本權利,毋宏制奪。
- (三) 囚犯投票, 至张尔伯一己之利,而是利及其这人及新里社屋。到客口犯投票楼门即接, 影架一般包括其家人及都里社屋路利。

(Page 1 of 2)

四)都行困難差排禁止在囚人住設 案構口。美加海外國民投票亦可在半個地球之起的香港進行。 特在囚人住設下記到了選尾 投票有何難?

Don't Say No"!
Nothing is Impossible
Don't ask me "What"!
Just to say, "Why Not"?

> 配证牌包建上 2009年2月11日2) (Rage 2012)

朱先生表示,在現時情況下,在囚人士並不具備投票的條件。

朱先生表示自己因爲對選舉的候選人認知不足,所以早已自行放棄了投票權,而在囚人士的情況就更差,由於在囚,根本沒法體驗社會生活,加上得到的資訊並不全面,所以在囚人士不具備行使投票權的應有條件。

朱先生讚成政府應就通過在囚人士投票問題上上訴,他強調反對的理據不在 於在囚人士是否有權投票,而是在囚人士根本不具備行使投票權的基本條件。

朱先生重申在囚時難以體驗社會,亦不像離港居民,能透過各種渠道獲得評估候選人資訊,在囚更對監房以外的地區認知不足,在囚人士在此情況下,根本難以判斷該如何投票。這也是港英政府爲何不讓在囚人士投票的原因,特區政府應避免在囚人士是否有權投票的問題上爭議,而是以在囚人士不具備根本的條件(例如候選人無法體會社會生活),去行使投票權作爲理據,說服社會不要讓不理解社會,觀點未成熟的人(在囚人士)行使投票權,否則只會危害社會。

朱先生提出的意見:

- 1) 贊成在囚人士投票但要留在懲教所內進行投票;
- 2) cctv監控以防止貪污及暴動發生:
- 3) 以監倉所在作爲區域劃分,便於執行及候選人拉票。需要立法局通過以防 容後一切可能之訴訟;
- 4) 提前一個月給他們投票因投票過程需時;及
- 5) 投票完成後立即公報結果以增加公信力。

政制及內地事務局長:

本人已經閱讀"有關在囚人士投票權"的諮詢 文件, 想發表意見。

註:以下內容,"他們"代替"在囚人士及遭羁押但未被定罪人士"

本人認為他們"犯法,為害社會,不應享有投票權,所以政府應該上訴。如果終審庭仍然判決他們"有選舉權,本人有以下建議。

- 日参考新加坡的方法,被判監超超12個月人士,服刑期間不可投票,遭扣押但未被定罪人士,仍可投票。
- (三)事業人士,例如醫生,律師,會計師,如果服刑,就不能從事該行業,因為"他們"所屬工會會予鎖他們"的牌照,所以 "他們"不應在工能組別投票。
- (E) "他們"如果在微中行為不檢,例如打架。季麗報法人 員,就會取消投票權。
- 四犯選舉詐騙或恐嚇選民的人士,應要先選舉權
- 田"他們"入獄時的家居地址,即定為選民登記地址
- (六)用"郵遞"方法投票,比其他方法更好
- 世) 懲教署職員,可以將假選人的宣傳單張,點在獄中報告板上,及播放電台, 電視台有關選舉活動。 切勿讓候選人進入監獄中拉票

市民 恆秀明上 2009年2月/6日

Committee on Community Support for Rehabilitated Offenders 社區參與助更生委員會

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Mr Herman HUI Chung-shing, MH, JP 許宗盛先生

Vice Chairman 副主席

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Secretary 秘書

CEO (Rch.), CSD 總行政上任(更生事務) (懲教署) Ref.: CSD GEN 1-57-302 Pt.10

香港下亞厘畢道 中區政府合署東座 356 室 政制及內地事務局(第2組)

執事先生:

(有關在囚人士投票權的諮詢文件)

因應當局要求,社區參與助更生委員會在三月六日的特別會議及隨後的通訊,就政府《有關在囚人士投票權的諮詢文件》內關於在囚人士投票權的各項建議,特別是建議對罪犯更生可能產生的影響,進行了詳細討論。現謹提交本委員會的意見書,以供參考。

(已簽署)

社區參與助更生委員會主席許宗盛暨全體委員

連附件

副本送:

保安局局長李少光先生 IDSM, JP 懲教署署長郭亮明先生 CSDSM

二零零九年三月二十三日

社區參與助更生委員會

就香港特別行政區政府政制及內地事務局諮詢文件: 《有關在囚人士投票權的諮詢文件》的意見

(二零零九年三月二十日)

社區參與助更生委員會(以下稱 "委員會")在二零零九年三月六日的特別會議和隨後的通訊,進行討論香港特別行政區政府政制及內地事務局(以下稱 "政府")《有關在囚人士投票權的諮詢文件》。以下是討論的要點。

對建議的總體意見、評估及立場

- 2. 委員會在研究諮詢文件時,是從罪犯更生角度及主要考慮建議對罪犯更生的影響。所以,若建議將阻礙罪犯更生便不予支持。委員會建議政府應藉恢復在囚人士「投票權」這契機,鼓勵在囚人士履行公民責任,以助其重返社會,融入社會。
- 3. 有委員認為在囚人士亦是香港公民的一份子,在絕大部分的情況下,應該讓他們享有「投票權」這個政治權利,這樣亦有助加強他們對社會的歸屬感和使命感,提高公民責任,有助其出獄後成為更好、更有公民意識的公民。
- 4. 有委員認為,法庭的裁決對在囚人士有正面意義。雖然在囚人士犯了錯,被判刑,但一個基本政治權利的「投票權」 是應該延續的。他相信這對他們日後更生,體現他們是社會 的一份子,都有積極意義。

具體意見

在囚人士登記為選民的政策方案(諮詢文件第2.08段及第5.01段)

- 5. 委員會支持放寬在囚人士喪失申請登記成為選民的資格,即所有合資格人士不會因在囚而喪失登記為選民的資格。
- 6. 有委員指出現今世界上有很多國家包括日本及南韓等,都容許在囚人士在監獄投票。在香港,一個人被判監禁,不等同被剝奪政治權利,既然囚犯有權就自己所犯的罪行作出上訴,亦應有權在羈押期間行使投票權。囚犯本身已沒有

人身自由,連選舉權也被剝奪,絕對是違反《基本法》和《人權法》;香港回歸祖國已經十一年,我們應按現行的社會價值觀共建和諧社會,不應對社會弱勢社群加添不必要的歧視。

在囚人士投票權的政策方案 (諮詢文件第2.09至2.20段及第5.01(a)至(c)段)

- 7. 對於在囚人士投票權的政策方案,就應否所有在囚人士均應獲准投票,還是應維持某些合理的限制,大部份委員會成員支持實行方案一,移除在囚人士在《立法會條例》第53(5)(a)至(b)條喪失投票資格的現有規定。他們認為方案一最為簡單和最少爭議,並支持保留被裁定干犯與選舉有關的罪行或賄賂罪行而根據第 53(5)(c)條所喪失投票資格的規定。
- 8. 有委員認為雖然投票權是公民最基本的政治權利,所有公民都應該享有,但是對於一些損害公眾利益,企圖用非法手段擾亂選舉政治平衡的人來說,他們本身的行為本來就是漠視、不尊重選舉,因此,為了維持立法機關的持正不阿,令這類人士喪失投票權是必要的。至於干犯其他罪行的人士都應該享有投票權。
- 10. 就當局提出的三個方案,有委員認為實行第一個方案最為簡單和最少爭議。第二個和第三方案的主要爭議,是如何定下長期服刑的準則。例如為甚麼判監十年就不能投票,但判監九年零十一個月仍可以投票呢;況且服刑十年或以上的囚犯只佔全體囚犯 14% (約七百多人),他質疑當局有沒有必要為這批少數人士另定準則,並認為恢復所有在囚人士的投票權最容易執行。

- 11. 多位委員認為在囚人士有權投票及行使公民責任。不論刑期長短,在囚人士均應擁有公民投票權。讓在囚人士行使公民權利,有助他們在出獄成為有公民意識的良好市民經更生角度所言,其選民資格不應因在囚人士的刑期長短而已入世會喪失投票權的準則極具爭議性,流於武斷和缺乏理據。們認為取消投票資格不應一刀切以判監刑期長短為準則也們認為取消投票權的政策方案,是根據法庭判詞是出,並得到大眾認同。根據外國的經驗,在囚人士仍擁有投票權,不應簡單地以刑期長短而褫奪在囚人士的公民投票權。
- 12. 多位委員不支持方案三,認為在執行上程序繁瑣、予人 詬病及具爭議性,對行政機構的運作構成壓力。此外,他們 對方案三計算服刑期的方式有保留,表示這方案除增加行政 上的困難外,亦包括在囚人士在出獄前的不良行為而需重新 計算服刑期時所可能引起的爭議。
- 13. 有委員認為五年以上在囚人士對外界認識已開始模糊,此外,罪行嚴重、長期在囚人士未必具備不偏不倚的心情去投票,他們對外界社會事務和發展沒有足夠認識。

在囚人士行使投票權的實務安排(第三章)

14. 有委員認為當局如何處理一些富爭議的實務安排,例如選舉候選人到監獄/懲教院所作任何形式的拉票或宣傳,在囚人士會否透過郵遞、報章、電視、電台得到與選舉有關以外的資訊等等,要做到合情、合理、合宜來完成一個有意義的投票,將是當局要面對的重大問題。

合資格成為選民的在囚人士登記地址 (諮詢文件第 3.02 至 3.06 段及第 5.01 (a)至(c)段)

- 15. 委員會支持文件第五章第22頁第5.01 (a)至(c)段合資格成為選民的在囚人士登記地址的三個建議,特別是接受以其入獄前在香港的「最後居住地方」為在囚人士在香港的唯一或主要地址,用於選民登記。
- 16. 就當局認為如果實行以監獄地址作為登記地址,「可能 導致在囚人士在某些地方選區的登記選民中的比例過度地

高」。有委員對當局的既定立場有些保留,畢竟民選議員代 表著所屬選區,故此在囚人士既然不再居住於那個選區內, 投票選擇那個選區的議員的意義並不是很大。這個問題對於 立法會選舉並不明顯,因為立法會關注的大多是全港性議 題,可是對於區議會選舉來說問題便較大。另一方面,假如 在囚人士的選民登記地址劃一為監獄地址,投票日的安排亦 會較為方便,所有選票集中在同一個投票箱便可以。相反, 假如採用當局屬意的方案,立法會投票日時還好一些,五個 票箱便夠用;但區議會投票日便麻煩了,選票分別屬於的選 區沒有過百個也有數十個,處理時肯定會很混亂。至於當局 認為「可能導致在囚人士在某些地方選區的登記選民中的比 例過度地高」,該委員認為這根本並不是一個問題。以赤柱 監獄為例,收容額為 1,714 名,而監獄所處的「赤柱及石澳」 選區,人口約為24,216名,比例連十分之一也沒有,因此, 他不明白當局為什麼仍會認為「比例過度地高」。總而言之, 他認為在囚人士的選民登記地址若以監獄的地址為準,投票 安排上將會較為方便。

- 17. 有委員指出諮詢文件第 26 頁有關德國就選民登記地址的做法可取,即在囚人士通常登記在他們長居的德國城市的選民登記名單,未有長居城市的在囚人士則以監獄所在選區登記。
- 18. 有委員指出,由於在囚人士服刑的懲教院所是由懲教署安排,所以在囚人士不應以監獄或服刑地區為其地方選區,而應以「最後居住地方」為登記地址。有委員表示監獄的地址分佈不勻,會影響選舉結果,因此不宜以監獄為登記地址。
- 19. 有委員認為為鼓勵在囚人士的社區觀念,他們的登記地址應根據所屬社區登記。他指出在囚人士將來都會重返社區,合理的想法便是認為他們來自哪區便回到哪區,如果在囚人士希望參與選舉,同意把資訊寄到「最後居住地方」,應讓他的家人幫忙把資訊轉交給他。
- 20. 有委員認為在囚人士登記地址要解決的只是技術問題,最主要是在囚人士用哪一個地址才可配合他的需要和可以幫助他的家人。所以,這是在囚人士的選擇,讓他們行使公民權利之餘,亦可選出代表其選區的議員以幫助他的家人。

21. 有委員理解到多數犯人都沒有居住地址,所以他建議應以配套形式,向在囚人士講解他們可以通過登記做選及行使公民權利投票,提高服刑人士的公民意識,減少出獄後再犯的機會,這對其家人和選區都有利益,來鼓勵他們以家人、親友的地址做登記。有委員認為,若沒有居所地址的在公人士,即露宿者或長期住酒店房間人士,應被視為不合選民資格。亦有委員表示若該名在囚人士沒有地址,例如是露宿者,則以他所棲身的天橋地區做選民登記地址。

拉票活動

(諮詢文件第 3.07 至 3.09 段及第 5.01 (d)至(e)段)

- 22. 委員會大部份委員接受文件第五章第 22 頁(d)至(e) 段的拉票活動安排,同意在囚人士可透過郵遞、報章、電視等傳媒取得與選舉有關的資訊,並反對選舉候選人選教院所作任何形式的拉票或宣傳,因為此舉會。於實驗教署會儘量為在囚人士提供資訊,使他們在以員公民權利時,不會因為缺乏資訊而受影響,因而可議為。因們所屬的社區投票,選出代表他們及其家人的議者。因人士提供資訊所作的安排,並沒有特別厚待在囚人士,只是把他們當為普通人一般處理。
- 23. 有委員認同當局對拉票活動的論點,即以郵遞選舉廣告及透過傳媒宣傳拉票便已經足夠,不需要候選人入內拉票。他指出現在就連大部份私人屋苑也不會批准候選人進入「洗樓」,因此看不出候選人為何需要到人數少得多的監獄拉票。
- 24. 有委員認為候選人可否進入院所拉票及宣傳等安排,應以不影響懲教院所的日常運作為原則。他同意在囚人士應到郵遞取得選舉資料,而懲教署應安排在日間指定時間及聯大人及選舉的資訊。他認為郵客選舉資訊可以直接與「最為在囚人士未必可以直接收到,因為在囚人士未必可以直接收到,認為這會做成選舉不公平。
- 25. 有委員建議在犯人入監時便立刻登記地址,讓他們決定自己或由親人接收有關選舉的資訊。

實務安排

(諮詢文件第 3.10 至 3.14 段及第 5.01 (f)至(g)段)

- 26. 委員會同意文件第五章第 22 頁 5.01(f)至(g) 段當局建議安排流動投票站前往監獄,或者直接在監獄內設立投票站。
- 27. 部份委員提議用郵遞方式投票。有委員認為諮詢文件第 28 至 30 頁澳洲、加拿大、法國和德國就選民投票方法的做法可取,即合資格的在囚人士可以郵遞方式投票,或以授權方式委託代表投票,以解決投票上的困難。有委員認為在人權、公眾安全及資源調配三者之間應取得平衡。在實務方面,她表示應用最少的資源及不影響公眾安全和市民的方法來處理,所以郵遞投票看來是最理想的選擇。
- 28. 有委員反對以郵遞方式投票,認為郵遞安排容易出現爭議和詐騙行為。亦有委員表示由於用郵寄方式投票或委派他人代投的方式會容易產生保密或買票的情況,因此並不贊成。
- 29. 有委員就押送外出投票建議表示,全港共有 23 間懲教院所,部份位處離島或偏遠地區。此外,每間院所有其特別的行政安排,不同類別的犯人必須加以分隔處理,所以在投票當日安排在囚人士離開院所前往票站投票有實質困難,社會和囚犯的安全也是要考慮的問題。因此,社會要在囚犯公民權和社會治安兩方面作出取捨。
- 30. 多位委員同意由在囚人士親身投票,不過基於保安理由,委員建議在監獄/懲教院所內設置投票站,安排特定時段讓在囚人士投票,以減低移送在囚人士往返院所及地區票站過程之不便,亦可減輕懲教署人力資源的壓力。
- 31. 有委員認為,為了將對懲教院所的日常運作影響減至最低,應考慮合理限制,縮短在囚人士投票的投票站的開放時間縮短,結束時間建議可訂於下午五時正,避免影響在囚人士的作息時間;此外,為了保持秩序及易於控制,可讓在囚

人士分批分组進行投票。

遭羈押但未被定罪人士的選舉安排 (諮詢文件第3.15段及第5.01(h)段)

- 32. 委員會一致贊同文件第五章第 23 頁 5.01(h)段有關遭羈押但未定罪人士的安排,亦應與在囚人士的投票安排相類似。
- 33. 有委員認為,遭羈押人士因未定罪,未算是在囚人士。倘若他/她們剛巧碰到選舉日,而仍有心情作出投票,他們應該亦有權履行選民的責任;既然有權利,政府理應安排有關措施。他認為這些票數不會太多。

點票安排

(諮詢文件第 3.16 段及第 5.01 (i)段)

- 34. 委員會同意文件第五章第 23 頁 5.01(i)段的點票安排,包括把選票自監獄移送到相關點票站,與其他選票混合,然後再作點票,以確保投票保密及避免標籤歧視。
- 35. 有委員提議安排提前截止投票時間,讓有足夠時間移送 選票到相關點票站去混合其他選票,使外界不能辨別哪些選 票是來自在囚人士,

其他意見

- 36. 有委員指文件並沒有提及功能組別選舉的安排。他表示,假如以現時的「小圈子功能組別」來看,在囚人士喪失了其功能組別,因為他們已不屬於任何組別了,即使他們將來出獄也未必從事原先的職業。如果在囚人士要在功能組別投票的話,他們所屬的界別應該與無業者一致,即「家務料理及待業」界,這樣處理也是最簡單方便的方法。
- 37. 有委員認為有關功能組別選舉的安排應與在囚人士的安排類似,即在囚人士的功能組別選民資格若未因在囚而被褫奪便可投票,原則是除非該在囚人士干犯了貪污或選舉有關的罪行而被剝奪投票權。

旅游者:

本人李敬倫 (香港)自分記數碼). 18 132 /2 Alban) 的終集監禁犯人·(倒犯編號)井)。别透過 这到函件, 以表達者人對於有関 在国人工應去沒有投票, 權」的 諮詢. 作出本人之意则。 超過蘇細閱讀過諮詢文件之內容後, 孝人大级义教支持方案一」 的建筑内层, 本人記為無論在公人之獨犯何等罪行此好, 智愿致 京有"投票權」這種基本的政治權利。因為定議在任人工投票。 是可多我們能与社會有更緊急的展響之能,更能夠幫助我們在削滿 出额之後,能成為一個具有公民意识及重任的市民,在透理念之义。 主道有瓷骸客过午一直致力推行的"助更生計劃」。确有相輔相并之处。 告目的器例更生了. 其实就是我力協助自己在刑场改造之孩. 能约定 为科研入社局、河里新生物、倒是好平民)。故处、秦军在任人工部有数案 推的转。这确实可能比是一個替在智路造和器及发彩的大使命。然而 在张江亚的原则上, 我们是那些被截灭于如今是攀有圈的那行 或贿赂罪药的人之、而根据第63(5)(5)保御农失龄渠罐的规定。 度是.本人建筑对於干部选额部分之人士. 亚非是永久丧失投票的推利。

而是可以設定個變影性的觀察期、對這類人士暫時剝奪其故案權。 衣觀等期過發,選會才恢復其投票權利。對於方案三及方案三的內定, 孝人知知然私人问意。简单来到,孝人就高天然后消被判监超边 某個年限人工之好需重换的影。这是偏然武断及多能的做法。 本人意得的需要投资要平等。不該带有分類分科的歧视服制、去楚定 魔女有效器横之状足。在黑的梦的她必多面. 本人貌為可愿用在国人士 本入旅南的住屋地址、作高登记及設定盗窃。从若然在山人士丰富是人名 强高为的强。他可以用量放此处件高变的。在实验上。本人建筑 有関投票线制, 基础監查的保证理由及保例, 确是不可能强权某人 土或的選團. 遊入徽中學行有限之珍動。故此. 本人認為選舉團可選 釋在賦中播放的確認。發出如可獲得先方面的選舉資料;或看以郵遞 为式或得媒中收取每间的站的重新便可以。是我数案为式的头貌盆排。 大部分可用发射式的投票方法、透過激散器的協助收集经 直接送往投票到便可以。最後,本人僅以表心感謝醫于相定閱讀這份 差别害。孤犯 身体发展!主想常在! 致:级制及例此事務局(第2组)

在囚人士投票權的政策方案意見

- ▶ 採取方案一:移除在囚人士在第 53(a)至(b)條喪失投票資格的規定,原因如下:
 - 投票權是基本政治權利(除了觸犯未來將立法之基本法 23 條 條文)。
 - 不能以刑期長短而決定應否喪失投票權。

在囚人士及遭羈押但未被定罪的人士行使投票權之實務安排:

- 登記地址:應以在囚人士之意願地址為登記地址,在囚人士應確 定及自行安排他人代為接收投票相關文件單張。如在囚人士在任 何原因下不能接收完整投票資料,政府不需付責。
 - 不能以監獄為登記地址,因為監獄工作人士並沒有責任跟義務為他人處理任何投票事誼(註:全香港所有人也沒有義務為自已以外人士處理投票事誼)。
- ▶ 在囚人士可要求監獄協助向選舉人仕以郵遞方式提供資料,監獄 並沒有義務更進提供資料進度,監獄亦必須確保該選舉資料沒有 違返監獄文書通訊要求(即不構成危害監獄治安及不帶有暗語成 份等。)

- ▶ 在囚人事可要求選舉人士到訪監獄解釋選舉事誼,安排如親友探監一樣,由選舉人士自行決定探監汝否。監獄工作人士無需為選舉人士安排任何競選活動。
- ▶ 於投票當天,選舉事務處須在監獄中設立投票站,直接接收在囚人士選票,監獄工作人士只須從旁維持秩序,無須參與選舉程序之中。
- 每一個監獄應有自已之投票站,不能容許在囚人士離開監獄。投票時間及點票地點等安排事誼仍由選舉事務處安排。
- 遭羈押人士需用囚車送往就近之監獄投票,警務人員只需維持治安便可,投票安排由選舉事務處決定。

後註:

▶ 選舉事務處必須確保競選人不能以虛假政網吸引獄中選票,如向 政府爭取釋放在囚人士,或扣減刑期指控等,危害香港法治。

(已簽署)

何逸雲

龍塘分區委員

No 人省等创酒在四人士投票權的諮詢文件,本 政策的限制与相関方案有以下意用 对於後靠在囚人士發為權的限制句 一往我失登記和投票資格的現有粉 囚犯的基本政治權利《投票權》已收收 部可以在投票符刊投票 俊花的古四人士牧务, 光绪强他們 忘的歸屬感,把展行公民的责任机行為透過投票活動確輔于每一位 在因人生身上、万他們更登忍社志 的资格,本人認為有欠公允公表及公正的特之6條及(香港人權法案)为21條的到明 与正的文法精神。因為(基本法 签禁,已是在四人士表献重的怨弱,共再 亲从外的附加热罚,别有欠公允;除非 個利罪行的嚴重性而不方是奪其政治權利則除知 此两何不等無論哪一個被料納、都层模 裁作用,因初表刑期在囚人士店再被多上一個话名,或为被摆敲者 更为受到过左排起和收到,久而久之下张连他們自己也認為自己是 有黑光常人, 侧接使他们和社坛之间的関係相, 长冠, 远離入社左。 人工的学記他也安排的一本人 -或主要的家居的英国人士'较切忘在日人士需要 对於技事还到才面,本人隐断岛后的建筑的弊疏,才去 較為大理。但多了發同候選人入盜稅、內進行世界活動,因為此學教至複亂就內的正常運作。但為青寶徽選舉在公平的原则不進行,可 為播放選匹有開的宣傳發蘇訊。作制拉索行動 对於在囚人七投票的安排方面、常用可在整戳内设立投 、由高局联网络教器作出通常安排 好於為同為透點押租未被定報人士的投票及 理委员会制定的文案安排、水人生典 在此致歉 2009年3月8月

放 似 者:
成队者:本人認,各年個态管格公民都有權行使其权要權,這
并是农民责任。因此本人認為因於市應有投票權;同時.
监囚犯警典公民责任创宣孙、并有助囚犯部人社会场致
15 CA V 20 14 W 10 14 W 10 10 W 10 10 10 10 10 10 10 10 10 10 10 10 10
公民夏 該及責任意; 及城步鱼阶粮舍。
THE OF THE OF THE OF THE OF
宣艇在方室安排市需额且各政府部門,安孝外园可
行的方案中, 本人認為古案一"納除在四人士在《支法
會條例7第53519至由條丧失权票费提的现在规定。這是
载于行方案。而四於登記為選民前地址, 废证XC人整然似
維續保留唯一並主要的歷代為確定登記地址,這條例較公
到, 京和學對稱了, 更好全销重盛和文學到到睡而, 平
好会贷款强民工以選擇都要求在探中設定的投票箱投票。
17.上應是私國行作有效方重市是本人的一點見解。
礼:工作情快!
林麦度
17-3-09
•

中心福在民主自會

(原名: 九貫十三雄委員會) 維辦爭處: 九龍 黃大仙 新蒲崗 彩虹道 32-34號 5樓 辦 公 室: 九龍 黃大仙 新蒲崗 彩虹道 18-16號 3 樓 電話: 23502445 傅真: 23234445 電影: info@eastkowloop.org.hk



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本會檔號 Our Ref.: 090323/LR/51/GV/14 來函檔號 Your Ref.:

香港中環 下亞厘畢道 中區政府合署東座 356 室 政制及內地事務局(第 2 組) 助理秘書長(政制及內地事務)(2A)

對《有關在囚人士投票權的諮詢文件》之回應

二〇〇八年十二月八日高等法院就三宗有關在囚人士投票權的司法覆核 個案的裁決,二〇〇九年二月九日,政府就有關裁決於發表〈有關在囚人士 投票權的諮詢文件〉,徵詢民意。

對此本會必須指出:《基本法》第 26 條明文規定,香港特別行政區永久性居民依法享有選舉權和被選舉權,而並非無條件享有。其中『依法』二字是指依香港特別行政區自行制訂的法律規條,換言之,香港特別行政區永久性居民是依香港特別行政區自行制訂的選舉法才享有選舉權和被選舉權。

法律條文怎可能自我否定,否則選舉法內所有對永久性居民的限制都可說是違反基本法。就以年齡爲例,基本法對永久性居民並沒有作出任何年齡限制,那麼選舉法限制選民須年滿 18 歲,候選人須年滿 21 歲又是否違反意制呢。

本會並非反對討論在囚人士應否投票權。本會認同遭羈押但未被定罪人士的憲制投票權未受任何法例影響,當局應作出安排,令該等人士於羈押期間,可以在投票日當日投票。至於已被定罪之在囚人士則應按選舉法的規定喪失投票權。當然,選舉法內有關限制亦應隨時代及民智的發展適時作出適度的修改,但不能以違憲爲由強制修例。

本會認同高等法院二〇〇八年十二月八的裁決具有深遠影響,政府必須 審慎考慮,作出適當的措施,避免選舉法成爲失效的法律。

東九龍居民委員會主席李德康

(總幹事:何其強 (已簽署) 代行)

2009年3月23日

No.		
Date		

致: 政划及內地事務局及相関部門.

就有関在囚人在設票權一事,本人如金戲,是 被零九ా犯编號。本人10人。

定有開囚犯的登記此址一項,本人認為應从 囚犯所寄居的監獄, 大多扁離市區, 交通配套竹 不完善, 有閑該配因友的中辦, 少為人道, 倘因 太真的能叫議員為他設廣, 他們就是靠他于 上的選案了, 宋所週知, 一般點開開地囚上一 什能個人, 這些業數, 應時隨地)是該區當選議 员所得選的票數數倍, 他們能不開心囚友的 福址吗? 當此來並非意園遊遊議員要多菜顧 囚犯而有以上達議, 我卻是在公民意識散 育上去為社會思考, 分這些囚友真正明白粉 白 被栗的重要性。

我對意思能議自根據四友最後報住院地方 為份屬選區並不讚同,更認為懲效院所室怕 社會監管既借口、班由如下。

①倘熟 懋敖 楼閣 會 魔 楼 抽調价 负 往其 定 監 狱, 鄞省 某 他 外面 人 任 不會 按 屋 到 则 虚 层 任 吗? 只要 农 烟 向 逗 舉 會 中 報 租 関 專 頂 便 有 例 可 依.

②. 倘将大舆山的囚友選舉權是九龍西, 與能實際需要根本批不上任何開采,倘不如 中他投廣州是泪匠的地方選與吧!這種 路假民主有什麼分別,選與應是可身問題. ③, 是社會資源分配,全港有位.六件囚友, 而議員於選舉資源本屬有限,除非贵 悉是在心分从囚友於故寒力量外,理應

李清 补地级 盖负侧能知道, 这裏的选民有是重票
源,他們的政網推介上必須要兼顧這些票倉
的需要,这些事情當此都是懲赦的害怕的人但
都是民主制度的重要性
长驱請责罢能尊重注起的判决,能自心主
芳愿因友的實際的需要, 是装息因友們的真正
权利,不要作一些从是而非,鱼目温珠的期
法最终都曾被人民价推翻, 浪费時間和貨
源的想法只是自欺欺人既妄想 放在一件
監獄沒有理由設立多區裁集制省易殖
作單區投票制容易及直接
(已簽署) の5/03/2009
In Kary Hay Cum
THE CLUMP.



香港社區組織協會 民權法律中心 就有關在囚人士投票權的公眾諮詢 提出的立場及建議

(2) (18) Y J (4) 文字经验的过去式和过去分词 (2) (4) (4) (4) (4)

引言

高等法院於去年 12 月 8 日就在囚人士投票權提出的司法覆核個案作出裁決,確認在囚人士享有投票權,而現行法例剝奪所有在囚人士投票權的規定違反《基本法》第 26 條及《香港人權法案》第 21 條;有關裁決要求政府採取措施使在囚人士能行使其投票權,並要求政府採取措施使被羁押人士能於投票日行使法律已規定的投票權。

- 2. 作為協助有關個案中兩名在囚人士申請人 (陳健森及蔡全新)提出有關司法覆核申請的民權組織,本會重申要求特區政府全面尊重及落實法院的裁決,採取各項應有措施立即落實在囚人士投票權,而不應再作出拖延。
- 3. 政府於本年2月9日發表《有關在囚人士投票權的諮詢文件》(以下簡稱《諮詢文件》),就放寬在囚人士投票權的限制、在囚人士及遭羈押但未被定罪的人士行使投票權的實務安排等事宜提出多項建議;就此,本會有以下意見及建議:

在囚人士登記為選民的權利及登記地址

- 4. 本會支持全面移除在囚人士喪失資格申請登記為選民的規定 (《諮詢文件》第2.08段),並認為有關當局有必要在日後於懲教設施內加強選民登記的宣傳,以促使更多在囚人士能與其他合資格的香港永久性居民一樣能行使其選舉權。
- 5. 對於合資格成為選民的在囚人士登記地址的規定,本會亦認同〈諮詢文件〉第3.05段提出的建議,即以有關在囚人士入獄前的主要家居為登記地址,此舉亦與大多數海外國家的做法一致。

全面檢討限制選民投票權的規定

6. 現行《立法會條例》第53(5)條規定了在若干情況下已登記選民將喪失在選舉中投票的資格,有關條文內容如下:

- "(5) 任何選民如有以下情況,即喪失在選舉中投票的資格-
 - (a) 該選民已在香港或任何地方被判處死刑或監禁(不論如何稱述),但一
 - (i) 既未服該刑罰或主管當局用以替代該項刑罰的 其他懲罰;而
 - (ii) 亦未獲赦免;或
 - (b) 在選舉當日,該選民正因服刑而受監禁;或
 - (c) 在不局限(a)段的原則下,被裁定或曾被裁定犯以下罪行,而選舉於或將於其被定罪的日期後的3年內舉行一
 - (i) 在違反《選舉(舞弊及非法行為)條例》(第 554 章)的情況下作出舞弊或非法行為;或
 - (ii) 《防止賄賂條例》(第 201 章)第 II 部所訂的罪行;或
 - (iii) 根據《選舉管理委員會條例》(第541章)訂立並 正有效的規例所訂明的任何罪行;或
 - (d) 根據 《精神健康條例》 (第 136 章)被裁斷為因精神上無行為能力而無能力處理和管理其財產及事務;或
 - (e) 是中央人民政府或任何其他國家或地區的武裝部隊的成員。"
- 7. 政府今次就限制投票權規定的檢討和諮詢工作,只集中處理在囚人士在〈立法會條例〉第53(5)(a)至(b)條下喪失投票資格的規定,但卻完全沒有觸及第53(5)(c)條的合憲性和合法性問題,本會認為這顯然有所不足。《香港人權法案》第二十一條規定: "凡屬永久性居民,無分人權法案第一(一)條所列之任何區別,不受無理限制,均應有權利及機會···在真正、定期之選舉中投票及被選",因此,本會認為政府有必要藉今次檢討及諮詢機會同時檢視《立法會條例》第53(5)(c)條中對投票權的限制是否 "合法"、"合理"及合乎人權規定,否則日後可能會因而遭到有關的司法挑戰。
- 8. 〈立法會條例〉第 53(5)(c)條所提述的三項條例,合共涉及數十項罪行,而當中無疑有部分罪行的性質極為嚴重且與維護公平公正選舉與否是關係密切的(例如〈選舉(舞弊及非法行為)條例〉第 11 條有關在選舉中賄賂選民的舞弊行為的罪行),但亦有部分罪行的性質屬於相對輕微(例如根據 102 條規定 "任何候選人必須在展示、分發或以其他方式使用任何選舉廣告之前向選舉主任呈交有關選舉廣告資料的聲明,未有遵從有關規定即屬犯 2 前向選舉主任呈交有關選舉廣告資料的聲明,未有遵從有關規定即屬犯 4 前,如按現行法例規定所有被裁定觸犯《立法會條例》第 53(5)(c)條所提述的任何一項罪行的選民均一律在其被定罪的 3 年內被剝奪投票權,則顯然並非合理的安排。
- 9. 為此,本會促請政府深入檢視《立法會條例》第 53(5)(c)條所提述的每一項罪行,研究是否觸犯任何一項有關罪行便能合理地在 3 年內剝奪該選民的投票權。

在囚人士投票權

- 10. 政府就放寬在囚人士投票權提出的建議方案有三,包括:方案一, 是所有合資格並已登記為選民的在囚人士均享有投票權;方案二,是取銷 被判監超過某個年限人士的投票資格;方案之三,是取銷被判監超過某個 年限人士的投票資格,但在服刑的最後幾年,容許他們投票。
- 11. 本會認為,最合理及合乎人權標準的做法是方案一,即全面肯定及給予所有合資格的在囚人士均可登記成為選民和投票。本會所持的理由是:
 - (1) 投票權是國際公認一個地方公民的最基本政治權利,不容無理 限制,因此肯定所有在囚人士的投票權是最適當的做法;限制 一些被判較長刑期的在囚人士投票權,無疑是監禁以外的"雙 重懲罰"。
 - (2) 若在立法規定中剝奪被判監超過某個年限在囚人士的投票權,無論該界線設在任何年限(無論是五年或十年),都會被質疑是隨意且缺乏客觀理據的,因而可能不符合〈香港人權法案〉中"不得無理限制公民投票權"的規定。事實上,於1992年加拿大最高法院亦曾裁定禁止任何在囚人士投票的法例屬違憲,期後國會一度修訂法例,改為只限制判刑達兩年或以上在囚人士的投票權,但於2002年有關法例再遭該國最高法院裁定為違憲,結果加拿大議會最終立法全面撤銷對在囚人士行使投票權的限制;以上經驗,值得特區政府參考。
 - (3) 政府提出第三個方案,其理據是: "由於監禁在現今較重視更新,容許在囚人士在刑期將滿時登記成為選民和投票,可提高他們的公民意識,有助他們再次融入社會"。本會完全贊同肯定在囚人士與其他永久性居民享有平等的選舉權利可提高他們的公民意識及對社會的認同,此舉有助他們更新及再次融入社會;也正因如此,本會認為罪犯更新工作在其進入監獄之日起已應開展,因而也更有理由全面給予所有在囚人士投票權。

行使投票權的實務安排

- 12. 關於在囚人士行使投票權的實務安排,本會理解當中涉及有效行使投票相關權利與羈留設施保安考慮之間的平衡問題,但無論如何,保安考慮絕不能令在囚人士獲得選舉應有資訊、有關人士行使投票權及選舉公正等基本原則受損害。
- 13. 為了確保在囚人士的應有權益獲得有效保障,本會認為政府有必要以附屬立法方式訂明在囚人士獲取選舉相關資訊等事宜的權益,以防止其應有權益遭到不合理的剝奪。

結語

14. 政府在高等法院作出有關在囚人士投票權的裁決後約兩個月時間,便已發表諮詢文件建議作出法例修改,其工作效率是值得肯定的;不過,政府現時似乎只是被動地回應法院的裁決,只非主動地就一些可能違反人權的法例與政策作出檢討修改,這反映出政府在保障人權的意識和工作態度方面仍極為不足。

二零零九年三月十三日

聯絡人:

何喜華 (主任) 王智源 (社區組織幹事) 蔡耀昌 (社區組織幹事)

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逸放考:

本人宠亥病, 炭,身份證裝商: ,是一 名在囚人士, 現正版刊於 。當細閱 从有閉在囚人士 投票權的證詢文件 77 後,本人對於投票權限制的政策方案及 實務 安排 有以下之意息。

對於放置對在囚人士投票機的限制的政策方案方面. 由於法庭裁定,在囚人士一律喪失登記和投票資務的現有規定違憲,即在囚人士的基本政治權利——投票機已铁紙復,並可以在投票口當口投票。改此,本人認為當局所建議的方案一較后乎法庭是次裁決之稱神。

對於方東第二及三从利期長短來決定在內人士投票權

马君,此雨個方案無齒哪一個被採用,都自構成據 截作用",因為長刑期在囚人士每再被蓋上一個污名成為極感 幾者,更加受到社會排摘和歧視,久而久久可能運他們自己 也認為自己是有異於者人,問接使他們和社會人間的関係愈 來感疏離,難以再融入社會。

對於在四人士的登記地址安排方面。本人認為當局所建議的"沒有保留唯一或主要的家居的在內人士"較切忘在內人士"較切忘在內人士, 你們不可以對於人工需要。由為推用分數例之最後居所為還民的在內人士, 不絕物區蓋所有在賦外不為是否己登記為選民的在內人士, 不絕

個別在 旧灶 具入歇前之居的,在入狱役可能被房屋署戒案主收回,所以此種個別循況則需要从超親之地以或監察作登記.

對於拉索流動方面,本人認為當局建議的郵通方式較為后裡。但並不赞所依然人在監獄內進行指東流動,可以 播放逐區有関的宣傳資訊,作為提票的方式。

對於實務支持方面, 君局可在監獄內設立投票站。 投票的時間限制 反監察投票 人员的支排事 直,均可由当局及 然教署作 出随者支排, 在人长短議 罢。

對於 雷 局 為 過 羁 押 但 未 被 定 罪 人 士 的 报 票 及 逐 智 管 理 要 員 魯 制 定 的 、 點 泵 支 种 , 本 人 並 無 藏 퓢 。

此致

政制及自地事務局(第上組)

(已簽署)

209年3月2日

陳女士反對在囚人士有投票權,她表示犯了法就不應該有公民權利,即使 要給他們投票權,也不是所有在囚人士也有,刑期十年以上的犯人在出獄 前一年才有投票權,五年以上的在出獄前半個月才可有投票權,但亦只限 表現良好的在囚人士,刑期五年以下的在囚人士一律不可有投票權。

局長、譯到局長分解:
局長、韓副局長名鑑: 一個人建議在有関在囚人子投票問題上,希望能 上訴主終著作,特終著門法官公平裁決
上京 2 4 美 后 6 14 美 15 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
上新主然著庭,特然著院法官公平裁决。 主於三個政策方案,都沒多第二,盼望少少
一
一校堂, 他有隐部, W. 维持更持正不阿, 我們不好
改變,仍有限制,以維持其持正不阿,我們不妨 多些希臘國家十年以上,包括無期徒利,罪行包括
震動學科 招助等無利力的 经 教育性 确实生 歌
京權,以維持公正及嚴正不同。另一方面、希望 一首局等在因人士學業及會老讀書的訓練外亦希 生能夠結了品德教育和訓練,從使成為一位好市民。
一高局 结于在囚人士 學業及會老讀書的訓練外亦希
工能夠結了如德教育和訓練,從使成為一位好有民人
子送节民,不再为非作歹
于这节队不再为推作歹。
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数:政制及用地事務局(第二組) 有關在囚人士投票機諮詢文件之回獨事且 八、取府当局在諮詢之件中提供的方案有气,而本人只認局及贊成第一個方案,以若 許孙有在囚人士均享有投票權,但不包括(下紅與選舉有關的罪行或賄賂罪行 的人之)。這樣才宣符中華人民共和國智港特別行政區基本法及自港人權法案例祭。 二、同上本人認、月及實成讓所有在囚人士均可以申請愛記成為選民,但千犯與選集 有關的罪行或賄賂罪行的人女,只可以能與其爱記而不可能與其在投票當日的投票 權、从免效应檢票等問題以現一不過如其出獄後可能回其投票權,支在其被判刑日 起計三年的不得參與投票,但能予登記,从便統計在囚人士之資記意然及投票意慾 明人数及比率、甚或可以此推廣在囚人士的公民意識及公民教育等目的為基礎。 三、有關於貧氣地址及如何分配選及應以在囚人士人緣前在港的最後居住地方營配 但不嘉論其是否在入街前已受記成為選民,而一論以入街前所報供的在港最強度 住地方愛記人分西口課區,這樣學教著的記錄也可談提至有處報地址入資料,更可 方便激为置及有關之政府各部門的異作及統計。 四、侯選人的選舉賞訊可透過傳媒及繁態方式結在囚人士獲取得、而舒應方式應以政府へ 次過將各候選入的選擇資訊收集等當後才以樂遞離方式一次過數考結在例上,和在 整教養方面可以两处職員及一么高級職員組成的小組有責收發選舉資訊及繁遞箱結在囚 人女,从及将有雕的電子傳媒文選擇資訊收集後結學在因入士觀看了時。 五、投票的方式可以在街中設立投票站,而投票站可欠新国定及流勤两旗方式,固定的投票 站可設立於人數比較多的及比較集中的院份如喜產洲,大山與山等離局及抗族流校的 等人數多而較集中、及比較多院附集中的地區;而流動投票站可應转人數較小而又 转偏差的院析及較不集中的院析。 六、不論流動或固定的投票站,选入的工作人員可限制於玩以下,而各候選人不論是屬 何政黨都不可恭派助于進入帮站監票,西只可由各政黨各派一員進書站監票,沒政黨的獨文候選 人可选過懲数署委託在票站的的高級職員或保安職員或政府票站監票主任員,而不可被 真造的而缘数署可收一名主任級高級職員及三名保安職員在票站的維持各方人員及 又作人复名人身安全从保守事務,如上其他負責带在囚人士的當值票站然教職員,人事处 應日在十名以上而可確保安全人各方之秩序。

七、監禁工作或人类这工作人员可如在的之票站一樣聘請回公職公務人員擔任,如外假之

懲数人員及警務人員、甚或是体假之庶政人員等,這樣、在票站內的安全運作及 維持供戶上都應可收到相當好之效果及反應、同時在保障其餘非么職公 族人真的政義、冰真的安全及監察上都應可有相當保定保障的。 11、政府更可在公器投票日起計的前一星期至两星期的,預先衣排在囚人女在发动中 投票、以免在入于上之不足及可縮短資原上的開支,甚至避免加久者投票日 树名为不足锄撞、而在這般時間的阶级集回来的票箱可完全强封式链 上,水量在安全的地方以及投票日完結點票當日才提取開啟票箱與公案 累超之票~目點核。這該习防止票的資料外港A防止買賣票等煙票事項比 现。同時可係不法拉器及各方資料外境。 大、第八項除內容的好處外更可有充足時間點與固定語站及流動 累站運作,从及方便懲赦署各院价的正常運作,在以上在懲赦署可是 朝九至中午一工作,下午二至五工作,下午五時後且早上九時前中午七時至三時都是各項展體活動及社長清潔等事,所以知明不能六小時正 常時間可能與累立上學作,因此从第八項的時間I計算應可从201 数金港各界教院所和又可減少資富及公等之間支 十、選舉資訊及候選人之選舉資訊,應以及發學年之公報選舉日期 開始計算,東該日期起日可能與在囚人士在集體休息咨詢而盡過到電視的時候內、可由懲裁審的選舉股票的組員責將電子傳媒上的一切選擇直到以及候發人之選擇資訊,構放能在囚人士觀看及了解。 七、在開着電子資訊及登記成為選民後的各在囚人生,不應、后隔間沒有登 賣票的種語法數 七八大投票當日本變数院新可以正常運作的將已登記成選民的在日 人士以十名作的叫在囚编。张及姓名的带柱票站报票,如上在报票的時 级网络在贝人士不知是何目接票,而按格的方流也可减少回犯互相基通 投票等不法票源出现这是高河與公保投票日不同时用的常用及理由。 从上是有關在贝入士投票權證詢之科之回覆及如何港實本人 行的建截。 個資料: 战法陈健泰 性别之 事价證號碼: 期:16-3-09



九龍城委任區議員 陳榮濂 太平紳士 The Office of Kowloon City District Councillor CHAN WING LIM, JP

本函編號: DCL08-001

香港下亞利畢道 中區政府合署東座 356 室 政制及內地事務局 局長 林瑞麟 太平紳士

林 局長 鈞鑒:

有關在囚人士投票權的諮詢文件之意見

有關放寬對在囚人士投票權的限制的政策方案,以及為在囚人士和遭羈押 但未被定罪人士行使投票權所制訂的實務安排,本人有以下建議。

本人同意在囚人士登記為選民的政策方案,所有合資格人士不會因在囚而 喪失登記為選民的資格。

對於在囚人士投票權的政策方案,本人較為傾向支持方案一。「移除在囚人 士在《立法會條例》第53(5)(a)至(b)條喪失投票資格的現有規定。被裁定干犯 與選舉有關的罪行或賄賂罪行而根據第 53(5)(c)條所喪失投票資格的規定將會 保留。」雖然投票權是公民最基本的政治權利,所有公民都應該享有,但是對 於一些損害公眾利益,企圖用非法手段擾亂政治平衡的人來說,他們本身的行 為本來就是漠視、不尊重選舉,因此,為了維持立法機關的持正不阿,令這類 人士喪失投票權是必要的。至於干犯其他罪行的人士都應該享有投票權。

對於在囚人士行使投票權的實務安排方面,本人同意服刑前尚未登記為選 民的在囚人士,如在監獄外繼續保留唯一或主要的居所(例如:最後的居住地 址),可申請按該居所地址登記。

服刑前己登記為選民的在囚人士,則可以其唯一或主要的居所地址登記。

對於無親無故,在監獄外已再沒有保留任何唯一或主要的居所的在囚人士

香港九龍土瓜灣馬頭角道 116 號新寶中心二期 1 樓 12 室 Unit 12, 1/F, Newport Centre, Phase II, 116 Ma Tau Kok Road, Tokwawan, Kln, HK Fax: (852) 2365 8486

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九龍城委任區議員 陳榮濂 太平紳士 The Office of Kowloon City District Councillor CHAN WING LIM, JP

(不論是否已登記為選民),將其入獄前最後的居住地方視為在香港唯一或主要 住址,用作選民登記。

對於拉票活動,本人不同意選舉候選人到監獄/懲教院所作任何形式的拉 票或宣傳,因為此舉會造成嚴重的保安問題,亦會影響監獄/懲教院所的日常 運作。本人同意在囚人士可透過郵遞、報章、電視、電台得到與選舉有關的資 訊。

至於實務安排,由於用郵寄方式投票或委派他人代投的方式會容易產生保 密或買票的情況,因此本人並不贊成。本人同意由在囚人士親身投票,不過基 於保安理由,本人建議在監獄/懲教院所內設置流動投票站,以減低移送在囚 人士往返院所及地區票站過程之不便,亦可減輕懲教署人力資源的壓力。此外, 為了將對懲教院所的日常運作影響減至最低,本人同意在囚人士投票的投票站 的開放時間縮短,結束時間建議可訂於下午 5 時正,避免影響在囚人士的作息 時間;為了保持秩序及易於控制,可讓在囚人士分批分組進行投票。

其他遭羁押但未被定罪人士之投票安排,亦應與在囚人士的投票安排相類 似。

為了確保投票保密及避免歧視,本人同意移送選票到相關之點票站,混合 其他選票,然後再作點票。

總而言之,在囚人士亦是香港公民的一份子,在絕大部分的情況下,我們 都應該讓他們享有這個政治權利,這樣亦有助加強他們對社會的歸屬感和使命 感,提高公民責任,有助其出獄後成為更好、更有公民意的公民。

陳榮濂 議員 太平紳士 謹啟

二零零九年二月十六日

香港九龍土瓜灣馬頭角道 116 號新寶中心二期 1 樓 12 室 Unit 12, 1/F, Newport Centre, Phase II, 116 Ma Tau Kok Road, Tokwawan, Kln, HK Fax: (852) 2365 8486

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陳權軍區議員辦事處

The Office of Mr. Chan Kuen Kwan, S.K.D.C. Member 新界西貢普通道 23 號 2 樓 1/F, No.23, Po Tung Road, Sai Kung, NT. TEL: 2791-2961 FAX: 2791-2861

政制及內地事務局局長 林瑞麟太平紳士 尊鑒:

《有關在囚人士投票權的諮詢文件》的意見

自一九九七年回歸後,香港特別行政區政府按照「一國兩制」、「高度自治」和「港人治港」的原則,發展和維持香港特區政府與中央人民政府和其他內地政府部門良好的工作關係。`

隨著香港回歸踏入第十二個年頭, 貴局已就香港的政制發展、選舉事務、區議會角色、職能及組成的檢討、基本法、香港特別行政區政府的對外事務等, 作出多方面諮詢,就有關落實普選行政長官和立法會方案、路線圖和時間表展 開廣泛諮詢。同時,透過公眾諮詢,收集不同意見,構成基礎,揉合一套主流 意見,作進一步推動工作。

至於,在選舉事宜方面確保本地選舉是以公平、公開和公正方式進行,並 且符合《基本法》的有關規定。是次更以《有關在囚人士投票權》作出公眾諮詢。

為此,本人有以下意見:

1. 行政問題

諮詢文件內提及考慮方案如:押解在囚人士前往按其登記地址編配的投票站投票,此舉不但影響前往票站其他投票人士,而且需要大量人手維持秩序。若囚犯遇到不友善目光,令到他們尊嚴有損,甚至,作出危害他人的行為。至於,安排在監獄內設投票站,選舉事務處更要培訓工作人員,教導犯人如何投票等,需要大量人手及經費不但浪費公帑,而且在處理投票活動,其實行政上仍存在許多問題未解決的。

2. 界定登記住址

合資格成為選民的在囚人士,將會以登記地址作為地區界別。眾所周知,囚犯 會因應其犯罪程度作監獄或懲教所分配。若進行拉票項目時便會較為複雜。現

陳權軍區議員辦事處

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行條例,候選人除用選舉廣告外,更可親身向選民拉票。那又是否容許候選團隊一行進入監獄呢?另外,若以地區分組,基本對整體投票率、候選人票數不會有太大的影響。而且候選人的郵寄宣傳資料,更要額外寄出予他們,郵費亦上升,那會否資源錯配?那又會否符合經濟效益呢?

根據現行《立法會條例》、《區議會選舉活動指引》及《村代表選舉活動指引》等,均列明在囚人士一律喪失登記和投票資格。其實條例已清楚列出,在囚人士已沒有投票資格,故我們應該尊重之前所整訂的條款,而不可因少數人提出司法覆核而更改有關規例。同時,重申我們並不是歧視或剝奪他們的投票資格,但必須要衡量個人的權利、義務和公民應有的責任。再者,在囚人士應該知道在入獄時,他們便會喪失一切權利,包括:投票資格等。因此,他們不應該就上述事宜提出司法覆核。

就有關在囚人士投票的諮詢文件,必須審慎考慮,就當中的細節仍存在許多的問題,如:增加選舉營運成本、人手安排、拉票及人身安全問題等。同時, 在修改條例後,本港現行的選舉指引必須有明確清晰安排,否則不堪設想。

因此,在綜合上述意見,本人對有關在囚人士投票權的諮詢,本人持不贊成意見。

如有任何問題,歡迎致電 2791-2961 與本人聯絡。謝謝!



(已簽署)

陳權軍 謹啟

2009年2月27日

遷酌者:

本人黄智满, 截, 身份證號碼: 是名終身 監禁的在囚人士, 现版刊於 。它、細閱《有關在囚人士 投票權的認詢文件》後, 本人對於投票權限制的政策方案及 實務安排有以下之意見。

對於放電對在四人士投票權的限制的政策方案方面 由於法庭裁定,在四人士一律喪失登記和投票權资格的沒有 規定達塞,即在四人士的基本政治權利一投票權已恢復, 並可以在投票日第日投票。故此, 本人認為當局所建議的方案一 較合乎法庭是次裁決之精神。

业外,容許合資格的存因人+投票,能加强他們對社會的 歸屬感,把覆行公民的責任和行為透過投票活動灌輸到每一個 在個人士身上, 它他們更關心社會, 並明瞭自己的社會角色和本份, 獨口後重投社會作好準備, 便能融入社會。

再者, 此兩個方案無論哪一個被採用, 都會構成"標籤效應", 因版長刑期存因人士會再被蓋上一個污名成為被標籤者, 更加受到 不知會排積和歧視, 只而只之可能連他們自己也認為自己是有異於常人, 間接使他們和私給之間的關係愈來愈旅離, 難以再融入社會.

對於在囚人士的登記地址安排方面 本人認為當局所建議的"没有保留唯一或認知家居利 在四人士"較切合在四人士需要。目病探用入献前之最後居所為 苍記地址, 能夠 函盖所有在做外不論是否已受記為幾民的 在四人士,此方式亦的節清人力及物力,不過,個别在四人士 其入赋前之居所, 在入赋後可能已被房屋需或業主收回, 外種個別情況則需要以近親之地地或監獄作登記。 對於拉案活動方面 本人認為當局建議的郵源方式較物合理。但並不赞欢 个发发人权整狱内进行拉票活動, 肉锅此學将嚴重擾獨し監狱 的正常運作。29局了實物醫學以公平的原則進行,可改以播放 骏西存閣的宣傳資訊來讓在例人士觀看,作物拉票的方式。 對於在四人士投票的實務安排方面 本人認為就各院所不同類别的如人需要, 富局可在監獄 内設立投票站。由於監狱的保安理由,投票的時間限制以及 監察股票人負的安排之一切事宜,均可由常局及戀教署作出、 安鲁的百排,本人並無該署。 對於當局物遭羁押但未被逗罪人士的投票及選舉管理 季員會制定的緊需安排,本人並無該異。 OX FY 政制度的地事務局(第2組) 责帮满建政 2009年2月26A.

数:政制及从地事旅后(第二组) 有關在囚人士投票機諮詢文件之回覆事直 人、取所當局在諮詢之件中提供的方来有三,而本人只認局及贊成第一個方案,以若 許州有在囚人士均享有投票權,但不包括(下紅架選舉有關的罪行或賄賂罪行 的人之)。這樣才告有中華人民共和國智港特別行政區基本法及自港人權法案例係 二、同上本人認、同人贊成讓然有在囚人士均可以申請愛記成為選民、但干犯與選集 有關的罪行或期數罪行的人去,只可以結與其愛記而不可能與其在投票當日的投票 權,从免做成績系等問題以現不過如其出獄後可能回其投票權,或在其被判刑目 起計三年的不得參與投票,但能予登記,从便統計在囚人士之資記意然。及投票意然 的人数及比率,甚或可以此批廣在囚入土的公民意識及公民教育等目的為基礎。 三、有關於營司、地址及如何分配選區應从在囚人士入獄前在港、中最後居住地方登記 但不嘉論其是否在入街前已受記成為選出,而一論以入街前的報失的在港景號 住地方愛記月分西口選展。這樣懲殺著的記錄也可證提至有處報地以及資料更可 方便激为署及有關之政府各部門的選作人統計。 四、侯選人的選舉賞訊可近過傳媒及繁張方式能在囚人土獲取得、而舒遞方式應以政府へ 次過將各候選入的選舉資訊收集等當後才以數據解方式一次過數考能在例上,和在 **懲裁署方面可以納名職員及公高級職員組成的小組負責收發選舉資訊及繁遞額結在囚** 入女,从及特有關的電子傳媒文選擇資訊收集後結與在囚入土額看了解。 五、投票的方式可以在精中毁文投票站,而投票站可分为固定及流勤两旗方式,固定的投票 站可設立於人數比較多的及比較集中的院外如喜產洲,大小與山等離島及赤柱、赤板角 等人數多面較集中、及比較多院所集中的地區;而流動投票站可概括人數較小而又 鞍偏落的院州及較不集中的院析。 六、不論流動或固定的投票站,進入的工作人員可限制於玩以下,而名侯選入不論是屬 何政黨都不可泰派助于進入書站監票,而只可由各政黨各派一員進書站監票,沒政黨的獨文侯選 人可造過熱力量或社在累站的的高級職員或保安職員或政府累站監管主任員責而不可能 真缝则而攀数署习城一名主处级高级雅真及三名保安雅真在票站的链特各方人真及 及作人复立人身完全从保守事務,如上其他負責等在囚入去的當值票立的懲敖職員,人數 感日在十名以上面习难保充宝人名方之旅序。 七、監票工作或人员完全工作人員可如在外之票站一樣聘請回人權人務人員擔任,如外假文

- MATT
懲敌人員及警務人員,甚或是体假之無政人員等,這樣,在患站內的安全運作及
继持供戶上都應可收到相當好之效果及反應, 同時在保障其餘非公職公
11、政府更可在公器沿票日超計的前一星期至两星期内,预先亦排在囚人女在各次中
被影队先在入生上大不足人可缩短資原上批開支,其多群外的人般投票日
—— 始名为不足独漫、和在这段時間的补购集同来的誓嗣可完全领封了的
<u>上、放真在资金的地方以及投票日完链點票当日大提取開啟票箱與人</u> 农
累相之書~同點核、這讀习防止票的資料外,進自防止買賣票等煙票事項出
现,同时可保不达拉器及各方資料外境。
大、第八項除內容的好處外,更可有无足時間燃與固定需站及流動
累站運作,从上方便懲赦署各院所的正常運作,在月入七本變 教署月是
朝九至中华一工作,下午二至五工作,下午五時後日平上九時前中午七時至
二、時都是各項展體治學及遊復清潔等事,所以有日天館、六小時正
了。 第時間可能與第三法學作,因此以第八項的時間「計算應可以及」
数点港各幣和区可減少資度及公等之間支。 上選舉資訊(1) (2) (2) (2) (2) (3) (4) (4) (4) (4) (4) (4) (4) (4) (4) (4
十、選舉資訊仍各候選入之選舉資訊應以及發學年之公報選舉日期
開始計算,東該日期建已可能與在囚人士在集體派息告點而報道到
也是华夏烈人名侯瑟人之亲华夏别,播放临在队上都看及了解。
七、旅灣有事子資訊及等記成旅遊民發的各在日人生不應、与隔開沒有登
到成為選出的在A人生,以系其在指於集中一處時可進行拉票注動及買
喜素的掩盖没氧。
青嘉的健素治野。 十二、在股票當日在變数1完新可以正常運作的将已登記成選及的在B
人去以北多松的叫在囚编。据及独节往常立故需,此上在报票的時
假的各种人士不知是何日接著,而这个的方流也可减少日把互相基通
——控制于人员高级的关系是一个人。 ———控制于人员的特别的原则Ro里由
从上还有棚在侧上十搭至上搬 30 割与处之风器 R 1. (4) 次 要 3. b
(C)
和日编辑: 4价超號码: 4期:16-3/01

致:香港社區組織協會	P026
4關在四人士投票權認詢工作事宜	
政府於今年2月9日發表《有關在囚人土投票權的諮詢文件》,京 提出建議方案以供公眾諮詢,諮詢期至2009年3月23日。	选放實、在囚人士投票限制
」、加認為是否所有在囚入土均應享有投票權?」」 □ ② (請格至 2、為什麼所有在囚入土均應享有投票權 ? (司選擇多於一項) □ 汀使公民權利	第3條)
□ 避鬼豐重懲罰	
□ 有助在囚人立宣报社會A里生 □ 令政府及立法議會更對視 更是人士的需要	
□ 其他; 3. 政府當局在諮詢文件中提供考慮的方案有三個;包括;	(胞结菌)
方案一: 容許的有每回人士均享有投票權(干犯與選舉有關的罪行或朋 方案二: 农生投票資格的規定根據刑期長短決定(例如:刑期在十年或以上 方案三: 农生投票資格規定根據刑期長短決定,但在囚人士於服刑期最後 那一個方案! 」方案一 □ 方案二 □ 方案三□	トアチルノ・タドルのおとい
其化方案: 上、旅認為在個人士有權強過什麼方式取得候選人的選舉資訊?(可選擇	(開議員)
一个三种源了一种源了一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个	(胸端龍)
一	上編配的投票的投票
8、你認為政府在今次有關在四人士投票權的公眾諮詢工作是否全面?[一至面	□ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □
空口編號: <u>种</u> 第一3一3一09	(阳麓龍)



SOCIETY FOR COMMUNITY ORGANIZATION



先生鈞鑒(編號 ▮

在囚人士投票權諮詢工作事宜

高等法院於2008年12月8日就在囚人士投票權提出的司法覆核個案作出裁 決,確認在囚人士享有投票權;有關裁決要求政府採取措施使在囚人士能行使 其投票權,並要求政府採取措施使被羈押人士能於投票日行使法律已規定的投 票權。

政府於今年2月9日發表《有關在囚人士投票權的諮詢文件》,就放寬在囚 人士投票權限制提出建議方案以供公眾諮詢,諮詢期至2009年3月23日。為 搜集在囚人士意見,本會現正向在囚人士進行問卷調查。請嘗試就以下問題搜 集閣下所認識的在囚人士的意見,並於 2009 年 3 月 16 日或以前將結果告知本 會。本會計劃在諮詢期屆滿以前,代表在囚人士向政府當局反映。問題如下:

- 1. 你認為是否所有在囚人士均應享有投票權? 区是 口否 (請移至第3條)
- 2. 為什麼所有在囚人士均應享有投票權?(可選擇多於一項)
- 口 行使公民權利
- ₫ 體現人人平等的精神
- 吖 避免雙重懲罰
- 百 有助在囚人士重投社會及更生
- □ 令政府及立法議會更重視更生人士的需要 。
- 四其他:有助政府及就會對加關法在因更生人大等
- 3. 政府當局在諮詢文件中提供考慮的方案有三,包括:

方案一: 容許所有在囚人士均享有投票權

(干犯與選舉有關的罪行或賄賂罪行的人士除外);

方案二:喪失投票資格的規定根據刑期長短決定

(例如:刑期在十年或以上的在囚人士喪失投票資格)

方案三:喪失投票資格規定根據刑期長短決定,但在囚人士於服刑期最後幾年

可方	以投票請問你較支持那一個方案? d 方案一 D 方案二案:	口方案三 口其作
4.	你贊成讓所有在囚人士均可申請登記為選民嗎?	☑ 贊成 □ 不贊成
	對於為合資格成為選民的在囚人士應以何處作為其登詞	己地址,你有何意見?
	服刑前尚未登記者 → 按服刑前該居所地址登記 服刑前已登記者 → 按其主要/唯一居所登記 不論是否已登記為選民,以其入獄服刑前在港最後居住	□同意 □不同意 □同意 □不同意 ・地方登記
	其他意見:	☑同意 □不同意 ————(請註明)
5	作到为太田!! 大型四 里	("/4 "== '91)

- 你認為在囚人士有權通過什麼方式取得候選人的選舉資訊?(可選擇多項) D郵遞 D傳媒 □互聯網 □候選人親身在監獄拉票 D 其他: <u>當局記律賠償(</u>請註明)
- 7. 你認為在囚人士以那種方式投票最為恰當?(可選擇多於一項)
- 区 安排流動投票站前往那些有合資格選民的監獄
- ☑ 在監獄內設立投票站
- □ 由懲教署押解在囚人士前往按其登記地址編配的投票站
- 口 以郵遞方式投票
- □ 委派他人代表投票
- 8. 在今次問卷調查以前,你曾否收到政府有關在囚人士投票權公眾諮詢資料?
- '9. 你認為政府在今次有關在囚人士投票權的公眾諮詢工作中有否盡力收集在 囚人士的意見? □ 有盡力 ☑ 沒有盡力
- 10. 你認為政府在今次有關在囚人士投票權的公眾諮詢工作是否全面? Ø 不全面
- 11. 你對在囚人士投票權問題有沒有其他意見:風暗認詢女件展別人編號運取並非全面流發。 类而制造器市展为结囚犯。 若有任何疑問及其他意見,請隨時來函聯繫。

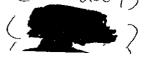
順祝 台安

二零零九年二月二十日



香港社區組織協會 社區組織幹事 王智源 謹上

(8-3-2009)



香港社區組織協會

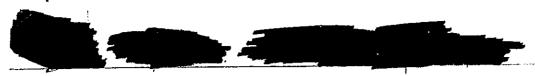
有關在囚人士投票機諮詢工作問卷調查

高等法院於2008年12月8日就成囚人士投票權提出的司法覆掖陷案作出裁决。確認,在囚人士享有投票權;有關起決要求政府採取措施使在囚人士能行使其投票權,並需求政府採取措施使被羁押人士能於投票日行使法律已

政府於4年2月9日發表《有關在囚人士投票機用諮詢文件》,就放寬在囚人士投票機限制提出建議方案从供有眾諮詢,諮詢期至2009年3月23日。為搜集在囚人士意見,本會現正向在囚人士進行問告詢查。諸嘗試就以下問題搜集在囚土的意見,或於2009年3月16日或以海將結果当知本智。本會計劃在諮詢期后滿以前,代表在囚人士向政府當局反映。問題如下:

	30.00	
	1. 你認為是香州有灰瓜人士均應等有投票權? / 是 否 (請格)	系第3條)
	2. 颜什麼所用我們上的應案直拾專機了了可避過效果	
		发票
	一一人为现在的人工里设在置入史生。与政府只文法議局重重相	胜人出的需要
_		(請駐明)
Ċ	3、政府當局在諮詢文件中提供考慮的方案有三、包括:	· · · · / · / · / · · ·
	方案一、若許備有在国人士均等有投票權	
	方案二、爱失投票資格的規定根據刑期長短決定	
	【MVM ** 初日	
	刀杀三、放失投票直格想定根據刑期是短决定,但在囚入士就服刑期	最後幾年可以投票。
	方案三、爱失投票资格规定根据刑期是短决定,但在图入士於服刑期。 (例如:利期在十年或从上的在图入士、光爱失投票资格,但期後最领五	年可獲集投票。)
	請問你車支持那一個方案? 一方案一 方案二 一方案三 一	_ 其他方案:
4.	、你赞成讓你在囚人士均可申請登記為選足嗎?」 贊成	(講説明)
Δ,	、对形颜石自脸的为苦目的去面上。 如去 以上 上一	
5.1	·服刑前尚未登記者→按服刑前該居所地址登記 —— 同意.] 湿見 (不月蓋,
いん	(人)以())()()()()()()()()()()()()()()()()(不凡息。 不同意、
.J	2.70 4 12 12 12 12 12 12 12 12 12 12 12 12 12	
	共两人第一人	

	5.4、其祂意息:			_(請註賴)
	6、热想、满在凡上有横	通過小麼大式取得侯選人的選獎 一互聯調	資訊!(可選擇多項)	
	子、你認為在图】士从于	图模方式投票最高帖當?(可選 b前往那些有片資格選及的雙指 3人士前鉄接其愛記地址編配	釋多於一項) 人在監禁的話中共享	[詩詩明]
·		套液他人代表投票 ,, 游音吞收到, 政府為關於囚), 士: 手	投系模点紧諮詢資料!	
	有爱力	《有關在囚人士报票權的公眾談 沒有蓋力		囚灶的意思
	矢面	并關在囚人士投票權的公案證 不全面	铜工作是否生面?	
	小福勤在囚人士报	票權問題有沒有其他意見:_		<u>/</u>
	4 4 4 4			
	思考的是是一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一		法总组制放弃工作 他意思請随時來私聯 在囚編號: 一字的釋放頭部: 一字的釋放頭部: 一字的電號碼: 一字的意願是否提供 (第186章)《個)資料() 權下,本會並不會將言	研整。 如底 放 放 数 等 資 料
		共两須 第二頁。	養署 現期: 8-3-30	



1. 你認為是否所有在国人士均愿等有投票榜以是一否。

2. 為什麼所有在囚人士均應等有投票機了(可選擇多於一項)

體現从平等的精神

有助在国人士重投社曾及更生

人 在政府及文法議會更重視更生人士的需要, 其地:南助政府及社会高加州建在自己更生上上的

3. 取府當局在諮詢文件中提供者屬的方案有三、包括:

方案八、岩許桃為在四人士均享有投票機

(千妃與選舉有關的罪行或賄賂罪行的人士孫外);

方案二: 聚失投票資格的規定根據刑期長短決定 (例如: 刑期在十年或以上的在四人士要失投票資格);

方案三:衰失极恶资格提定根据利期长短决定,但在囚人士放服刑期最後 幾年可以投票。

請問你較支持那一個方案?

✓方案~ ___方案三 其洲 (請說明)

4、你贊成讓所有在囚人士增可申請愛試為選尾嗎?

5. 對於為台資格成為選用的在囚人土態,以何處作為其登記地址, 你有何意見了

5.1 服刑前尚未登記者》按服刑前該居航地地登記_

共两旬第一百

5. _H	其他意息:				(請註明)
6.	你認為在囚人士有机	養通過什麼方	式取得候選入	的選舉資訊?	
	✓難遞 ✓傳媒 /	互聯網√/	環人親身在監獄	•	
4	做認為在日人士以	图 4 2 2 2 2	是数据数3 (3)	是接点状 百)	注明)
7.	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	以外的 那些	AKM四氢 (C) (A	心际为从一块/ 内監禁	•
	V 在點線內部	女招票站			
	由徽教署押	解在囚人士前	<u> </u>	址編配的投	票站
	以歡遞方式卡	文書	委派他人代表	_ 投票	
8	在戶次問卷調查以前],你曾否收到:	政府有關在囚)	、士投票權公眾言	咨詢資料?
-	有 沒	有			,
9. 1	你認為政府在不次有	關在囚人士投	黑權的な衆諮	詢工作中有否蓋	力收集
	表D人士的意见?	有基力	(/ 沿角點)	1.	
10.1	邓韫为政府在方次		投票權的公司	人諮詢工作是否	全面[
		不全面	1 .	4	
11. /	的對在囚人士投票	權問題不	有没有其他意	、鬼:狼鸣给	韵文律
· <u>-</u>	是智能人编號會	取益排至	向旅發 炒	而制造點了	像为
	HE BAB.	, .	` '	· · · · · · · · · · · · · · · · · · ·) 21
-	- 12 nD :				
•	若有任何疑問及	甘油温目	善路性 北	7、小小郎	
	为内在门外门	大川岛。为	.,明姐均秋	创	
*			1.0	A. D. (1) - D	0
			1月	A=200 \$3A	80
			がまれ		
			[Committee of the committee of	

有關在囚人士投票機諮詢工作問卷調查

高等法院於 2008年12月8日就在囚人士投票機提出的司法覆掖伯案作出裁决破認,在囚人士享有投票權;有關裁决要求政府採取措施使在囚人士能行使其投票權,並要求政府採取措施使被羁押人士能於投票日行使法律已規定的投票權。

处府於今年之月9日發表《有關族囚人士投票權出諮詢文件》,就放寬在囚人士投票權限制提出建議方案从供公眾諮詢,諮詢期至2009年3月23日。為搜集在囚人士意見,本會現底何族囚人士進行問卷調查。請嘗試就以不問題搜集在囚人士的意見,並於2009年3月16日或从海將結果当知本智。本會計劃在諮詢期后海从前,此表在囚人士向政府當局反映。

問題如下:	
1. 你認為是孟代存在囚人士均應享有投票權? / 是 _ 否 (請格至第3條)	
2. 颜什麼所有放別人士的應急直接要機了了可避過放大 一百、	
一一人用现在的人工里提供冒入更生 人名的伊尔兰法德里南相南北江山和亚亚	
一一地上海的政府及主教和国际表面工工工工工工工工工	
~ ARM 图形在的明义介平技术考虑相关笔台。 目标· T 目录程序	_
/1 天 · · · · · · · · · · · · · · · · · ·	
(干犯與選舉有關的罪行或期賂罪行的人士除外); 方案二、喪失投票資格的規定根據利期長短決定	
(松)加工机具性大人属主儿上的大州)、西北风面块四个	
方案三、表决投票直格規定根據刑期是短决定,但在国人士就服刑期最後幾年可以投票(例如:刑期在十年或以上的在囚入士、先衷失投票道格、但期後最後五年可接来投票。)	;
清殿的東京北部、河上河。	0
請問你較支持那一個方案? 」 方案二 方案二 其他方案:	
10 機式電影性(1) (書談明)	_
、刻形颜后自脸的热爱已抽去面上。 在,一上,上上一	
、對於為后資格成為選尾的在囚人士應以阿處非為其登記地址,你有何意見? 1. 服刑前尚未登記者→按服刑前該居所地址登記 ——同意 不同意	
从从外的人交前有一种且主要加造一起加速点	
3. 外部定位公支记者禁护、以其人能制前在告急强烈。	
共和有 第一有	

5.4、其他意息:			and the second second		(請註明)
6、旅認為在四人上有機	互聯網 _	_ 侯策 \ 親民妖	&結找票 #	Atr	
7. 你認為在因人士从那 一 安排流動投票处 一 必要總教署押解在区 — 以數遞方式投票	/検方式 投票5 面往那些有5 人士前铁按其	表為恰當了(牙) 資格選及的監察 登記地址 編集	選擇多於~項)	
8. 在厅次問卷調查以前,	临曹哲收到 瓦	及府有關在囚 人-			,
9、棉認為政府在下次	用整力				让的意思
10、棉瓢为政府在外来	全面				·
11、旅懟在四人士投票	權問題都	在其他意思:	现在被制	对是意识	一人福就
想在是接受本意制造的人士。 是制造的人士。 是制造的人士。 是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是是	湖溪村。如岸 人	(A)	在 他意見請隨 大在 以編號 表早的釋放 以 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一	第五牌牌 馬馬馬提供 八個人 一個人 一個人 一個人 一個人 一個人 一個人 一個人 一個人 一個人 一	外進行
	共两勇(第二頁	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~		

共两頁 第一頁

致:有港社區組組協會 社區組織幹事又智潔如失均毀

有關私囚人士投票諮詢工作問卷調查事直

1. 現時情況:

本人在此自2009年2月9日政府發表以有關在囚人士投票權的諮詢文件》用 起,本人京太一直翻察懲,数署署方就以有關在囚人士投票權的諮詢文件》一事上的運 作及做法,是有欠公道,因其只是刊出公告,而要犯人自己申請方可以等取,並且要 放署內記,疑其犯人編號,從而与犯人如成心理及精神上有敵生壓力負擔,不 肯隨便向署方索取文件,以予專強被其署方抽後算賬,以及地被其署方如本人一樣的 被個別對對,從而与犯人不敢隨便向署方等取文件,加上現時署方並非加便失遠源表格》 的做法,放表格在,做堂的當眼處收犯人客取一樣,的公開派發,因此更加做成其產重 的壓力結犯人及有与他囚犯,成對文的两方,此為嚴重的專項。

共两夏 第二頁

土 有關於在囚人士投票權一事本人在此詢問過一些囚犯,其意見己如本人至上之問卷,但本人不能大量的做調查,只以口頭上詢問從而連本人在內只得四次文件呈上,敬年實誼。

三、航第五項水人現有以下各方囚犯意息,以及其各方囚犯擔心疑慮之意見如下之一、如至部的互線落實在囚处投票權及不論是否全部開放限制,其在收到舒應文件上緊
复限制或被署方宜为抽後算版查打點。

之,如在投票前的時間日子署方家排其各囚犯不用回下場面翻廣有關新月或與問等,與有限不過開工是要被扣犯人工資,如是多日養殖或發展工場,轉所去其他地方,與有聽取的說,其囚犯將曾被扣減多日工資,甚至如超过一个懲刑,在其他地方,限定部庭開工場。三天以上,其囚犯之工資將被完全扣城面領署再從新由從部工資推計,其以開信開放投票權等加沒有開放,因囚犯是一定租肯定經濟方會員和成工資的風險去愛記成為選及及不會去投票的。這樣囚犯的意動等於否,同時而因以上之情况他成在囚人士大量無刑壓力從而任囚犯的心理囚精神受損害。

三以上之情况本人是從口頭商詢及觀察《在国人士投票機諮詢文件》的事情,以及其著方及管方家以此事項上的運作機式而得出的。

有关放宽对在国人士投票权的建议

- J. 赞成应该故爱」给于左国人士有投票权,国为这是一个基本的人权,並支持方案-所提及的政策方案.
- 正在国人士投票权的造民营乳地处在該处被知在国人士在犯事的的主名民的作为选民堂乳地地。
- 函数成在国人士可以收到斯连的这攀广告工相是资料.
- 四, 雙成在国人士可以透过额纸, 电台及电视等收集体取得选举资訊。
- (里)提致去选择保险人可以自约准备发展或编备等一形式的相差扩大资料及扩大政制、从便多国路教所作出通当海排给于在国人士作为考茬之用。
- 四,提到有一个参考在国人士的选举视像层致确境使在国人士有机层透过互动形式了解选举传递人的政简好。

· · · · · · · · · · · · · · · · · · ·				M M 3 - 2	103/ NO 3
四, 雙成 从 搜 太 3	为有美的多	级级	在国人士	搜塞.	
迎, 赞成过					
区) 兰景省:		助五发	生功能组	别兰爱介	
区人门第 2					到 考考度。
·					
<u>-</u>					

葉永成 太平紳士 用箋

David W. S. Yip M.H. J.P.

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Queen's Road Central, Central, Hong Kong

Tel (電話): (852) 2541 9318 Fax (傳真): (852) 2489 9165 P033

尊敬的政制及內地事務局 林瑞麟局長

社區參與助更生委員會特別會議 討論〈有關在囚人士投票權的諮詢文件之意見〉

(一)、在囚人士登記成爲選民

查港作爲世界上最自由城市之一,本人同意給予適齡在囚人士登記成爲選民,履行公民責任,原因(就算在囚人士曾經犯法,但已在懲教所或監獄中服刑,以最寶貴之自由來作抵償。本人作爲「懲教署社區參與助更新委員會成員」,更希望在囚人士,可藉此更了解及參與其入獄前居住社區之最新發展,好讓日後刑滿出獄後,可盡快重投社區,不會與社區脫節。

(二)、投票權

- a. 本人認爲給予服刑中所有適齡之在囚人士投票權,不應以刑期長短作爲 門檻,並以(方案一)最爲可取。
- b. 但對被裁定干犯與選舉有關的罪行或賄賂罪行的人士,本人認爲應喪 失其投票權資格,否則對其所犯罪行會造成諷刺。(但干犯其他罪行的 在囚人士則不在此列)。

(三)、選民登記地址

- 當受懲人士在進入院所及監獄前,當局應先諮詢其本人是否已是或是 否願意登記成爲選民之意願,如願意又未登記者可填寫「選民登記表」 如不願意者亦需填寫「不願意成爲選民申報書」以茲証明。以上在囚 人士登記程序,亦可在每屆臨近區議會及立法會選舉前再次作出諮詢。
- 2) 如該受懲人士同意出任選民,其登記住址必須按照在囚前所報住地址 作爲其選區,但所有登記資料應交由懲教署直接轉選舉事務處。另所 有選舉宣傳刊物可寄往指定郵箱,因保安理由,宣傳單張不應由家人 轉交,故可於懲教所或監獄附近之郵政局設置郵箱,由懲教署職員前 往郵箱領件再轉交有關在囚人士,以解決監管之問題。

(詳見以下例子):

受懲人士住址

服刑院所

處理方法

新界西 荔枝角懲教所

於荔枝角郵政局設立郵箱,懲教署職員 可往就近郵局領取宣 傳單張,再轉交有 關在囚人士,不應以懲教院所或監獄作郵 寄點。

葉永成 太平紳士 用箋

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選舉宣傳:

本人認爲無論區議會或立法會選舉,所有候選人均不能進入懲教院所或監獄 進行宣傳活動,除因保安理由外,亦不希望有個別人士借題發揮,製造新聞, 影響選舉。受懲人士亦可透過報章、電視、宣傳單章或錄影片段中知悉候選人資 料。

投票日

本人建議於投票日在每間懲教院所或監獄中設置投票箱,以便在囚選民親自 投票,至於收回投票箱時間,則由選管會自行決定。

副本抄送:中西區民政事務處 何吳靜靜專員

中西區區議會議員
社區參與助更生委員會委員
葉 永 成 謹啓

二零零九年三月九日

楊位醒東區區議員

北角英皇道 460 號 樂嘉中心 1 字樓

1/F., Roca Centre, 460 King's Road, North Point, Hong Kong.

電郵面頁

日期:2009年3月10日

收件人: 政制及內地事務局局長 林瑞麟

電 郵:pvr_consultaion@cmab.gov.hk

發件人: 楊位醒

聯絡電話:

連此面頁總頁數: 2

如發現缺頁或內容不清,請即與本人聯絡

電話:

傳真:

E-mail:

本人就 2008 年 12 月 8 日政制及內地事務局"有關在囚人士投票權的公眾諮詢"提出書面意見,敬請 閣下查收,謝謝!

楊位醒東區區議員

北角英皇道 460 號 樂嘉中心 1 字樓

1/F., Roca Centre, 460 King's Road, North Point, Hong Kong.

在囚人士投票權諮詢意見書

政府最近就放寬在囚人士投票權限制展開公眾諮詢。本人認爲,在政府提出的三個方案中,以取消長期服刑在囚人士的投票資格,但准許在囚人士在刑期最後數年恢復投票權的方案較爲可取。

在囚人士投票權不應該一刀切全部喪失資格,但也不該一刀切讓全部在囚人士可有投票權。因干犯嚴重罪行而入獄的重囚,無視法紀,還讓他們去投票選舉立法機關成員,未免可笑。他們要長期服刑,目的是懲罰其失去自由和與外界隔絕,所以本人贊成,取消長期服刑如10年或以上在囚人士的投票資格,可以防止罪惡、鼓勵公民行爲及對法治的尊重。至於有干犯防止舞弊及選舉條例罪行的在囚人士,亦不該有投票權,以維護選舉的廉潔和公正。

協助在囚人士更生,是香港邁向國際社會應備條件。由於在囚人士一旦出獄,便有權在選舉中投票。故此本人建議,修訂相關法例讓在囚人士於服刑最後五年或服刑少於五年,恢復或仍可擁有投票權,毋須經由判刑法官作出指令。盖五年之內必有選舉年,正好鼓勵在囚人士在出獄前注視香港發展,關心社會而登記成爲選民參與投票,既可加強其公民意識,亦有助他們出獄後悔過自新,更有信心重新融入社會。

至於爲在囚人士和遭羈押人士行使投票權所制訂的建議實務安排,例如有關合資格成爲選民的在囚人士登記地址,爲方便管理,本人認爲,可劃一改爲監獄地址,投票日的投票及點票安排會較輕鬆,所有選票集中在監獄內設立的投票箱或流動投票車。

基於監獄保安的特殊理由,本人贊成,爲冕出現混亂,禁止所有候選人親身 在監獄內拉票,一律只能透過郵遞選舉廣告拉票;在投票日則可以有限制地讓想觀 察投票過程的相關人士進入。

> 東區區議員 楊位醒 2009年3月10日

致香港特別行政區政府 政制及內地事務局(第2組) 關於檢討《在囚人士的投票權》的意見書 (共3頁)

日期:公元二零零九年三月廿三日

(一) 基本假定

- 1.1 就政制及內地事務局最近徵詢本港市民關於《在囚人士的投票權》一事,本人假定有關當局是希望在制訂在囚人士的投票事宜的具體安排前,作出一廣泛諮詢,而被諮詢對象,主要為一般香港市民而非相關的專業團體或人士;因此,所獲得的意見,亦不會以專家意見來看待。
- 1.2 就諮詢文件 1.11 段所載「法庭認為,投票權無庸置疑是最重要的政治權利。現行對在囚人士的投票權和登記成為選民的權利作出普遍、自動和劃一的限制,根據相稱的原則(也就是說,所施加的限制應與施加該項限制以求達到的合法目的相稱),並無理據可言。載於《立法會條例》第 31(1)(a)至(b)條及第 53(5)(a)至(b)條的喪失投票和登記資格條文,涉及在囚人士及被判死刑或監禁但未服該刑罰或沒有獲赦免的被定罪人士,違反《基本法》第 26 條和載於《香港人權法案條例》(第 383 章)第 8 條的《香港人權法案》第 21 條所保證的憲制投票權。當局應作出安排,令這類在囚人士和被定罪人士可以在投票日當日投票。」,表達懷疑,因為
 - ▶本港現行的法例,一般的假定皆為不違本港以至中國〔即香港的主權國〕的憲法,而在相關法例被審定為違憲之前,不違憲假定理應沿用。
 - ▶此外,本港現沒有憲政法庭之設立,而相關的違憲申訴,法制上似乎亦無明確規定是否全屬高院或以上法院之範疇;事實上,本港曾有裁判官主動判令某一法例是違憲,如2008年一裁判官就一名美籍記者之車被影快相後拒絕提供司機資料一案,裁定相關法例要求有違《人權法》,因律政司上訴而被推翻。
 - A 在本港的基本法中,似乎沒有指明人權法有其絕對或相對的法律凌駕性,故此,有關當局亦應就相關人權的爭議,尋求和作出明確的 法律規範和指示。
- 1.3 就 1.2 段的觀察,本人建議律政司應儘快就「審議違憲權」一事,作出合理的跟進和回應,例如跟中央溝通和了解,香港就違憲審議之權限和尺度,以避免為日後中港在司法、以至法制上的互動和對照上發生矛盾和尷尬。

(二) 本人對相關議題的基本立場

- 2.1 本人的宗旨是「人權的維護,應以保障人人在法治前的平等、公正和公義性為大原則,當中的公義又應以促進社會(即大眾)福祉和人類整體幸福為基礎考慮」,所以,對於在囚人士的投票權利和安排,亦應以相關原則來審核他們。
- 2.2 假設諮詢文件 1.11 段所載法庭判決成立,即《立法會條例》第 31(1)(a) 至(b)條及第 53(5)(a)至(b)條的喪失投票和登記資格條文,涉及在囚人士及被判死刑或監禁但未服該刑罰或沒有獲赦免的被定罪人士,違反《基本法》第 26 條和載於《香港人權法案條例》(第 383 章)第 8 條的《香港人權法案》第 21 條所保證的憲制投票權。則本人有以下意見:
- 2.3 就在囚人士的分類,如以定罪以否為例,則未被定罪者,應以無罪假 定來看待,故其相關的投票權利或限制,應跟一般市民無異。
- 2.4 對於已被定罪的在囚人士,則可按犯罪的嚴重性和刑期分類,如重犯, 一般犯及輕犯等。另外,因為各相關犯人有上訴之可能,若相關上訴 經已提出而尚未判決,則相關人士仍應以被定罪者看待。至於其是否 有和如何確認其投票權,以至如何安排相關投票措施等,則有關當局 應按法理、相關決定和措施對本港的實質影響,以至其他地區的做法 作為參考,以訂定一最可和對香港最有利之方案。
- 2.5 於相關合資格享有投票權的在囚人士,其具體安排亦應平衡相關措施之可行性、公正性和相關的社會代價來作出考慮,因為香港社會實無義務為被定罪而服刑中的在囚人士過份付出代價,否則,便會對一些老弱、傷殘或在港外公幹/旅遊/被困等人士造成不公!(例如:政府現時沒有為老弱傷殘者提供點到點的專車或護送服務,亦不能為在外公幹/旅遊/被因人士等作出相應的外地投票設施或輔助。)

(三) 相關設問

- 3.1 請問法治與公安 [Law and Order] 的主要考慮是甚麼?人權跟公安如何平衡?
- 3.2 一般人權都包括言論、結社、集會和在選舉中有選舉與被選的權利,請問這些權利如何實行於在囚人士身上?可有法定限制?何解?

3.3 請問憲法跟一般成文法或律例有何異同,當中又有沒有凌駕性或相互制 約性呢?若有,誰有權判定其凌駕性和訟裁相關爭議與矛盾呢?

(四) 總結

- 4.1 除作出現有諮詢外,有關當局應儘快就「審議違憲權」一事,作出合理的跟進和回應,以實事求是和香港的長遠利害為著眼點,以期早日解決可能出現的違憲申訴。
- 4.2 對於未被定罪的囚者,應以無罪假定來看待,故其相關的投票權利或限制,應跟一般市民無異。
- 4.3 對於已被定罪的在囚人士,則可按犯罪的嚴重性和刑期分類,審定其是 否有和應如何確認其投票權和相關投票措施,有關當局應按法理、相關 決定和措施對本港的實質影響,以至其他地區的做法作為參考,以訂定 一最可和對香港最有利之方案。
- 4.4 相關的具體安排,在維護人權同時,應以保障人人在法治前的平等、公正和公義性為大原則,當中的公義又應以促進社會(即大眾)福祉和人類整體幸福為基礎考慮。

進見者:黎民〔筆名〕,獨立時事觀察員聯絡電郵:

郵址:

——本文完結 (End of Document) ====

本人黎怡華 歲身份證號碼: 是一名 終身監禁的在囚人士,現服刑於 本人現 就有關在囚人士投票權的諮詢文件,提出意見

對於合資格成為選民的在囚人士登記地、地安排,本人對於當局所建議的,沒有保留唯一或主要的家居的在囚人士,較切合在囚人士需要,因為採用人獄前之最後居所為登記地址,能夠因蓋所有在獄外

不論是否已登記為選民的在囚人士,此方式亦的節省人力及物力。不過個別在囚人士在入緣之後,以往在外之住所,可能被房屋署或業主收回,此種個別情况則需要以近親之地址或監緣就作登記。
對於拉票活動方面,本人認為當局建議的郵遞方式較為合理,但並不覺成候選人在監然內進行拉票活動,因為此學將嚴重擾亂、監然的正常運作,但為了實徹選舉以公平的原則下進行可以播放選區有關的宣傳資訊來讓在囚人士觀看,作為拉票方式。
對於在囚人士投票實務安排方面。本人認為就各院所有不同類別在囚人士在囚。而監然就不要顧及保安,而且監然就亦有一套作息時間。如在監然的設投票站,操作上存在一定技術、困難。本人認為人對遞投票表格,作為投票是可行,所需的文件及表格提前數星期送交在囚人士。
對於當局為遭羈押但未定罪人士的投票及選舉管理委員會制定器追票安排,本人並無議果。
政制及內地事務局(第2組)
聚怡華 護上
2009年2月27日

SOCIETY FOR COMMUNITY ORGANIZATION

香港社區組織協會

九輪何女田公主道五十二號三樓 52 Princess Margaret Rd., 3/Fl., Homantin, Hong Kong. Tel: (852) 2713 9165 Fax: (852) 2761 3326 E-mail: seco@pacific.net.hk Website: www.seco.org.hk

政制及內地事務局長林瑞麟先生鈞鑒:

轉介就有關在囚人士投票權的公眾諮詢事宜文件

高等法院於2008年12月8日就在囚人士投票權提出的司法覆核個案作出裁決, 確認在囚人士享有投票權;有關裁決要求政府採取措施使在囚人士能行使其投票權,並要求政府採取措施使被羈押人士能於投票日行使法律已規定的投票權。

政府於今年2月9日發表《有關在囚人士投票權的諮詢文件》,就放寬在囚人士投票權限制提出建議方案以供公眾諮詢,諮詢期至2009年3月23日。

其中一名興訟人士蔡全新先生,欲透過本會轉交其對公眾諮詢文件的意見。(見 附件)煩請安排時間會面,以進一步陳述本會立場及意見。 由於以上議題落實公民 政治權利,煩請儘快跟進。 如有任何疑問,請致電 2713 9165 與本會聯繫。

敬祝 台安

SCOMMUTT GROWER STATE OF THE SECOND MARGINET BY

(已簽署)

香港社區組織協會 社區組織幹事 王智源 謹上

二零零九年二月二十日

副本抄送: 各大傳媒機構

致:政制队为地事務局局長当器	
就有關在囚人士投票權的公眾諮詢	国事宜
東人是藥至就先生,正因服刑而受監禁 ,現 編號 ,在八點前已葉記成為多資格選用,因服 於去年八月十五日八稟高等法院原訟庭提出司法廣核申請, 整管理查員會條例,附例分,指上述條例涉嫌違点《告港》 以內民權利如政治權利國際公約》第二五三條〉,本人為本案等 L/83/2008)	震核从立法营收例》第31张水强 人權法案條例》(第383章)(H-BB
早前高等法院原訟庭於去年十二月八日就在案裁定从 此等條例指,附有服刑人士(包括在成港或海外被判刑)少 選民資格,即使己選記成為選民,也會喪失投票權資格的條 法官在判詢中指出,任何人士的投票權不應,也被剝禁 有關選舉法例禁止在囚人士投票,是違人《基本法》第26條 及保障公民權利,因此裁定有關申請人騰許。	为表生登记為立法管或其仇選區的 是例達憲。 年,連在1015 + 亦不例如。田山
據貴局於在年二月九日就《有關在囚人士投票權的諮詢 投票權的政策,並提出三個可行方案,包括:方案一,是 為選民,行使其投票權的政治權利,是保留違久《選舉 章)或《防止賄賂條例》(第201章)第11部,附訂定的在 資格;方案二,是限制判監起過十年以上的在囚人士均喪 是限制判監十年以上的在囚人士投票權,但在服刑的電 成為百資格的選民,行使公民投票權的政治權利。	对有宣貨格的在四人士均容許登記 (舞弊及非注行為)條例》(第554 四人士均喪失登記為選足和投票 生投票機如選及資格·安定 = 1
在人認為,最客觀而言理及言乎人權標準的估法則 言資格的在囚人士登記成為選民,行使其投票權,因為 基本的政治權利,且何人士不應稅無理限制。	D是方案一,即至面地肯定給予 投票權是國際公約規定的最

一一方案二, 若在立法規定中對對判監超	
	遏于与从上的在旧人士投票權 ,
<u></u>	的資格、亦有遺具L C 24 12 25 12 12 12 12 12 12 12 12 12 12 12 12 12
《基东注》第26条列明、查港特别行政區永久	性居民依注享有嚴舉權和被發舉權。
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方案三,若在立法限制判監超過十年1人	上的女们人士投票榜,女服刑事很五年
便客許有關人士登記成為合資格的選尾,行	西拉尔巴特里格比亚比姆州,其后对西班里
實驗是隨意且歌之客觀的做法,是帶有歧	指标代料要对本。 29年7月 按 270
第26條的標準,不得無理限制公民投票權的	初户。 知户。
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如立法循系制等有關在旧人士投票權的:	中華 工学和户制度与1.14 m 4
大質疑並引起另一場許監潮。因為《基本法》等	LAK, TON TOKET SON THE HALL
香港原有注律除由全國人民代表大會常務委會	160林为中,各港村的小成區及上時,
特别行而原注律,如此以及用本从法律的未注	上 办為同州江松楠有外,採用為香港
特別行政區法律,如以海發現有的法律與本法 支停止生效,就上述理據或資料,值得港府:	<u>抵胸,引及照用压思定的程序修改</u>
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迎	、查港社區組織有	
· 	社區組織第事	
	王智源先生	有關在囚人士投票權諮詢意思事宜
		
	早前高等法院	原訟於去年十二月八日裁定在囚人士與普遍市民一樣,可登記為合
	格選且行使其投	《科文信铭伯辭栗趺士人四五關在》、城日北月三年在前在班鑑。任辭栗
$-\phi$	表示。會放寬在四	人士投票權的限制,並提出三個方案諮詢公眾。
···-		
\	<u> </u>	班人士均應享有投票權,而干犯、特選舉有關的罪行或賄賂罪行
· · · · · · · · · · · · · · · · · · ·	島凱中烈士人位	是失登記為選民的資格,換言文,本人最豐成方案一的建議,最合
	理和合乎人權標	準的做法。
_2.	方案二,限制被	判監超過十年或以上的在囚人士喪失受記為澤民及投票權的資格。
	<u>用建注庭的判</u>	令。用為法官在判詞中指出,性何人士的投票權下應地被無理
	<u>剝奪,連在四人</u>	土流不例外。
	<u>.</u>	
	万等三,限制判	1監超過,十年或以上的在四人士會喪失其投票權資格,但准許在旧
	人工社的人们员	領立年的刑期快得其投票權資格。都會被管疑是隨意且飲乏客
	强,的放任。是	一带有歧視,性的社會政策,在日復必然引起另一場,許監潮。
1.	工柜鱼鞍自由	
<u> </u>	四五年不下回、	際公認一個地方公民的權利,體現人人平等的精神,有助在囚
	上重新正產工人	长附八位省。
<u>-</u>	新分半で石やら	1 4 18 D) L + D) 1 + 25 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	2000年40日本	以為選用的 <u>在旧人士其</u> 赞記地址。以未入獄或遭拘押前的最
<u> </u>	TR OCK HOTE S	《被定罪判刑的法庭作课高受記。
6,	たまれず 山1-	土可在儲中聯點政黨或候選人的資料。而候選人親身在獄
<u> </u>	中村臺南海湾	三野寄方式拉票。
	1 12 //2 // 1/2	24 91) 142 40
7.	本投	選舉事務處可安排流動投票站或在獄中設立投票站。
·· ···	或由徵 数 累 为	严解在旧人士前往按查記餐區投票。
		1 11 11 11 11 11 11 11 2 010 1次 1001 1 大方。
ያ.	女的虾罐一本	今次有關在四人士投票權的諮詢工作感到不满,因為獄中
	炉	分製在四人土投票權的諮詢問卷,不能給予有需要的在
		以水中的1000000000000000000000000000000000000

国人士表差自己的意思,只在微中的	當眼位置張斯告示。
9. 本人於來年2月28日在犯人申請事項册上 在囚人土投票權問卷表格,其後被當局 在獄中參與或協助政黨的任何工作、1 著有任何疑問。請致函與本人聯絡。	拒恐ず パタぎ・伽 単まさや / ~ ゆ
敬祝 工作順利	會太崇全前 護上
	2009.3.6.
·	

	No.	1
	Date	• •
《在四人士投票權個人意見與建議		
一	.>>	
1. 本人是在囚人士、现已服刑 本人的无	147日	极自己
禁,本人並沒有確電刑期,整開監獄。本人就在,		
立法咨詢、有終立意則及建議。	ムクエ	12 5-12
		··
2. 就政府建議的三個放置在囚人士投票摆限制	 ኳካ ጎ	更动等
立案,在人支持方案一.即极此在四人士在《立法会》		
(a)至(b)体丧失投票资格的对方规定。被裁定于2	P 1557	远-南早 (13)(2)
國的電汽或頭型電汽而根據第 53 (5)(1)	头 #8	要当村
的规定判据经验。		
3. 其態二個方案、本人認為不能接受及存在很	多章:	議的問
是 西阔方案亦違久《基本法》第26位本"载於似		
每一個分(第 38 3章) 策 86k 的《杏港人楼注案》第 21 d	车约	经送的
墨制投票据。倘若通過第二及第三方案,可		
土挑戰五國徒例、政府必悉改訴、嚴重影響	الرياند	・ 遠信。
4. 方案二以刑期割负投案栈,涉及人数从在囚	人士	14% 当九
在囚人士丧失投票校(当中包括本人左内。)有成	また	上認為
這一件《人士不是人 不何有政治權利》		
	<u>.</u>	
5.作为这件为一份子、我是十分難過、法院就是	人上	7军占判
刑是李7我自由這是各理的但法定產未就本	<u> </u>	张广. 判
以别春政治核利《文法機關配入刑期与自意知》	之定、	<u> </u>
断。與一個例子、A有B、同樣敗涯危脏藥物 1公斤	1. 教士	是相距
万速、但A自B经不同法官判刑、A放料十一	牛 3.	被判十
车,但A被制车投票拨。(上述例子经常出现)	<u>) A 前</u>	B风横

6. 同時,監然內主流意識是政治分漠,並不認為自己在狱中是香港公民。大部份犯人認為投票是義務,付出,並不是權利(特別是中長期犯人)。如果通過於予投票,是可以突走已這些在囚人士的公民意識——原來這個社會是有效仍。數与在囚人士的投票權,对為選舉起果並沒有太多的影响,如果放定,選舉權, 架不應再為幾百人施口如限制, 勞民傷, 財, 引起争批。

王. 从刑期丢失决定投票楼、就政府及立法機關來說是对最重罪案目犯,她必要外邀到,特最投票楼的对卖。是是一个人人的理义的思维。对於在国人士来说,我要带重不重要但如果一部份回犯有投票楼。一部份没有,没有的部份就会跟为一一社会不接受我地。其實我有望行政,立法人任.搜清一個思维,对中上階級來說,投票楼是楼州,是对他下路展、董德子言人士,投票只是一件旅校事是付出。惠就是他下展中的他下屋,如果你地找清洁。思维,限制投票推,是加工厂。

是 方案三同樣出现上述問長。但只因限在數多監禁 别人身上。根據在人然知,在四人士中,有 THP 是實限刑十 年或以上,但有一十人以上是被判數多監禁。這班沒有刑 期的犯人,如果根據方案三然言、實際上是丧失投票 權。因為,數多監禁是沒有出獄日期,如果辛運地 特多 用行政命令其子勢身都以不固定刑期,如果辛運地 特多 用行政命令其子勢身都以不固定刑期,這一等特益局外 二进、就出册。該行 私 不社會 的意識!這些機数 丟走明白。接言之,方案三是施 改為,此多監禁犯人 不應或我是稅。 比較正確。

P. 京塞=是直接由在人有關、俗去流過六案=代表我直

至有难要刑期前,我亦没有投票成,对此,我感到悲傷,
理考上,一么就说注記的謀裁犯,政府要逐列附加
炒到、我是明与。但情感上、政府出公安当博園接助更
生, 但, 左, 就, 歧, 说, 是, 我, 却, 别, 此, 我,
周前在社会的首的我来说,一张小小的迷案,这我有一
低使春春,一份老南社李春,但如果其他如人有.终身皇
楚是没有我地,如何就跟自己我们是社会其中一
公士。

"我支持方案一、投票横对找来说,不是模利、力我认为是一個契機——安廷我們公民意識的契機。 請不要歧视、這乗以多學樂和人。

> 班名: 劉家明 明: 25·2·2·201

 \mathcal{P}_{i} 数数者 人欢唱名尚, ID no. ,是一名版利验 就有關在囚人士投票营的諮詢,何 硬撬諮詢文件问答,我除在国人士在第分(5)(a) 至(6)俟妻失数更近格的规定;从方案一的2.10和211 罪行或贿赂罪行运法 條例第31(1)(c)及第53(5)(c),無从保留作為違反獲 菜二的2.13和2.从,内容从刑期是短作高局 分投資資格 及風和不 是丹正過去對法律無知的不無視法紀的最好。 ,投票潜台的面不可相避益益。

月2 有關含黃建成豐地的在以人生,豐紅地赴安排: 對於當局建議,沒有樣留唯一或主要的家庭的在母 養,數適言在內者需要,老強用入職的之最後在的 變記,能夠涵蓋納有職外,不論是否已豐記為展在 對在囚人生,此方法有助節者人力布別力。 但有個的人生在入職之後,過程在外前任例,可能 報收回及取消,此種個別情況,則應期情以此觀地 並可以監督作豐記。 上述豐記意见,可从海低社會人生最高,資東或種東 情況,至分離東來讓中的情況出到。

對起東活動意見: 當局建議的郵應名式較切台監獄情況,能配台在囚 若超收信件的福利。而不發同便逐人在監獄內進行 投票活動,以避免影响管石的正常運作程序。但為 了貫徹建準簽訂在公平下超收,可从安排播放促進 人政網的經行,作為股票活動。

新春日人生投票通路爱见: 鐵数暑摊有不同的院所及超歌,因聚亦同類別的农 人,君方的主要概能要保障各院所觀定,而設有一 養作為時間或運作;若在各院所設定及要站,對哥 方及度管質如構成壓力,只會沒要社會資源, 本人覺得从郵應方式投票是可行方梁,在囚運民可 从同時提出至傳車最及投票表格,也不會影內設別 關連作。 投票郵應的承後可期,可參考到面別旅居的地間度 民,郵處運業从該面的選舉可提前七日為限期,並 以郵仰日期內率到;香港从選管剪地赴運中運票, 或配合點案工作單樣。 此致:政制及內地事務局(第2個) 被腸品的者。

2009年2月13日

致:政制及內地手格 两哥是 (有阒在囚人士投票校)公家諮詢会2009年3月6日沙田香港文化博物館劇院 阅奏阅下: 就上述的分零認詢会本人提正以下费息: 本人绝对赞成及支持政府及民间组缴投放资源 中釋四人士助更生計劃, 全釋回人士重投入社 多,做一个对社会有用有貢獻的人。 但对于政府还要大鳏大鼓地方研究在四人士的 投票校问题则有所保留。必须知道一个人犯法 才會被定難收點, 令他我失自由反有过错, 定 是一種戀點。罪犯之前一定需知道其後果。在日時间,現將一般起遊飯人杖我認為絕巴是鉤。 如丹店一些犯罪在囚者提供中常人一般的权利 本自由則為太过,所有的刑直和懲罰又有何意義? 本人反对在四人士放票权, 政府需要做的事情 实在多得很, 坚为用浪感野间心道源在此議題上。 產者区市民產過德

盘:_	_(一羅洋強)
日期:二多	夏秀九年三	月三日
数放务	·	
	<u></u>	图在四人士投票推的個人意息
己作出数。	汉, 深应为	8在囚人士, 得悉法庭教有関在囚人士及案權 雙! 裁决不但對於們在囚人士多了一份許屬
• •		<u>系的公民意識。作为日後重新投入社會,</u> 为此本人有以下之思見:
DE 能在		总法庭已於二零零八年+二月八日作生裁决。理己为遂民,作为一视同仁的效應。(陈法庭刊
人則記至 長超,又 行在囚人	5东条-成为 可避免不必	设系接的諮詢文件中的等主章(建議指委), 本 后府。理由是為是浪费人力资源来打算刑期 多的争議。亦为使您数署的安排。授言之, 任 即但未被至罪人士, 只要与予资格, 正式登記為 系格。
· 一方 意	第 人	自於有部份在囚人士的而且確沒有係留唯一或主义的参居,本人記為諮詢文件(P.22)中的(C)"在 后额外再無係留住何值—或主要的居所的在囚 土(不論是否已登記為選民),其入就服刑前在 一港的最後居住地方,看被视為香港的唯一或 一支地址、用於選民,登記。"最為台通。
拉案	活動——表	5 後選人親身在監狱內拉案,相信定必持成

	崴年的仔女問題。因此本人記·為郵遞方式·考爱 宣傳學張最為適益。
	一若能類早通知署方(懲数署),在指定的司期、時間到各監狱/院所推行公正、公平的收集,相信署方定能配合。
—————————————————————————————————————	了随時與本人聯络,言詞上如有任何冒犯之處
放請原訴!	11 -0 0 0 1 1 at 11 12 1 13 10 2 12 1
順视生活情	4大!
·	(已簽署)
	£ : \$ 2 \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
	星澤強謹放

(d) The	prisoner should have the option to choose exten his her
	just last residence or his Jamily's current residence (i-
Xu c	was high with vaide or often referre as registered
addre	ss of elector
(b) 1h	prisoner ohned have easy access to all election-related
motivi	It, and election adventisements of the condidates
*Kroi	A CSD
(c) J.x.	to soler of convenience, the prisoner render only vote in
person	and not through proxy or representative.
(d) Hur	e show be me polling ofotion at every prison mu the
	time for voting should be scheduled to suit security
a Joseph	durinistrative purposes of CSD at their discretains.
	Submister by.
	CHIM NAI REWIG

列印

第1頁,共1頁

寄件人: FUK CHAI CHOY

收件人 pvr-consultation@cmab.gov.hk

日期: 2009年3月16日星期一下午1:10:53

主題: opinion on the right to vote

致政制事務委員會:本人想就有關在囚人士投票權的問題發表意見 所謂在囚人士,其實是因爲犯案而被罰囚禁以抵其所犯罪行的人,對於因此而須要接受社會刑責的罪犯,在囚期間已經含有暫時被剝奪權利的意義,所以本人覺得他們投票之權利亦應該暫停,以免被政客們利用來達到其政治目的。本人實在非常擔心如果此路一開,眾議員或政客們會利用如《爲囚犯爭取滅免刑責》等利益之類的政綱來爭取他們自己的票源所帶來的後果。自從梁耀忠議員由監獄中救出殺人重犯之後,已經開始令很多人擔憂遲早會有議員抓着這個觀點去發揮的。爲了整體社會利益著想,此風不可長啊!所以本人極力反對在囚人士擁有投票權,希望各政制事務委員會委員們千萬要審慎考慮清楚此 舉將會帶來的後遺症,以解市民之憂!



HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong DX-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org Telephone: 2869 0210 Fax: 2869 0189

6 March 2009

Mr. Stephen Lam, JP Secretary for Constitutional and Mainland Affairs Constitutional and Mainland Affairs Bureau 3/F Main and East Wing Central Government Offices 11 Ice House Street Hong Kong.

Dear W Secretary

Public Consultation on Prisoners' Voting Right

I refer to my letter to you dated 19 February 2009.

I am pleased to enclose herewith a copy of the Submission of the Hong Kong Bar Association on Prisoners' Voting Right Consultation for your consideration, which has been resolved at the Bar Council Meeting held at 5 March 2009.

Yours sincerely,

(signed)

Russell Coleman SC Chairman

Encl.

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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Mr. Robin Egerton	艾家敦
Ms. Jolie Chao	趙芷筠

Consultation Document on Prisoners' Voting Right

Submission of the Hong Kong Bar Association

- 1. The Constitutional and Mainland Affairs Bureau ("the Bureau") released a consultation document intended to review policy options with a view to relaxing statutory restrictions on prisoner disenfranchisement, as well as practical arrangements for prisoners and persons remanded in custody to exercise their voting right. This followed the successful challenge against the constitutionality of provisions in the Legislative Council Ordinance (Cap.542) ("LCO") disenfranchising prisoners and persons remanded in custody in three separate judicial review applications; see *Chan Kin Sum & Ors v Secretary for Justice & Anor* [2008] 6 HKC 486, CFI.
- 2. The Hong Kong Bar Association ("HKBA") has been invited to express views on these topics.

General Observation

3. Although the HKBA notes that the consultation document has a confined scope, dealing only with the issues arising out of the *Chan Kin Sum* case, the HKBA is of the view that the Bureau may on the same occasion review also the merits of maintaining other disenfranchisement provisions in electoral laws.

Human Rights Protection

- 4. It is clear from the judgment of the Court of First Instance in the *Chan Kin Sum* case that the current provisions which disenfranchise prisoners are not only disproportionate, but that the Government had failed to point to a policy which justifies voting restrictions. It is therefore necessary to first identify why such restrictions (if any) should be implemented and then only consider how justifiable restrictions can be implemented.
- 5. The HKBA also considers that it is paramount that the reviewed legal framework for the disenfranchisement of any class of persons must be consistent with the Basic Law of the HKSAR, the Hong Kong Bill of Rights Ordinance (Cap.383) ("HKBORO"), and the International Covenant on Civil and Political Rights. Fundamental rights, as the right to vote has been recognized by the Court, are guaranteed under these instruments. While the right to vote may be reasonably restricted on legitimate grounds, the grounds for any restriction imposed must be identifiable, precise, legally certain and proportionate. As the Chief Justice of the Supreme Court of Canada reiterated in Sauvé v Canada [2002] 3 SCR 519 at 539, "The objectives must not be trivial, and they must not be discordant with principles integral to a free and democratic society".

The Role of the Judiciary

6. Since the resumption of Chinese sovereignty, the roles of the executive, legislature and judiciary under the separation of powers are stipulated under the Basic Law of the HKSAR. The courts of the HKSAR act "as a constitutional check on the executive and legislative branches of government to ensure that they act in accordance with the Basic Law" (Ng

- Ka Ling & Ors v Director of Immigration (1999) 2 HKCFAR 4, CFA at 25G-I (per Li CJ)).
- 7. The constitutional role of the courts in the HKSAR and the independent exercise of judicial power under the Basic Law are a fundamental underpinning of the legal system and must not be compromised. Any intrusion into the exercise of judicial power (such as the removal of sentencing discretion) must be justified in the context of the constitutional framework of the HKSAR.

Protection of minority rights

- 8. Before turning to the substantive issues raised by the consultation paper, the HKBA further notes that a fundamental principle of voting is to allow minority voices to participate in civic society equally. Dissenting voices are aired and not to be suppressed by the ballot box. That large sections of the majority may deem appropriate to disenfranchise a small minority does not by itself accord legitimacy or justify voter restrictions under the Basic Law. After all, it has also been stated that a mere majoritarian preference for abolishing a right altogether would not be a constitutionally valid objective nor provide sufficient justification by itself.
- 9. Paragraph 106 of the *Chan Kin Sum* Judgment states that the universality of the franchise has become the cornerstone of HKSAR's form of democracy. The Basic Law constitutionally guarantees a right to vote in accordance with the law and the HKBORO protects the right to vote from discrimination as to the putative voters' status.
- 10. The HKBA offers the comments below in an attempt to contribute to an important public debate, but it must be made clear that the Bar does not

profess to possess or provide a solution. Instead, the comments are provided to ensure that any policy decision to reformulate the legislation will be consistent with the constitutional principles enshrined in the Basic Law and the HKBORO.

Prisoners' Right to Register as Electors

11. Para 2.08: The HKBA welcomes the recommendation to remove the disqualification of prisoners from applying to be registered as a voter.

Prisoners' Right to Vote

- 12. The Bureau has identified three major policy options on relaxation on the ban on prisoners' voting rights:
 - (1) The first option is to adopt the present position post-judgment, that is the removal of existing disqualification provisions in section 53(5)(a)-(b) of the LCO.
 - (2) The second option is to modify section 53(5)(a)-(b) to disqualify prisoners if their sentences of imprisonment exceed a certain length. It seems that the Bureau's intention under this second option is to distinguish "serious" offenders from "less serious" offenders. The proposed length of sentencing is mooted as 10 years or over including indeterminate sentences.
 - (3) The third option is said to be a variation to the second option. The intention is to disenfranchise serious offenders upon initial conviction. The right to vote is then returned to the prisoner for the remaining portion of his/her sentence after having served a term of their

imprisonment (e.g. 5 years of the 10 year sentence). Under this option, Rule 69 of the Prison Rules (Cap.234A) is taken into consideration and any remission in accordance to good conduct or industry may be taken into account when counting the remaining number of years of the imprisonment of the prisoner concerned for his/her voting rights.

- 13. The HKBA is of the view that while the three policy options do in themselves represent a relaxation of the disenfranchisement, little reasoning or evidence has been put forward to precisely identify the objectives of disenfranchisement and why such objectives are necessary, rational and proportionate to justify disenfranchisement.
- 14. The HKBA is of the view that the Bureau must first ask what the actual grounds or policy objectives for denying prisoners the right to vote are. Second, once actual grounds or policy objectives (if any) are identified, whether those grounds or policy objectives are capable of justifying limitations the right to vote. The proper approach is to first consider if denying a constitutional right is necessary before inviting views as to how such constitutional rights should be denied.

Option One: Removal of existing Disqualification Provisions in section 53(5)(a)-(b)

15. Paras 2.11 and 2.12: These paragraphs sets out the grounds in support of abolishing the disqualification provisions and the retention of limited disqualification provisions against serious offenders. The HKBA considers these paragraphs inadequate. The Government had attempted to run similar arguments before the Court of First Instance in the *Chan Kin Sum* judicial review applications (see paragraphs 140-145 of the

Judgment). This was rejected outright by the judge on the basis that there was no evidence before him to suggest that depriving prisoners the right to vote would serve the aims of prevention of crime or to give an incentive to citizen-like conduct, or that it would help civic responsibility and respect for the rule of law. Instead, when similar arguments were run before the Supreme Court of Canada using expert evidence to substantiate such claims, the Chief Justice in *Sauvé* (above) rejected the arguments that voting is a privilege the government can suspend and that the commission of a crime is a signal that the offender has opted out of community membership. Rather, the Chief Justice opined that the argument was merely a variation on the age-old "unworthiness rationale" for denying the vote.

- 16. Further, in the case August v Electoral Commission [1999] (3) SA 1, the South African Constitutional Court declared instead that "[t]he vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts".
- 17. The HKBA accordingly takes the view that a constitutional presumption lies in favour of abolishing disqualification against prisoner voting unless there is very strong empirical or expert evidence to suggest that the local situation in Hong Kong requires the disqualification of the vote to (1) prevent crime; (2) incentivise citizen-like conduct; (3) enhance civic responsibility; and (4) foster respect for the rule of law. Otherwise, there appears to be no legitimate justification to maintain disqualification.
- 18. It is further noted that at paragraphs 146-147 of the Chan Kin Sum Judgment, the Court of First Instance made it clear that the burden lies with the Government to justify the violation of the constitutional right to vote. It has after all been stated by the Supreme Court of Canada that

"Demonstrable justification requires that the objective clearly reveal the harm that the government hopes to remedy, and that this objective remains constant throughout the justification process ... the objective 'must be accurately and precisely defined so as to provide a clear framework for evaluating its importance, and to assess the precision with which the means have been crafted to fulfil that objective".

Option Two and Option Three: Disqualification based on length of sentence and enabling prisoners to serve their last years of imprisonment to vote

- 19. Option Two and Option Three will be dealt with together. The Bureau admits in the consultation document that the two options are inter-linked and are a variation of each other.
- 20. Paras 2.13 and 2.14: These paragraphs sets out one main objective to justify the retention of disenfranchisement. It is said that the integrity of the legislature may be protected by distinguishing between "serious" offenders and "less serious offenders". The definition of a "serious" offender is a prisoner who is serving a sentence for a "sufficiently long period, for instance 10 years"; some 779 out of 5411 prisoners as of December 2008 were serving such sentences. The consultation document highlights the nature of the offences that such prisoners were convicted for, including "trafficking ofdangerous drugs, murder. manslaughter/attempted murder, robbery and rape". The Bureau takes the view that the crimes committed by these prisoners and their long sentences reflect proportionately the seriousness of their offences.
- 21. Para 2.15: This paragraph simply states that some are of the view that it may be arbitrary to disqualify based on the length of the imprisonment without stating the underlying rationale behind such views.

- 22. Paras 2.16-2.18: These paragraphs set out Option Three, which is a variation to Option Two, by namely allowing serious offenders who are serving 10 or more years of their sentence to vote in the last few years of their sentence. The objective to allow serious offenders a right to vote in their last few years aims to facilitate the rehabilitation of prisoners and their connection with the community. It is then said that Option Three strikes a balance between disqualifying serious offenders from voting and facilitating rehabilitation of prisoners.
- 23. The HKBA is of the view that the proposals in Option Two and Option Three are problematic and will result in the same arbitrariness that follows from a blanket disenfranchisement. In fact the Court of First Instance stated in the Chan Kin Sum Judgment between paragraphs 125 to 128 that "superficially, this argument has its attraction. But once one remembers that LegCo elections are not held everyday, the argument loses much of its force. As we all know, LegCo elections are held every four years. Thus depending on when one is sentenced to prison, one may or may not miss an election".
- 24. The HKBA is of the view that voting rights cannot be merely analyzed by simply drawing a bright line of "9 years good, 10 years bad". This simplified approach risks the very same arbitrariness that was struck down by the courts. Instead, one must look towards the fundamental constitutional principles underlying the right to vote, the right not to be discriminated because of any status and the right of prisoners to basic civic rights.

Definition of "Serious" Offences and Legitimate Objective

- 25. The Bureau attempts to define a "serious" offence by sentences of 10 or more years. By drawing a bright line at 10 years, it is said to avoid criticisms that the restriction is disproportionate since it only affects very few of the actual prisoner population (14% as of December 2008).
- 26. In the course of submissions in the *Chan Kin Sum* judicial review applications, the Government did in fact rely on "additional punishment" as a legitimate objective for breaching the social contract. Such additional punishment was warranted as a further deterrence of crime and also acts as sanction to reflect the severity of the crime.
- 27. In the context of Option Two and Option Three, this might be superficially attractive. Problems emerge when one starts to understand that the setting of 10 years does not treat like criminals alike.
- 28. At every level of court, different punishments are handed out at different persons for similar crimes. A drug trafficker who is a repeat offender of small volumes of drugs may receive a lower sentence than a first time offender of a large volume. A serial sex offender who does not rape may receive a lower sentence than a drunken boyfriend who forces himself on his lover. A serial robber without a weapon may receive a lower sentence than a first offender with a knife. All these crimes are "serious". But just because offenders do not receive a 10 year sentence means that they are free to vote. A serious offender such as the applicant in HCAL 83/2008 only received a 7 year sentence for armed robbery. Under the scheme discussed in Option Two and Option Three, he would be entitled to vote.
- 29. The Chan Kin Sum Judgment clearly sets out between paragraphs 125 and 128 that any restriction that is linked to the length of sentence must ensure that like prisoners be treated alike, and different prisoners be treated

- differently. Once they are not, the justification based on such a way "begins to break down".
- 30. After all, HKBORO provides under Article 6 that all persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person, and under Article 21 for the right to participate in public life, and under Article 22 for equality and protection from discrimination. Any bright-line policy must ensure that all these constitutional rights are not violated, and if violated, justified with rationally connected reasons.

Separation of Powers: the Sentencing Function of the Judiciary

- 31. On a closer inspection, the analysis above reveals that any justification for disenfranchisement on the basis of additional punishment, deterrence or sanction impinges not only on the powers of the legislature to prescribe sentences, but also on the powers of the court to sentence.
- 32. At Para 2.19, the Bureau admits that it did consider conferring sentencing discretion upon the judges but found that conferring such a right may affect the political neutrality of the court. By this admission, it is clear that Option Two and Option Three may have overstepped constitutional limits under the separation of powers between the executive, the legislature and the judiciary.
- 33. Article 80 of the Basic Law provides that the courts of the HKSAR shall exercise the <u>judicial power</u> of the Region. Judicial power, as was recognized by the Court of Final Appeal in *Lau Cheong v HKSAR* (2002) 5 HKCFAR 415, 447-449 (paragraphs 101 to 105) includes the discretionary power to sentence. Normally, the legislature will set a range of sentence

- and the judge in exercise of his discretion and considering all matters relevant, sentence accordingly.
- 34. Notwithstanding the above, the discussion in the case S v Dodo 2001 (3) SA 382 is relevant to the actual situation of the HKSAR region. The South African Constitutional Court held, when considering if the mandatory life sentence for murder was constitutional, that both the legislature and executive play a role and share an interest in the punishment to be imposed by the courts, in both regards to the nature and severity of punishment. It is in the executive's interest to ensure that law-abiding citizens are protected, with the obligation weighing particularly heavily in regard to crimes of violence against bodily integrity and increasing with the severity of the crime. It is the legislature's role to ensure that sufficiently severe penalties are imposed on dangerous criminals in order to protect society, but its powers are by nature general. Its role is not to determine each individual case. As a matter of principle, the legislature ought not to oblige the judiciary to impose a punishment that is wholly lacking in proportionality to the crime as this would undermine the rule of law and the constitutional state. Such a punishment would contravene the accused's right not to be sentenced to a punishment that was cruel, inhuman or degrading, and his right to a fair trial.
- 35. Likewise, the Court of Final Appeal in Lau Cheong was dealing with the constitutionality of the mandatory life sentence for murder. The Court emphasized that the question of the appropriate punishment for what society regards as the most serious crime was a controversial matter of policy involving different views on the moral and social issues involved. The legislature had to make a difficult collective judgment taking into account the rights of individuals as well as the interests of society. It had to strike a balance bearing in mind the conditions and needs of the society

itself, including its culture and traditions and the need to maintain public confidence in the criminal justice system. However, at paragraph 106, it was expressly stated that "However, the punishment for murder stands in a special position."

- 36. Thus the Court of Final Appeal accepted that mandatory life sentence for murder stands in a special position. For reasons of protecting the public from offenders of physical violence of the most heinous nature (intentional killing), the legislature was entitled to prescribe a mandatory penalty that left no sentencing discretion to the courts.
- 37. By proposing mandatory disenfranchisement across only a section of convicted persons, e.g. serving a term of imprisonment of 10 years or more, the Bureau runs the risk of usurping the constitutional power of the courts under Article 80 of the Basic Law to impose a punishment that is proportionate to the crime committed. The HKBA is not convinced that the power of assigning punishment of disqualification from voting belongs to the legislature. Rather such power, if intended to be exercised, rests primarily as a power integral to the sentencing function of the judiciary.
- 38. It has been recognized even at common law that the starting position for all convicted persons was merely the restriction of liberty. In Raymond v Honey [1983] 1 AC 1, the House of Lords affirmed, at p 10, that "under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication...". With Hong Kong's new constitutional order, civil and political rights such as the right to vote, can only be taken away if there are justifiable reasons.

39. The HKBA is of the view that the Bureau has failed to provide reasons or evidence that is compelling enough to warrant the disqualification of prisoners.

Conclusions

- 40. The HKBA, for the reasons set out above, prefers Option One.
- 41. The HKBA supports the Bureau's view that legislative amendments to remove the disqualification of prisoners should cover the whole spectrum of electoral laws.
- 42. The HKBA considers that the Bureau's proposed practical arrangements for prisoners to vote are reasonable. The HKBA further considers that the electoral arrangements for persons remanded in custody to vote should be worked out and implemented without delay.

Postscript

- 43. The HKBA considers that the present opportunity is an appropriate one to reconsider the entire disqualification provisions in the LCO, including those who are convicted of corruption offences and election offences, as well as disqualification against permanent residents who are listed as reservist members of armed forces.
- 44. Section 31(1)(c) of the LCO restricts any person convicted of a corruption or election related offence from registration. There appears to be no rationally connected justification to remove such persons from the register as they may still nonetheless exercise their right to vote once the statutory time-bar has lapsed.

- 45. Section 53(5)(c) of the LCO disqualifies any person convicted of a corruption or election related offence from voting. It can be inferred that corruption and election related offences are crimes related to integrity and therefore a possible legitimate objective is to preserve the integrity of the ballot and electoral system. Assuming serious offenders are disqualified under the general prisoner provision, it is difficult to see how a noncustodial sentence of a minor election offence can justifiably disqualify such a convicted person. After all, can corruption or electoral offences be distinguished from a theft offence under the Theft Ordinance (Cap.210), or a money laundering offence under the Organized and Serious Crimes Ordinance (Cap. 455), or an insider dealing offence under the Securities and Futures Ordinance (Cap.571)? For example, a person convicted of theft and received a custodial sentence of 3 years in the District Court will continue to be eligible to vote, whereas a candidate convicted of excess expenditure and sentenced to a fine, is subsequently disqualified for 3 years from the date of conviction.
- 46. The preservation of disqualification based upon corruption and election related offences are extremely problematic in light of constitutional analysis. Assuming the disqualification provisions are reformed to only disqualify prisoners serving 10 or more years of custodial sentence. It would be arbitrary that a conviction (resulting in a non-custodial sentence) for a minor electoral offence would disqualify a voter for 3 years whereas a short term custodial sentence for repeated theft would not deprive that convict of a voting right.
- 47. Section 31(1)(e) of the LCO restricts any member of any armed force in the world from registering as an elector. Section 53(5)(e) imposes the disqualification in relation to voting. Many professionals in Hong Kong who are permanent residents, or qualify for permanent residence status,

may nonetheless be listed as inactive "reservists" in their home country and are therefore, strictly speaking, disenfranchised in both geographical as well as <u>functional</u> constituencies. The HKBA is of the view that any restriction on voter registration should not be linked to any discrimination against any status.

48. While the HKBA notes that there may be legitimate national security concerns for restricting the right to vote against such persons, the HKBA considers that it is reasonably arguable that the restriction against <u>all</u> forms of membership and participation in armed forces may be a disproportionate restriction against permanent residents who are otherwise eligible to vote. There should be, built-into any reformulated legislation, exceptions to the general prohibition.

Dated 6 March 2009.

Hong Kong Bar Association

The following territories have some form of mandatory or volunteer national service: Finland, Germany, Greece, Israel, Russia, Singapore, South Korea, Turkey, United Kingdom (Territorial Army), United States (National Guard).

JUSTICE*

THE HONG KONG SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS

Chairman Ruy Barretto, S.C.

Vice Chairman Hin Lee Wong

Executive Secretary
Hay Yiu Wong

Secretary for Constitutional and Mainland Affairs,

23rd March 2009

Government Secretariat,

Lower Albert Road,

Hong Kong.

By Fax Only

(Fax: 2840 1976)

Dear Sir,

Re: Public Consultation on Prisoners' Voting Right

Enclosed herewith is JUSTICE's submissions on prisoners' voting right.

Yours sincerely

(signed)

H.Y. Wong Executive Secretary

Encl.

*incorporated with limited liability

JUSTICE's submissions on Prisoners' Voting Right

- 1. JUSTICE is in complete agreement with the Court of First Instance's decision in HCAL-79/2008, HCAL-83/2008 and HCAL-82/2008 that the right to vote is without doubt the most important political right.
- 2. JUSTICE therefore supports a complete removal of all the disqualifications from voting which necessarily includes the removal of the restrictions on prisoners from applying to be registered as a voter. JUSTICE cannot see how allowing offenders who have committed serious criminal offence to vote (which was merely an exercise of their undoubted political rights) could threaten the rule of law or somehow undermine the integrity of the legislature by taking part in electing legislators.
- 3. Since the right to vote is a fundamental political right, JUSTICE is against the idea of giving a sentencing court the power to make disqualifying order as an additional aspect of the imprisonment sentence, as this is tantamount to conferring a discretion on the judiciary to deprive a fundamental political right, not to mention imposing an unduly heavy burden on the sentencing judge.
- 4. JUSTICE is therefore against the proposal to retain the disqualification from voting provided under Section 53(5)(c) of the Legislative Council Ordinance which disqualifies any person who is or has been convicted of an offence under the Elections (Corrupt and Illegal Conduct) Ordinance, Cap. 554; against Part II of the Prevention of Bribery Ordinance, Cap. 201; or against any regulation in force under the Electoral Affairs Commission Ordinance, Cap. 541 where the election is to be held or is held within three years after the date of the conviction.
- 5. As for the practical arrangement for prisoners to exercise their voting right, JUSTICE agrees with the proposal under 3.05 of the consultation paper that for prisoners who maintain a sole or main home, and who have not yet been registered as electors before they serve their sentence of imprisonment, they may apply to be registered to the address of their sole or main home if they continued to maintain a sole or main home outside the prison, while for prisoners who have already registered as electors, their registered addresses would follow the address

of their sole or main home. For those prisoners who do not maintain a sole or main home, their last dwelling-place in Hong Kong before serving their sentence of imprisonment would be deemed to be their only or principal residence for the purpose of voter registration.

6. JUSTICE is in favour of setting up polling stations inside prisons to enable the prisoners to cast their vote, and agrees that shorter polling hours (say to end at 7:00 p.m. instead of the usual 10:30 p.m.) is justified in view of the special regime in penal institutions.

23.3.2009

17th March 2009

AS (Constitutional and Mainland Affairs) (2A) Central Government Offices 3/F, East Wing Lower Albert Road Hong Kong

Dear Madam/Sir,

Policy Options on Prisoners' Voting Rights

Regarding the ongoing consultation on the above topic, I would like to express my preference for option a) of the consultation document, i.e. the granting of full voting rights to prisoners. To be deprived of their freedom temporarily does not make people second class citizens in other respects. They remain part of our society and should be able to exercise their political rights.

Yours sincerely,

(signed)

Hans Lutz

Policy Options on Prisoners' Voting Rights

The prisoners should be allowed to exert their full voting right – that is option a) of your consultation document.

Comments:

- 1) Participating in democratic rights is a basic human right and should, as a matter of principle, not be denied.
- 2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a further punishment that shouldn't be imposed by the executive branch. If it is seen necessary as e.g. in cases of election related offenses it should be imposed by the judiciary.
- 3) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.
- 4) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

From: Mak Siu Fan Contact Address:

Date: 9 March 2009 (signed)

Dear Sir/Medan,

After carefully considering the three options put forward by the Horg Korf Government in the Consultation Document on Prisoners' Voting Right, I am of the opinion that the Option One (Removal of the existing Disqualification Provisions in suchion 53(5)(a)-(b) of the Legislative Council Ordinance) will best serve the inferents of society as a whole.

As mentioned in the Do current, there are views that express resorrations on letting all convicted persons to vote regardless of the crimes they have committed. In addition to that, there are other views that say that those persons who have committed miner offences should be allowed to vote, but those persons who have Committed serious offerers should not be allowed because by committing those crimes they have threatened the rule of law. Some people consider it as necessary to disqualify serious craiminals from voting. I personally think that there are all valid arguments, and they should be considered. However, we should also remember that no metter how serious a crime one has committed, he or she is still a part of society. People who are sitting in Jails, shorttern as well as long-term prisoners, need rehabilitation. In fact, the more serious the crime, the more rehabilitation is needed. And I think that giving convicted persons the right to rote will go a long way in helping them in their rehabilitation process. It will make then feel that they still matter. That they are part of society, and they need to telp make the society sox ibetter. It will make them feel that they can be apart of the solution, Asked of the problem. Tust because they have committed crimes in

the past, it doesn't recessarily mean that they will commit crimes again. They need society's support very much. And besides, the aim of the Hory kong government is, to rehabilitate prisoners and turn them into law-abiding citizens. The emphasis is on rehabilitation, not purishment. And if we day prisoners' the right to vote because we want to purish them for the sources crimes they have committed, then I think it is wrong, of It is wrong because our goal is to rehabilitate prisoners, not purish them.

As to the practical arrangements for prisoners to exercise their right to vote, I think it is best to set up polling stations inside prisons.

Your sincerely,

(signed)

Harman Preet

Having readed about consultation Document on prisoner's Voting right I restainly about like to draw some opinion of nine Atknown I om not a permanent ordidat of the But I myself being a prisoner I like to exposes my views for valuation for its to be heard.

Inside the broklet I come to lean that there are 3 options which a government would like to propolate for prisoneri. Omeng of than, option one wall indeed strike a feir amount of balance with equal weight for all prisoner given the fact that prisoner are also a part of Society. Once I think each one of them shall have equal right to exercise their contributionally hoting right, interpretively of what we add it.

Not to forget, just because voncera's Law committeed a serious Offerce and forth depriving their Constitutionally Voting right from them wald seem infinitely unlogical. Mu, it will retionally illustrate infairness as its promote a bias perspective attitude showing no respect and inhumanity for the interest dignity of human person. However, if a say is truth shot the peritentiary gystem is acturally for deformation and social relabilitation. Then I see no wrong on giving all prisoner a fair equal apportanities knowing a pellon call play a productive role by in some source that can half them to have improssion that they too are not a forgetten member but still a port of a society - Thick essentially can dolp build prioners to rease a better indestending with of society. Moreover, I'm of opinion that each one of them shall Love same equal right. The reason as to ale it's shall be as if oxervice it cald contradict with against the prior rule as a rule of prior clearly demonstrate that all priore shall every the same privilege or shall be treated equally and fairly regardless of what. Finally, I just hope a chance may be given to all portey.

fax faithfully

2009年3月6日

Central Government Offices 3/F, East Wing Lower Albert Road Hong Kong

Dear Sir/Ms:

I urge that Hong Kong's prisoners be given the right to vote. So doing would instill in the prisoners citizenship and a sense of belong to society. This is both a matter of basic justice and human rights, but also gives dignity and encouragement to inmates and enhances their rehabilitation. It is hard to see that it would do any harm. Please give this matter serious consideration.

Sincerely yours,

(signed)

James D. Seymour Honorary Senior Research Fellow Chinese University of Hong Kong.



THE

HONG KON

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Practitioners Affairs

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CA/09/123595

17 March 2009

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朱潔冰

Deputy Secretary General 副秘書長 Heidi K.P. Chu

Team 2

Constitutional and Mainland Affairs Bureau

Room 356, East Wing, Central Government Offices

Lower Albert Road, Hong Kong

Dear Sirs,

Re: Prisoners' Voting Right

I refer to the Bureau's Consultation Document and attach the Law Society's submissions.

Yours sincerely,

(signed)

Jdyce Wong Director of Practitioners Affairs e-mail:

Encl.



PRISONERS' VOTING RIGHT

The Law Society of Hong Kong has reviewed the Consultation Paper published by the Constitutional and Mainland Affairs Bureau and makes the following submissions:

1. Policy Options on Prisoners' Right to be Registered as Electors

The Law Society agrees with the proposal to remove the disqualification of prisoners from applying to be registered voters.

2. Policy Options on Prisoners' Voting Right

- (a) Option One is to remove the existing disqualification provisions in section 53(5)(a)-(b). The disqualification of persons convicted of election-related or bribery offences from voting under section 53(5)(c) will remain.
- (b) Option Two is to disqualify prisoners from voting if they are serving a sentence of imprisonment for a sufficiently long period (say, 10 years or over). The right to vote would resume upon completion of sentence and release from imprisonment.
- (c) Option Three is to disqualify prisoners from voting if they are serving a sentence of imprisonment for a sufficiently long period (say, 10 years or over) while enabling them to resume the right to vote when they are serving the last few years of imprisonment (say, last five years).

The Law Society: In the development of universal franchise, the goal was to allow all persons to vote, irrespective of their sex, race, social status, criminal record, etc.

The other area is the evolution of the jurisprudence related to theories behind the reason for and the type of punishment for crimes. It is submitted that an enlightened view would hold that all prisoners have basic rights, including the right to vote, no matter how serious their crimes. It is also in society's interests to have all persons express their views and vote in regard to government policies and the persons chosen to participate in the governance of society. A person who murders, or burglars, or commits a serious sex offence, or has been convicted of bribery, etc. can still rationally consider and decide on political options that all citizens face in the voting booth.

In regard to basic principles of human rights, any proposal to allow exceptions in regard to the exercise of rights (any rights) of any group of persons, that the door opens widely to allow others to advocate the further chipping away of those rights.

The Law Society does not agree with the three policy Options and considers it inappropriate to impose any restriction on voting against prisoners given the importance of the political right which is guaranteed under Article 26 of the Basic Law.

3. Practical Arrangements for Prisoners to Vote

Registered Address of Eligible Prisoners as Electors

- (a) For prisoners who have not yet been registered as electors before they serve their sentence of imprisonment, they may apply to be registered to the address of their home if they continue to maintain a sole or main home outside the prison.
- (b) For prisoners who have already been registered as electors before they serve their sentence of imprisonment, their registered addresses would follow the address of their sole or main home.
- (c) For registered and non-registered prisoners who no longer maintain any sole or main home outside the prison, their last dwelling-place in Hong Kong at which they resided before serving their sentence of imprisonment would be deemed to be their only or principal residence in Hong Kong for the purpose of voter registration.

Canvassing for Votes

- (d) Prisoners may receive electoral documents and election advertisements sent by post.
- (e) Prisoners may have access to the election-related information covered by the mass media such as newspapers, radio and television.

Practical Arrangements

- (f) To arrange mobile polling stations to visit prisons with eligible electors or to set up polling stations inside prisons.
- (g) To consider reasonable limitation on the polling hours for prisoners (e.g. up to 5:00 pm), and to regulate the flow of prisoners in the polling stations.

Electoral Arrangements for Remanded Unconvicted Persons

(h) To work out arrangements for remanded unconvicted persons to cast their votes which would be similar to those for prisoners.

Law Society: The Law Society agrees with the proposals listed in paragraphs (a) to (h) above.

Counting Arrangements

(i) Depending on the actual polling arrangement to be adopted, the EAC would need to work out the counting arrangements, including the arrangements for transferring the ballot papers to the relevant counting stations, to be mixed with other ballot papers to ensure the secrecy of votes, etc.

Law Society: Noted.

The Law Society of Hong Kong 17 March 2009 122942

有关在B人は投票権の建議

本人是一位在旧人士, 被判敛生猛蛛, Nio. 。本人对有关在四人七四投票摧毁均有从下意见。

本人以为, 投票機具有置疑是最全等的政治權利, 亦是最生本的人權。本人至法返对任何人, 机構式政府对在因入土投票權加以無理的限制, 無高是一般的市民或是在因人土的權益都為該每到《基本法》及以及推議》的保護。在因人土被判監禁已经得到了為有的總獨, 如再在投票權上加以任何無理的限制, 就等被对在囚人土的額外總獨。因此本人要求政府立刻,撤陷对在囚人土的額外總獨。因此本人要求政府立刻,撤陷对在囚人土均額外總獨。因此本人要求政府立刻,撤陷了在囚人土投票權的限制, 新还一切為有的權利, 並作出每美好排本本的投票。

專此弘達,並張回震。

(署名來函)

2009年3月1日

(編者註:來信人要求以不具名方式公開)

致: 先生/文士

知悉貴局現正進行有関在囚人士投票權作公開諮詢 ,收集公報的意見。而本人正是70年代在港土生土長 的社會的一方子,自覺有義務和盡公民責任對社會事 務(包括是次在囚入士投票權的諮詢)作出積極性的建議。

證詢文件指出法庭於2008年12月8日就三宗司法覆核個案作出裁決,就現行對在囚入士的投票權和登記成為選民的權利作出普遍,自動私劃一的限制,根據相稱的原則(防施加的限制應與施加該項限制以求達到的方法目的相稱),並無理據可言。

戴於立法會得例第31(1)(a)至(b)傑及第53(5)(a)至(b)傑 , 達反基本法第26傑和載於香港人權法案條例第383章 第8條的香港人權法案第21條所保證的憲制投票權。

對於在囚入土登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01 設所建議在囚入土投票權的政策方案,包括(a)(b)(c)段都不能接受。

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另一方面,根據立法會條例第53(5)(c)條規定,被裁定干犯與選舉有関的罪行或賄賂罪行的人士在被定罪後三年內將喪失投票的資格以維持立法機関持正不阿。然而是次有関的司法羅核個穿未有涵蓋此項規定。但這項規定無疑是對在囚人士作為監禁之外的一種附加懲罰,月樣有達基本法第26條私者港人權法案第21條的規定。

因此本人認為應擇用奧地制,瑞典,瑞士,丹麥, 爱爾蘭,冰島,芳蘭,加拿大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加任何形式 的限制,並反對由行政,立法,司法等機関芝同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明它在囚人士喪失部方或一切的投票 權,及以利期的長延,干犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導致社會大 報對在囚人士產生歧視,偏見及擇籤效應的問題出現

監獄作為社會的一種鎮壓及懲治的國家機器,其主自除施行懲罰,亦有義務協助在日入士更新。依據人本主義理念,准予干犯輕微罪行的在日入士和所謂嚴重危害法治而被定罪的重犯一律有權參與選出立法人員方能更好地彰顯以及維持立法機関持正不阿的形象。這既有助鼓勵在日入土通過參與社會事務而提升公民責任意識,月時也加強在日入土窑入社會履行天賦的公民義務處。

尺對在日人士的選民登記資格和投票權施加在何形式的制約,致徒在日人士作為一個人與其他的社會成 資和團体及整体社會系統之間的互動出現單內與封閉 現象,都足以反影我們的社會出現民主倒退,這無疑 是對者港作為一個先進城市的極大諷刺,有礙社會的 均衡發展。

另一方面,干犯輕微罪行的在囚人士和所謂嚴重危憲法治而被定罪的重犯已受到社會的法律制裁。立法機関不應假設在囚入士方後所作出的個人行為仍會及持續對社會造成危害或鱼面的情況出現而對在囚人士施加監禁之外的附加懲罰,這都是沒有理據可支持的

至於气道格成為選民的在囚人士登記地址的實務安排。本人支持採用以下方案的模式。

- (1)以入狱服刑前尚未登記為選民或入狱服刑前已登記 為選民的在囚入士,他們的唯一或主要的家居地址 作為選民登記地址。
- (2)从監獄的地址作為在囚入士唯一或主要的選民登記地址。

拉票法動,非人傾向支持採用加拿大的做法,在投票日前便選入可獲准遊入監獄作拉票法動。在日人士可联絡便選入或政黨取得選區便選入資料。懲教院所联絡員收到便選人名單後須在院份內多處額眼地方張貼。

P. (3)

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而在日人士投票的實務安排,丰人反對以郵遞方	
投票或委派他人代為投票的做法。因為在四人士收	级
化何郵遞都必須經由懲教院湖職員收極才能寄出和	
收, 過程之中極大可能產生投票保密的問題出現。	
	弑
或在監獄內設立投票站都是最后遍理想的做法。月	
<u> </u>	
入設有投票站的懲教院所監察選舉投票的過程。得	
在囚人士可在保密和不被孔祠直接或周接,有形或	無
形的語言和非語言的干擾或恫嚇之下親手将選票投	
要箱內進行投票。以確保整個選舉投票在公平,公	正
, 公開的情況之下進行。此沒排月樣適用於遭羁押	但
未被定罪人士的投票安排。	•
最後點覃宏排應由選舉管理委員會來制定可行的	操
作方案,包括安排教送選票到相関點票站,與其他	選
要混气,以確保投票得密等措施。	
	入
土查閱。但不反對當局參與的其他討論或其後發表	的
報告(不論有限制地或公開發表),或會提及為回應認	 詢
文件而提交的意見。	
— (署名來函) <u>————————————————————————————————————</u>	
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(編者註:來信人要求以不具名方式公開)	
<u> </u>	·
GA 0665 P. (4)	••

是查看到正進行有關在囚人主投票權作公開設詢,收集公眾的意見。而孝人正是 60年代在 這七生土民的社會的一分子,自覺有義務和蓋公民責任對社會事務(包括是汉在囚人主投票權的證 詢)作出樣極性的建計。

證詢文件指出法施於2008年12月8日就正完司法覆接個案作出裁決,就銀行對在同人工的投票權知登記成為選民的權利作出書戶,自動和劃一的限制、根據相稱的原則(所施加的限制施與施加該項限制以利達到的合法目的相稱),並延建據可言。

截於立法會條例第31(1)(a)至(b)條及第53(5)(a)至(b)條,違反基本法第26條和截於香港人權法案條例第383章第8條的喬港人權法案第21條所保證的電制投票權。

對於在日人工登記的選民的權利及投票權,专人認為證詢文件第21頁第五章5.01段 例建議在日人工投票權的政策方案,包格(a)(b)(c)段都不能接受。

本人認為如支持應全面飲滿在日人土電火投票權資格的限制。以維護基本法第26份和電港人工整法案第21條的立法精神不規定。不應維持某些的調合理和實質。這反某本法的限制。而進于在日人土置記為選民和有投票、推复作為一個銀代文明,民主自由社會戰爭總件成員不可劃缺的一項基本而不可能等的公民、推制與義務。

另一方面,根據立法會條例第53(5)(c)條規定,被裁定千犯與選舉自關的罪行或期點罪行的人工在被定罪後已年內將喪失投案的資格以維持立法機関持正系阿。然而是次有關的司法發按個案未有這風蓋此項規定。但這項規定無疑是對在囚入土作為監禁之外的一種附加燃罰。同樣有選等本法第26條和意港人權法案第21條的規定。

国此本人認為應採用奧地利,瑞典、諾士、丹麥、愛爾蘭、冰岛、芬蘭、加拿大、日本、商业,及以色列等国家的做法,不對在囚人士的投票權物,加任何的或的限制,並及對由行政,立法,司法等機關共同對在囚人士的投票權制定限制和設置障礙。例如進行立法,就予法庭判刑的明令在囚人士東史部分或一切的投票,權,及从刑期的意义, 千犯輕微罪行或的講覧全危害法治的重點,任為評定在囚人士投票權的限制。因為此等做法會造成社會的不平等,並極人可能導至社會大眾對社囚人士產生歧視,偏見及標籤,效應的問題出現」。

監獄作為社會的一種鎮壓及懲品的國家機器,其主旨除施行懲罰,亦有義務協助在因人土受新。依據人本主義理念,准予平別輕微罪何的在囚人土和例請嚴重為電法盜面被定罪的重配一律有權參與選出主法人員方能更好地數顯从及維持主法機関持正不阿的刑象。這既自助鼓勵在囚人土通過參與社會華務而提升公局責任意識,同時也加強在囚人土爱入社会履行灭賦的公民義務感。

月對在日人士的選民童記員提和投票權施加任何形式的制約,致使在日人士 作為一個人與其化的社會成員和團件及整体社會系統之間的互動出現。單句與封 閉現象,都足以反影我們的社會出現,民主倒退,這無疑是對意港作為一個光遊城市 的极大温烈,有礙社會的闷惭者居. 另一方面,不犯輕微罪行的在囚人土和所謂嚴重危害法治而被定罪的重犯已受 到社会的法律制裁。立法機関不應假設在囚人上个後所作出的個人行為仍會及持續 對社會造成危害或負面的情况出现而對在四人士的加監禁之外的附加懲罰、後都是 没有维操可支持的。 至然会资格成為選民的在四人土置記地北的貧務安排。本人支持採用以个 为家的模式。 (1)从入战服刑前尚未辈記為選民或入狱服刑前己墅記為選民的在囚人土,他 們的唯一或主要的家屋地址作為選民登記地址。 (2)从整絃的地址作為在国人土唯一或主要的選民堂記地址。 拉案活動, 本人傾向支持 採用加拿大的 做法, 在投票日前侵運人可獲难進 入整粒作拉索法的。在四人工可软给便遇人或政案取得理庭使選人資料。您教 院的联络員收到侵遇人名單後領在院所內多處顯眼地方張駐。

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一种在国人生投票的實務安排,专人反對以郵遞方式投票或委派他人代為投
一系明版法。自府在国人土收餐任何郵源都必须好有繁教院的職員以給了能
到出来接收, 胸椎之中拖大了能產生投票保密的問題出現。
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机防电烙法 红 超 3 数 加 18 4 4 6 2 12 13 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
相反定排流動投票站前在那些有合置提進民的監獄或在監獄內設
主投票站都是最合通程想的做法。同時亦必須准許後選人, 選舉代程人
<u>一一一年来双条代战人</u> 進入沒有投条站的懲殺 医研酷婴 連樂 招會 的 19.49
体降在内人工可在保密和系被任何自接或關係 有效式疑识的经子私比较
一意图了搜查顺哪戶不翻台灣學教授入學籍以後代投票 八位海水的恐惧
投票在公平、公正、公開的情况文个進行。此安排同樣通用旅遊新押但未
被定罪人生的投票安排。
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教授點案安排應力運導管理委員會來制定可們的操作占案、包括安排移送選案到租関點票站, 與其他選案混合, 从確保投票保密等措施。
一排粉这选条到相関影索站, 哭息他選案混合, 从维保投票保密等措施。
這份回應證詢文件,本人不願意公開姓名供公眾人士查閱。但不反對當局勞與的某他討論或其後發表的報告(不論有限制地或公開發表),或會提及為回應語
的其他計論或其後發表的報告(不斷為限制以前公園程表)不為超了物人物
到文件和提支的意息。
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(編者註:來信人要求以不具名方式公開)
<u> </u>
P.(4)

致: 先生/文士

少悉貴局現正進行有関在囚人士投票權作公開諮詢 ,收基公眾的意見。而本人正是60年代在港土生土長 的社會的一方子,自覺有義務私盡公民責任對社會事 務(包括是次在囚入士投票權的諮詢)作出積極性的建議

證詢文件指出法庭於2008年12月8日就三家司法覆 核個審作出裁決,就現行對在囚入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的厚則(分施加的限制應與施加該項限制以求建到 的会法目的相稱),並無理據可言。

載於立法會得例第31(1)(a)至(b)條及第53(5)(a)至(b)條 ,達反基本法第26條私載於香港入權法案條例第383章 第8條的香港入權法案第21條所保證的憲制投票權。

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本人認為並支持應至面取消在囚入士麥失投票權置 格的限制。从維護基本法第26條私务港入權法案第21條 的立法精神及規定。不應維持基些所謂言理而實實達 又基本法的限制。而准予在囚入士登記為選民私有投 案權是作為一個現代,文明,民主自由社會賦予總体 成員不可劃缺的一項基本而不可被奪的公民權利與義 務。 另一方面,根據立法會條例第53(5)(c)條規定,被裁 定于犯與選舉有関的罪行或賄賂罪行的人士在被定罪 後三年內將衰失投票的資格以維持立法機関持正不阿 。然而是次有関的司法覆核個穿未有涵蓋此項規定。 但這項規定無疑是對在囚人士作為監禁之外的一種附 加懲罰,月樣有達基本法第26條私者港人權法案第21 條的規定。

因此本人認為應擇用奧地制,瑞典,瑞士,丹麥, 愛爾蘭,冰島,芳蘭,加拿大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加任何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明它在囚人士喪失部方或一切的投票 權,及以利期的長延,千犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 報對在囚人士產生歧視,偏見及標籤效應的問題出現

監獄作為社會的一種鎮壓及懲治的國家機器,其主 員際施行懲罰,并有義務協助在日入土更新。依據入 本主義理念,准予干犯輕微罪行的在日入土和所謂嚴 重危害法治而被定罪的重犯一律有權參與選出之法入 員方能更好地彰顯以及維持立法機関持正不阿的形象 。這既有助鼓勵在日入土通過參與社會事務而提升公 民責任意識,月時也加強在日入土宪入社會履行天賦 的公民義務感。 尺對在日人士的選民登記置热和投票權施加让何形式的制約,致徒在日人士作為一個人與其他的社會成員和團体及整体社會系統之間的互動出現單內與封閉現象,都足以反影我們的社會出現民主倒退,這無疑是對者港作為一個先進城市的極大調剌, 有礙社會的均衡發展。

另一方面, 干犯輕微罪行的在日人士和汾謂嚴重危 憲法治而被定罪的重犯已受到社會的法律制裁。立法 機関不應假設在日人士方後所作出的旧人行為仍會及 持續對社會造成危害或負面的情況出現而對在日人士 施加監禁之外的附加證罰, 這都是沒有理據可支持的

至於气道热成為選民的在四人士登記地址的電務安排。本人支持採用以下方案的模式。

- (2)从監獄的地址作為在囚人士唯一或主要的選民登記 地址。

拉罗法動, 孝人順內支持採用加拿大的做法, 在投 單日前便選入可獲准進入監獄作拉要法動。在日入士 可联絡候選入或政黨取得選區便選入道料。 營教院所 联絡員收到便選人名單後須在院所內多處顯眼地方張 貼。

而在囚入士投票的電務沒排,走入反對从郵遞方式
投事或委派他人代為投票的做法。因為在日人士收發
任何郵遞都必須經由懲教院湖職員收檢才能寄出私接
收,過程之中極大可能產生投票保密的問題出現。
相反安排流動投票站削往那些有台资格選民的監獄
或在監獄內設立投票站都是最后邁理想的做法。同時
<u> </u>
入設有投票站的懲教院外監察選舉投票的過程。保障
在旧人士可在保密和不被任何直接或間接,有形或無
形的語言和非語言的干擾或明樹之下親手將選票投入
要箱內遊行投票。从確保整個選舉投票在公平,公正
, 云開的情況之下進行。此沒排月樣適用於遭羁押但
<u>未被定罪人士的投票</u> 安排。
最後點要沒排應由選舉管理委員有來制定可行的操
作为案,包括安排移送選票到相関點票站,與其他選
要混台,从確保投票得密等措施。
這伤回應誤詢文件, 本人不願意云開始名供公安人
土查閱。但不反對當局參與的其他討論或其後發表的
報告(不論有限制地或公開發表),或會提及為回應認詢
文件而提支的意見。
(署名來函)
(編者註:來信人要求以不具名方式公開)

致: 先生/文士

知悉貴局現正進行有関在囚人士投票權作公開諮詢 ,收集公眾的意見。而本人正是20年代在港土生土長 的社會的一分子,自覺有義務私盡公民責任對社會事 務(包括是次在囚入士投票權的諮詢)作出積極性的建議

證詢文件指出法庭於2008年12月8日就三宗司法覆核個審作出裁決,就現行對在囚人士的投票權和登記成為選民的權利作出普遍,自動私劃一的限制,根據相稱的原則(所施加的限制應與施加該項限制从求達到的台法目的相稱),並無理據可言。

载於立法會條例第31(1)(a)至(b)條及第53(5)(a)至(b)條, 建反基本法第26條私載於者港入權法案條例第383章 第8條的者港入權法案第21條所保證的憲制投票權。

對於在囚入土登記為選民的權利及投票權,本人認為 為 說詢文件第21 頁第五章 5.01 設所建議在囚入土投票 權的政策方案,包括(a)(b)(c) 設都不能接受。

本人認為並支持應至面取消在囚入土衰失投票權資格的限制。从維護基本法第26條私者港入權法案第21條的立法精神及規定。不應維持基些所謂言理而實實達及基本法的限制。而准于在囚入土登記為選民和有投票權是作為一個現代,文明,民主自由社會賦予總体成員不可劃缺的一項基本而不可擔奪的公民權利與義務。

另一方面,根據立法有條例第53(5)(c)條規定,被裁定于犯與選舉有関的罪行或賄賂罪行的人士在被定罪後三年內將喪失投票的資格以維持立法機関持正不阿。然而是次有関的司法覆核個案未有涵蓋此項規定。但這項規定無疑是對在囚人士作為監禁之外的一種附加懲罰,月樣有達基本法第26條私者港人權法案第21條的規定。

因此本人認為應採用奧地利,瑞典,瑞士,丹達, 愛爾蘭,冰島,芳蘭,加拿大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加於何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明它在囚人士喪失部分或一切的投票 權,及以刑期的長延,干犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投異權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 報對在囚人士產生歧視,偏見及標籤效應的問題出現

只對在四人士的選民登記資格和投票權施加化何形式的制約,致使在四人士作為一個人與其他的社會成 資新團体及整体社會系統之間的互動出現單內與封閉 現象,都足以反影我們的社會出現民主倒退,這無疑 是對香港作為一個先進城市的極大調剌, 有礙社會的均衡發展。

另一方面,干犯輕微罪行的在日人士和所謂嚴重危憲法治而被定罪的重犯已受到社會的法律制裁。立法機關不應假設在日人士方後所作出的個人行為仍會及持續對社會造成危害或負面的情況出現而對在日人士施加監禁之外的附加懲罰,這都是沒有理據可支持的

至於气道热成為選民的在囚入土登記地址的實務安排。本入支持採用以下方案的模式。

- (1)以入試服刑前尚未登記為選民或入獄服刑前已登記 — 為選民的在囚入士,他們的唯一或主要的家居地址 作為選民登記地址。
- (2)从監獄的地址作為在囚入士唯一或主要的選民登記地址。

按票法動, 孝人傾向支持採用加拿大的做法, 在投票日前使選入可獲准進入監獄作拉票法動。在日人士可联絡使選入或政黨取得選區使選入道料。 營教院分联絡員收到使選人名單後須在院汾內多處顯眼地方張貼。

而在囚人士投票的實務沒排,主人反對从郵號方式
投事或委派他人代為投票的收法。因為在日人士收發
任何郵遞都必須經由懲教院強職員收檢才能寄出和接
收,過程之中極大可能產生投票保密的問題出現。
相反沒排流動投票站前往那些有旨資格選民的監獄
或在監獄內設立投票站都是最后通理想的做法。同時
<u> </u>
入設有投票站的懲数院所監察選舉投票的過程。保障
在囚人士可在译密和不被任何直接或関接,有形或無
形的語言和非語言的干擾或例構之下親手將選票投入
票箱內進行投票。从確保整個選舉投票在公平,公正
, 云開的情況之下進行。此沒排月樣適用於遭羈押但
未被定罪人士的投票安排。
最後點要沒排應由選舉管理委員會來制定可行的撰
作为案,包括安排移送選案到相関點票站,與其他選
粟混气,从確保投票译冠等措施。
這伤回應語詢文件,本人不顧意公開姓名供公眾人
土查閱。但不反對當局參與的其他討論或其後發表的
数告(不論有限制地或公開發表),或會提及為回應諮詢
文件而提交的意見。
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政制及內地事務局(第2組)

致:先生/文士

契悉貴局現正進行有関在囚人士投票權作公開諮詢 ,收集公銀的意見。而本人正是60年代在港土生土長 的社會的一分子,自覺有義務和盡公民責任對社會事 務(包括是次在囚入士投票權的證詢)作出積極性的建議

證詢文件指出法庭於2008年12月8日就三宗司法覆核個案作出裁決,就現行對在日之士的投票權和登記成為選民的權利作出普遍,自動私劃一的限制,根據相稱的原則(所施加的限制應與施加該項限制以求達到的言法目的相稱),並無理據可言。

载於立法會得例第31(1)(a)至(b)條及第53(5)(a)至(b)條 , 達反基本法第26條私載於者港入權法案條例第383章 第8條的者港入權法案第21條所保證的憲制投票權。

對於在囚入土登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01段所建議在囚入土投票 權的政策为案,包括(a)(b)(c)段都不能接受。

本人認為並支持應至面取消在囚入土衰失投票權資格的限制。从維護基本法第26條私者港入權法軍第21條的立法精神及規定。不應維持基些所謂言理而實資達及基本法的限制。而准予在囚入土登記為選民私有投票權是作為一個現代,文明,民主自由社會賦予總体成員不可劃缺的一項基本而不可擔奪的公民權制與義務。

另一方面,根據立法者條例第53(5)(c)條規定,被裁定干犯與選舉有関的罪行或賄賂罪行的人士在被定罪後三年內將喪失投票的資格以維持立法機関持正不阿。然而是次有関的司法覆核個軍未有涵蓋此項規定。但這項規定無疑是對在囚人士作為監禁之外的一種附加懲罰,月樣有達基本法第26條私者港人權法案第21條的規定。

因此本人認為應择用奧地制,瑞典,瑞士,丹麥, 愛爾蘭,冰島,芳蘭,加拿大,日本,南非及以色列 等國家的做法,不對在日人士的投票權施加任何形式 的限制,並及對由行政,立法,司法等機関共同對在 日人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明乞在日人士喪失部方或一切的投票 權,及以利期的長短,千犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在日人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 舞對在日人士產生歧視,滿見及擇籤效應的問題出現

尺對在日人士的選民登記置热和投票權施加让何形式的制約,致使在日人士作為一個人與其他的社會成 員和團体及整体社會系統之間的互動出現單句與封閉 現象,都足以反影我們的社會出現民主倒退,這無疑 是對者港作為一個先進城节的極大諷刺,有礙社會的 均衡發展。

另一方面, 干犯輕微罪行的在日人士和汾謂嚴重危 憲法治而被定罪的重犯已受到社會的法律制裁。立法 機関不應假設在日人士方後汾作出的個人行為仍會及 持續對社會造成危害或負面的情況出現而對在日人士 施办監禁之外的附加懲罰, 這都是沒有理據可支持的

至於气道热成為選民的在囚人士登記地址的實務安排。本人支持採用以下为雾的模式。

- (1)以入獄服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚入士,他們的唯一或主要的家庭地址 作為選民登記地址。
- (2)从監獄的地址作為在囚人士唯一或主要的選民登記地址。

按票法動, 孝人順內支持採用加拿大的做法, 在投票日前後選入可獲准進入監獄作拉票法動。在日人士可联絡候選入或政黨取得選區後選入資料。 遊教院所联絡員收到後選人名單後須在院所內多處額眼地方張 此。

而在囚人士投票的實務沒排,丰人反對从欽逸方式	赵
投票或委派他人代為投票的放法。因為在四人士收入	
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收,過程之中極大可能產生投票保密的問題出現。	
相反沒排流動投票站前往那些有旨資格選民的監	狱
或在監獄內設立投票站都是最后通理想的做法。月	
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在囚人士可在保密和不被沿河直接或間接,有形或	
形的語言和非語言的干擾或明嚇之下親手將選票投	
要箱內進行投票。以確保整個選舉投票在公平, 公	
, 去開的情況之下進行。此沒排月樣邁用於遭羈押	
未被定罪人士的投票安排。	
最後點軍沒排應由選舉管理委員有來制定可行的	拇_
作为案,包括安排教送選票到相関點票站,與其他	建
霁混气,从確保投票保密等措施。	-,-,-
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文件而提交的意見。	
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(編者註:來信人要求以不具名方式公開)	

致:先生/文士

知悉貴局現正進行有関在囚入士投票權作公開諮詢 ,收集公銀的意見。而本人正是50年代在港土生土長 的社會的一分子,自覺有義務私盡公民責任對社會事 務(包括是次在囚入士投票權的諮詢)作出積極性的建議

證詢文件指出法庭於2008年12月8日就三宗司法覆 核個審作出裁決,就現行對在囚之士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的厚則(所施加的限制應與施加該項限制以求建到 的会法目的相稱),並無理據可言。

载於立法會條例第31(1)(a)至(b)條及第53(5)(a)至(b)條, 達反基本法第26條私載於香港入權法案條例第383章 第8條的香港入權法案第21條所保證的憲制投票權。

對於在囚入土登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01段所建議在囚入土投票權的政策方案,包括(a)(b)(c)段都不能接受。

另一方面,根據立法會條例第53(5)(c)條規定,被裁 定干犯與選舉有関的罪行或賄賂罪行的人士在被定罪 該三年內將衰失投票的資格以維持立法機関持正不阿 。然而是次有関的司法覆核個案未有涵蓋此項規定。 但這項規定無疑是對在囚人士作為監禁之外的一種附 加懲罰,月樣有達基本法第26條私者港人權法案第21 條的規定。

因此本人認為應採用奧地制,瑞典,瑞士,丹麥, 愛爾蘭,冰岛,芳蘭,加拿大,日本,南非及从色列 等國家的做法,不對在囚人士的投票權施加於何形式 的限制,並反對由行政,立法,司法等機関共同對在 因人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判利時明を在囚人士喪失部方或一切的投票 權,及从利期的長短,千犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 報對在囚人士產生歧視,備見及擇籤效應的問題出現

凡對在囚人士的選民登記道統和投票機施加让何形式的制約,致徒在囚入士作為一個入與其他的社會成員和團体及整体社會系統之間的互動出現單內與封閉現象,都足以反影我們的社會出現民主倒退,這無疑是對香港作為一個先進城市的極大調剌,有礙社會的均衡發展。

另一方面, 干犯輕微罪行的在日人士和汾謂嚴重危 憲法治面被定罪的重犯已受到社會的法律制裁。立法 機関不應假設在日人士方後汾作出的個人行為仍會及 持續對社會造成危害或負面的情況出現而對在日人士 施加監禁之外的附加懲罰, 這都是沒有理據可支持的

至於台資格成為選民的在四人士登記地址的實務安排。本人支持採用以下方案的模式。

- (2)从監獄的地址作為在囚人士唯一或主要的選民登記地址。

拉罗法動,孝人傾內支持採用加拿大的做法,在投票日前便選入可獲准進入監獄作拉罗法動。在日人士可联絡候選入或政黨取得選區便選入資料。懲教院所联絡員收到便選人名單後須在院所內多處額眼地方張此。

而在囚入士投票的實務安排,丰入反對从郵遞方式
投事或委派他人代為投票的做法。因為在囚人士收發
在何郵遞都必須經由懲教院強職員收極才能寄出和接
收,過程之中極大可能產生投票保密的問題出現。
相反安排流動投票站前往那些有台資格選民的監獄
或在監獄內設立投票站都是最后邁理想的做法。月時
<u> </u>
入設有投票站的營教院所監察選舉投票的過程。保障
在四人士可在译密和不被任何直接或閱接,有形或無
形的語言和非語言的干擾或明樹之下親手將選票投入
要箱內進行投票。 从確保整個選舉投票在公平, 公正
, 云開的情況之下進行。此安排月樣適用於遭羈押但
未被定罪之士的投票安排·
最後點要沒排應由選舉管理委員會來制定可行的操
作方案,包括安排移送選案到相関點案站,與其他選
要混岩,从確保投票得選等措施。
這份四應誤詢文件,本人不顧意公開姓名供公銀人
土查閱。但不反對當局參與的其他討論或其後發表的
数告(不論有限制地或云開發表),或會提及為回應諮詢
_ 文件而提交的意見。
(署名來函)
(編者註:來信人要求以不具名方式公開)

致:先生/文士

證詢文科指出法庭於2008年12月8日就三宗司法覆 核個宰作出裁決,就現行對在日入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的原則(所施加的限制應與施加該項限制以求達到 的言法目的相稱),並無理據可言。

载於立法會條例第31(1)(a)至(b)條及第53(5)(a)至(b)條 , 違反基本法第26條私載於香港入權法案條例第383章 第8條的香港入權法案第21條所保證的憲制投票權。

對於在囚入土登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01 段所建議在囚入土投票權的政策为案,包括(a)(b)(c)段都不能接受。

本人認為並支持應生面取消在囚入土衰失投票權資格的限制。从維護基本法第26條私者港入權法率第21條的立法精神及規定。不應維持基些所謂言理而實資達及基本法的限制。而准于在囚入土登記為選民私有投票權是作為一個現代,文明,民主自由社會賦予總体成員不可劃缺的一項基本而不可檢奪的公民權利與義務。

另一方面,根據立法會條例第53(5)(c)條規定,被裁定干犯與選舉有閱的罪行或賄賂罪行的人士在被定罪後三年內將衰失投票的資格以維持立法機閱持正不阿。然而是次有閱的司法覆核個军未有涵蓋此項規定。但這項規定無疑是對在囚人士作為監禁之外的一種附加懲罰,月樣有達基本法第26條私者港人權法案第21條的規定。

因此本人認為應採用與地利,瑞典,瑞士,丹麥, 愛爾蘭,冰島,芳蘭,加寧大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加任何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明宣在囚人士喪失部方或一切的投票 權,及从刑期的長延,干犯輕微罪行或所謂嚴重危害 法沒的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能等至社會大 獨對在囚人士產生歧視,備見及擇籤效應的問題出現

整獄作為社會的一種鎭壓及懲治的國家機器,其主 自除施行懲罰,亦有義務協助在日入土更新。依據入 本主義理念,准予干犯輕微罪行的在日入土和所謂嚴 重危害法治而被定罪的重犯一律有權參與選出之法入 員方能更好地彰顯以及維持立法機関持正不阿的形象 。这既有助鼓勵在日入土通過參與社會事務而提升公 民責任意識,月時也加強在日入土宪入社會履行天賦 的公民義務感。 凡對在日人士的選民登記置統和投票權施加從何形式的制約,致使在日人士作為一個人與其他的社會成員和團体及整体社會系統之間的至動出現單內與封閉現象,都足以反影我們的社會出現民主倒退,這無疑是對香港作為一個先進城市的極大調剌,有礙社會的均衡發展。

另一方面, 千犯輕微罪行的在囚人士和所謂嚴重危 憲法治而被定罪的重犯已受到社會的法律制裁。立法 機関不應假設在囚人士方後所作出的個人行為仍會及 持續對社會造成危害或負面的情況出現而對在囚人士 施加監禁之外的附加懲罰, 這都是沒有理據可支持的

至於气道格成為選民的在四人士登記地址的宣務安排。本人支持採用以下方案的模式。

- (1)以入狱服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚入士,他們的唯一或主要的家居地址 作為選民登記地址。
- (2)以監獄的地址作為在囚入士唯一或主要的選民登記地址。

拉舞法動,非人傾向支持採用加拿大的做法,在投棄日前候選入可獲准進入監獄作拉專法動。在日人士可联絡候選入或政黨取得選區後選入資料。潛教院所联絡員收到後選人名單後須在院所內多處顯眼地方張貼。

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而在囚入士投票的實務沒排,丰入反對从郵遞方式			
投事或委派他人代為投票的做法。因為在日人士收發			
社村郵遞都必須經由懲教院朔職員收極才能寄出和接			
收,過程之中極大可能產生投票保密的問題出現。			
相反安排流動投票站削往那些有台資格選民的監獄	<u>_</u>		
或在監獄內設立投票站都是最后邁理想的做法。同時			
<u> </u>			
入設有投票站的懲教院外監察選舉投票的過程。保障			
在囚人士可在保密和不被任何直接或間接,有形或無			
形的語言和非語言的干擾或明樹之下親手將選票投入			
要箱內進行投票。从確保整個選舉投票在公平,公正			
,云開的情況之下進行。此安排月樣邁用於遭羁押但			
未被定罪入土的投票安排。			
最後點要安排應由選舉管理委員會來制定可行的撥			
作为案,包括安排移送選票到相関點票站,與其他選	<u>,</u>		
要混包,从確保投票保密等措施。			
造伤回應認詢文件,走人不顧意公開姓名供公銀人			
土查閱。但不反對當局參與的其他討論或其後發表的			
数告(不論有限制地或云開發表),或膏提及為回應認該			
文件而提交的意見。			
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(署名來函)			
Albeit Harry Cl. Lord and Co. S. Hard and Mark			

致: 先生/文士

證詢文件指出法庭於2008年仅月8日就三宗司法覆 核個譯作出裁決,就現行對在囚入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的原則(所施加的限制應與施加該項限制以求達到 的言法目的相稱),並無理據可言。

對於在囚入土登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01 設所建議在囚入土投票權的政策方案,包括(a)(b)(c)段都不能接受。

另一方面,根據立法會條例第53(5)(c)條規定,被裁 定于犯與選舉有関的罪行或賄賂罪行的人士在被定罪 後三年內將喪失投票的資格以維持立法機関持正不阿 。然而是次有関的司法覆核個審未有涵蓋此項規定。 但這項規定無疑是對在囚人士作為監禁之外的一種附 加懲罰,月樣有達基本法第26條私者港人權法案第21 條的規定。

因此本人認為應擇用奧地制,瑞典,瑞士,丹麥, 愛爾蘭,冰島,芳蘭,加拿大,日本,角非及以色列 等國家的做法,不對在囚人士的投票權施加任何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制新設置障礙。例如進行立法 賦予法庭判刑時明它在囚人士喪失部分或一切的投票 權,及以刑期的長短,干犯輕做罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 報對在囚人士產生歧視,偏見及擇籤效應的問題出現

監獄作為社會的一種鎮壓及懲治的國家機器,其主 員際施行懲罰,并有義務協助在囚人士更新。依據人 本主義理怎,准予干犯輕微罪行的在囚人士和浙謂嚴 重危害法治而被定罪的重犯一律有權參與選出之法人 員方能更好地彰顯以及維持立法機関持正不阿的形象 。這既有助鼓勵在囚人士通過參與社會事務而提升云 民責任意識, 月時也加強在囚人士毫入社會履行天賦 的工民義務感。 只對在日人士的選民登記資格和投事權施加在何形式的制的,致徒在日人士作為一個人與其他的社會成 資本團体及整体社會系統之間的互動出現單句與封閉 現象,都足以反影我們的社會出現民主倒退,這無疑 是對香港作為一個先進城市的極大調剌,有礙社會的 均衡發展。

另一方面,干犯輕微罪行的在日人士和治寶嚴重危憲法治而被定罪的重犯已受到社會的法律制裁。立法機關不應假設在日人士方後所作出的個人行為仍會及持續對社會造成危害或負面的情況出現而對在日人士施加監禁之外的附加懲罰,這都是沒有理據可支持的

至於气道积成為選民的在四人士登記地址的電務安排。本人支持採用以下方案的模式。

- (1)以入狱服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚入士,他們的唯一或主要的家屋地址 作為選民登記地址。
- (2)从暨猷的地址作為在日人士唯一或主要的選民登記地址。

按票法動, 孝人順內支持採用加拿大的做法, 在投票日前便選入可獲准進入監獄作拉票法動。在日人士可联絡候選入或政黨取得選區候選入資料。 證教院紛 联絡負收到使選人名單後須在院紛內多處顯眼地方張 貼。

而在囚人士投票的實務安排,本人反對以郵遞方式
投票或多派他人代為投票的做法。因為在日人士收發
私何郵遞都必須經由懲教院朔職員收極才能寄出私接
收,過程之中極大可能產生投票保密的問題出現。
相反沒排流動投票站前往那些有旨資格選民的監獄
或在監獄內設立投票站都是最后通理想的做法。月時
<u> </u>
入設有投票站的懲教院外監案選舉投票的過程。保障
在四人士可在得密和不被任何直接或周接,有形或無
形的語言和非語言的干擾或明辦之下親手將選票投入
要箱內進行投票。以確保整個選舉投票在公平,公正
<u>, 云開的情況之下進行。 此沒排月樣週用於遭羁押但</u> 本如內四分 , 2h by 西河 by
<u>未被定罪人士的投票安排。</u>
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最後點票沒排應由選舉管理委員會來制定可行的操
作方案,包括安排移送選案到相関點票站,與其他選
要混包,从確保投票保密等措施。
土查閱。但不反對當局參與的其他討論或其後發表的
報告(不論有限制地或公開發表),或會提及為回應諮詢
文件而提友的意見。
(署名來函)
(編者註:來信人要求以不具名方式公開)

致:先生/文士

少悉貴局現正進行有関在囚入士投票權作公開諮詢 ,收集公銀的意見。而本人正是60年代在港土生土長 的社會的一方子,自覺有義務和盡公民責任對社會事 務(包括是次在囚入士投票權的諮詢)作出積極性的建議

證詢文件指出法庭於2008年12月8日就三宗司法覆 核個審作出裁決,就現行對在日入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的厚則(分施加的限制應與施加該項限制以求建到 的方法目的相稱),並無理據可言。

載於立法會得例第31(1)(a)至(b)條及第53(5)(a)至(b)條 , 達反基本法第26條私載於香港入權法案條例第383章 第8條的香港入權法案等21條所保證的憲制投票權。

對於在囚入土登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01段所建議在囚入土投票權的政策方案,包括(a)(b)(c)段都不能接受。

本人認為並支持應至面取消在囚入土麥失投票權置 格的限制。从維護基本法第26條於香港入權法案第21條 的立法精神及規定。不應維持某些所謂言理而實資達 反基本法的限制。而准予在囚入土登記為選民私有投 票權是作為一個現代,文明,民主自由社會賦予總体 成員不可劃缺的一項基本而不可檢奪的公民權利與義 務。 另一方面,根據立法會條例第53(5)(c)條規定,被裁 定于犯與選舉有関的罪行或賄賂罪行的人士在被定罪 後三年內將衰失投票的資格以維持立法機関持正不阿 。然而是次有関的司法粮核個軍未有涵蓋此項規定。 但這項規定無疑是對在囚人士作為監禁之外的一種附 加懲罰,月樣有達基本法第26條私者港人權法案第21 條的規定。

因此本人認為應掙用奧地制,瑞典,瑞士,丹麥, 愛顧蘭,冰島,芳蘭,加拿大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加在何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明它在囚人士喪失部方或一切的投票 權,及以刑期的長短,千犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 報對在囚人士產生歧視,偏見及擇籤效應的問題出現

兄對在囚人士的選民登記資格和投票樣施加在何形式的制約,致徒在囚入士作為一個人與其他的社會成員和團体及整体社會系統之間的互動出現單句與封閉現象,都足以反對我們的社會出現民主倒退,這無疑是對香港作為一個先進城市的極大調剌,有礙社會的均衡發展。

另一方面, 干犯輕微罪行的在日人士和分謂嚴重危 憲法治面被定罪的重犯已受到社會的法律制裁。立法 機關不應很設在日人士方後所作出的個人行為仍有及 持續對社會造成危害或負面的情況出現而對在日人士 施加監禁之外的附加懲罰, 這都是沒有理據可支持的

至於台道热成為選民的在囚人士登記地址的宣務安排。本人支持採用以下方案的模式。

- (1)以入狱服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚入士,他們的唯一或主要的家庭地址 作為選民登記地址。
- (2)从監獄的地址作為在日人士唯一或主要的選民登記地址。

拉罗法勒,半人傾向支持採用加拿大的做法,在投票日前候選入可獲准進入監獄作拉罗法勒。在日人士可联統候選入或政黨取得選區後選入資料。營教院所联絡員收到使選人名單後須在院所內多處題眼地方張貼。

而在囚人士投票的實務沒排,丰人反對以郵遞方式				
投票或委派他人代為投票的做法。因為在四人士收發				
社何郵遞都必須經由懲教院朔職員收極才能寄出私接				
收, 過程之中極大可能產生投票保密的問題出現。				
相反安排流動投票站削往那些有台資格選民的監獄				
或在監獄內設立投票站都是最后通理想的做法。同時				
<u> </u>				
入設有投票站的營教院外監察選舉投票的過程。保障				
在四人士可在保密和不被孔祠直接或間接,有形或無				
形的語言和非語言的干擾或明樹之下親手將選票投入				
票箱內進行投票。以確保整個選舉投票在公平,公正				
_, 云開的情況之下進行。此安排月樣通用於遭羁押但				
<u>未被定罪人士的投票</u> 安排。				
最後點要沒排應由選舉管理委員會來制定可行的操				
作方案,包括安排移送選票到相関點票站,與其他選				
要混气,从確保投票保密等措施。				
這份四應諮詢文件, 丰人不願意公開姓名供公報人				
土查閱。但不反對當局參與的其他討論或其後發表的				
毅告(不論有限制地或公開發表),或會提及為回應諮詢				
文件而提交的意見。				
(署名來函)				
(編者註:來信人要求以不具名方式公開)				
P. (4)				

致:先生/文士

知悉貴局現正進行有関在囚人士投票權作公開諮詢 ,收集公銀的意見。而本人正是50年代在港土生土長 的社會的一分子,自覺有義務和盡公民責任對社會事 務(包括是次在囚入士投票權的諮詢)作出積極性的建議

設詢文件指出法庭於2008年12月8日就三宗司法覆 核個案作出裁決,就現行對在日入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的原則(所施加的限制應與施加該項限制以求達到 的言法目的相稱),並無理據可言。

載於立法會得例第31(1)(a)至(b)條及第53(5)(a)至(b)條 ,達反基本法第26條承載於香港入權法案條例第383章 第8條的香港入權法案第21條所保證的憲制投票權。

對於在囚入土登記為選民的權制及投票權,本人認為諮詢文件第21頁第五章5.01 設於建議在囚入土投票權的政策方案,包括(a)(b)(c)段都不能接受。

本人認為並支持應至面取消在囚人士衰失投票權置格的限制。从維護基本法第26條承考港人權法案第2條的立法精神及規定。不應維持基些所謂言理而實遵達及基本法的限制。而准予在囚人士登記為選民私有投票權是作為一個現代,文明,民主自由社會賦予總体成員不可劃缺的一項基本而不可擔奪的公民權制與義務。

另一方面,根據立法會條例第53(5)(c)條規定,被裁 定于犯與選舉有関的罪行或賄賂罪行的人士在被定罪 後三年內將喪失投票的資格以維持立法機関持正不阿 。然而是次有関的司法覆核個軍未有涵蓋此項規定。 但這項規定無疑是對在囚人士作為監禁之外的一種附 加懲罰,月樣有達基本法第26條私者港人權法案第21 條的規定。

因此本人認為應擇用奧地制,瑞典,瑞士,丹麥, 愛爾蘭,冰島,芳蘭,加寧大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加任何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明定在囚人士喪失部方或一切的投票 權,及以利期的長延,干犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 獨對在囚人士產生歧視,偏見及標籤效應的問題出現

監獄作為社會的一種鎮壓及懲治的國家機器,其主 自除施行懲罰, 亦有義務協助在囚入土更新。依據入 本主義理念,准予干犯輕微罪行的在囚入土私所謂嚴 重危害法治而被定罪的重犯一律有權參與選出之法入 員方能更好地彰顯以及維持立法機関持正不阿的形象 。這既有助鼓勵在囚入土 通過參與社會事務而提升公 民責任意識, 月時也加強在囚入土岩入社會履行天賦 的公民義務威。

另一方面,干犯輕微罪行的在日人士和所謂嚴重危 憲法治而被定罪的重犯已受到社會的法律制裁。立法 機関不應假設在日人士方後所作出的個人行為仍會及 持續對社會造成危害或負面的情況出現而對在日人士 施加監禁之外的附加懲罰,這都是沒有理據可支持的

至於气道热成為選民的在囚入士登記地址的宣務安排。本人支持採用以下方案的模式。

- (1)以入獄服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚入士,他們的唯一或主要的家居地址 作為選民登記地址。
- (2)从監獄的地址作為在囚人士唯一或主要的選民登記地址。

起票法動,孝人傾內支持採用加拿大的做法,在投票日前候選入可獲准進入監獄作拉票法動。在日人士可联絡候選入或政黨取得選區後選入資料。 營教院的联絡員收到候選人名單後須在院別內多處額眼地方張貼。

而在囚入土投票的實務沒排,丰人反對从郵號方式				
投事或委派他人代為投票的做法。因為在日人士收發				
任何對逸都必須經由懲教院湖職員收檢才能容出私接				
收, 過程之中極大可能產生投票保密的問題出現。				
相反安排流動投票站削往那些有言資格選民的監獄				
或在監獄內設立投票站都是最后通理想的做法。月時				
<u> </u>				
入設有投票站的懲数院所監察選舉投票的過程。译降				
在四人士可在译器和不被任何直接或間接,有形或無				
形的語言和非語言的干擾或明樹之下親手將選票投入				
票箱內進行投票。以確保整個選舉投票在公平,公正				
, 公開的情況之下進行。此安排月樣通用於遭羁押但				
未被定罪人士的投票安排。				
最後點點沒排應由選舉管理委員有來制定可行的操				
作方案,包括安排移送選票到相関點票站,與其他選				
要混气,从確保投票得選等措施。				
這份回應諮詢文件,本人不願意公開姓名供公安人				
土查閱。但不反對當局參與的其他討論或其後發表的				
報告(不論有限制地或公開發表),或會提及為回應諮詢				
文件而提交的意見。				
(署名來函)				
(編者註:來信人要求以不具名方式公開)				

致: 先生/文士

为悉貴局現正進行有関在囚人士投票權作公開諮詢,收集公報的意見。而本人正是50年代在港土生土長的社會的一方子,自覺有義務和盡公民責任對社會事務(包括是次在囚入士投票權的諮詢)作出積極性的建議

證詢文件指出法庭於2008年仅月8日就三宗司法覆 核個審作出裁決,就現行對在囚入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的原則(所施加的限制應與施加該項限制以求建到 的言法目的相稱),並無理據可言。

载於立法會得例第31(1)(a)至(b)條及第53(5)(a)至(b)條 , 達反基本法第26條私載於香港入權法案條例第383章 第8條的香港入權法案第21條所保證的憲制投票權。

對於在囚入土登記為運民的權利及投票權,本人認為諮詢文件第21頁第五章5.01段所建議在囚入土投票權的政策为案,包括(a)(b)(c)段都不能接受。

本人認為並支持應至面取消在囚入士妻失投票權資格的限制。从維護基本法第26條私者港入權法案第2條的立法精神及規定。不應維持基些所謂言理而實實達及基本法的限制。而准予在囚入士登記為選民私有投票權是作為一個現代,文明,民主自由社會賦予總体成員不可劃缺的一項基本而不可檢奪的公民權利與義務。

另一方面,根據立法會條例第53(5)(c)條規定,被裁定干犯與選舉有閱的罪行或賄賂罪行的人士在被定罪後三年內將衰失投票的資格以維持立法機閱持正不阿。然而是次有閱的司法覆核個军未有涵蓋此項規定。但這項規定無疑是對在囚人士作為監禁之外的一種附加懲罰,月樣有達基本法第26條私者港人權法案第21條的規定。

因此本人認為應採用奧地剝,瑞典,瑞士,丹麥, 愛爾蘭,冰島,芳蘭,加亨大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加於何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行之法 賦予法庭判刑時明它在囚人士喪失部方或一切的投票 權,及以利期的長短,千犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會造成社會的不平等,並極大可能導至社會大 報對在囚人士產生歧視,備見及擇籤效應的問題出現

整然作為社會的一種類壓及懲治的國家機器,其主 自除施行懲罰,并有義務協助在日人士更新。依據人 本主義理念,准予干犯輕微罪行的在日人士和所謂嚴 重危害法治而被定罪的重犯一律有權參與選出立法人 員为能更好地彰顯以及維持立法機関持正不阿的形象 。這既有助鼓勵在日人士通過參與社會事務而提升云 民責任意識,月時也加強在日人士宪入社會履行天賦 的云瓦義務處。 只對在日人士的選民登記資熱和投事權施加祉何形式的制約,致徒在日人士作為一個人與其他的社會成員和團体及整体社會系統之間的互動出現單何與封閉現象,都足以反影我們的社會出現民主倒退,這無疑是對者港作為一個先進城市的極大調剌,有礙社會的均衡發展。

另一方面, 干犯輕微罪行的在四人士和分謂嚴重危 憲法治而被定罪的重犯已受到社會的法律制裁。立法 機関不應假設在囚人士方後所作出的個人行為仍會及 持續對社會造成危害或負面的情況出現而對在囚人士 施加監禁之外的附加懲罰, 這都是沒有理據可支持的

至於气道积成為選民的在囚入士登記地址的電務安排。走入支持择用从下方案的模式。

- (1)以入獄服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚之士,他們的唯一或主要的家居地址 作為選民登記地址。
- (2)从監獄的地址作為在囚人士唯一或主要的選民登記地址。

上 其 是 法 動 , 本 人 傾 闷 支 持 採 用 加 奪 大 的 做 法 , 在 投 單 日 前 候 選 入 可 獲 准 遊 入 監 徵 作 拉 要 注 動 。 在 囚 入 士 可 联 紙 候 選 入 或 政 黨 取 得 選 區 便 選 入 道 料 。 營 教 院 浙 联 終 夏 收 到 便 選 人 名 單 後 須 在 院 汾 内 多 處 顯 眼 地 方 張 匙 。

投票或委派他人代為投票的做法。因為在四人士收發			
经何對遞都必須經由懲教院強職員收檢才能寄出和接			
收,過程之中極大可能產生投票保密的問題出現。			
相反安排流動投票站創往那些有言資格選民的監獄			
或在監獄內設立投票站都是最后遍理想的做法。月時			
<u> </u>			
入設有投票站的懲教院外監察選舉投票的過程。保障			
在囚人士可在保密和不被批判直接或間接,有形或無			
形的語言和非語言的干擾或明樹之下親手將選票投入			
要箱內進行投票。从確得整個選舉投票在公平,公正			
, 云開的情況之下進行。此安排月樣適用於遭羁押但			
未被定罪人士的投票安排。			
最後點票沒排應由選舉管理委員有來制定可行的操			
作方案,包括安排移送選案到相関點票站,與其他選			
翠混气,从確保投票保密等措施。			
這伤回應諮詢文件, 走人不顧意公開姓名供公安人			
土查閱。但不反對當局參與的其他討論或其後發表的			
教告(不論有限制地或云開發表),或會提及為回應諮詢			
文件而提交的意見。			
(編者註:來信人要求以不具名方式公開)			

致: 先生/文士

实悉貴局現正進行有関在囚入士投票權作公開諮詢 ,收集公銀的意見。而本人正是60年代在港土生土長 的社會的一方子,自覺有義務和盡公民責任對社會事 務(包括是次在囚入士投票權的認詢)作出積極性的建議

說詢文件指出法庭於2008年12月8日就三宗司法覆核個案作出裁決,就現行對在囚入士的投票權和登記 成為選民的權利作出普遍,自動私劃一的限制,根據 相稱的原則(所施加的限制應與施加該項限制以求建到 的会法目的相稱),並無理據可言。

戴於立法會條例第31(1)(a)至(b)條及第53(5)(a)至(b)條 , 達反基本法第26條私載於香港入權法案條例第383章 第8條的香港入權法案第21條所保證的憲制投票權。

對於在囚入士登記為選民的權利及投票權,本人認為諮詢文件第21頁第五章5.01 設所建議在囚入士投票權的政策方案,包括(a)(b)(c)段都不能接受。

本人認為並支持應至面取消在囚入士衰失投票權置 格的限制。从維護基本法第26條私者港入權法案第21條 的立法精神及規定。不應維持某些所謂言理而實實達 及基本法的限制。而准于在囚入士登記為選民私有投 案權是作為一個現代,文明,民主自由社會賦予總体 成員不可劃缺的一項基本而不可被奪的公民權糾與義 務。 另一方面,根據立法有條例第53(5)(c)條規定,被裁 定于犯與選舉有関的罪行或賄賂罪行的人士在被定罪 後三年內將衰失投票的資格以維持立法機関持正不阿 。然而是次有関的司法覆核個審未有涵蓋此項規定。 但這項規定無疑是對在囚人土作為監禁之外的一種附 加懲罰,月樣有達基本法第26條私者港人權法案第21 條的規定。

因此本人認為應採用奧地制,瑞典,瑞士,丹蹇,愛爾蘭,冰島,芳蘭,加拿大,日本,南非及以色列 等國家的做法,不對在囚人士的投票權施加於何形式 的限制,並反對由行政,立法,司法等機関共同對在 囚人士的投票權制定限制和設置障礙。例如進行立法 賦予法庭判刑時明宣在囚入士喪失部方或一切的投票 權,及从刑期的長短,干犯輕微罪行或所謂嚴重危害 法治的重犯作為評定在囚人士投票權的限制。因為此 等做法會选成社會的不平等,並極大可能導至社會大 舞對在囚人士產生歧視,備見及標籤效應的問題出現

監獄作為社會的一種鎮壓及懲治的國家機器,其主自摩施行懲罰,并有義務協助在日入土更新。依據入本主義理怎,准予千犯輕微罪行的在日入土和所謂嚴重危害法治而被定罪的重犯一律有權參與選出立法人員为能更好地彰顯以及維持立法機関持正不阿的形象。這既有助鼓勵在日入土通過參與社會事務而提升公民責任意識,月時也加強在日入土宪入社會履行天賦的公民義務處。

凡對在囚人士的選民登記置熱和投棄機施加化何形式的制約,致徒在囚入士作為一個入與其他的社會成員和團体及整体社會系統之間的互動出現單句與封閉現象,都足以反影我們的社會出現民主倒退,這無疑是對者港作為一個先進城市的極大諷刺,存礙社會的均衡發展。

另一方面, 干犯輕微罪行的在日人士和所謂嚴重危 憲法治面被定罪的重犯已受到社會的法律制裁。立法 機關不應假設在日人士方後所作出的個人行為仍會及 持續對社會造成危寒或負面的情況出現而對在日人士 施加監禁之外的附加懲罰, 這都是沒有理據可支持的

至於气道热成為選民的在四人士登記地址的電務室排。本人支持採用以下方案的模式。

- (1)以入獄服刑前尚未登記為選民或入獄服刑前已登記 為選民的在囚入士,他們的唯一或主要的家屋地址 作為選民登記地址。
- (2)从整慰的地址作為在囚人士唯一或主要的選民登記地址。

拉票法動, 本人傾向支持採用加拿大的做法, 在投票日前候選入可獲准進入監獄作拉票法動。在囚入士可联絡候選入或政黨取得選區候選入資料。 營教院所 联絡員收到候選人名單後須在院別內多處額眼地方張 貼。

而在囚入土投票的實務沒排,本人反對以郵遞方式				
投票或多派他人代為投票的做法。因為在囚人士收發				
社村郵遞都必須經由懲教院所職員收檢才能寄出和接				
收,過程之中極大可能產生投票保密的問題出現。				
相反安排流動投票站削往那些有台資格選民的監獄				
或在監獄內設立投票站都是最后通理想的做法。月時				
办 必須准許候選人,選舉代理人及監察投票代理人進				
入設有投票站的整教院所監察選舉投票的過程。保障				
在囚人士可在译智和不被征柯直接或間接,有形或無				
形的語言和非語言的干擾或明樹之下親手將選票投入				
票箱內進行投票。以確保整個選舉投票在公平,公正				
, 云開的情況之下進行。此安排月樣適用於遭羁押但				
未被定罪人士的投票安排。				
最後點要沒排應由選舉管理委員有來制定可行的操				
作为案,包括安排移送選案到相関點票站,與其他選				
要混气,从確保投票保密等措施。				
這份回應諮詢文件, 本人不願意公開姓名供公安人				
土查閱。但不反對當局參與的其他討論或其後發表的				
数告(不論有限制地或公開發表),或會提及為回應諮詢				
文件而提交的意見。				
(署名來函)				
(編者註:來信人要求以不具名方式公開)				
<u> </u>				
P. (4)				

LC Paper No. CB(2)1110/08-09(01)

To: pvr consultation@cmab.gov.hk,

2009/03/02 AM 02:33

Subject: ANONYMOUS submission

To whom it may concern,

Please treat this as an ANONYMOUS submission to the consultation on prisoners' voting right. Thank you for your attention.

Regarding the possible policy options proposed, first, I disagree to the offence-specific qualification proposed in option ONE. I also disagree to options TWO and THREE for the reasons below.

My view is that the length of sentence of imprisonment as ordered by Court is NOT a fair indicator of whether (or when) an inmate should retain his/her right to vote.

For example, A just started serving a 7-year sentence, whereas B has finished serving 4 years out of his 10-year sentence and there is LegCo election this year.

In this case, A can already vote (even though A still has 7 years remaining in prison and) even though the candidates whom he votes for and succeeds may not even remain in office when A gets released and has the opportunity to 'be served and represented' by the representatives he chose.

However, B, having 6 years of imprisonment remaining, cannot vote but have to wait for 1 more year.

As the exact length of sentence ORDERED is to a certain extent arbitrary, this division based on the sentence ORDERED will lead to grave injustice, unreasonableness, defiance to human logic and also the well-accepted principle that prisoners are to be encouraged to assimilate, participate, and contribute to society upon their release. The deprivation of their voting right does not only violate their fundamental right and take away their way of participation in public life, it also carries with the a symbolic, self-contradictory implication that prisoners still have to suffer/be deprived of some of their fundamental rights even AFTER their release... This, in a way, is aggravating/lengthening the punishment society/the court has ordered. Not only does this run against our conscience, but is also out of line of the prohibition on double jeopardy — that one can only be punished one for the same wrong he has committed.

I believe this is an unacceptable irony that has been possibly overlooked by the proposers.

Therefore, NEITHER option TWO NOR option THREE is reasonable in my opinion.

I would support a total lifting of disqualification from voting, i.e. ALL prisoners should have the right to vote, however long their sentence is, however long they have served it, whatever offence s/he has been convicted of and sentenced for. This is a fundamental human right and should be subject to as little restriction as possible. The court did NOT hold that it OUGHT to be subject to restrictions, but only mentioned the legislative possibility of imposing restrictions. In my opinion, the most appropriate reform is to life the ban totally.

Alternatively, if the one insists on imposing restrictions/ certain extent of disqualification from voting, I would propose the length of sentence REMAINING TO BE SERVED to be the indicator, such that all prisoners having a certain length of sentence remaining to be served can vote on an equal basis. For the specified length, I would say 8 years, so the prisoners can observe the performance of those they support in the first election before casting their vote on the next election which may have direct effects on their lives upon release. This is also consistent with the principle that prisoners are to be encouraged to prepare themselves to return to and to serve society, in which their right to participate in public life cannot be jeopardised.

Those are my opinions and I sincerely hope they can be accorded due regard during the legislative process.

Last but not least, must also be reiterated that Hong Kong has prided itself in the rule of law and the protection of fundamental rights and freedoms as a common law tradition. Any failure to keep up this valuable and virtuous tradition will not only put Hong Kong to shame, it will also shake the long foundation of human rights protection and the city's international reputation, drastically.

Thank you very much for your kind attention.

ANONYMOUS

Policy Options on Prisoners' Voting Rights

The prisoners should be allowed to exert their full voting right – that is option a) of your consultation document.

Some arguments:

- 1) Participating in democratic rights is a basic human right and should, as a matter of principle, not be denied.
- 2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a further punishment that shouldn't be imposed by the executive branch. If it is seen necessary as e.g. in cases of election related offenses it should be imposed by the judiciary.
- 3) Prisoners live in a public institution (although involuntarily) and are as such recipients of a public service. They should therefore be allowed to participate in the election of the legislative and executive branches of government that eventually shape the public service.
- 4) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.
- 5) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

Your sincerely

(Name provided)

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- 5) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

I hereby express my opinions as stated above. Yours.

(Name provided)

13 March 2009

Team 2, Constitutional and Mainland Affairs Bureau, Room 306, East Wing, Central Government Offices, Lower Albert Road, Hong Kong.

Dear Sirs,

My views on whether prisoners should be allowed to vote is:

Prisoners should NOT be allowed to vote.

Reasons:

(1) Although the Basic Law might well have granted every citizen of HKSAR the right to vote, that right is not a once-and-for-all right, nor unconditional either. Rights of individucuals are only automatically conferred to them on condition that they are law-abiding citizens. A person who causes harm and damage to others and society is automatically deprived certain of his/her rights. For example, a law-abiding citizen automatically has the right of freedom of movement and enjoy a free life unconditionally. But if he/she commits a crime he/she will have to be locked up and the right to enjoy a free life will be lost, at least during the term of imprisonment. This is the consequence of his/her wrongdoing, and the law has spelled this out very clearly. By choosing to do wrong to others and society despite what the law forbids, that person is at the same time also choosing to give up certain of his rights. Thus, the existing law says clearly that a prisoner does not have the right to vote, so a convict who has chosen to break the law has also chosien to give up his right to vote once he/she is jailed.

In just the same way that a prisoner automatically loses his/her freedom of movement, a prisoner loses automatically his/her voting rights. This is just and fair. There is no need for a change of legislation.

(2) Even in the most "democratic" and "free" country – the US – which advocates "human rights" and "freedom", 48 of the 51 states deny serving prisoners the right to vote, and 33 states disqualify parolees from voting, and 8 even bar ex-convicts from voting. Only 2 states – Maine and Vermont – allow prisoners to vote.

Didn't the US always tell HKSAR what to do on "human rights" matters? So, what is wrong with HKSAR following the US legislation of barring prisoners from voting?

(3) Another serious debate that affects the future of HKSAR is "universal suffrage", with the "democratic" and anti-China camps demanding universal voting for the Chief Executive of HKSAR. We must know that most of the voters here in HKSAR are very immatured and ignorant voters. They will vote for those candidates that promise to fight for them the greatest social benefits, as everyone could often see on TV interviews of old, uneducated people who said they had voted for the candidate who would give them

material benefits, even though they had never known or heard of that candidate before. These ignoroant voters do not have the analytic ability to visualize the implication and consequence of their blind votes. Mind you, anti-China and anti-HKSAR voters have been successfully voting for candicates who have demonstrated to bring most troubles to the government of HKSAR and China.

By the same token, there is every reason to believe that if prisoners are allowed to vote, they will vote for those who will bring most troubles to the government of HKSAR and China, for most prisoners in HKSAR have a grudge against the government and society, and only a very very limited few were really rehabilitated, as evidenced by the fact that many prisoners were caught again for committing crimes again after their release.

It will therefore be very dangerous to the HKSAR society as a whole if prisoners are allowed to vote.

(4) Concerning the criticism that a released prisoner is in essence deprived of his/her right to vote simply because during his/her term of imprisonment he/she has not been allowed to register, I think the criticism is groundless. We must know that registration as a voter, just like any form of registration (for example, registration for subscription of shares and stocks), anyone who misses the registration deadline will automatically lose the accompanying entitlement. That is a fact of life and way of life.

A prisoner who has missed the registration deadline while being imprisoned is a fact of life and way of life, because if he/she is NOT allowed to vote at the time of registration, he is NOT allowed to vote on the voting day even after release. The purpose of registration by the specified deadline is an orderly arrangement to ensure that a voter IS ENTITLED to vote on a voting date orderly, in just the same way that pre-registration is required to subscribing shares and stocks, to make sure that on the date of subscription the process of subscription is carried out by entitled subscribers in an orderly manner: one cannot argue that even though one has not registered before the deadline, one however can still vote on the voting day (or subscribe on the subscription day), nor can one claim that one's voting rights (or subscription rights) has been deprived.

Therefore, I am strongly opposed to allow prisoners to vote, no matter how long the term of imprisonment is.

HKSAR citizen

(signed)

c.c. Mainland China's 中联办主任

諮詢期結束後不久收到的公眾意見書 Public Submissions received shortly after close of consultation period

序號 Serial No.	名稱 Name/Title
LP01	民主動力
LP02	民主黨
LP03	Edward Fung



民主動力就「有關在囚人士投票權」諮詢文件的回應

民主動力就《有關在囚人士投票權的諮詢文件》有以下意見及建議:

在囚人士登記爲選民的權利

1 民主動力支持全面撤銷在囚人士喪失資格申請登記爲選民的規定,並促請有 關當局於懲教設施內加強選民登記的宣傳。

在囚人土投票權

- 2 政府就放寬在囚人士投票權提出的建議方案有三,包括:方案一,是所有合 資格並已登記爲選民的在囚人士均享有投票權;方案二,是取銷被判監超過 某個年限人士的投票資格;方案之三,是取銷被判監超過某個年限人士的投 票資格,但在服刑的最後幾年,容許他們投票。
- 3 民主動力認爲方案一是較爲妥善的安排,即全面肯定及給予所有合資格的在 囚人士均可登記成爲選民和投票,理據如下:
 - 3.1 投票權被認定爲一項基本政治權利,不容無理剝奪。若以刑期長短作爲 喪失投票權的準則,未免流於武斷,可能不符合《人權法》中「不得無 理限制公民投票權」的規定,有機會再次引起司法覆核。
 - 3.2 限制被判較長刑期的在囚人士的投票權,無疑於向他們施加監禁以外的 附加懲罰,對他們不公平。
 - 3.3 容許在囚人士投票,可提高他們的公民意識,有助他們再次融入社會。
- 4 此外,本會認爲政府有必要藉今次機會同時檢視現行《立法會條例》第 53(5)(c) 條中對投票權的限制,即所有被裁定干犯與選舉有關的罪行或賄賂罪行的選 民均一律在其後 3 年內被剝奪投票權的規定,有否抵觸《人權法》和《基本 法》,以免日後遭到有關的司法挑戰。

合資格成爲選民的在囚人士登記地址

5 本會認同〈諮詢文件〉的建議,即以在囚人士在監獄外的主要的家居爲登記 地址,而沒有保留家居者則以他們入獄前的主要家居爲登記地址。

拉票活動

6 本會認爲,在囚人士取得選舉資料的權利應受到保障,他們應能透過郵遞及 傳媒取得選舉資料。此外,本會建議參考加拿大的做法,容許候選人親身在 監獄內拉票,但他們必須與懲教設施主管當局協調,並取得合適的保安許可。

在囚人士投票的實務安排

7 本會建議安排流動票站前往監獄,或在監獄設立投票站。

遭羈押但未被定罪人士的投票安排

8 與在囚人士有別,現行法例並無限制被羈留但未被定罪者投票,惟他們過往 一直沒有獲安排投票。民主動力要求政府採取各項應有措施使被羈押人士能 於投票日行使法律已規定的投票權。

點票安排

9 爲確保投票的保密性,當局應安排移送選票到相關點票站,與其他選票混合 點算。

2009年3月

聯署團體:民主黨



民主黨立法會議員秘書處 Secretariat of Legislative Councillors of The Democratic Party

香港中環雲巖街11號 中區政府合署西翼401-409室 Rm. 401-409, West Wing, Central Government Offices, 11 Ice House Street, Central, HK

地話Tel 2537 2319 傳真Fax 2537 4874

民主黨對有關在囚人士投票權的意見

對在囚人士投票權的意見

民主黨認同在囚人士作為公民的一份子,投票是公民權利的體現,因此,他們擁有投票權是無可爭議的。

至於那類在囚人士才可以投票,民主黨認為,即使是干犯與選舉有關的罪行或賄賂罪的人士,他們已受到相應懲罰,所以,不應再剝奪他們的投票權,至於終身監禁人士,他們既然是社會的一份子,就可以透過投票對公共事務表達意見,所以,民主黨認為,不應限制任何在囚人士的投票權利。

對候選人拉票活動的意見

對於文件建議因為嚴重的保安問題,不准許候選人在監獄拉票,民主黨理解實際的操作困難,不過,我們除了同意在囚人士可以郵遞或取得傳媒關於選舉的資訊外,只要在囚人士提出要求,政府有責任提供其他渠道,讓在囚選民與候選人有互相交流的機會,體現選民應有的權利。

就投票安排的意見

文件內提出了三項建議,包括:

- (a) 安排流動投票站或在監獄內設立投票站;
- (b)投票時間會較一般投票時間為短;及
- (c)必須限制入內觀察投票的候選人、選舉代理人及監察投票代理人的人數。

民主黨對此等票站安排及投票時間/觀察投票限制沒有異議。

2009年3月

親愛的香港政府和立法會,

這封信是為囚犯投票權的公眾諮詢。

我的名字是 Edward Fung。我是香港永久性居民,是一個辦公室和會計辦事員。 我在加拿大完成中學和大學。我知道,犯人在加拿大有投票權。

我支持備選方案 1 。我同意每名囚犯有投票權。我想選舉候選人被允許在監獄中 拉票。然而,投票權應該不包括那些犯選舉罪或賄賂。其他囚犯應該有投票權。他 們的罪行可能較嚴重。然而,他們不是犯同一性質的罪。

香港希望我們的俘虜,釋放後,成為守法公民。我同意諮詢文件方案1的原因。如果他們能夠投票,囚犯可以更好重新融入社會,他們會有更多的公民意識。

方案 1 減少累犯,因為這使囚犯認為香港給他們第二次機會。大多數囚犯都是男性。男子被定型是強大和獨立的。他們的需要往往被婦女和男子忽視,甚至在男子尋求幫助時。譬如男性,在香港,第一次使用自殺電話幫助比女性多。

忽視促使忽視。如果香港否認囚犯,包括那些犯嚴重罪行,投票權,他們將拒絕服 從法律。傳統上男子想要尊嚴。他們進行報復,如果他們覺得挑戰和被剝奪的尊 嚴。香港需要關心犯人,使他們有投票權。他們更有可能對香港有關心的回報。

我的信仰來自普世社會福音。每個人都是平等的和獨特的創造。囚犯的人太多。每個人是一個罪人。耶穌死亡的每個人都在十字架上。一個人,從監獄中釋放,已經很難找到工作。雇主擔心的犯罪記錄。他們忘記自己也是罪人。

方案 1 通過成為法律後,香港應該向囚犯溝通本法的理由。香港希望囚犯改正他們的錯誤和改變。香港對囚犯需要希望,不是恐懼。

我促請立法會通過方案 1,成為法律。

(signed)

Edward Fung

Dear Hong Kong Government and the Legislative Council,

This letter is for the public consultation of the voting right of prisoners.

My name is Edward Fung. I am a permanent resident of Hong Kong. I am an office and accounting clerk. I finished secondary school and university in Canada. I was aware that prisoners in Canada have the right to vote.

I support option 1. I agree that every prisoner be given the right to vote. I would like election candidates be allowed to canvass in the prison. However, the voting right should be withheld from those who are serving their sentences of election crimes or bribery. Other prisoners should have the right to vote. Their crimes may be more severe. However, they are not the same nature as election crimes or bribery.

Hong Kong wants our prisoners, upon release, be law-abiding citizens. I agree with reasons for option one in the consultation document. Prisoners can better re-integrate into the society, if they can vote. They will be more civic-minded.

Option one reduces recidivism, because it makes prisoners feel that Hong Kong is giving them a second chance in life. Most prisoners are males. Men are stereotyped to be strong and independent. Their needs are often neglected by both women and men, even when men ask for help. More men than women, for the first time, use the suicide telephone help in Hong Kong. Neglect breeds neglect. If Hong Kong denies prisoners, including severe crimes, of the right to vote, they will deny obeying the law. Men traditionally want dignity. They will retaliate if they feel challenged and are denied dignity. Hong Kong needs to care about prisoners by giving them the right to vote. They are more likely to care about Hong Kong in return.

My beliefs come from the social gospel. Each person is created equal and unique. A prisoner is a person too. Every person is a sinner. Jesus died for everyone on the cross. A person, who is released from prison, already has difficulty finding a job. Employers fear the criminal record. They forget that they are sinners too.

After option one is passed into law, Hong Kong should communicate the rationale to the prisoners. Hong Kong hopes that prisoners will learn from their mistakes and change. Hong Kong needs hope, over fear, in prisoners.

I urge the legislative council to pass option one into law.

Edward Fung

有關在囚人士投票權的

公眾諮詢報告

Report on Public Consultation on Prisoners' Voting Right

附錄(補充) Appendix (Supplement)

二零零九年四月 April 2009

日期:

2009年2月10日 17:27

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

反對囚犯可以投票

原因有2:

入獄是因為犯法,故犯罪人自然應被剝奪自由,於獄內亦應取消其社會權利,不論年期長短。
 以罪犯入獄前登記住址區域作投票更為荒謬,對住在該區市民更不公平!囚犯於獄內根本不知原住區之變化及需要,如何會知道那參選人可以改善該區問題?

Tel:

Date: 10-02-2009

日期:

2009年2月10日 20:10

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Opinion

Dear Sir/Madam,

I strongly supports the relaxation of the ban on prisoners' voting right, please find my opinions as follows.

I oppose to the policy option (2) and (3), because this may retain and cannot resolve the anonymous situations that

"Prisoners who are serving sentences of, say, one year or less, and who happen to be serving their sentences on election day, are not entitled to vote. Yet a prisoner who has been sentenced to, say three years and six months' imprisonment shortly after the previous elections, is entitled to vote because barring any accident, he will be released in time, before election day, to vote in the next elections – assuming that he has been registered as an elector prior to sentencing (or manages to get himself registered as an elector immediately after release).",

which was already mentioned in the concerned judgment of Hon. Cheung J para.122-123.

As a result, I would prefer to choose option (1).

Yours faithfully,

日期:

2009年2月17日 19:13

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Prisoners Voting Rights Consultation

Having read the consultation document, I have the following views to express:

- 1. Regarding prisoners voting rights, I find it very difficult to draw a moral line as to where a voting restriction should be brought in. In view of the Court's judgement that such restrictions should have a legitimate aim, I can only recommend Option One. I can foresee further litigation should Options 2 or 3 are introduced, as there is bound to be debate about the legitimate aims of such restrictions (and this is the only argument I have against 2 & 3).
- 2.Regarding practical arrangements for voting. I would suggest that the opinions of the Correctional Services Department should hold sway on this matter as it is their staff, not the general public, who have the task of looking after and managing our prisoners.
- 3. Canvassing. Again, the CSD should have the final say on this matter. It sounds as if the receiving of electoral materials by post is the most suitable option.

I hope you find my suggestions helpful

Yours sincerely

日期:

2009年2月17日 22:39

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

在囚人士選舉權問題建議

附件:

2009 2 17囚犯能否参加選舉.doc (39 KB)

Dear Sir/Miss:

Enclosed pls find my proposal to the "在囚人士選舉權問題"

rds.

17, Feb., 2009

- (a) 放寬對在囚人士投票權的限制的政策方案以及
- (b) 在 囚 人 士 及 遭 羈 押 但 未 被 定 罪 人 士 行 使 投 票權的實務 安排。

本人對以上兩點有以下意見.

- 1) 法律對"自然人"的解釋已很清楚.
- 2) 在囚及羈押的人士已是代表違犯了自然人的基本的條件.
- 3) a) 法律的制定及來源是跟据公平公正的及以往的案例經過不少的經歷而成文,一名自然人不能公平公正的按已有的法例辦事及在社會工作,結因要觸犯法例,他所做的決定又怎可相信。
 - b) 囚犯已不是"自然人",又是在接受勞教的過程中(即坐監). 所謂勞教是這囚犯未準備好. 一定要囚犯完成改造後才可...
- 4) 我們不應要吸收選票而接受在囚人士投票.

17, Feb., 2009

日期:

2009年2月23日 21:02

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

有關在囚人士投票權的公眾諮詢

附件:

₹ 在囚人士應有登記為選民的權利和資格.doc (38 KB)



To whom it may concern,

pls see attached.

Cheers >o<

有關在囚人士投票權的公眾諮詢

在囚人士登記為選民的政策方案

放寬在囚人士喪失申請登記成為選民的資格。換言之, 合資格人士不會因在囚而喪失登記為選民的資格。

在囚人士投票權的政策方案

應維持某些合理的限制

一/ 是應維持 :根據《立法會條例》第53(5)(c)條,被裁定

干犯與選舉有 關的罪行或賄賂罪行的人士在被定罪後三年內將喪失投票的資格。

二/是應維持 :根據《立法會條例》第53(5)(a)條,該選民已在香港或

何其他地方被判處死刑或監禁

三/需要考處是否應維持: 在選舉當日,該選民正因服刑而受監禁但視 刑期長短和罪行

- 一 法庭可基於政治罪行和誠信(詐騙、貪污、偽造或盜用公款)等罪行的 人士喪失投票資格
- 被判終身監禁的人士,則終身喪失投票權。
- 自稱或黑社會人士,則終身喪失投票權。
- 刑期長短例如十年或以上的人士,則喪失投票權。

在囚人士行使投票權的實務安排

合資格成為選民的在囚人士登記地址

- (a) 服刑前尚未登記為選民的在囚人士,如在監獄外繼續保留唯一或主要的居所,可申請按該居所地址登記。
- (b) 服刑前已登記為選民的在囚人士, 以其唯一或主要的居所地址登記。
- (c) 在監獄外再無保留任何唯一或主要的居所的在囚人士(不論是否已登記為選
- 民),其入獄服刑前在香港的最後居住地方,會被視為在香港的唯一或主要住址,用於選民登記。

拉票活動

- (d) 在囚人士可收到郵遞的選舉文件及選舉廣告。
- (e) 在囚人士可經由報紙、電台和電視等傳媒取得與選舉有關的資訊。

實務安排

- (f) 安排流動投票站前往那些有合資格選民的監獄。
- (g) 應考慮合理限制:在囚人士的投票時間(例如直至下午五時)及管制在囚人士在投票站內流通的安排。

遭羁押但未被定罪人士的選舉安排

- (h) 為遭羈押但未被定罪人士制訂投票安排,與在囚人士的投票安排相類似。 點票安排
- (i) 選舉管理委員會會視乎實際採納的投票安排,制訂點票安排,包括安排移送選票到相關點票站,與其他選票混合,以確保投票保密等措施。

日期:

2009年2月27日 10:40

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

反對囚犯有投票權

本人和丈夫□L力反對在囚人仕有投票權,因他們犯了法,理智和行爲□m沒有正確判斷力。亦會加大政府開支和浪費警力!

謝謝

27/2/2009

日期:

2009年2月28日 0:39

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Consultation on Prisoners' Voting Rights

附件:

34

.pdf (148 KB)

Dear Sir/Madam,

It has come to my attention that you are considering voting rights for prisoners in Hong Kong. I am writing to submit a paper published in the British Journal of Criminology on the experience of prisoner enfranchisement in Ireland. It may be of some assistance in your consultation of prisoners' voting rights.

With best wishes,

(Editor's Note: A journal article enclosed by the sender is not reproduced because of copyright.)

Dear Sir/Ms...

In connection to your current consultation progress, it is my view that prisoners should be allowed to exert their full voting right, that is option a) of your consultation document.

The main reasons behind my opinion are the following:

1) Participating in democratic rights is a basic human right and should, as a matter of principle, not be denied.

2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a further punishment that shouldn't be imposed by the executive branch. If it is seen necessary - as e.g. in cases of election related offenses - it should be imposed by the judiciary.

3) Prisoners live in a public institution (although involuntarily) and are as such recipients of a public service. They should therefore be allowed to participate in the election of the legislative and executive branches of

government that eventually shape the public service.

4) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.

5) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

Sincerely yours,

Private address:

日期:

2009年3月6日 20:01

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Re: Support for Prisoners' Right to Vote

附件:

Rights to Vote.doc (39 KB)

Dear Sir,

I would like to put forward through the attachment my views on the captioned matter for this consultation exercise.

Yours sincerely,

AS (Constitutional and Mainland Affairs) (2A)
Central Government Offices
3/F, East Wing
Lower Albert Road
Hong Kong
Email Address: pvr_consultation@cmab.gov.hk
Fax 2840 1976

Policy Options on Prisoners' Voting Rights

The prisoners should be allowed to exert their full voting right – that is option a) of your consultation document.

Some arguments:

- 1) The right to vote is a basic human <u>right and not a privilege</u> (as held by the European Court of Human Rights on October 6 2005 in the case of Hirst v United Kingdom (No. 2) (2006) 42 EHRR 41) and should, as a matter of principle, not be denied
- 2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a *further* punishment that shouldn't be imposed by the executive branch. If it is seen necessary as e.g. in cases of election related offenses it should be imposed by the judiciary. Furthermore, it is hoped that due consideration should be accorded to what is said by Lord Wilberforce in *Raymond v Honey* [1983] 1 AC 1: "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication" (p 10)
- 3) Prisoners live in a public institution (although involuntarily) and are as such recipients of a public service. They should therefore be allowed to participate in the election of the legislative and executive branches of government that eventually shape the public service.
- 4) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.
- 5) Giving full voting rights to prisoners gives them 'human dignity', a basic value which is recognized in both the Preamble of the Charter of the United Nations and Article 1 of the Universal Declaration of Human Rights. It is a step towards better rehabilitation of inmates.

日期:

2009年3月6日 21:57

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

prisoners' rights to vote

Dear Sir/madam

I strongly support the move to grant full voting rights to prisoners. It is not only a basic principle of justice and human rights, but also gives dignity and encouragement to inmates and enhances their rehabilitation.

日期:

2009年3月7日 11:30

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

RE: Possible policy options On relaxing the ban on relaxing the prsioners' voting right

Dear Sir,

I would like to express my view on the issue of "Possible policy options On relaxing the ban on relaxing the prsioners' voting right", in regard of sch affair, I choose the option (A) Prisoners' right to register as electors.

Best regards,

日期:

2009年3月7日 14:05

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Policy Options on Prisoners' Voting Rights

Dear Sir/Madam,

I support giving full voting rights to the prisoners. Voting is a basic rights entitled to all, including prisoners. To vote or not is the prisoners' choice.

Hong Kong is a civlised society. We should allow voting rights for all eligible citizens.

Thank you.

Regards,

日期:

2009年3月7日 14:53

收件人: 副本抄送:

<pvr_consultation@cmab.gov.hk>

副本抄i 標題:

Prisoners' voting rights

Dear Sir/Madam

I am writing in support of option (a) in your consultation document on prisoners' voting rights. I believe that custodial sentences issued as punishment for specific offences should not impinge on the rights of prisoners to express their views on issues of public policy.

Yours sincerely,

日期:

2009年3月7日 22:58

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

在囚人士投票權的諮詢

附件:

型投票權.doc (34 KB)

Mar 7, 2009

致:香港下亞厘畢道

中區政府合署東座356室 政制及內地事務局(第2組)

在囚人士投票權的諮詢

本人認為諮詢文件應包括對現在囚犯之調查,統計他們以往選民登記、投票之比率,以及不同剩餘年期囚犯對選舉權利之期望,以作參考。例如調查結果顯示各項比率皆低,替他們爭取權利之需要亦會低

意見根基:

1. 本人之意見基於一項原則,就是某次選舉會否對在囚選民日後生活有關係或影響,即是議員任期之 內該名選民是否預計己出獄。否則,某次選舉对某在囚選民來說,可以說是亳無意義和需要的

換言之,因本港選舉爲四年一次,在選民登記截止的時候,剩餘刑期長於四年的囚犯不能成爲選民。 實際上,亦沒有需要。 如日後五年一任的行政長官選舉變成普選,登記資格便是剩餘刑期少於五 年。

這類似內地对判囚政治權利年期的剝奪

- 2. 反對法官酌情權或作爲監禁以外的附加懲罰,因爲香港很多法官和裁判官十分昏庸,不宜再加責任。再者,有無投票權对很多人來說根本就不在乎,更遑說是懲罰
- 3. 本人建議,假設在囚登記資格爲四年剩餘形期,入獄後亦要重新登記
- 4. 我諗,在監獄投票應最適合

Yours faithfully,

日期:

2009年3月9日 9:44

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Consultation on Prisoner Voting Rights

附件:

Policy Options Prisoners Voting Rights - March 09.doc (37

KB)

Please find attached my letter expressing my concern.

Thank you

e-mail:

Tel:

AS (Constitutional and Mainland Affairs) (2A)
Central Government Offices
3/F, East Wing
Lower Albert Road
Hong Kong
Email Address: pvr_consultation@cmab.gov.hk
Fax 2840 1976

Policy Options on Prisoners' Voting Rights

The prisoners should be allowed to exert their full voting right – that is option a) of your consultation document.

Some arguments:

- 1) Participating in democratic rights is a basic human right and should, as a matter of principle, not be denied.
- 2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a *further* punishment that shouldn't be imposed by the executive branch. If it is seen necessary as e.g. in cases of election related offenses it should be imposed by the judiciary.
- 3) Prisoners live in a public institution (although involuntarily) and are as such recipients of a public service. They should therefore be allowed to participate in the election of the legislative and executive branches of government that eventually shape the public service.
- 4) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.
- 5) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

日期:

2009年3月9日 10:13

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Unrestricted Voting Rights for Prisoners

Dear Sir,

I wish to express my support of Option A to give prisoners in Hong Kong the unrestricted voting right.

This is based on my belief that every person deserves human dignity. Whatever we as a community can do to give prisoners a sense of responsibility, belonging and participation will assist them in their rehabilitation.

The limited voting right that all Hong Kong people enjoy now is precious. We should not deny any citizen or resident that democratic right. We should be expanding rather than contracting the vote. Other countries have made it possible for prisoners to participate in elections. Hong Kong can set a good example as a Chinese city that is governed in a just, humane and progressive way.

Thank you.

Yours sincerely,

日期:

2009年3月10日 8:34

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Freedom to vote

"Home of the Free? If they are US citizens they should be allowed to vote no matter what they are guilty of. If you take away their freedom to vote then take away their citizenship."

日期:

2009年3月10日 9:34

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Policy Options on Prisioners' Voting Right

AS(Constitutional and Mainland Affairs)(2A) Central Government Offices 3/F, East Wing Lower Albert Road Hong Kong

Dear Sir,

I refer to the Consultation Document on Prisoners' Voting Right (Feb 2009).

I think giving full voting rights to prisoners gives them dignity and hence better rehabilitation of inmates. Indeed, participating in democratic rights is a basic human right and should not be denied. I support that the prisoners should be allowed to exert their full voting right.

As regards Policy Options on Prisoners' Voting Right, I therefore support Option One, i.e., to remove the existing disqualification provisions in section 53(5)(a)-(b). The disqualification of person convicted of election-related or bribery offenses from voting under section 53(5)(c) will remain.

Grateful if you would take note of my view above.

Thanks

10 March 2009

日期:

2009年3月11日 6:02

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

查詢有關在囚人士投票權的問題

你好,本人欲查詢有關在囚人士投票權的問題。

爲何在囚人士被囚期間,財產權等其他權利不被剝奪,但偏偏投票權卻要被剝奪?而且,投票不但是公民的權利,亦是大家的義務,如果不讓他們投票,不就等於叫他們不用盡一個公民的義務?

謝謝有關人士的解答。

祝

台安

日期:

2009年3月11日 15:04

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

有關在囚人士投票權的公眾諮詢

你好,本人就有關在囚人士投票權的公眾諮詢,不同意在囚人士擁有投票權 在囚其間,本身不應該能夠享有行使公民權利, 而且在囚其間本來就不屬合法居留在港, 當中就確立選民身份已出現予盾

謝謝

日期:

2009年3月11日 23:38

收件人:

<pvr consultation@cmab.gov.hk>

副本抄送:

標題:

Prisoner voting rights

Dear Sir or Madam,

I am writing to express my personal opinion regarding the proposed granting of voting rights to prisoners. In particular, I support the government's stance in opposing a prisoner's right to vote. Most societies' values would dictate that a person convicted and imprisoned for a crime would expect to lose a certain number of their rights. The most obvious right is of course their freedom, but this should not necessarily be the only one. Furthermore, when the necessary arrangements for prisoner voting would likely cost the taxpayer so much extra money as well as place great strain on the Correctional Services Department, allowing inmates to vote really does seem to defy commonsense. Would not this public money be much better spent on other areas? I would like to emphasize that the primary issue here is not money, but in principle. Where do we draw the line? If we allow inmates to vote, should we also allow them to claim social welfare whilst in prison? I am not suggesting we deprive prisoners of all their rights, however, I do think that an incarcerated individual should only be given bare minimum rights required for their period of imprisonment. I am not a legal expert, but I know that prisoners already have some rights such as the chance to appeal their conviction as well as the opportunity to meet a J.P. Whilst such rights are very reasonable, the right for them to vote at the expense of precious public resources is not. Thank you for your time.

Yours faithfully,

日期:

2009年3月13日 18:06

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

submission re PVR

Dear Sir/ Madam,

For the policy options on prisoners' voting right, I support Option One for the following reasons:

- other than those convicted due to election-related offences, the other prisoners should be treated equally
- their imprisonment is already punishment of their offences; there should not be added punishment
- HK should not impose punishment in the form of "depriving one's political rights".

Thanks

(Please note that I agree to publish my submission, if needed; but I request NOT to disclose my full name.)

日期: 收件人: 2009年3月14日 12:33

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題: 附件:

feedback on consultation paper

Presentation1.jpg (103 KB)

Dear sir/ madam,

I prefer the proposal 3 of the Paper, as it is a check-and-balance approach. Also, attaches my article covered on Sing Pao on 11 March 2009 for yr reference.

<< Presentation1.jpg>>

Regards,

Mobile:

(Editor's Note: A newspaper article enclosed by the sender is not reproduced because of copyright.)

日期:

2009年3月15日 14:02

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

有關在囚人士投票權的公眾諮詢

本人

(身份證號碼

)就以上諮詢活動自願表達意見,本人<u>不贊成</u>在囚人士可享有投票權。

日期:

2009年3月15日 21:45

收件人:

<pvr consultation@cmab.gov.hk>

副本抄送:

標題:

Prisoners' Voting Rights

AS (Constitutional and Mainland Affairs) (2A) Central Government Offices 3/F, East Wing Lower Albert Road Hong Kong Email Address: pvr_consultation@cmab.gov.hk

Fax 2840 1976

Policy Options on Prisoners' Voting Rights

The prisoners should be allowed to exert their full voting right – that is option a) of your consultation document.

Dear Sir/Madam,

I am writing to support the full voting right of prisoners for the following reasons:

- 1) Participating in democratic rights is a basic human right and should, as a matter of principle, not be denied.
- 2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a *further* punishment that shouldn't be imposed by the executive branch. If it is seen necessary as e.g. in cases of election related offenses it should be imposed by the judiciary.
- 3) Prisoners live in a public institution (although involuntarily) and are as such recipients of a public service. They should therefore be allowed to participate in the election of the legislative and executive branches of government that eventually shape the public service.
- 4) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.
- 5) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

Thank you for your attention.

Sincerely,

日期:

2009年3月18日 10:55

收件人:

<pvr consultation@cmab.gov.hk>

副本抄送:

標題:

有關在囚人仕投票權

在囚投票權案值得上訴/

2009-3-15

在以人為本的社會,市民願意支持出獄人士在改過自新後重獲新生。要盡公民責任,在出獄後再好好留意時事,參考政網才參與投票選舉也未遲。獄中品流複雜,不宜再去鼓勵搞作充滿貪污舞弊危機的政治活動,政府如不就在囚者投票權案裁決上訴,結果除了是違背主流民意,浪費社會資源,最終可能會自討苦吃。

香港自開埠以來一直以法治精神作為核心價值觀之一,然而近年劫不斷出現有濫用司法覆核的情況,這是頗令人擔憂的。去年有人提出在囚者應有投票權的司法覆核,而高等法院在去年十二月八日就此個案作出判決,裁定現行《立法會條例》中有關在囚者喪失登記成為選民及投票資格的條文違憲。

基於有關判決,政府於上月發表了《有關在囚人士投票權的諮詢文件》,應進行為期六星期的公眾諮詢,至本月二十三日結束。筆者出席了三月六日(星期五)的首場諮詢會,當晚天氣寒冷,兩勢也不小,但香港文化博物館劇院內還是坐滿了接近八成市民,可見大家對這個議題是相當關注的。可惜,這份文件由標題以至內容都很有問題,例如席上有市民提出此文件叫做「有關在囚人士投票權」,但原來應非就其是否應享有投票權而聽取民意,而是政府已準備了在囚者投票的A餐、B餐和C餐,叫市民講講哪個方案較好?如是者這份文件其實是否應該稱為《在囚人士投票方式的諮詢文件》?否則有誤導之嫌?

政治和法律是兩門學問,而很多時候在社會議題上相互關連。上述諮詢會主講者是政制及內地事務局副局長譚志源及選舉事務處代表,律政司沒有發言人在場,對於一個就司法覆核結果而進行的諮詢會未免有所不足。會上有另一位市民提出一個很關鍵的問題:「這個判決是否最後?」譚氏的回應頗為含糊,只表示尚有司法程序未完成。正如本欄去年十二月十三日所發表的一篇《投票權當然需論「資格」》所提到「相信不少市民都認為,在大是大非的原則下,不可能對單一判決照單全收。」本人於是在會上就市民提問作出發言跟進,清晰的回應,這個判決未必是最終裁決。

高等法院由上訴法庭及原訟法庭組成,具上訴及原訟司法管轄權。上訴權是香港法律制度內重要的一環,據比較高級別的法院得以覆核較下層法院的判決,上訴制度旨在確保經由上訴至更高級別的法院,可以修正任何在法庭聆訊,在有關程序、或事實上在調查過程中出現的失誤。就與公眾利益或指違反《基本法》的案件,訴訟任何一方不服上訴法庭的判決,可以申請向終審法院上訴的許可。有與會者問譚志源,律政司會否提上訴?他沒有為這問題提供答案,而我們亦沒有聽過當局一定不會提出上訴,所以強迫市民去接受一個未必是最終,甚至未必是正確的判決,這已經與尊重民意的大前提有所違背。

政府要就該司法覆核結果提諮詢,第一步其實是要問市民是否贊成在囚人士有投票權?倘若大部分市民都同意,然後等二步才拋出投票方式讓大家就不同方案作出選擇,這才起碼叫做合理。當晚出席的社會不同界別人士大部分都基於廉潔、保安、公帑適當運用等理由表示在囚者不宜投票,以為出席諮詢會是就此表態,來到才知道是當局是要市民選投票A、B、C餐(因有些事前未看過文件),於是紛紛表示極之無奈。

香港人如果對《基本法》真的尊重和了解,對去年十二月八日的法院裁決是不能接受的,而且衷心希望政府能提出上訴。現時的 《立法會條例》規定在囚人士一律喪失登記和投票資格絕對沒有違反《基本法》。第二十六條之寫法是:「香港特別行政區永久性居民依法享有選舉權和被選舉權。」可不是「人人」都有選舉權和被選舉權,《基本法》賦予港人的權利是自行立法,是以一條正式被

就法治精神來研究的一個重點是:將人判入獄、羁押在囚之目的是為了什麼?就是對破壞法紀、觸犯刑事罪行者以入獄失去自由作為懲罰,使其得以反省,同時刑罰亦有阻嚇作用,即是說不想失去自由,那便不要犯罪!試想想,如此類推,要是在獄中同時享有政治權利,那是不是又可再享有過時過節與家人團聚權等等才叫做符合人權?如是者入獄只不過是出入行動不那麼方便,樣樣權利、娛樂十足,刑罰還有否阻嚇作用?

在諮詢會中有位女士發言時講得很好,她說有人好像是要將投票權送出去,但政府可有實際做過調查,探討過在囚者究竟對讀政綱選議員有沒有興趣?這個意見真是一針見血的,否則如果開票箱結果出來,幾千在囚者原來只有不到幾十人投票,如此勞民傷財只為大家成為一個錯誤司法覆核的犧牲品,這實在說不過去。再者不容忽略的考慮方向是,犯法者在獄中真的那麼有興趣盡公民責任嗎?可不可以作資料調查一下,他們在入獄前有幾多個是登記選民?又曾投過幾多次票?在文明社會我們當然重視人權,但卻不能容忍別有用心者以法亂法,濫用司法覆核作為自己的政治籌碼。此case的提出者之一是在立法會中掃場擲物的惡棍,是真的那麼尊重《基本法》而提司法覆核?太令人懷疑了吧?

在以人為本的社會,市民願意支持出獄人士在改過自新後重獲新生。要盡公民責任,在出獄後再好好留意時事,參考政綱才參與投票選舉也未遲。獄中品流複雜,不宜再去鼓勵搞作充滿貪污舞弊危機的政治活動,政府如不就有關裁決上訴,結果除了是違背主流民意,浪費社會資源,最終可能會自討苦吃。倒不如延長諮詢期,發放一份較詳盡的文件,這才真正達到尊重民意、尊重法治的目標。

作者為時事評論員

日期:

2009年3月19日 15:35

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

反對在囚人士有權利投票

本人反對讓在囚人士有投票權利,因爲在囚人士係犯左法,所以判坐監,而坐監係其中一種懲罰,用作剥削他們自由同遞奪佢地權利 這樣他們才覺自由可貴同珍惜....

如果讓他們有投票權 簡直係對坐監作爲一個懲罰 失去一個意義

人權唔係咁用...我極力反對

日期:

2009年3月20日 22:56

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

consultation on prisioner's right to vote

I agree to resume the prisoners' right to vote. And for the practical arrangement, I prefer to set up mobile polling station in the prisons.

mobile:

日期:

2009年3月21日 14:59

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Views sought on prisoner voting rights - should be deny

To whom it may concern,

Person has been put in prison because they have broke the law. This is a legitimate reason why they have less rights than other people in the society. When the person has served their time for whatever they have done wrong in the past will get the rights to vote is logical and reasonable.

If a prisoner ask for fairness, then I would like to ask when they have committed a crime, is there any moment in the back of their head that what he/she did at the time is not fair to other people? Even if one may argues that they are serving in prison...well it is "serving" not "served", when they have served their time, then we talk about the rights.

It is too obvious that some of those LEGCO members like this to happen, it is a public known fact that some of these people are linked/related to the local triads. They definitely will get more votes in prison than from the general public. Any decent and well educated human beings will definitely not vote for those clowns.

Please do not allow this to happen, I don't want to end up living in a place like Taiwan / Japan, where the triad and politicians equals to the same thing.

PS. If possible plz ask the Chief Executive or senior Chinese officials to use any means to get rid of those well known clowns and trouble makers. Of course, best will be to get rid of the triads that back them up as well.

Best regards.

日期:

2009年3月22日 15:31

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

遞交《有關在囚人士投票權諮詢文件》的建議

附件:

有關《在囚人士投票權諮詢文件》的建議書.doc

(47 KB)

政制及內地事務局林局長:

本人是

中學的通識教育科教師。

上星期三(2009年3月18日),本人跟修讀通識教育科的學生探討香港在囚人士投票權的議題,並進行一系列討論和分享。下課後,各學生都願意將討論的共識和意見歸納成一份建議書,再呈交 貴局參考。

現附上我校學生的建議書,敬希 貴局接納。

如有任何疑問、回覆或跟進,可隨時聯絡本人。

學校地址: 學校電話: 學校傳真:

謹上

政制及內地事務局 林瑞麟局長:

有關在囚人士投票權的建議

我們是一班修讀通識教育科的中六學生,得知 貴局正就「有關 在囚人士投票權」事項進行公眾諮詢。經商議後,我們就上述事項提 出以下建議。

首先,我們認爲投票權是每個人的政治權利之一,雖然在囚人士是干犯了某些罪行,但我們相信這並不表示可以代表剝奪他們的政治權利。投票權是基本的政治權利之一,《公民權利及政治權利國際公約》亦有明確規定。同時根據香港法例第 383 章《香港人權法案條例》第 8 條的〈香港人權法案〉第 21 條規定:「凡屬永久性居民,均應有權利及機會在真正、定期之選舉中投票及被選,以保證選民意志之自由表現。」

因此我們在諮詢文件第二章《在囚人士投票權的政策方案》中, 強烈表示支持方案一「移除在囚人士在第53(5)(a)至(b)條喪失投票資 格的規定」。

其次,就諮詢文件第三章《在囚人士及遭羈押但未被定罪的人士 行使投票權的實務安排》中,我們認爲已登記爲選民的在囚人士,可 以選擇使用服刑前已登記的唯一或主要的居所爲登記地址,無須另行 更改;而對於未登記爲選民的在囚人士,我們建議跟從上述做法---選擇使用服刑前已登記的唯一或主要的居所爲登記地址。但對於沒有 唯一或主要的居所爲登記地址的在囚人士(不論登記爲選民與否), 我們同意政府的安排---以其服刑前在香港的最後居住地方爲唯一或 主要住址,用於選民登記。我們的建議是建基於行政安排,以簡易的 程序去處理問題,無須花過多資源去做選民登記。

在投票時實務安排方面,我們認爲在監獄內設立投票站較爲易於實行,每個監獄可按自己本身的地理環境,在適當地方設立票站,同時因應監獄對在囚人士的作息,安排彈性投票時間:有些在囚人士可以早點投票、有些在囚人士可以晚點投票(只要介乎正常投票時段便可)。當然懲教署職員需要管理人流。

至於拉票活動方面,我們相信在囚人士跟普通市民一樣,可以從不同渠道獲得候選人資訊,例如:從報章、收音機、電視和郵遞的候選人單張等,只是在囚人士不能親身參與候選人的選舉論壇。但是我們認爲這種分別,實無損在囚人士對各位候選人的認識,繼而影響投票的傾向。所以我們贊成 貴局在諮詢文件第3.08節的建議。

誠如高等法院法官於2008年12月8日就三宗司法覆核個案作出判決時表示,在囚人士是有權進行投票的,現行的《立法會條例》第31(1)(a)至(b)條及第53(5)(a)至(b)條是違反《基本法》第26條及香港法例第383章《香港人權法案條例》第8條的〈香港人權法案〉第21條的規定,在法、理、情三方面都是講不通。故此,我們懇請 貴局接納上述的建議,全面改善現行的不足情況,令在囚人士的權利得到保障。

2009年3月23日

日期:

2009年3月22日 22:49

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Voting Rights for Prisoners

The prisoners should be allowed to exert their full voting right - that is option a) of your consultation document.

Reasons:

- 1) Participating in democratic rights is a basic human right and should, as a matter of principle, not be denied.
- 2) Prisoners are sentenced through a judicial process. Any restriction of voting rights is a *further* punishment that shouldn't be imposed by the executive branch. If it is seen necessary as e.g. in cases of election related offenses it should be imposed by the judiciary.
- 3) Prisoners live in a public institution (although involuntarily) and are as such recipients of a public service. They should therefore be allowed to participate in the election of the legislative and executive branches of government that eventually shape the public service.
- 4) The inmates are not detached individuals, but are part of families that like to make their voices heard through a democratic process. Through their participation in elections they can support their families who are also potential beneficiaries (or victims) of political decisions.
- 5) Giving full voting rights to prisoners gives them dignity. It is a step towards better rehabilitation of inmates.

日期:

2009年3月23日 12:39

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

(沒有標題)

附件:

Consultation Document on Prisoners Voting Right.doc (25 KB)

Dear Sir or Madam.

Please find attached my comments on this consultation.

I am happy for my name to be published along with my comments, but not for my email address nor any other personal details to be disclosed.

Please confirm receipt of my comments.

Yours faithfully

Paul Jackson.

Consultation Document on Prisoners' Voting Right

I have no particular comments or concerns on the details of proposed prisoners' voting rights. However, I do believe that as a matter of far greater urgency, HKSARG should revise its voting procedures to allow absentee voting for those voters who are *not* in prison, nor on remand.

Hong Kong citizens and permanent residents with full voting rights may need to be outside the territory or unable to attend the designated polling station for any number of reasons, including: business (earning money that in most cases ultimately benefits Hong Kong), bereavement (e.g. to attend a close family member's funeral overseas), nature of occupation (e.g. seamen, fishermen, pilots and aircrew etc), urgent medical treatment etc.

Rather than compile a narrow list of such "qualifying" criteria, HKSARG ought to devise appropriate mechanisms to ensure that its law abiding citizens and permanent residents are not deprived of their voting right merely because they happen to be outside Hong Kong (a rather small territory in which to be confined) on a particular date, or unable to get to the designated polling station.

Almost all of the countries referred to in the Consultation already allow some form of absentee voting for some or all of their citizens with general voting rights, whether by voting in person at Embassies and Consulates overseas, postal voting, proxy voting, or other means.

Considering that all affected parties would necessarily have valid Hong Kong identity cards (or at least certificates, or suitably endorsed passports), the opportunity for absentee voting fraud ought to be a lot lower than that in some other countries and territories (e.g. United Kingdom), if the procedures are carefully designed, implemented and adhered to.

I would hope to see a Public Consultation on general absentee voting before any voting right(s) are extended to prisoners, as I believe that general absentee voting would concern and impact a far larger proportion of potential voters than prisoner voting.

Paul Jackson 23 March 2009.

日期:

2009年3月23日 15.59

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

香港研究協會---市民對是否讓所有在囚人士都享有投票權意見分歧

附件:

482chart.pdf (156 KB)

【新聞稿】

市民對是否讓所有在囚人士都享有投票權意見分歧

政府現正就放寬在囚人士投票權限制的政策方案,以及為在囚人士和遭羈押但未被定罪人士(遭羈押人士)行使投 票權所制定的實務安排進行公眾諮詢。香港研究協會就此於3月13至18日展開全港隨機抽樣電話訪問,成功訪問了1038 名十八歲或以上市民,以了解市民對有關諮詢文件的意見。

調査結果顯示:對於諮詢文件提出的三個放寬在囚人士投票權限制的政策方案,最多受訪者選擇「讓所有在囚人士 都享有投票權」,佔三成七;其次是「禁止長期服刑的在囚人士投票」,佔三成二;再次是「恢復長期服刑的在囚人士 在刑期最後幾年的投票權」,佔一成半;而對此表示「無意見」的則佔一成六。根據《立法會條例》,被裁定干犯與選 舉有關的罪行或賄賂罪行的人士在被定罪後三年內將喪失投票的資格,諮詢文件建議繼續保留此條例,七成二受訪者對 此表示「贊成」, 而表示「不贊成」及「無意見」的各佔一成四。

當擁有投票資格的在囚人士進行投票時,最多受訪者認為「在監獄內設立投票站」的安排最為適當,佔三成九,其 次是認為「安排流動投票站前往監獄」,佔三成一;再次是認為「以郵遞方式投票」,佔一成半;認為是「在囚人士親 身前往投票站」的佔百分之五;而認為是「委派他人代為投票」的則只佔百分之二。諮詢文件建議為遭羈押但未被定罪 人士制訂的投票安排,與在囚人士相類似,四成一受訪者對此表示「贊成」,表示「不贊成」的佔一成九,而表示「無 意見」的則佔四成。此外,諮詢文件建議在囚人士的投票活動須於晚上七時前停止,五成九受訪者對此表示「贊成」, 表示「不贊成」的佔一成四,而表示「無意見」的則佔兩成七。對於將不同類別的在囚人士在投票活動進行期間加以分 隔的建議,六成受訪者對此表示「贊成」,表示「不贊成」的佔一成半,而表示「無意見」的則佔兩成半。

香港研究協會負責人表示,對於放寬在囚人士投票權限制的政策方案,三成七受訪者認為應該「讓所有在囚人士都 享有投票權」,但同時亦有三成二受訪者認為應該「禁止長期服刑的在囚人士投票」,反映市民在是否讓所有在囚人士 都享有投票權的問題上意見分歧。對於諮詢文件建議繼續保留《立法會條例》中有關被裁定干犯與選舉有關的罪行或賄 路罪行人士投票權限制的條例, 七成二受訪者對此表示贊成, 反映保留有關條例有助維護選舉的公正性, 此舉得到普遍 市民認同。對於在囚人士的投票安排,三成九受訪者認為在監獄內設立投票站最為適當,相信與該投票安排既能讓在囚 人士行使其投票權,又能保障公眾安全有關。至於五成九受訪者贊成在囚人士的投票活動須於晚上七時前停止,以及六 成受訪者贊成將不同類別的在囚人士在投票活動進行期間加以分隔,皆反映基於保安理由而對在囚人士投票時施加上述 限制的做法,得到大部份市民的支持。;

香港研究協會負責人指出,投票權是公民行使其政治權利的重要體現,理應受到保障,但如何在保障在囚人士行使 其政治權利與維護公眾利益之間取得平衡,需要社會各界進行深入的探討。協會呼籲政府認真聽取社會各界的意見,積 極研究各方案的可行性,凝聚共識,為合資格的在囚人士提供適當的投票安排,真正體現香港的民主法治精神。

附件: 調査結果分析圖表(共一頁)

發稿	选 博.
1女1何1	戏(円)

電話:

傳真:

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網址:

發稿日期: 2009年3月23日

香港研究協會

調查題目

:市民對〈有關在囚人士投票權的諮詢文件〉意見調查

調查期間

: 2009年3月13至18日

有效問卷數目 : 1038份

調查方法

: 以隨機抽取電話號碼作全港性電話調查

調查目的

:政府現正就放寬在囚人士投票權限制的政策方案,以及為在囚人士和遭羈押但未被定罪 人士(遭羈押人士)行使投票權所制定的實務安排進行公眾諮詢。本會就此進行調查,

以了解市民對該諮詢文件的意見。

1 對於放寬在囚人士投票權限制的政策方案,受訪者認為應該

二、一、一、一、一、一、一、一、一、一、一、一、一、一、一、一、一、一、一、一	<u></u>
镍所有在囚人士都享有投票權	37%
禁止長期服刑的在囚人士投票	32%
恢復長期服刑的在囚人士在刑期最後幾年的投票權	15%
無意見	16%



2 根據(立法會條例),被裁定干犯與選舉有關的罪行或賄賂罪行的人士在被定罪後三年內將喪失 投票的資格。諮詢文件建議繼續保留此條例,受訪者是否贊成

10-11 -14 M 10 1	20 2 2 V 11 V mb/4
贊成	72%
不贊成	14%
無意見	14%



3 當擁有投票資格的在囚人士進行投票時,受訪者認為以下哪一項投票安排最為適當

	C11 2C71 ~1
以郵遞方式投票	15%
在囚人士舰身前往投票站	5%
在監獄內設立投票站	39%
安排流動投票站前往監獄	31%
委派他人代為投票	1%
其他	2%
無意見	7%



4 諮詢文件建議為遺竊押但未被定罪人士制訂的投票安排,與在囚人士相類似,受訪者是否贊成

贊成	41%
不贊成	19%
無意見	40%



5 諮詢文件建議在囚人士的投票活動須於晚上七時前停止,受訪者是否贊成

贊成	59%
不贊成	14%
無意見	27%



6 諮詢文件建議投票活動進行期間,不同類別的在囚人士須加以分隔,受訪者是否贊成

贊成	60%
不贊成	15%
無意見	25%



7 受訪者的年龄分佈

3 - 7	
18至30歲	23%
31至40歲	23%
41至65歲	48%
65歲以上	6%

R 参勤安的學與公体

٥.	文 5 有 的 学 歷 分 佈	
	小學或以下	8%
	中學	50%
ļ	大惠或以上	12%

9 受訪者認為自己是

又的有的向日口为	€
低收入人士	49%
中產人士	47%
高收入人十	1%

日期:

2009年3月23日 23:02

收件人:

<pvr_consultation@cmab.gov.hk>, <pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

在囚人士投票

本人支持方案一,即在監獄設置投票站。因為能防止在囚人士逃跑。

而且,本人認為,不論刑期長短,都應該擁有投票權。

日期:

2009年3月23日 23:31

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Submission from the HK Human Rights Monitor on the Prisoners' Right to Vote

附件:

Submission from HKHRM on Right to Vote of Prisoners.doc (106 KB)

香港人權監察 HONG KONG HUMAN RIGHTS MONITOR

香港上環子沙街二十號金德樓4樓 4/F Kam Tak Building, 20 Mercer Street, Sheung Wan, Hong Kong 電話 Phone: (852) 2811-4488 電郵地址 Email: info@hkhrm.org.hk

Submission to the Constitutional and Mainland Affairs Bureau in Response to the Consultation Document on Prisoners' Voting Rights 23 March 2009

Introduction

- 1. Currently the Legislative Council Ordinance, Cap. 542 ("LCO") governs the registration of electors and conduct of elections for the Legislative Council (LegCo) of Hong Kong. Section 31 of the LCO provides for the disqualification of persons from being registered as electors. Section 53 of the LCO also specifies the disqualification of electors from voting at an election. In both of these provisions, prisoners serving a prison sentence are disqualified. In other words, they are not allowed to vote under the current legislation.
- 2. No legislation disqualifies unconvicted persons in remand to vote. However, their right to vote is in practice denied because they are not allowed to leave the remand facilities to cast their vote and there are no arrangements for them to cast their vote in the remand facilities.
- 3. On 8 December 2008, the Court handed down its judgment on the judicial review (JR) on the right of prisoners to vote. As the Court set out in its judgment, "the right to vote is the second substantive right set out in Chapter III of the Basic Law, entitled 'Fundamental Rights and Duties of the Residents'. It is, beyond argument, a 'fundamental' right of the permanent residents of the SAR, as the caption of Chapter III clearly states." The judge concluded that "the general, automatic and indiscriminate restrictions on the right to vote and the right to register as an elector cannot be justified under the proportionality test".
- 4. It should be noted that similar disqualification provisions can be found in the Chief Executive Election Ordinance (Cap. 569), the District Councils Ordinance (Cap. 547) and the Village Representative Election Ordinance (Cap. 576). The Court's judgment on the disqualification provisions under the LCO will have bearing on similar provisions of the above 3 Ordinances.⁵
- 5. Since the Administration considers that it is necessary to "formulate policy options on the relaxation of the restrictions", a consultation document on prisoners' voting right has thus been published after the Court's judgment to conduct the public consultation on this issue. The Hong Kong Human Rights Monitor welcomes the consultation and would like to express our views on the issue as follows.

Para. 50, HCAL 79, 82-3/2008.

The full version of the LCO can be found at: http://www.legislation.gov.hk/blis_export.nsf/chome.htm
The full version of the judgment can be found at:

http://legalref.judiciary.gov.hk/doc/judg/word/vetted/other/en/2008/HCAL000079_2008.doc

Para. 164, Ibid.

Para. 4.02 of the Consultation Document.

Para. 1.15, Ibid.

Prisoners' Right to Register as Electors

- 6. Under the existing provisions of the LCO, all prisoners are disqualified from applying to be registered as voters. The Court in its judgment considers that "the disqualification from registration in section 31(1)(a)-(b) of the LCO is difficult to justify in the sense that it applies regardless of whether the prisoner is expected to be released from prison by the time of the next election."
- 7. The Administration in its consultation document expresses that there is possible limitation under the existing arrangement that a person who has served the sentence may not be able to vote if he has missed the voters' registration deadline. The Monitor agrees with the Court and considers that the disqualification from registration should be removed.

Policy Options on Prisoners' Right to Vote

- 8. The consultation paper provides 3 options on prisoners' right to vote. Option one is to remove the existing disqualification provisions in section 53(5)(a)-(b) of the LCO, which means that unless specified in section 53(5)(c), no prisoners will be disqualified to vote. We believe that the right to vote is a fundamental political right that should be enjoyed by all without distinction, including prisoners. No distinction should be made according to the types of crimes or the length of sentence. The Monitor thus supports this option.
- 9. Some people may worry that allowing persons who are convicted of election-related or bribery offences would affect the integrity of the legislature. It should be noted that under section 53(5)(c) of the LCO, persons convicted of election-related or bribery offences are disqualified from voting within three years after such conviction. The imprisonment already serves the purpose of protecting the integrity of the legislature by penalizing convicted persons. The Administration stated that since this provision is not covered by the JR cases this consultation will not affect this provision. Such disqualification will remain. The Monitor opines that imprisonment already serves the purpose to penalize convicted persons, persons who are convicted of election-related or bribery should be given the right to vote as well. Although this provision is not covered by the JR cases, the Administration should consider repealing section 53(5)(c) of the LCO.
- 10. The Administration states in its consultation document that "there are also views that while prisoners who have been convicted of minor offences may be allowed to vote, those who have committed serious criminal offences have threatened the rule of law and should not be allowed to take part in electing our legislators in order to protect the integrity of the legislature. The disqualification of serious criminals from voting is considered by some as necessary". The Monitor considers that the persons who have committed serious offences are already penalized by probably a longer sentence. Their right to vote should not be deprived as a penalty. Moreover, the Monitor doubts the functions of the disqualification of serious criminals from voting are to "prevent crime" and "give an incentive to citizen-like conduct and enhance civic responsibility and respect for the rule of law". The Monitor doubts its correctness in principle and effectiveness in its effect. We urge the Administration to conduct empirical studies and to provide cogent evidence to justify its claim.

Para. 132 of the Judgment.

Para. 2.10 of the consultation paper.

Para. 2.12, ibid.

¹⁰ Ibid.

- Option two is to disqualify prisoners from voting if their sentences of imprisonment exceed a certain length. The Administration explains that by distinguishing serious offences by the length of sentence, this option seeks to balance between protecting the integrity of the legislature while retaining the voting right for less serious offenders.¹¹
- 12. The Monitor opposes this option because there are no fair and objective criteria to determine the threshold on the length of imprisonment sentences. As the Administration in a way admits, "...as serious and minor offences cannot be simply defined by the length of the imprisonment sentence, it may be arbitrary to determine the threshold of disqualification based on the length of the imprisonment sentence". 12
- 13. Some may suggest determining the disqualification by referring to different types of crimes. The Monitor considers that it is difficult to judge each of the crimes. Even for cases of the same crime, there are so many different factors to be taken into consideration. Moreover, this also would mean that new judgment should be made whenever there is new legislation. For example if the legislation on national security is enacted in the future, the Court may need to decide the necessity of this disqualification on treason, subversion and sedition, etc.
- 14. Option three proposes that while a person serving an imprisonment sentence of say, 10 years or above is disqualified from voting, he will be allowed to vote in the last few years (for instance the last five years) of his term of imprisonment. It is a variation to option two.¹³
- 15. The Monitor opposes this option. First, similar to option two, the same concern about the arbitrariness in determining the threshold of disqualification may also arise. There are no reasonable and objective criteria to determine how long the outstanding term of imprisonment the prisoner should be allowed to cast their vote. This option suggests the long-term prisoner will resume their right to vote when they are serving the last few years of imprisonment. However, it may encounter administrative difficulties as the exact term of sentences is a variable which is subject to the determination of the corresponding Review Boards. For instance, the Long-term Prison Sentences Review Board will conduct regular reviews on completion of 5 years' imprisonment and every 2 years thereafter for adult prisoners and will review the sentences of the young offenders annually till they reach the age of 21, and every 2 years thereafter. The Release under Supervision Board will process the applications from eligible prisoners for early release to their last few years of imprisonment.
- 16. Besides addressing the right of prisoners, the Monitor recommends the Administration examine any need to amend the disqualifications provision under section 53(5)(e) of the LCO. 16 Under this provision, it is possible that retired military personnel with lifelong titles in the army of Kuomintang or the Communist Party are not allowed to vote in spite of the fact that they have gained the status of permanent resident in Hong Kong. If so, this disqualification provision probably contravenes the right to vote constitutionally guaranteed under Article 26 of the Basic Law. The Administrative should provide more information on this issue to see if it is necessary to amend the provision to address the said problem.

Para. 2.13 of the consultation paper.

Para. 2.15, ibid.

Para. 2.16, ibid.

The Long-term Prison Sentences Review Board was established pursuant to the Long-term Prison Sentences Review Ordinance, Cap 524.

The Release under Supervision Board was established pursuant to the Prisoners (Release under Supervision) Ordinance, Cap. 325.

Section 53(5)(e) of the LCO provides that an elector is disqualified from voting at an elect if the elector is a member of the armed forces of the Central People's Government or any other country or territory.

Practical arrangements for prisoners to vote

- 17. In choosing the practical arrangements for prisoners and those unconvicted remands to exercise their voting right, we should bear in mind the following principles:
 - Fairness of election
 - Secrecy of the ballot
 - Prisoners to participate in their local community
 - Prison security
 - · Voting right as a fundamental right
 - Rehabilitation
 - i. Other forms of punishment
 - ii. Whether disqualification is indispensable as a sentencing option.
- 18. The first problem is on the registration address of the prisoners. The Administration in its consultation document proposes that for prisoners who maintain a sole or main home, the address of their sole or main home will be the registration address of the prisoners. For prisoners who do not maintain a sole or main home, they would be assigned to the geographical constituency within which their last dwelling-place was located. It is a convenient way for the Administration because the information on the prisoners including prisoners' sole or main home, or last dwelling-place before their imprisonment would be available from the prison's record, which could provide administrative certainty. Moreover, it can help the prisoners participate in the issues in that community, which would be good for them when they finish serving the sentence and return to their local community.
- 19. Also, such proposals could prevent the problem of vote planting, which can protect the fairness of the elections. The option of registering a prisoner at the address of the next-of-kin will make the registration complicated and may facilitate vote planting.
- 20. We agree that the proposal to use the address of the prison as a registered address is problematic. As the consultation document states, "it may lead to an unduly high proportion of prisoners in the registered electorate of certain constituencies".
- 21. "Unduly high proportion" may not be a big problem in the LegCo geographical constituency elections, because each constituency currently has at least 440,000 voters representing 1 million population. However, such problem is obvious in the District Council (DC) Elections. Take the District Council constituency of Stanley and Shek O as an example. There are around 7,300 voters representing around 24,000 population in this constituency, while there are in total 4 prisons in the district. As at 31 December 2008, there are in total 2,397 prisoners in these 4 prisons. ¹⁷ If they all become voters in this constituencies, one-fourth of the voters are prisoners, which will become an unduly high proportion and thus easy for criminal elements to take undue advantage of this exceptionally high prisoner composition.
- 22. However, the prisoners do not have much of a chance to communicate with the outside world, so they probably do not know the environment and issues in the area they were living in originally. Even the prisoners can get the election information by post or from the mass media, they may still lack information in choosing their representatives. Since all the prisoners are actually living in the constituencies in which their prisons are located, if we allow the prisoners to use the prisons as their registered address, it may well help them participate more meaningfully in the local community and choose a real representative with their vote. Since

Hong Kong Correctional Services: Population in Panel Institutions (as at 31 Dec 2008). http://www.csd.gov.hk/english/ins/ins stat/ins_stat.html

both of the options have their own advantages and problems, the Monitor recommends the Administration to conduct an in-depth study of overseas experience and review this after the next LegCo and DC elections, and compare which options on the registration address would be more beneficial to the prisoners and the society as a whole.

- 23. For the canvassing of votes, the Monitor agrees that prisoners could access election-related materials both by post and the mass media. If the Administration decides to adopt the options of using prisons as the registered address, the Administration should consider allowing candidates to canvass in person inside prisons. This could help the prisoners to integrate to a certain extent into the community and to choose their representatives through direct communication with the candidates. The Administration should conduct an overseas study on this as well.
- 24. In making the practical arrangements, it is extremely important to maintain the secrecy of ballot. Otherwise manipulation of votes may take place which would definitely affect the fairness of various elections. The Monitor is of the view that either polling stations or mobile polling stations should be set up inside prisons to cover all registered prisoners and remands. It would be the best way to strictly maintain the secrecy of the ballot as compared to postal voting or voting by proxy.
- 25. Postal voting or voting by proxy may reduce the secrecy of the ballot. They make undue influence, intimidation and vote buying more effective and therefore more likely to take place. They will lead to the loss of confidence in the voting system. They should be considered only if it has been proved to be very difficult to vote in person in prison facilities. As the consultation document states, "they (postal voting or voting by proxy) are also more susceptible to undue influence and fraud than ballots cast by electors in person inside a polling station". The Monitor strongly objects to any proposals on postal voting or voting by proxy.
- 26. The Administration should provide special arrangements for the storage of ballot boxes, especially when prisoners' sole or main home, or their last dwelling-places, is used as their registration address. The ballot boxes currently used are very large. For LegCo elections it may not be a big deal since there are only 5 geographical constituencies and less than 30 functional constituencies, about 30 ballot boxes are probably enough for each prison or and remand facility. However, for DC elections it would not be easy. There are 405 constituencies in last DC election in 2007. It would be difficult to put 405 existing ballot boxes in each facility, not to mention the mobile stations. The Monitor proposes that special ballot boxes, which are smaller could be used in these polling stations.
- 27. The consultation document also states that for security reasons, if prisoners are allowed to cast their votes in person, the Administration would need to consider reasonable limitations. These include: (1) to provide shorter polling hours; (2) to regulate the flow of prisoners in the polling stations; and (3) to allow the candidates/agents to take turns or draw lots to enter the polling stations if the number of candidates/agents exceeds the limit; (4) to report to the Electoral Affairs Commission if there are any exceptions.
- 28. The Monitor agrees that special arrangements and limitations should be provided to facilitate the prisoners to vote and to ensure the security of prisons. The Administration should discuss with the Correctional Service Department to come up with different arrangements and polling times for the prisoners in different prisons and remand facilities to vote. However, the Monitor emphasizes that, the presence of candidates or their agents is important in ensuring the fairness of the election. They should not be denied entry to the polling stations because of security reasons.

- 29. If the Administration decides not to use the address of prisons as the prisoners' registration address, and sets up polling stations in prisons or arranges mobile polling stations, it could be that a single polling station will involve the voting more than hundreds of constituencies in DC election. While the Administration allows candidates or their agents to enter polling the stations to ensure the fairness of election, independent candidates or even various political parties may not have enough manpower to visit polling stations set up inside the prisons. However the arrangements inside these polling stations are important in maintaining a fair election. Thus the Monitor suggests allowing human rights organizations or other NGOs and international observers which are concerned about the fairness of the elections to enter the polling stations and monitor the operation of elections. The Administration can request interested parties to apply for such permission in advance.
- 30. It is also stated in the consultation document that "remanded unconvicted persons who are validly registered electors present themselves at the relevant polling station can exercise their right to vote on t polling day." The Monitor agrees that remanded unconvicted persons should be able to vote and thus agrees that special arrangements should be adopted to facilitate them to cast their vote.
- 31. The Monitor agrees that special counting arrangements including arrangements for transferring the ballot papers to the relevant counting stations to be mixed with other ballot papers to ensure the secrecy of votes, should be adopted.

Way Forward

- 32. In late February the Administration asked the judiciary to suspend for nine months the effect of the ruling on prisoner voting, to give the Administration time to amend the law and implement other administrative arrangements.¹⁹
- 33. The Monitor objects to the Administration for suspending the effect of the ruling. Since the Administration actually agrees to formulate policies to allow prisoners to vote, only technical problems are yet to be confirmed. Before the next large-scale election of DC in 2011, there is at least one by-election to be held in this month (Tai Wai District). Prisoners' right to vote should not be deprived in these coming by-elections and the Administration should take this chance to test its practice for prisoners to cast their vote.
- 34. Reviews on the arrangements for prisoners and remanded unconvicted persons to exercise their voting right should be conducted after every LegCo and DC elections so as to improve the voting arrangements. Since the District Council by-election on 29 March 2009 will be the first test of such arrangements, the Administration should invite independent organizations to monitor the operation to allow prisoners to vote. Various government departments, including the CMAB, EAC and Correctional Service Department should conduct and publish their own detailed review report.
- 35. The Monitor notes that, patients who are not able to leave the hospital, homeless people who do not have a registration address and employees who need to work on the polling day have no means to cast their votes since no special arrangements are provided. Their right to vote is deprived as well. To allow them to exercise their right, the Administration should also study special arrangements for them to vote as soon as possible.

Para. 3.15, consultation document.

Court asked to suspend prisoner voting ruling, SCMP, 24 February 2009.

日期:

2009年3月31日 12:11

收件人:

<pvr_consultation@cmab.gov.hk>

副本抄送:

標題:

Fwd: 有關容許犯人投票的實際操作

這是我去年曾向政制及內地事務局發出的意見,由於未察覺咨詢期已過而未有再發,希望仍能得到費局注意,謝謝!

------ Forwarded message ------

From:

Date: 2008/12/9

Subject: 有關容許犯人投票的實際操作

To: cmabeng@cmab.gov.hk

致: 政制及內地事務局局長

本人對於容許犯人投票的實際操作, 有意見如下:

首先是有關選民登記的問題. 本人認為, 囚犯或還押犯的選民登記地址, 應以其受押前最後的通常居住地址而定, 而不是有關懲教院所地址, 原因如下:

1. 在囚人士是以高密度集中在極少數地點,如果容許以懲教院所作為選民登記地址,會對有關選區的居民造成不公平情況.

特別是在區議會選舉的情況, 由於選區細小, 在囚人士將對選舉造成很大影響.

2. 區議員的主要服務對象為一般市民, 如果某少部份區議員需集中服務在囚人士, 恐有違區議會條例所述之職能. 相反,

若以受押前最後的通常居住地址而定,全港所有區議員只需平均分擔少量在囚人士,是較公平的做法

3. 由於懲教院所集中了大量曾犯法的人, 如果容許他們集中在同一選區投票, 容易吸引惡勢力介入有關選區, 謀取議席以獲得利益,

嚴重影響選舉的公平公正,亦嚴重影響議會的公信力,更甚者會引來惡勢力在有關選區長期活動.相反,若以受押前最後的通常居住地址而定,

則犯人投票的選區必散佈全港, 惡勢力介入的誘因及力量便大大減少

4. 由於懲教院所集中大量曾犯法的人,增加了舞弊 (如買票)的可能性,如果容許他們集中在同一選區投票,舞弊變得更容易,

便會帶來嚴重後果. 但如果犯人分散在全港不同選區, 舞弊的效率便會大減, 而且影響變得分散.

- 5. 在囚期間, 犯人可能會不時轉換院所, 導致選區轉變. 使用原居地址便可解決這問題.
- 6. 進行選區分界 (特別是區議會) 需考慮社區的一致性, 縱使有時候同一區議會選區可能有公屋及私人樓宇, 但由於雙方可自由往來,

仍不致是完全隔絕的社區. 但懲教院所內外卻是完全隔絕的兩個社區, 強行將這兩種社區合併投票會嚴重有違選區分界的原則.

- 7. 候選人不可能進入院所拉票, 大量犯人集中在同一選區會對選舉造成很大的不確定性, 對候選人不公平.
- 8. 由於讓犯人投票, 必需修改有關條例, 故此即使上述提議可能有違現時法例, 亦可以一併修改, 不成問題, 只要對在囚人士的登記地址作出特別規定即可.
- 9. 犯人可以用院所地址作為通訊地址, 以確保他們收到選舉有關資訊.

第二點是有關投票安排.

由於現時投票是採用即場點票而非中央點票,處理囚犯的選票便可能影響點票進度,故此本人建議囚犯應在投票日投票,但限定較短的投票時間

(例如一般是7:30-22:30, 囚犯便安排在同日7:30-15:30, 由於獄方可以集中安排, 確保所有囚犯選民皆可投票, 並不會造成不公平情況). 而讓囚犯外出投票必定造成極大保安風險, 絕不可取.

而採用提早結束投票的安排, 可以用以下方式處理.

區議會一般選舉 (不包括補選):

a. 囚犯選民獲發所屬選區選票, 在秘密情況下作出選擇, 對摺選票, 然後在選舉人員監察下, 放入一個印有選區名稱的信封

(信封沒有任何其它記認). 信封由選舉人員簽名後密封.

- b. 在選舉結束前, 即星期日的22:30, 把密封信封送到各選區的指定主要點票站 (參照現行法例)
- c. 在選舉結束後, 在票站投票箱內的選票已倒出但未開始點算前, 點票站主任在見証下把該等信封拆開, 在不打 開選票下把囚犯的選票混入其它選票
- d. 然後正常點票

以上方法, 確保在不破壞保密原則下, 亦不會影響點票效率.

立法會一般選舉及地方選區補選:

- a. 囚犯選民獲發所屬選區選票, 在秘密情況下作出選擇, 對摺選票, 然後在選舉人員監察下, 不分選區放入白色投票箱 (功能組別選票則投入紅色投票箱)
- b. 投票結束後, 把所有白色票箱和紅色一併送到點票中心.
- c. 在正式投票結束後 (星期日22:30), 在點票中心先把選票按選區分類, 然後正常點票

由於平均而言每一選區皆有較多囚犯選民,以上方法不會破壞保密原則,亦不會影響點票效率

採用提早結束投票的安排可能出現一種情況,就是囚犯選民在院所投票後,剛好在正式選舉完結前獲釋,以致他們有機會在普通票站重覆投票;

又或者有人正常投票後, 剛好被還押, 以致他們有機會在獄中重覆投票. 但這種問題不難解決. 假如有囚犯在這情況下獲釋,

只要懲教署在釋放該人前立即通知有關票站主任,便可解決這問題;而假如有人在投票日入獄,獄內的選舉人員在發出選票前,

便應向有關票站主任查核該人已否投票. 由於這種情況應該很罕見, 應不會造成太大工作量

如果有個別院所囚犯人數太少,以至不值得特別開設票站,在考慮保安風險後,可把他們送到鄰近其它院所投票,

區議會補選/村代表選舉及補選/選舉委員會界別分組選舉及補選/行政長官選舉/立法會功能組別補選

由於以上幾種選舉,涉及的選民人數很少,故此涉及的在囚人士會更少,利用上述的方法處理會非常浪費資源.可考慮指定一至兩個高度設防或人數較多的院所作為票站,把較為低危的犯人集中送到這些院所投票.其餘程序和上述的一樣.

這可以平衡資源效益和保安風險的問題.

本人最後的意見是有關投票的細節.

- 1. 本人認為不應要求犯人提早投票, 或要求他們提早提出投票要求. 由於可能有人在投票日前突然入獄, 這些人便不可能提早提出投票要求而失去投票機會.
- 2. 各院所票站應備有全港選民登記冊的電子版, 以便即時查出各囚犯所屬選區, 可以讓他們即時投票並作投票紀錄.
- 3. 各院所票站應備有全港各選區的選票若干數量, 以便任何囚犯選民皆可投票, 包括突然入獄的選民
- 4. 在囚人士沒有身份證在身上, 修法時需注意這一點
- 5. 在進行每次選舉/補選前, 懲教署/警方/廉署等應向選舉事務署提供當時所有囚犯和還押犯的名單, 身份證號碼及所在院所,
- 以便選舉事務署評估投票的需求以安排票站. 但由於可能有人突然入獄, 這不宜用作評估空白選票分配之用.

希望貴局能認真考慮本人的意見,當中以選民登記地址是最重要的考慮,因為這涉及選舉的公正性.

香港市民