

本署檔號：OUR REF: SF2 to HAB/CR/1/20/154 Pt.6
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14 November 2002

Mr. Stephen Lam
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Legal Service Division
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Mr. Lam,

Village Representative Election Bill

Thank you for your letter of 12 November 2002.

My response to the points you raised in the letter is as follows :

(a) General observation

As far as we are aware, the lawful traditional rights and interests of indigenous inhabitants of the New Territories include:

- (i) building of a small house under the Small House Policy by male indigenous inhabitants over the age of 18;
- (ii) burial in permitted areas (usually hillsides) outside gazetted cemeteries;
- (iii) exemption from Government rent; and
- (iv) exemption from Government rates.

/....

We are not aware of other traditional rights and interests. However, we cannot guarantee that the above list is exhaustive.

(b) Clause 5(3)

Clause 5(3) provides that :

"The function of a Resident Representative for an Existing Village is to reflect views on the affairs of the Village on behalf of the residents of the Village. A Resident Representative shall not deal with any affairs relating to the lawful traditional rights and interests of indigenous inhabitants."

If a Resident Representative expresses views on behalf of the residents of the Village on affairs relating to the lawful traditional rights and interests of indigenous inhabitants at a public forum, he is "reflecting views" on the affairs of the Village.

We do not intend to put "the traditional way of life" along side "the lawful traditional rights and interests of indigenous inhabitants" in clause 5(3) of the Village Representative Election Bill. The reason is that some aspects of "the traditional way of life of indigenous inhabitants" may overlap with some aspects of "the traditional way of life of an Existing Village". It might not be practicable to clearly differentiate between the two.

(c) Clauses 14(f) and 16(e)

We are of the view that "the armed forces of the People's Republic of China" is more appropriate. We will ask the Constitutional Affairs Bureau to have a look at similar provisions in other electoral legislation.

(d) Clause 62(3)

The arrangements for electing office holders of a Rural Committee are set out in the constitution of that Rural Committee. Such arrangements are administrative, not statutory.

/....

Clause 60(1) provides that the constitution of a Rural Committee shall be construed in accordance with Part 8 of the Bill, including clause 62(3).

If the arrangements for electing office holders of a Rural Committee are inconsistent with Article 21 of the Hong Kong Bill of Rights, then the election is unconstitutional (clause 60(1)). The Government would not recognize the persons so elected.

Yours sincerely,

(Stephen Fisher)
for Secretary for Home Affairs

c.c. D of J (Attn.: Mr. Lawrence Peng)
Mr. Alan Chong

DHA (Attn.: Miss Monica Chen)