

Legislative Council Panel on Constitutional Affairs

Voting Right of Prisoners

Purpose

This paper sets out the current statutory provisions on the issue of prisoners' right to vote and the relevant background.

Background

2. Under the current legislation, a person who is serving a sentence of imprisonment is disqualified from voting in public elections. The relevant legal provisions include section 53 of the Legislative Council Ordinance (Cap. 542), section 30 of the District Councils Ordinance (Cap. 547), and section 26 of the Chief Executive Election Ordinance (Cap. 569). At present, there are about 6,400 prisoners who are aged 18 or above and holding Hong Kong Identity Cards. Although not all of them are registered electors, this figure may give an indication of the potential number of persons being affected.

3. A concern group has put forward a suggestion separately to the Administration and the Legislative Council (LegCo) that prisoners should be allowed to vote in public elections on human rights grounds.

The Administration's Position

4. International human rights conventions and the Hong Kong Bill of Rights Ordinance permit reasonable restrictions on the right to vote and to be elected in elections. It is generally accepted in Hong Kong that when a person has been convicted of an offence and sentenced to imprisonment, he may be deprived of certain rights. There are current statutory provisions which bar prisoners from voting.

5. Records show that since at least the 1985 LegCo election, prisoners have been prohibited from voting. The suggestion of extending the right to vote to prisoners was debated at LegCo in 1995, in the context of a Member's Bill to relax the eligibility criteria of voters, and was voted down by a majority of LegCo Members. The issue has since been raised again in a number of legislative amendment exercises

prior to public elections. On each occasion, LegCo Members agreed that the bar on prisoner voting should be maintained.

6. As to overseas practices, different places have different policies and regulations on prisoners' right to vote, having regard to their own circumstances. A number of countries including the United Kingdom, Luxembourg, Hungary, Czech Republic, Russia, Singapore, Malaysia, Japan and most states of the United States of America impose total ban on prisoner voting. Other countries such as France and Germany have different restrictions on prisoners' right to vote, based on the court's determination on whether and for how long the convicted person's right to vote should be forfeited. In Australia, prisoners serving a sentence of three years or more and convicts of treason are barred from voting in federal elections. It is noteworthy that the sentence threshold of this restriction used to be five years but has been tightened up recently, such that prisoners serving a term between three to five years are also disqualified from voting under the revised policy. A number of European countries have no restrictions on prisoners' right to vote.

7. The Administration does not intend to launch a review on prisoners' right to vote at this stage. Nevertheless, we are prepared to consider the subject again if there is clear indication from the community that there should be a review. If the proposal of allowing prisoners to vote were to be further explored, consideration will also need to be given to a range of issues including inter alia the extent of relaxation, how prisoners should be allocated to the appropriate constituencies, electioneering and polling arrangements, security arrangements, and possible read-across implications on other restrictions of prisoners' rights.

Advice Sought

8. Members are invited to note the content of this paper and to offer their views on the disenfranchisement of prisoners.

Constitutional Affairs Bureau
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