

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

寄件人:
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:

1. 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。
2. 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

寄件人:
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,

寄件人:
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

寄件人:
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囚犯能否參加選舉.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, 結困要觸犯法例. 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

寄件人:
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／需要考慮是否應維持：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
 - 一 被判終身監禁的人士，則終身喪失投票權。
 - 一 自稱或黑社會人士，則終身喪失投票權。
 - 一 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。

投票活動

- (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。

遭羈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。

寄件人:
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

寄件人:
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:  .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:

Tel:

寄件人:
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 right and not a privilege (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.

寄件人:
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.

寄件人:
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,

寄件人:
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 civilised society. We should allow voting rights for all eligible citizens.

Thank you.


Regards,

寄件人:
日期: 2009年3月7日 14:53
收件人: <pvr_consultation@cmab.gov.hk>
副本抄送:
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,

寄件人:
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:  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，就是某次選學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已出獄。否則，某次選舉對某在囚選民來說，可以說是毫無意義和需要的

換言之，因本港選舉為四年一次，在選民登記截止的時候，剩餘刑期長於四年的囚犯不能成為選民。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。


這類似內地對判囚政治權利年期的剝奪

2. 反對法官酌情權或作為監禁以外的附加懲罰，因為香港很多法官和裁判官十分昏庸，不宜再加責任。再者，有無投票權對很多人來說根本就不在乎，更遑說是懲罰

3. 本人建議，假設在囚登記資格為四年剩餘刑期，入獄後亦要重新登記

4. 我認，在監獄投票應最適合

Yours faithfully,

寄件人:
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.

寄件人:
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,

寄件人:
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."

寄件人:
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 Prisoners' 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

寄件人:
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。

為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

寄件人:
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矛盾
謝謝

寄件人:
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,

寄件人:
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.)

寄件人:
日期: 2009年3月14日 12:33
收件人: <pvr_consultation@cmab.gov.hk>
副本抄送:
標題: feedback on consultation paper
附件:  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.)

寄件人:
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，本人不贊成在囚人士可享有投票權。

寄件人:
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,

寄件人:
 日期: 2009年3月18日 10:55
 收件人: <pvr_consultation@cmab.gov.hk>
 副本抄送:
 標題: 有關在囚人士投票權

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，雨勢也不小，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（因有些事前所未看過文件），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

通過的法例又何來違反《基本法》？

就法治精神來研究的一個重點是：將人判入獄、羈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，他們在入獄前有幾個是登記選民？又曾投過幾次票？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

寄件人:
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, 因為在囚人士係犯左法, 所以判坐監, 而坐監係其中一種懲罰, 用作剝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 簡直係對坐監作為一個懲罰 失去一個意義
人權唔係咁用...我極力反對

寄件人:
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 prisoner'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 :

寄件人:

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,

寄件人:
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，我們認為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，我們認為已登記為選民的在囚人士，可以選擇使用服刑前已登記的唯一或主要的居所為登記地址，無須另行更改；而對於未登記為選民的在囚人士，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為登記地址。但對於沒有唯一或主要的居所為登記地址的在囚人士（不論登記為選民與否），我們同意政府的安排---以其服刑前在香港的最後居住地方為唯一或主要住址，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，我們認為在監獄內設立投票站較為易於實行，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。但是我們認為這種分別，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

寄件人:
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.

寄件人:
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.

寄件人:
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。

調查結果顯示：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賂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：調查結果分析圖表(共一頁)

發稿機構:
電郵:
聯絡人:

電話:
網址:

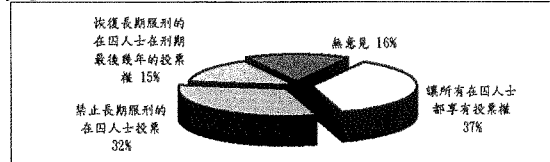
傳真:
發稿日期: 2009年3月23日

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。

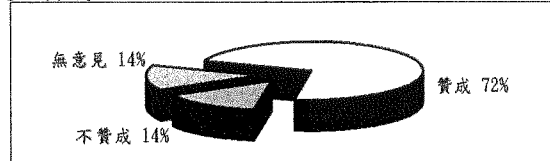
1 對於放寬在囚人士投票權限制的政策方案，受訪者認為應該

讓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%



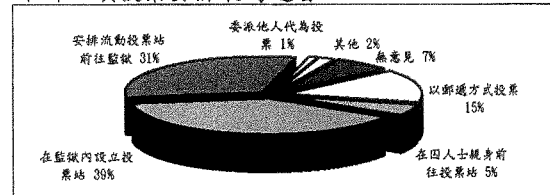
2 根據《立法會條例》，被裁定干犯與選舉有關的罪行或賄賂罪行的人士在被定罪後三年內將喪失投票的資格。諮詢文件建議繼續保留此條例，受訪者是否贊成

贊成	72%
不贊成	14%
無意見	14%



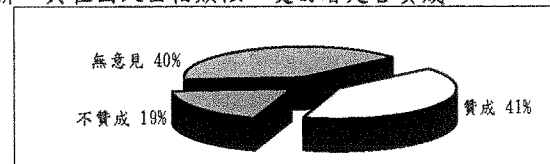
3 當擁有投票資格的在囚人士進行投票時，受訪者認為以下哪一項投票安排最為適當

以郵遞方式投票	15%
在囚人士親身前往投票站	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%



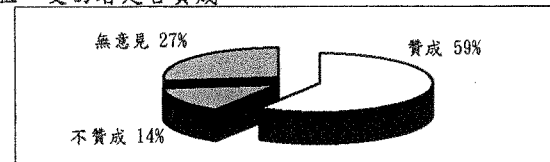
4 諮詢文件建議為遭羈押但未被定罪人士制訂的投票安排，與在囚人士相類似，受訪者是否贊成

贊成	41%
不贊成	19%
無意見	40%



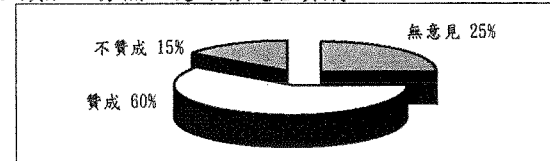
5 諮詢文件建議在囚人士的投票活動須於晚上七時前停止，受訪者是否贊成

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 受訪者的年齡分佈

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

8 受訪者的學歷分佈

小學或以下	8%
中學	50%
大專或以上	42%

9 受訪者認為自己是

低收入人士	49%
中產人士	47%
高收入人士	4%

寄件人:

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。

寄件人:
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

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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.¹ 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.² 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."³ 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
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.⁶ The Hong Kong Human Rights Monitor welcomes the consultation and would like to express our views on the issue as follows.

¹ The full version of the LCO can be found at: http://www.legislation.gov.hk/blis_export.nsf/chome.htm

² 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

³ Para. 50, HCAL 79, 82-3/2008.

⁴ Para. 164, Ibid.

⁵ Para. 4.02 of the Consultation Document.

⁶ 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
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.⁸ 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”.⁹ 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”.¹⁰ 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.

⁷ Para. 132 of the Judgment.

⁸ Para. 2.10 of the consultation paper.

⁹ Para. 2.12, *ibid.*

¹⁰ *Ibid.*

11. 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 Board¹⁴ 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 release¹⁵. The prisoners who are released earlier cannot enjoy the resumption of the right to vote in 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.

¹¹ Para. 2.13 of the consultation paper.

¹² Para. 2.15, *ibid.*

¹³ Para. 2.16, *ibid.*

¹⁴ The Long-term Prison Sentences Review Board was established pursuant to the Long-term Prison Sentences Review Ordinance, Cap 524.

¹⁵ The Release under Supervision Board was established pursuant to the Prisoners (Release under Supervision) Ordinance, Cap. 325.

¹⁶ 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

¹⁷ 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."¹⁸ 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.

¹⁸ Para. 3.15, consultation document.

¹⁹ Court asked to suspend prisoner voting ruling, SCMP, 24 February 2009.

寄件人:
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, 由於未察覺諮詢期已過而未有再發, 希望仍能得到貴局注意, 謝謝!

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

From:
Date: 2008/12/9
Subject: 有關容許犯人投票的實際操作
To: cmabenq@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则。
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, 點票站主任在見證下把該等信封拆開, 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. 假如有囚犯在這種情況下獲釋,

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

2008年12月9日