



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

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