

THE FORGOTTEN DIGNITIES OF A VILLAGE REPRESENTATIVE

Background:

1. Village representation has long been an established system in the New Territories. It was presumed, for the most part, to be an internal affair of the indigenous villagers, and the District Officer only acted to provide administrative assistance. However, at the turn of the century, two non-indigenous villagers challenged the legality of this arrangement through the judicial review process, arguing that non-indigenous villagers should be allowed to vote and to be eligible for candidacy in the village elections. In December of 2000, the Hong Kong Court of Final Appeal delivered judgment in favour of the two plaintiffs. The Court held that the system of village representation must change – on the basis that the elected representative should represent the interest of all villagers and not simply those of indigenous descent. The Court also pointed out that article 40 of the Basic Law, which dictates the lawful traditional rights of the indigenous people, does not include political rights. In other words, the traditional lawful rights of the indigenous inhabitants are not undermined by allowing non-indigenous villagers to participate in village elections.

2. Subsequently the Government, in drafting the Village Representative Election Ordinance, also pointed out that a dual-representative system would be in line with both Bill of Rights Ordinance and the Sex Discrimination Ordinance. Furthermore, it would serve to protect the rights and interests of the indigenous people. Sadly however, from the establishment of the dual-representative system up till now, the Government has not attached much significance to the role of the village representative. This attitude has led not only to the erosion of indigenous lawful rights, but has also hindered the management and development of the villages – contrary to the agenda of establishing a dual-representative system.

1999 Judicial Review and Judgment:

3. In the cases FACV No.11 & 13 of 2000 – The Secretary for Justice, the Sai Kung District Office, Cheung Kam Chuen v Chan Wah, Tse Kwan Sang, Hang Hau Rural Committee and Pat Heung Rural Committee) – the judgment was delivered on December 22, 2000. By judicial review proceedings, Chan and others challenged the validity of 1999 village election, where Chan was not

eligible to vote, and Tse was not eligible as a candidate. The Equal Opportunities Commission provided the Court with assistance of counsel as *amicus curiae*, but Heung Yee Kuk, Pat Hueng Rural Committee and Sai Kung Rural Committee were absent from the final hearing. The Government and the Rural Committees lost their case both at the first instance and on appeal, and in this final appeal, the Government and Cheung Kam Chuen lost once again, and were ordered by the Court to pay the costs of the proceedings.

4. The case was lost on relatively obvious grounds:
 - (1) In this day and age, the structure of the village has evolved, and accordingly so has the duties of the elected village representatives. In this modern era, the village representative's authority and responsibilities can be said to touch upon "public affairs", and are not limited merely to the internal matters of indigenous villagers.
 - (2) Given the reasons above, the candidacy of village representative cannot be confined to those of indigenous descent, as it would be a violation of Article 37 of the Bill of Rights Ordinance and Article 39 of the Basic Law, which corresponds with Article 25 of the International Covenant on Civil and Political Rights, stating that every permanent resident shall have the right and opportunity to take part in the conduct of public affairs.
 - (3) In addition, the electoral arrangements creates sexual discrimination, as a non-indigenous woman could obtain the right to vote after marrying an indigenous male, but a non-indigenous man would not be afforded the same upon marriage to an indigenous female.

5. Unanimous judgment by the Court:
 - (1) The exclusion of non-indigenous residents in the election of village representatives, both in the right to vote and the right of candidacy, is a violation of the right to participate in public affairs as governed by Article 21(a) of the Hong Kong Bill of Rights Ordinance; and
 - (2) The electoral arrangements – which provides that a non-indigenous female may obtain the right to vote upon marriage to an indigenous male, but a non-indigenous male cannot obtain the same right upon marrying an indigenous female – is a violation of Article 35 of the Sex Discrimination Ordinance (Cap. 480).

6. In the judgment, the Court also listed the functions of a village representative, which include but are not limited to the following:

- (1) Assisting in certifying the indigenous status of villagers, for the purpose of their applying to build houses under the Small House Policy;
 - (2) Arranging for those villagers with indigenous status to obtain exemption from rates and discounts on government rent;
 - (3) Witnessing and arranging for hillside burials;
 - (4) Witnessing villagers' applications for succession to estates under the New Territories Ordinance;
 - (5) Certifying the indigenous status of the descendants of people, who come to Hong Kong from other countries, and assisting them in applying for Hong Kong identity cards;
 - (6) Liaising between various government bodies and villagers on various matters.
7. Thus, the representation of a village is no longer confined to the internal affairs of the indigenous villagers. Rather, it relates to a range of public interests and touches upon many aspects of public affairs.

Village Representative Election Ordinance:

8. In June 2002, when the Government proposed to reform the village representative election system, it was stated that the suggested amendments are consistent with the ruling of the Court of Final Appeal in 2000.
- (1) In the Commissioner's report of the Village Representative Election Bill, the legality of the Bill was explained to the Legislative Council as being in line with the Hong Kong Bill of Rights Ordinance, and is consistent with the definition of "resident".
 - (2) The function of a village representative is to safeguard the traditional rights and lawful interests of the indigenous inhabitants, although they were not specifically defined by the government. However, it was pointed out that such rights and interests would generally encompass rights and interests to land, including:
 - (a) Small Houses;
 - (b) Traditional / hill-side burial;
 - (c) Discounts from government rent; and
 - (d) Exemptions from rates
 - (3) The village representatives should receive increased government support

during their time in the village office.

- (4) The Government will consider subsidizing village representatives. Also, in accordance with Chapter 576 of Hong Kong legislation, there are two types of village representatives, whose responsibilities are listed as follow:

Indigenous Village Representative	Village Representative
(1) To represent the opinions of the indigenous residents in relation to matters of their respective village; and (2) To manage matters that relate to the indigenous residents in terms of their traditional lawful rights and customs.	(1) To represent the opinions of the residents in relation to matters of their respective village.

Village Representative Finance and Resources:

9. Village Representatives have always acted to protect the rights and interests of their respective villages – many will go to great lengths for their village residents. After the Village Representative Election Ordinance came into effect in 2003, the responsibilities of both the Indigenous Village Representatives and the Village Representatives became clearly defined, and the duties of the office became more demanding.
10. Only in April 2010 did the Home Affairs Department finally approve of a quarterly-allowance of \$2,000 for the village representatives. This allowance is not a wage, nor is it a form of financial reimbursement for monies spent. Rather, it was “an acknowledgement of the village representative’s contribution to the district and region.” However, the monthly rate of a mere \$666.60 could do little to contribute towards the expenses incurred in the course of village affairs management, and this allowance appeared more like a government handout than any sort of acknowledgement.
11. Other members in representative offices – such as members of the Legislative or District Council – receive a salary that is annually adjusted for inflation. Furthermore, their salary has been substantially increased in the past decade. A chart of the salaries (from 2001) is provided in Annex 2. In stark contrast, the allowance of the village representative has not received any adjustments since

its implementation by the Government in 2009. From this, it can be seen that the Government has no real desire to support a system of local governance. This attitude discourages young villagers from participating in village affairs and from general community involvement – it is detrimental to the operations of the villages, the villagers and the supporting District Office.

Recommendations and Conclusion:

12. The villages of New Territories should develop alongside the rest of Hong Kong society. Yet, such progress is fraught with difficulties. The rights and interests of the villagers are suffering under the lack of public funding and support for the village representatives. Therefore, the N.T. Support Group proposes that the Government should create a monthly allowance of \$10,000 – as financial contribution towards the administration and management of the villages, and also as remuneration for the hard work of the village representatives. Only in increasing resources, could a proper system of education and training be developed in order to propel the New Territories to progress with the rest of Hong Kong society.