

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Policy on Earth Burial at Gallant Garden

Background

At the Panel meeting held on 19 June 2006, Members discussed issues relating to the policy on earth burial at Gallant Garden. Following discussion, the Administration was invited to –

- (a) provide information on the number of civil servants who died on duty from 2001 to 2005; and
 - (b) re-examine the issue of whether permanent earth burial at Gallant Garden should be granted to all civil servants who died on duty so as to commemorate their contributions to public service, taking into account the views of the staff sides including in particular their commentaries on the use of “an exceptional act of bravery” as the threshold for granting exemption from the six-year exhumation policy.
2. This note gives the information requested in (a) above and sets out the Administration’s response to (b).

Number of civil servants who died on duty

3. From 2001 to 2005, 13 civil servants died on duty. Of them, 12 were buried at Gallant Garden. The remaining one was buried in another cemetery according to the wishes of the late officer’s family members. Details are given in the [Appendix](#).

Permanent earth burial at Gallant Garden

4. The Administration has carefully re-examined the views expressed by Members. As explained by the Administration at the Panel meeting held on

19 June 2006, the constraints faced by the Administration include:

- (a) Gallant Garden forms part of the Wo Hop Shek Public Cemetery. The prevailing six-year exhumation policy, which is applicable to all public cemeteries, applies to earth burials in Gallant Garden. According to legal advice, unless the proposal to allow permanent earth burials in Gallant Garden for civil servants who died on duty is extended to non-civil servants on an equal basis (so that the latter would also be granted permanent earth burials at public cemeteries if they died whilst on duty), it is likely to constitute discrimination within the meaning of Article 22 of the Hong Kong Bill of Rights which incorporates the provisions of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR prohibits and protects against discrimination on any ground such as race, religion, social origin, birth or other status. Any differential treatment in respect of earth burial in public cemeteries on the basis of a deceased person's employment status whilst alive is likely to offend Article 26 of the ICCPR. Article 39 of the Basic Law states that the provisions of the ICCPR shall remain in force in Hong Kong;
- (b) for land conservation purposes, the Government is committed to a policy that encourages cremation instead of earth burial. Since 1976, in accordance with an Executive Council decision, the Government has stopped processing applications for private cemeteries where permanent earth burials may be permitted. The Government would be acting in breach of its own policy if it were to designate a piece of land as a private cemetery for the permanent earth burial of civil servants who died on duty. If the Government were to do so, it would face great difficulty in turning down applications from other organizations for private cemeteries for the permanent earth burial of other persons who died on duty. But acceding to such applications would defeat the Government's policy to encourage cremation; and
- (c) as regards what constitutes an "exceptional act of bravery", the Executive Council advised in 2000 that such an act should be recognizable by the award of a bravery medal granted by the Chief Executive on the recommendation of the Honours Committee. This provides an objective yardstick for granting permanent earth burial to a person irrespective of whether he was a civil servant or otherwise.

5. For the above reasons, the Administration is unable to accede to the request that all civil servants who died on duty should be granted permanent earth burial at Gallant Garden. We hope Members would accept that any new yardstick, apart from having to meet the test of being objective, must be consistent with the legal considerations set out in para. 4(a) above and be compatible with the Government's policy on cemeteries as outlined in para. 4(b).

Civil Service Bureau

July 2006