



香港申訴專員公署
Office of The Ombudsman, Hong Kong



主動調查報告
Direct Investigation Report

民政事務總署及地政總署
對在「認可殯葬區」外非法殯葬的規管

**Regulation of Illegal Burials outside "Permitted
Burial Grounds" by Home Affairs Department and
Lands Department**

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1

INTRODUCTION

BACKGROUND

1.1 To protect the traditional rights and interests of indigenous villagers of the New Territories and to curb the problem of illegal burials, the Government introduced in 1983 the “hillside burial policy” (“the Policy”) and designated some plots of Government land as Permitted Burial Grounds (“PBGs”) for burial of deceased indigenous villagers. The family members or agents of the deceased must comply with various requirements regarding land use, public hygiene and environmental protection. At present, there are about 520 PBGs in Hong Kong, all situated on unallocated Government land in the New Territories. The land totals some 4,000 hectares, about half the size of Hong Kong Island.

1.2 In 2015, this Office published a direct investigation report on “Management of Permitted Burial Grounds”. In that report, we criticised the Home Affairs Department (“HAD”) and the Lands Department (“LandsD”) for being too lax in taking enforcement action against burials of deceased indigenous villagers outside PBG boundaries (hereinafter referred to as “burials outside PBGs”). We also made a number of recommendations for improving the management of PBGs.

1.3 However, from the complaints we received subsequently and media reports, we noticed that the problem of burials outside PBGs was still prevalent. Against this background, The Ombudsman initiated another direct investigation against HAD and LandsD on 19 January 2018 pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, to probe any inadequacies in the regulation of burials outside PBGs by the two departments.

1.4 On 10 September 2018, we issued our draft investigation report to HAD and LandsD for comments. After considering their comments, we completed this investigation report on 12 November 2018.

2

RELEVANT POLICIES AND OPERATIONAL GUIDELINES

HILLSIDE BURIAL POLICY

2.1 Under the Policy (**para. 1.1**), all hillside graves already in existence before 1983, regardless of whether the deceased was an indigenous villager, would be permitted to remain in situ, unless there is a need for the Government to resume the land or a grave is found posing a threat to public hygiene or safety. In that same year, the Government permitted burials of deceased indigenous villagers of the New Territories in PBGs.

BURIAL CERTIFICATE

2.2 The former City and New Territories Administration (“CNTA”), the predecessor of HAD, promulgated a set of Operational Guidelines in 1983, stipulating that all District Offices (“DOs”) in the New Territories under CNTA were responsible for vetting and approving applications for the Burial Certificate (“the Certificate”). When an indigenous villager passes away, his/her family members or their agent for burial must obtain a Certificate issued by the local DO before the deceased can be buried inside a PBG. The procedures are set out below.

2.3 Family members of a deceased indigenous villager must first obtain confirmation of the indigenous status of the deceased from the village representative of indigenous inhabitants (“VR”) or the Rural Committee (“RC”) and make an oath in order to be eligible to apply for a Certificate. Upon verification of indigenous status,

the DO will issue a Certificate and ask the family members to mark on a map of the PBG produced by LandsD to roughly indicate the proposed burial site.

2.4 In addition, DO will point out to the Certificate applicant the conditions set out in the Certificate and remind the Certificate applicant that the grave concerned must lie within the PBG and that other conditions of the Certificate must be observed, otherwise, LandsD or the Food and Environmental Hygiene Department (“FEHD”) may take enforcement actions to remove the grave and the remains of the deceased. Applicants unsure of the location of the burial site can seek help from the RC Chairman or VR. If villagers are still not certain whether a proposed grave lies within the PBG, the DO will contact the local District Lands Office (“DLO”) under LandsD to arrange a site inspection. Nevertheless, the departments concerned would not verify the burial site before the deceased is buried because they consider that such practice would involve huge resources. Besides, villagers usually hope that burials can take place as soon as possible. As such, it would be rather difficult for the departments to verify the burial site together with a Certificate holder at short notice.

Conditions of the Certificate

2.5 The Certificate sets out the conditions that Certificate holders must observe. They include:

- (1) The location of burying the remains of the deceased must be within the designated boundaries as indicated on the PBG map (**para. 2.3**) of the Certificate;
- (2) The serial number of the Certificate must be inscribed or written on the gravestone/urn/ash container at the grave;
- (3) Should there be a need of reburial, or reconstruction/renovation of the grave/urn shelter, prior approval must be sought from the District Officer.

Consequences of Breaching Certificate Conditions

2.6 If a Certificate holder breaches the conditions on the Certificate, the DO concerned would refer the case to the relevant departments for follow-up action in accordance with their jurisdictions and the relevant legislation. Where necessary, DO

would offer assistance, such as liaising with the VR or RC. In case a breach by the Certificate holder is confirmed, the DO is empowered to revoke the permission for burial of the deceased within the PBG. Should this happen, the remains of the deceased would have to be removed, and all the costs incurred would be borne by the Certificate holder.

3

REGULATORY CONTROL

RELEVANT DEPARTMENTS

3.1 Enforcement of the Policy is undertaken by a number of Government departments. Burials outside PBGs are handled by the relevant departments depending on the burial locations.

REGULATORY CONTROL OF BURIALS OUTSIDE PBGs

3.2 In general, burials outside PBGs involve the following irregularities:

- (1) Illegal occupation of Government land – enforcement action to be taken by LandsD;
- (2) Burials of human remains or containers carrying human remains outside cemeteries without permission – enforcement action to be taken by FEHD.

3.3 On receipt of a complaint or referral of a case about burial outside PBGs, the DLO concerned will gather cadastral information about the burial ground in question and conduct a site inspection with the complainant to confirm the burial location^{Note}. The DO concerned is responsible for checking the records to ascertain whether the family of the deceased has applied for a Certificate.

3.4 Where a case of burial outside PBGs is confirmed, the DLO can post a notice at the burial ground in question and order the persons concerned to remove the unauthorised gravestone and other structures by a prescribed date under the Land

^{Note} If the complaint is received by the local DO, the DO will also join the site inspection.

(Miscellaneous Provisions) Ordinance. Besides, FEHD can post a notice informing the persons concerned that the human remains shall be removed from the tomb by a prescribed date pursuant to the Public Health and Municipal Services Ordinance. After the deadline, the DLO and FEHD will organise a joint operation. The DLO will remove any unauthorised structure on the site and it may reinstate the site depending on the situation, while FEHD will, with the DO's consent, remove the human remains from the tomb.

3.5 In deciding whether the human remains involved in a case of burial outside PBGs should be removed by FEHD, the DO concerned will consider different factors, including: whether the grave was constructed before 1983 (**para. 2.1**); whether a Certificate has been obtained for the grave; whether the grave has illegally occupied any Government land; whether DO has issued a notice to the VR and/or the RC and the family of the deceased; whether the departments responsible for managing the site where the grave is located (e.g. DLO) have been consulted; and whether it is feasible to let the family members of the deceased relocate the grave.

IMPROVEMENT MEASURES

3.6 Although the departments concerned have set out on the Certificate the conditions that the holders must follow, there is no restriction on the exact location and size of the burial site within PBGs. Nor have they established any procedure or mechanism for checking compliance of those conditions on the Certificate. Hence, it is difficult for the Government to monitor non-compliance. For better management of PBGs, HAD had held an inter-departmental meeting in October 2013 and proposed that a pilot scheme be introduced at three PBGs in Sai Kung and Islands Districts ("Pilot Scheme"), whereby management committees chaired by the local DO or VR would be set up for those three PBGs, with the departments concerned implementing, in accordance with their respective responsibilities, a series of improvement measures, including:

- (1) DLOs to install the boundary markers of PBGs;
- (2) DLOs to carry out freezing surveys;
- (3) DLOs to demarcate spaces available at PBGs for new applications of burial sites;

- (4) DOs to take the lead to set up management committees and impose restrictions on the size of burial sites; and
- (5) the departments concerned to conduct joint inspections to check the compliance of conditions of the Certificate. In case of non-compliance, the applicant would be required to rectify the irregularities, or the DO concerned may consider revoking the Certificate and request the departments concerned to take enforcement action.

3.7 However, the Pilot Scheme was not carried through at that time because, according to HAD, it would need LandsD's expertise in survey and land administration to implement the Pilot Scheme, but LandsD refused to offer assistance on the grounds of resource constraints. LandsD had also explained to this Office that, for reasons such as resources were involved, it could only offer assistance and join hands in launching the scheme after redeployment of manpower or increase of resources.

3.8 In view of this, we urged, in our direct investigation report on "Management of Permitted Burial Grounds" published in 2015 (**para. 1.2**), the departments concerned to launch the Pilot Scheme proposed by HAD as soon as possible, with each department actively participating according to its own expertise and statutory powers. The aim was to ascertain whether the proposed improvement measures, including boundary markers for PBGs and restriction on the size of burial sites, were feasible and effective, with a view to gradually extending those measures to more PBGs.

3.9 Subsequently, the departments concerned agreed to establish an inter-departmental working group for launching the Pilot Scheme. At present, the scheme has been introduced for eight PBGs in Sai Kung, Islands, Tai Po and Tuen Mun Districts. The measures include setting up management committees comprising representatives from Government departments and the rural communities, and engaging contractors to carry out works at PBGs. Certain items of the outsourced works have focused on curbing the problem of burials outside PBGs, such as installing boundary markers to prevent burials outside the sites due to unclear demarcation of PBGs, and conducting record surveys to gauge the current situation of burials outside PBGs. All surveys were completed in the first quarter of 2018, and boundary

markers were installed for all the aforementioned eight PBGs. Besides, HAD plans to install boundary markers for around 60 most frequented PBGs by phase. It is also studying how technology can be applied to facilitate identification of PBG boundaries by Certificate applicants.

3.10 HAD and LandsD will analyse the information obtained to understand and assess the situation of PBGs, and scrutinise the relevant issues on a macro level through the inter-departmental working group. Furthermore, HAD is planning to extend the Pilot Scheme to cover more PBGs, hoping to gather more information to assess the situation of PBGs and review the effectiveness of this scheme, with a view to formulating long-term management and enforcement strategies.

4

CASE STUDIES

4.1 Since this Office announced the direct investigation report on “Management of Permitted Burial Grounds” in 2015 (**para. 1.2**), there have still been cases from time to time involving improper regulation of burials outside PBGs by Government departments. The following four cases specially highlighted the inadequacies of the departments concerned in addressing this problem. We will give an account of those cases in this chapter and comment on those cases in the next, making recommendations to the departments concerned.

CASE I

4.2 In response to a report by a member of the public, officers of the DLO concerned conducted inspection in March 2016 and found a newly constructed grave (“Grave A”) with the serial number of a Certificate issued by the DO inscribed on the gravestone. According to records, the Certificate was issued in November 2015. Grave A was located on a plot of Government land between two PBGs, and was about 240 metres outside the PBG designated in the Certificate. DLO, therefore, referred the case to DO for follow-up action. In May 2016, DO advised the Certificate holder, Mr A, to relocate the human remains to the PBG so as to comply with the conditions of the Certificate. Mr A stated that he had no intention to relocate the grave in the near future. In November, DO asked Mr A again if he had reached a consensus with his family members regarding relocation of the grave. However, Mr A reiterated that he was unwilling to relocate the grave any time soon because it would cause serious disruption to “fung shui”. He also contended that the lack of any boundary markers at the PBG could easily lead to confusion among villagers.

4.3 Subsequently, DO continued to communicate with Mr A and tried to arrange a meeting between him and DLO, so that DLO could explain more clearly to him on how the Government would handle and take action against illegal burials. It

was not until June 2017 that DO managed to meet Mr A jointly with DLO. At the meeting, DLO explained the enforcement actions against illegal burials to be taken by the Government departments concerned. Mr A stated that he was willing to relocate the grave, but had to take into account the actual rate of decomposition of the human remains and the Chinese traditional burial customs. He agreed to relocate the grave in accordance with traditional customs when the human remains in the grave were completely decomposed after several years.

4.4 Eventually, DO issued a warning letter to Mr A in September 2018, stating that Grave A was located outside PBG (i.e. in breach of the conditions of the Certificate) and advising Mr A to relocate it to PBG.

CASE II

4.5 In October 2016, in response to a report by a member of the public, staff of the local DLO conducted an inspection and found a new grave (“Grave B”) with the serial number of a Certificate issued by the DO inscribed on the gravestone. Records showed that the Certificate was issued in May 2016. Grave B was located on a plot of Government land between two PBGs, about 333 metres outside the PBG designated in the Certificate. DLO, therefore, referred the case to DO. In December 2016, DO informed the Certificate holder, Mr B, that Grave B was located outside PBG and hence in breach of the conditions of the Certificate. DO urged him to relocate the grave to the PBG or risk enforcement action by the relevant authorities. However, Mr B refused to comply on the grounds of “fung shui”. Thereafter, DO tried repeatedly to contact him in order to learn about the stance of Mr B and his family on the question of relocation, as well as to arrange a meeting between him and DLO so that he would understand better DLO’s enforcement action. Nevertheless, all such effort was in vain. To DO’s knowledge, Mr B was abroad.

4.6 In September 2017, DO finally got in contact with Mr B. In October, DO, together with DLO, met with him. Both DO and DLO urged him again to relocate Grave B to PBG as soon as possible to comply with the conditions of the Certificate, otherwise, they would take enforcement action. Mr B explained that neither he nor his family intended to breach the conditions of the Certificate. The mistake occurred because they were unaware at the time that the burial site lay outside the PBG. Mr B considered immediate relocation of a new grave in violation of the traditional village customs. Notwithstanding that, he undertook to relocate the grave to PBG in

accordance with village traditions seven years after burial of the deceased.

4.7 Eventually, DO issued a warning letter to Mr B in September 2018, pointing out that Grave B was located outside the PBG (and, therefore, in breach of the conditions of the Certificate) and advising him to relocate the grave to the PBG.

CASE III

4.8 In August 2012, a local DO, upon receipt of a report by the local DLO, learned that there were two graves (“Grave C” and “Grave D”) located outside the PBG. DO later confirmed that Certificates had been issued to Grave C and Grave D in July 2010 and March 2012 respectively. Grave C was located about 17 metres outside the boundary of the designated PBG, and Grave D, about 30 metres. The Certificate holders for the two graves were respectively Mr C and his cousin (“the Cousin”). In December 2012, DO staff met with the VR of the village concerned and Mr C, who also represented the Cousin in handling the matter. At the meeting, DO reminded Mr C to relocate Grave C and Grave D to the PBG for compliance with the conditions of the Certificates. Mr C stated that the designated PBG was inaccessible because it was very steep and overgrown with weeds. DO indicated that it would try its best to offer assistance.

4.9 In early 2013, DO once again advised Mr C to relocate the graves. In early 2015 and September 2016, in response to the enquiries of progress by the person reporting the case, DO again advised Mr C to relocate the graves. On each occasion, Mr C invariably indicated that he wished to observe traditional customs and avoid showing disrespect to the deceased. He would only relocate the graves after the remains of the deceased had completely decomposed.

4.10 In end 2016, DO consulted the Headquarters of HAD regarding whether it should discuss the time frame for relocation of graves with Mr C under the premise of respect for traditional village customs. In March 2017, the Headquarters replied that it had no objection to DO discussing with Mr C the relocation timetable.

4.11 Between October 2017 and July 2018, DO was in constant contact with the RC Chairman concerned and Mr C with a view to drawing up a relocation timetable. In August 2018, DO met with the RC Chairman, Mr C and the mother of the Cousin (i.e. the widow of the deceased buried in Grave D). At the meeting, DO reiterated

that Mr C should relocate Grave C and Grave D to the PBG. Mr C asserted that the customs of his village prescribed that remains of the deceased could only be exhumed and reburied after more than ten years of burial. Besides, the Cousin had passed away in 2017. They had to raise funds to finance the relocation expenses of the two graves. As such, Mr C hoped that the departments concerned would be sympathetic to their situation. They were willing to undertake in writing to relocate both graves to the PBG in one go five years later (i.e. in 2022). The RC Chairman concurred.

4.12 In October 2018, DO issued a warning letter, pointing out that both Grave C and Grave D were located outside the designated PBG (and therefore in breach of the conditions of the Certificates). It advised Mr C to relocate the two graves to the PBG.

CASE IV

4.13 In early 2016 in response to a report of illegal burial, the local DO conducted an investigation and found a newly constructed tomb (“Tomb E”) with a Certificate issued at a site about 20 metres outside the PBG designated in the Certificate. Records showed that the Certificate was issued in December 2015. DO immediately requested the Certificate holder, Mr D, to stop the burial works, but Mr D said that the burial had already been completed. After the DLO concerned had confirmed that Tomb E was outside the PBG, DO and DLO met with Mr D in April 2016, requesting him to relocate Tomb E to the PBG for compliance with the conditions of the Certificate. Mr D, however, refused to relocate the tomb immediately on the grounds of “fung shui”. DO then demanded in writing that Mr D relocate the tomb, or his case would be referred to the law enforcement authorities.

4.14 In his letter to DO, Mr D explained that he had mistakenly buried his deceased family member outside the PBG due to his lack of professional knowledge. He asked DO to exercise discretion and allow him to delay the relocation of the tomb. DO reiterated in its reply to Mr D that his case would be referred to the law enforcement authorities if he did not take follow-up action.

4.15 In June 2016, DO requested DLO to take enforcement action. However, DLO stated that no structure was found on Tomb E and that Mr D had indicated that he would not carry out any works on the tomb. Therefore, DLO considered that it was not a case of unauthorised structures on Government land, and there was no justification for it to start any removal operation. DLO suggested that DO continue to persuade

Mr D to relocate Tomb E to the PBG while at the same time refer his case to FEHD for follow-up action regarding removal of human remains in the tomb.

4.16 Between June and October 2016, DO referred the case to FEHD for follow-up action. However, there was no consensus between the two departments on how such action should be taken. FEHD requested that DO first give consent to the removal of human remains, and then it would post a notice requiring the person(s) concerned to remove the human remains in Tomb E (**para. 3.4**). Nevertheless, DO had yet to give its consent.

4.17 In July 2017, DO sent another letter to Mr D, requiring him to relocate Tomb E to the PBG or his case would be referred to the law enforcement authorities. In response, Mr D again requested DO to exercise discretion and allow him to follow the village traditions to let the deceased be buried in the tomb for seven or eight years before relocation. That would avoid disturbing the peace of the deceased and any detrimental effects upon the descendants. The RC concerned also wrote to DO in support of Mr D's appeal.

4.18 At the end of 2017, DO requested again that FEHD post a notice at Tomb E. In its reply to DO, FEHD stressed the need to obtain DO's consent before any notice could be posted. DO then informed FEHD that it had no objection to posting the notice.

4.19 In March 2018, before posting the notice, FEHD asked for DO's confirmation that Tomb E was an illegal burial. DO replied to FEHD that a review on the case of Tomb E was in progress, and that it would inform FEHD of the result when ready.

4.20 In June 2018, DO had a meeting with the local District Council member(s), the VR and RC representative(s) and the family of the deceased in Tomb E. During the meeting, DO reiterated that Tomb E must be relocated to the PBG. The family asked for its discretion and undertook to relocate the tomb to the PBG in the seventh year after burial. This request was supported by the District Council member(s) and RC representative(s) at the meeting. At present, DO has not yet decided whether Mr D's request should be acceded to. Hence, FEHD has not posted any notice to take enforcement action.

5

OUR COMMENTS AND RECOMMENDATIONS

5.1 While examining the cases of burials outside PBGs, this Office noticed that some graves were located near the boundaries of PBGs. The persons involved might have made an inadvertent mistake in burying the deceased outside PBGs. However some graves, located a long distance from PBGs, in certain cases over 300 metres, could hardly be excused as inadvertent mistakes. If the departments concerned fail to rectify such irregularities, it will not only cause damage to the natural environment, but also encourage other people to follow suit and aggravate the problem of burials outside PBGs.

5.2 As borne out by those cases cited in chapter 4, this Office considers that the departments concerned have the following three major inadequacies in the regulation of burials outside PBGs.

I. SLOW PROGRESS IN PILOT SCHEME WITH BOUNDARY MARKERS INSTALLED FOR ONLY EIGHT PBGs IN HONG KONG

5.3 In our direct investigation report on “Management of Permitted Burial Grounds”, we already criticised the Government for failing to take any effective measures to ensure that the burial locations were in PBGs, and made improvement recommendations to the departments concerned in this regard (**para. 3.8**). To date, HAD and the relevant departments have only introduced the Pilot Scheme and installed boundary markers for eight PBGs (**para. 3.9**). However, more than 500 PBGs in Hong Kong (**para. 1.1**) have yet to be installed with boundary markers.

Furthermore, under the Pilot Scheme neither HAD nor LandsD is required to deploy staff on site for inspection of the burial location each time before approving the burial. Consequently, incidents of burials outside PBGs occur from time to time.

5.4 Despite that HAD plans to install boundary markers for around 60 most frequented PBGs by phase (**para. 3.9**), the remaining some 400 PBGs will still have no boundary markers for the information of the approved applicants. Moreover, even though HAD is studying how technology can be applied to facilitate identification of PBG boundaries by Certificate holders (**para. 3.9**), it is unlikely to eradicate the problem of burials outside PBGs if the departments concerned do not inspect the locations of burial sites before approval of the burials.

II. LAX ATTITUDE OF DOs IN TAKING FOLLOW-UP ACTION

5.5 Although HAD is empowered to revoke the Certificates in cases of burials outside PBGs and require removal of the human remains (**para. 2.6**), any enforcement action subsequent to such burials would inevitably encounter resistance from indigenous villagers of the New Territories because they attach great importance to village customs and consider relocation of graves a violation of the Chinese tradition of letting the deceased rest in peace.

5.6 In its reply to this Office, HAD stated that it respected the burial tradition of the indigenous villagers but that did not mean that HAD's existing policy allowed any delay in relocating the graves. However, as seen from Cases I to III, when the family members of the deceased objected to immediate relocation of the graves, DOs, which are responsible for issuing the Certificates, would only repeatedly give advice to the Certificate holders without taking any further action. In Case III, the DO might have even left the case unresolved indefinitely if the informant had not enquired about the case progress in 2015 and 2016 (**para. 4.9**). Moreover, the case had been dragging on for more than six years without any enforcement action from the departments. The DO only issued a warning letter in October 2018 advising the person concerned to relocate the grave to the designated PBG (**para. 4.12**). It is illustrative of the DO's lax attitude in taking follow-up action. As for Case IV, the DO had told the Certificate holder on several occasions that enforcement action would be taken against him unless he relocated the tomb. Yet, when FEHD requested DO to confirm that Tomb E was an illegal burial site, the DO replied that it was reviewing the case of Tomb E. As a result, FEHD could not post any notice to start enforcement action

(**paras. 4.19 - 4.20**). In doing so, the DO was in effect acquiescing to deferment of grave relocation. All those cases showed that DOs would not insist on taking enforcement action whenever there was resistance. In fact, HAD confirmed with this Office that it had never revoked any Certificates with regard to cases of burials outside PBGs.

5.7 We appreciate the traditional idea of “rest in peace upon burial”. This is exactly the reason why the problem of burials outside PBGs is so difficult to rectify within a short time after the mistake occurred. The departments concerned should understand this and try to tackle the problem at its source. Hence, we recommend that before extending the Pilot Scheme to all PBGs, the departments concerned should take other measures to ensure that villagers, before burying the deceased, clearly know about the boundaries of PBGs and the consequences of burials outside PBGs. In addition, both HAD and LandsD (which has the expertise in surveying) should deploy staff to visit a PBG together with a Certificate holder to confirm the location of a burial site prior to the burial, and conduct a follow-up inspection afterwards. In view of the problem of burials outside PBGs over the years and the protracted period needed for rectification (usually more than seven years) once the problem emerges, it is worthwhile to put in such extra resources.

III. OFFENDERS ALLOWED TO CONTINUE AT NO COST

5.8 The Certificate stipulates clearly that the deceased must only be buried in a PBG and not just any plot of Government land. It is a breach of the conditions of the Certificate if a Certificate holder buries the deceased outside the PBG (**para. 2.5(1)**) and the DO may then revoke the Certificate. Upon revocation, the remains of the deceased must be removed (**para. 2.6**).

5.9 Burials outside PBGs generally involve illegal occupation of Government land and the enforcement responsibility rests with LandsD (**para. 3.2(1)**).

5.10 For general cases of illegal occupation of Government land, LandsD would take appropriate enforcement action on a case-by-case basis. Enforcement actions may include engaging a contractor to demolish the illegal structure, enclosing the plot of Government land being illegally occupied, and instituting prosecution against the illegal occupant. In other words, there would be consequences for those who illegally occupy Government land.

5.11 Nevertheless, Cases I to IV showed that the departments concerned had never taken the enforcement actions as mentioned in paragraphs 5.8 to 5.10 in tackling cases of prolonged illegal occupation of Government land by the Certificate holders. Neither did the departments require those persons concerned to pay any price. As a result, some offenders might regard the conditions of the Certificate as requirements on paper only. They might think that they could use Government land at no cost and that they need not bear any consequences for breaking the law.

5.12 If the departments decide to temporarily tolerate burials outside PBGs out of respect for traditional village customs (which is exactly the Government's current practice), they should consider taking punitive measures (such as imposing a fine) against offenders so that they have to pay a certain price for their offences. It is indeed a matter of justice and fairness.

5.13 In response to our recommendation above, HAD replied that punitive measures against offenders for burials outside PBGs would be considered alongside its review of the effectiveness of the Pilot Scheme (**para. 3.10**).

5.14 LandsD stated that burials outside PBGs are in violation of the Policy (**para. 1.1**). It is not appropriate, before the existing policy is reviewed and revised, for LandsD, as the executive arm of land administration, to handle singly such cases in the same way as those general cases of illegal occupation of Government land. LandsD indicated that effective enforcement work requires a set of comprehensive strategies and the cooperation of the departments concerned. Taking into account the traditional village customs and that the Department could not demolish those structures unless and until the human remains are removed, LandsD held that currently the more feasible enforcement plan should be enclosure of the Government land in question in order to prevent further occupation and use of the land.

5.15 This Office could not accept such views of LandsD. In fact, it is such purported justification of respect for traditional village customs of burials (**para. 5.6**) that makes regulation of burials outside PBGs, which are found only afterwards, so difficult to enforce. By the same token, what LandsD has now proposed about enclosing the land in question (**para. 5.14**) could possibly be seen or commented as obstruction to traditional customs (such as ancestral worshipping in springs and autumns). Moreover, it takes time for the Government to review the "comprehensive strategies". In such circumstances, we consider that the departments concerned

should devise a plan for punitive measures against offenders. The principle is that while the Government temporarily tolerates those irregularities on the basis of traditional customs and does not require immediate rectification, the offenders must pay a certain price. That should avoid giving the public an impression that some burials outside PBGs are given preferential treatment and those offenders need not pay any price for illegal occupation of Government land.

RECOMMENDATIONS

5.16 Based on the above analysis, The Ombudsman makes the following recommendations to HAD and LandsD:

- (1) to solve the problem at its source by introducing specific measures to ensure that villagers, before burying the deceased, are fully aware of the boundaries of PBGs and the consequences of violating the conditions (**para. 5.7**).
- (2) to deploy staff to conduct a site inspection with the Certificate holder before a burial takes place in order to confirm the location of burial site, and conduct a follow-up inspection after the burial (**para. 5.7**); and
- (3) to explore the introduction of punitive measures to make those who illegally occupy Government land pay for their misdeeds (**paras. 5.12 and 5.15**).

ACKNOWLEDGEMENTS

5.17 The Ombudsman thanks HAD and LandsD for their full cooperation during the course of this investigation.

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