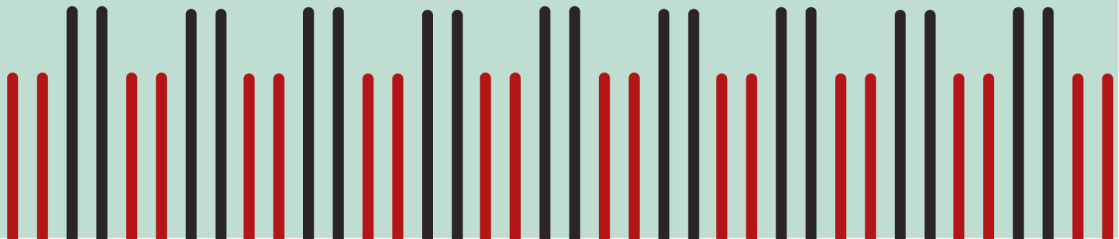


Immigration Detention Legal Self-Help Toolkit

a community guide on immigration detention

TOOLKIT 3: ADDRESSING MISTREATMENT IN DETENTION



NOTE: THIS MANUAL IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE. TALK TO YOUR LAWYER IF YOU NEED ANY SPECIFIC LEGAL ASSISTANCE.

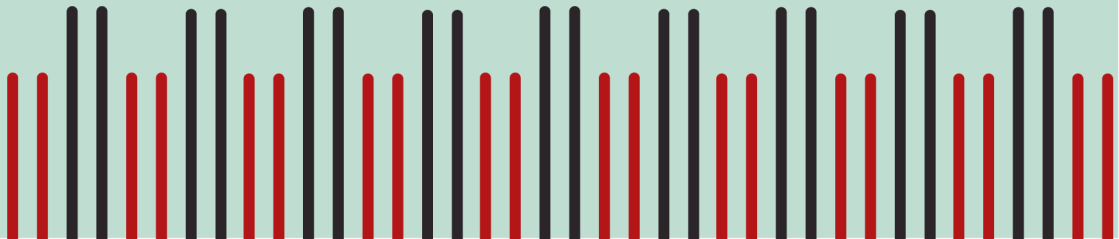


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Overview

This is a toolkit for people who may have an immigration detention problem. If you are an asylum seeker, have no legal immigration status in Hong Kong, or are friends and family of someone in this situation, you may find helpful information and guidance in this toolkit.

This toolkit is for informational purposes only and does not constitute legal advice. You should consult a lawyer to seek legal advice if you need specific assistance.

How to Use the Self-Help Kit

There are five (5) sections of this toolkit. Each section aims to provide information and guidance, based on different scenarios that you may face relating to immigration detention. You can find the section most relevant to you, based on the scenario you are in:

| Scenario | Toolkit No. |
|---|--|
| #1: I am worry that I might be detained | #1: Preparing for Risk of Detention |
| #2: I am currently being detained | #2: Addressing Your Detention |
| #3: I was or am being mistreated in detention | #3: Addressing Conditions in Detention |
| #4: I need help from a lawyer | #4: Getting Legal and Other Support |
| #5: I need information about my USM/refugee claim | #5: Navigating the USM |

SELF-HELP KIT GUIDE

I HAVE A DETENTION PROBLEM

SCENARIO 1: I might be detained

READ: Risk of detention
(Booklet 1)

Understanding risk of
detention (Section 1.1)

Lowering detention
risks (Section 1.2)

Preparing for detention
(Section 1.3)

SCENARIO 2: I am currently being detained

READ: Addressing
Detention (Booklet 2)

Option 1:
Release

Action 1:
ImmD review
(Section
2.3.1)

Action 2:
Court to order
release
(Section
2.3.2)

Release on
recognizance
(Section
2.2.3)

Option 2:
Departure

Action 3:
Voluntary
return
(Section
2.4.1)

Action 4:
Forcible
removal
(Section
2.4.2)

SCENARIO 3: I was or am being mistreated in detention

READ: Addressing
Mistreatment in
Detention (Booklet 3)

Option:
File
Complaint
(Section
3.2.1)

Option:
Seek civil
remedies
after
release
(Section
3.2.2)

SELF-HELP KIT GUIDE

I WANT LEGAL HELP OR INFORMATION

SCENARIO 4:
I want legal assistance
or help from a lawyer

READ: Getting Legal Help
(Booklet 4)

Getting free legal
support (Section 4.1.1)

Finding private
representation (Section
4.1.2)

NGOs and Other
Support Organizations
(Section 4.2)

SCENARIO 5: I need
information about my
USM/refugee claim

READ: Navigating the USM
and My Refugee Claim
(Booklet 5)

Making a Non-
Refoulement Claim
(Section 5.3)

Appealing your Immd
Decision (Section 5.4)

The Judicial Review
Process (Section 5.5)

SCENARIO 6: I have
other questions

READ: Frequently Asked
Questions (Booklet 6)

Introduction: What is Immigration Detention

0.1 What is Immigration Detention?

Immigration detention is the practice of the government exercising their power to detain people under the Immigration Ordinance (the “IO”), which is the immigration law in Hong Kong. They should only detain someone if they plan to deport or remove them from Hong Kong and if there are valid reasons to keep them in detention until that happens.

Immigration detention is not supposed to be a criminal punishment, but it can similarly take away your freedom.



What is the difference between immigration detention and a criminal sentence?

| | <u>Immigration Detention</u> | Criminal Sentence |
|-----------------------------------|---|---|
| WHAT is happening | A person is detained in an immigration detention facility | A person is detained in a correctional facility |
| WHO makes the decision? | Director of Immigration/ Immigration Department (the “ImmD”) | A judge |
| WHY does it happen? | To control immigration and the movement or activities of migrants in Hong Kong | To punish someone for committing an offence |
| WHEN does it happen? | When the ImmD decides that the factors to justify detention apply | After someone is convicted of a criminal offence and sentenced by a court |

0.2 Why might I be detained?

You can be detained if the Director of Immigration (the “**Director**”) thinks that you do not have a legal right to enter or remain in Hong Kong. However, there are certain circumstances in which the Immigration Department (the “**ImmD**”) should not detain you.

The ImmD can only detain you for certain **valid reason(s)**. The ImmD needs to provide you with legal reasons when:

- 1 your detention **starts**; and
- 2 the ImmD wants to **continue** detaining you.

0.2.1 How can the ImmD justify detention?

The ImmD can detain you for the following reasons, under the Immigration Ordinance (the “**IO**”):



Reasons to detain under the Immigration Ordinance (IO)

- **Question or investigate:** If they want to question and investigate you (*section 26*).
- **Unlawful entry into Hong Kong:** If you arrived in Hong Kong unlawfully (*section 27*), are being suspected of illegal entry (*section 32*) or are refused permission to enter Hong Kong (*section 32(1)*).
- **Waiting to be removed:** If you are waiting to be removed after permission to enter is refused (*section 32(4)*).
- **Ongoing non-refoulement claim:** If you are waiting for a final decision on your non-refoulement/torture claim (*section 37ZK*).
- **Deciding to deport or not:** If the authorities are deciding whether to deport you (*section 29*) or to remove you (*sections 32(1A), 32(2) & 32(2)*).

- **Removal order or deportation order:** If you are under a removal order or a deportation order (*section 32(3)*) and waiting to be removed (*section 32(4)*).

| | Removal Order | Deportation Order |
|-----------------------------|--|--|
| Who may receive the order? | People who do not have permission to remain in Hong Kong (e.g. those who overstayed their visa, or entered illegally). | People who do not have the right to stay in Hong Kong and have also been convicted of a criminal offence and sentenced to at least 2 years of imprisonment. |
| What does the order mean? | A Removal Order requires a person to leave Hong Kong, but does not ban them from returning to Hong Kong lawfully in the future. | A Deportation Order requires a person to leave Hong Kong and bans them from returning at any time in the future (or for a specific period). Violating a deportation order is a crime. |
| How can I appeal the order? | Submit a Notice of Appeal against Removal Order within 24 hours after receiving the Notice of Removal Order. | File an objection to the Deportation Order with the Chief Secretary of Administration within 14 days . |

DID YOU KNOW?

Many asylum seekers are issued a **removal order** as they will have overstayed their visa or “breached a condition of their stay” to make a non-refoulement/torture claim (“**USM claim**”). In practice, the ImmD will not take steps to remove an asylum seeker until his or her claim is concluded by the Court of First Instance at the Leave for Judicial Review stage.

- **Breached deportation order:** If you fail to follow a deportation order (*section 31*) or breach the condition(s) of a deportation order (*section 34*).
- **Breached condition of stay:** If you breach the conditions of stay (*section 32*).
- **False statements or documents:** If you are not allowed to enter Hong Kong and have made false statements or used false documents (*section 32*).

REMEMBER

Although you *can* be detained for these reasons, not everyone *will* automatically be detained.

For example, many asylum seekers are issued a removal order but are not detained. This is because there are other reasons the ImmD considers when making a decision to detain.

These are some of the reasons the ImmD can use to justify your continued detention:

- 1 if you will be deported or removed very soon;
- 2 if you have a record of serious offences, disobedience or identity issues; or
- 3 if you do not have close connections or support in the community.

1

If you will be deported or removed very soon

This may apply to you...

- If you do not have a USM claim;
- If your USM claim was unsuccessful, and you do not have a pending application in the Court of First Instance (the “CFI”) in the High Court;
- If you have an open USM claim, but it is going to finish very soon;
- If you are willing to leave Hong Kong and a repatriation arrangement is underway.



2

If you have a record of serious offences, disobedience or identity issues

This may apply to you...

- If you have prevented or delayed your removal by not cooperating with the ImmD in the repatriation process;
- If you did not comply with the recognizance conditions during your release (e.g., by missing signing) or are re-arrested during recognizance;
- If you have a history of violent behavior, criminal offences, or previous convictions;
- If you have previously escaped from custody or jumped bail;
- If you are likely to pose a threat or security risk to the community;
- If you are likely to engage in unlawful employment or business if released;
- If you have not provided satisfactory proof of your identity (e.g., used a fake passport or do not have ID documents);
- If you have lied to the ImmD.



3

If you do not have close connections or support in the community

This may apply to you...

- If you are unable to take care of yourself;
- If you have no fixed address or close family or friends in Hong Kong.

0.2.2 What are valid reasons to continue detention?

If you are detained, the ImmD cannot detain you indefinitely, without good reason.

Your detention will be reviewed periodically. This is a continuous and ongoing obligation. The ImmD will need further reasons to show that it is lawful to keep you in detention. They may rely on the same reasons in **Section 0.2.1.** above.

If your situation in detention changes and any of the reasons used to start your detention no longer apply, you can try to request a review of your detention and explain to ImmD how your situation has changed.

If the ImmD cannot justify your continued detention, you should be released.

SCENARIO 3:

I WAS OR AM BEING MISTREATED IN DETENTION

3 Introduction

There are rules about how detainees should be treated. If those rules are not followed and detention staff mistreat detainees, they may be breaking the law.

This section will help you to understand:



- 1 Your rights in immigration detention; and
- 2 What action you can take if your rights have been violated.

3.1 Your rights in detention

3.1.1 Laws and Policies

Detainees' rights in immigration detention are protected by different laws and policies:

- 1 International laws
- 2 Hong Kong's constitutional and common law
- 3 Other laws and government policies

1) International Laws

International laws generally recognise fundamental human rights, such as:

- freedom from cruel, inhumane and degrading treatment and punishment;
- rights to effective remedies;
- rights to privacy; and
- rights to life



2) Hong Kong Constitutional and Common Law

The key statutory law providing protection to you is the Hong Kong Bill of Rights Ordinance (“HKBOR”). The most important sections of the HKBOR to immigration detainees are:

- **Section 8, Article 5:** No one should be detained in an arbitrary manner. If you are detained, you need to be told why you are being held, and you can challenge the lawfulness of your detention at court. If the court finds the detention unlawful, you should be released and might be able to get compensation.
- **Section 8, Article 6:** As a detainee, you must be treated humanely. There is a clear difference between persons who are in prison for being convicted, and those who are held without a conviction (*i.e.*, detention).



In a 2015 case **Saeed v Secretary for Justice** ([2015] 1 HKLRD 1030), the District Court considered the lawfulness of the detainee’s treatment during the detention. It decided that certain treatments (including being detained in overcrowded facilities not designed for long-term detention, no change of clothing, no shower, no dental hygiene facilities, having to sleep on the floor, a lack of flushing toilet, strip searches and handcuffing of the detainee) were unlawful and awarded damages (also see **Section 3.2.2**).

3) Other laws and government policies

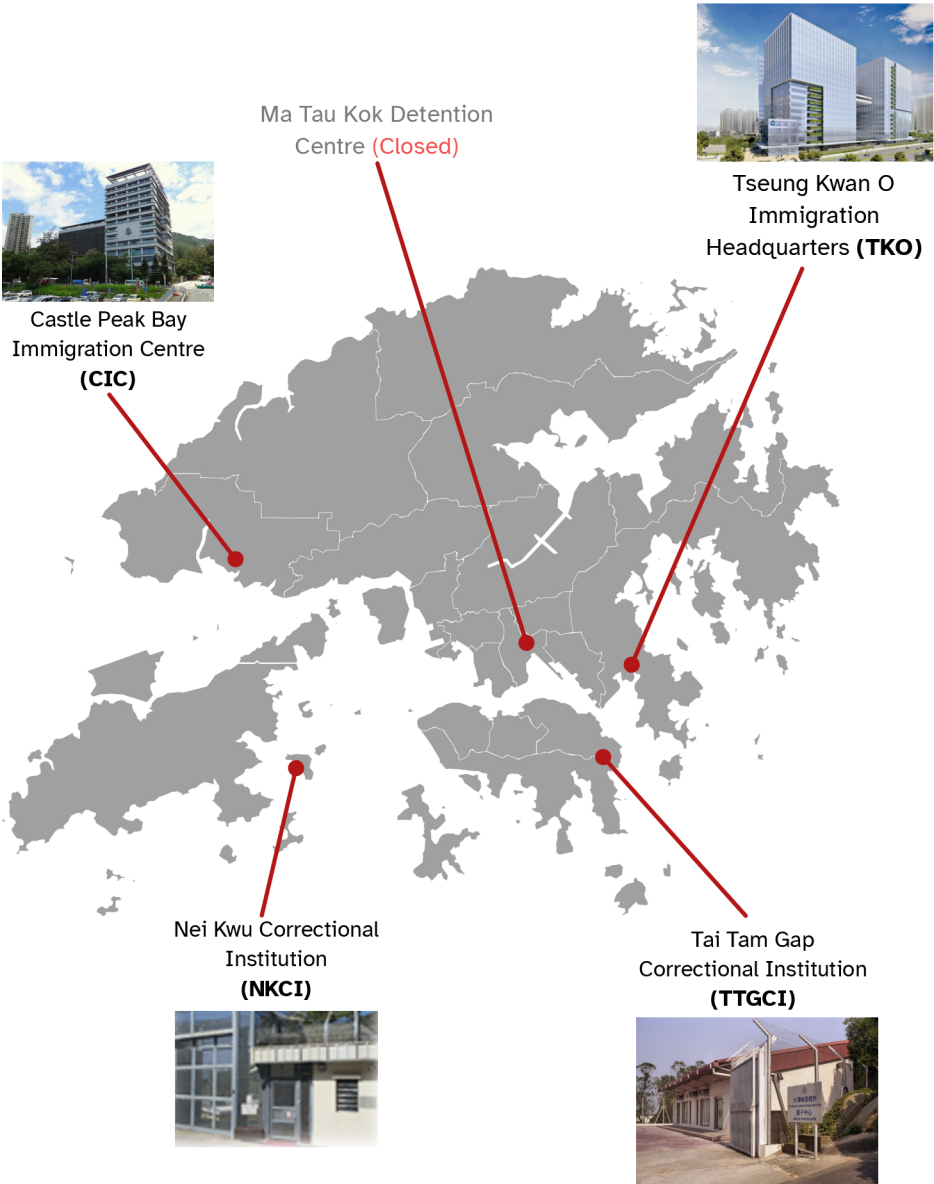
There are other laws and policies regulating day-to-day treatment in different facilities such as:

- The Immigration (Treatment of Detainees) Order (Cap. 115, section 35(1)) [the “**I(TD)O**”]
- The Immigration Service (Treatment of Detained Persons) Order (Cap. 331, section 13A) [the “**IS(TDP)O**”]
- The Prison Rules (Cap 234A) [the “**Prison Rules**”]
- The Castle Peak Bay Immigration Centre Operational Manual (Treatment of Detainees) [the “**CIC Operation Manual**”]

These include rules about many things, for example, where you can sleep, what you eat and wear, how you can use phone calls, letters, or receive visitors, how medical care is provided to you, and the paperwork, record keeping and procedure of detention (also see **Section 3.1.2**).

Hong Kong Detention Locations

You can be detained in different places, which are regulated by different legislation and policies.



Hong Kong Detention Locations

The table below outlines detention locations, the authority in charge, and the laws and policies that apply.

| Detention Location | Who's in charge? | What are the regulating laws and policies? |
|--|-------------------------------------|---|
| CIC: Castle Peak Bay Immigration Centre <i>Generally for longer-term detention (except the 1/F of CIC).</i> | The Immigration Department ("ImmD") | Immigration (Treatment of Detainees) Order (Cap. 115 E) The Castle Peak Bay Immigration Centre Operational Manual (Treatment of Detainees) |
| TKO: Tseung Kwan O Immigration Tower <i>Newly opened in 2023. Mainly for short-term detention.</i> | | Immigration Service (Treatment of Detained Persons) Order (Cap. 331, section 13A) |
| TTGCI: Tai Tam Gap Correctional Institution <i>Exclusively for male detainees.</i> | Correctional Services Department | Prison Rules (Cap. 234A) |
| NKCI: Nei Kwu Correctional Institution <i>Detention facility only for female detainees.</i> | | |
| Other places e.g. prisons, police stations, additional custody centres, different entry points into Hong Kong or custodial wards in hospitals. | - | <i>Prison and custodial wards in hospitals:</i> Prison Rules (Cap. 234A) <i>Border entry points:</i> not specified |
| *The Ma Tau Kok Detention Centre (MTK) is no longer in use | | |

3.1.2 Conditions and treatment in detention

There are some key rules that must be followed for all people held in any detention centre in Hong Kong.

You should be informed of your rights and the rules of detention in writing. If you do not understand any document provided to you in detention (either because of a language barrier or disability), you can ask for an interpreter or other assistance, as Government policy provides for this support.

If the rules in detention are not followed, this can be very serious. If you are mistreated in detention, not allowed to talk to a lawyer, not given enough medical help or food, or are unfairly punished, this may be unlawful. It is important to know your rights and to make sure you are treated fairly and correctly in detention.

Handcuffs

- Should only be used where necessary.
- It may be necessary to use handcuffs to keep you or others safe, to prevent you from escaping, or under the instructions of a Medical Officer.
- Improper use of handcuffs in detention can be seen as a form of cruel, inhuman or degrading treatment. There should be good reasons for using handcuffs.
- The use of handcuffs should be recorded.



Solitary Confinement

- If you break the rules in detention, you might be placed in a separate room, without contact with any other detainees. This is called **solitary confinement**.
- There should be good reasons for placing you in solitary confinement.
- It might be necessary for your own protection or to maintain general order in the detention facility. In this case, you cannot be held in solitary confinement for more than 7 days, unless you agree to a longer period.
- You can be held in solitary confinement for a longer period if you have committed an offence against discipline.
- No one should be in solitary confinement for **more than 28 days** at CIC.
- Putting you in solitary confinement without suitable reasons or keeping you there for too long can be unlawful.



Bodily searches



Three types of bodily searches:

- *Frisking*: padding down detainees while they are dressed
- *Strip search*: detainees to be undressed for visual inspection
- *Body cavity search*: examining body openings such as the anus and vagina

A bodily search is sometimes necessary for security reasons, or to prevent the smuggling or trafficking of banned or dangerous items.

These searches, especially strip searches and body cavity searches, can be invasive and can make you feel uncomfortable. They should only be used when necessary, and they should be done in a way that respects your dignity as much as possible.

There are specific rules about the circumstances and methods of these searches:

- **Out of view**: strip searches should only be done outside the view of another detainee and by an officer of the same sex, unless you agree otherwise.
- **For discipline of the detention centre**: body cavity searches such as the rectum, vagina, nostrils or ears can only be done when it is necessary for the discipline of the detention facilities.
- **Same sex medical professional**: body cavity searches should be done by either a doctor or a nurse of the same sex. Please note that medical examination can be done by medical staff of the opposite sex, but not bodily searches.
- **Non-invasive methods**: there is a pending legal change which states that these searches should be done with non-invasive methods (such as X-ray scans), and that manual searches should only be used in exceptional cases (*Legislation Committee's briefing paper on the I(TD)O 2023*).

There is currently no regulation about when strip searches can or cannot be done. However, if the strip searches are totally unnecessary, disrespectful and the ImmD cannot provide reasons for the strip searches, they may be unlawful.

Access to Medical Care



- The ImmD must provide **adequate** medical attention, usually by medical staff in the detention facilities.
- If the detention facility cannot provide sufficient medical care, you should be taken to a place where you can be treated.
- Refusing to provide medical care, or providing insufficient care, can be unlawful.
- You might receive a medical examination when you arrive at and leave the detention centre.
- You might be able to be visited by a registered medical practitioner selected by you, your friends or your legal advisor.
- If you have severe medical and psychological conditions, these may be factors which mean you should not be detained (See **Toolkit 2, Section 2.1.2**).

Access to Legal Advice

- You have a right to have access to legal assistance without delay.
- If you have a lawyer, they can schedule **legal visits**, where they can bring documents.
- Legal meetings in person with a lawyer can be seen, but must not be heard, by officers.
- Legal meetings can last from 1 to 2 hours, depending on how many timeslots the lawyers have booked.
- Interpreters should be provided if needed.



Accommodation

- You should have dignified and humane living conditions.
- If you have any special request, try making it, even if it might be rejected. Your request will be recorded.
- You should be provided a bed and reasonable bedding at night.
- You should be able to wash, shower, shave, and use the toilet.
- If you are female, you should be kept separate from male detainees, and be looked after by a female officer. Male officers should not enter your room by themselves, except in the event of an emergency.



Clothing

- You are allowed to keep head-dresses required by custom or religion, essential clothing and hearing-aids.
- You can receive clothing from outside (providing it complies with the detention centre's guidelines. See [Appendix 3.1](#)).



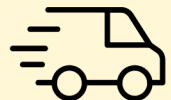
Food and Drinks

- You should be provided with food and drinks for free.
- You can request a different diet if needed.
- You can request water when needed.
- You can receive food from outside (providing it complies with the detention centre's guidelines. See [Appendix 3.1](#)).



Transportation

- You should be exposed to public view as little as possible when being transferred.
- You should be protected from insult or curiosity.



Exercise and Recreation

- You can apply to have books, papers or documents (providing they comply with the detention centre's guidelines. See **Appendix 3.1**).
- You can request and borrow books, newspapers or other reading materials, but you might need to pay for them. You cannot sell or transfer any articles.
- You might be able to receive articles from visitors (providing they comply with the detention centre's guidelines. See **Appendix 3.1**).
- Religious services are permitted.
- You should be provided with a reasonable amount of exercise.
- Some detention centres permit you to smoke in a designated area in accordance with directions.



Family & Friends Contacts and Visits

- You should be able to inform your family and friends about your whereabouts.
- You can write and send and receive letters, photos and pictures. Pens and papers might be provided to you (providing they comply with the detention centre's guidelines. See Appendix [*]).
- Phone calls are limited and may be monitored/supervised.
- Letters may be monitored.
- Visitors can bring clothing, food and personal items to you (providing they comply with the detention centre's guidelines. See Appendix [*]).
- You can receive visitors. Visits by family and friends are also called '**social visits**.'
- There are different rules about arranging social visits at different detention centres. Your family and friends should check online or call the detention centre before visiting:



| Detention Centre | Appointment Required? | How to make an appointment | Time Limit | Visitor Limit |
|--|-----------------------|--|------------|------------------|
| Castle Peak Immigration Centre (CIC) | No | Detainee must add visitor's name to visitor list | 15 mins | 2 people |
| Tai Tam Gap Correctional Institution (TTGCI) | Yes | Online: HKCSD Official Visit e-Booking Service | 15 mins | 1 person per day |
| Nei Kwu Correctional Institution (NKCI) | Yes | Online: HKCSD Official Visit e-Booking Service | 15 mins | 1 person per day |

It is important that detainees add their friends/family/case workers to their visitor list so they can conduct social visits.

3.1.3 Here are some general tips to protect your rights

Tip 1:

As soon as you are detained, you can:

- Ask for a copy of the **Notice to Persons Detained**, which shall be displayed in the room used for detention (as legally required under the I(TD)O);
- Ask for the **Notice of Detention**, which would be available after the ImmD has finished reviewing your case;
- Request to notify a named person (e.g., close relative or any other person) of your whereabouts.

Tip 2:

Don't sign anything that you do not understand or do not agree with. Ask for translation and interpretation if needed (but note that no laws require the authorities to do so).

Tip 3:

You can speak to the Welfare Officer on the following matters:

- The kind of food you need to eat;
- If you need to wash things or items or need clean clothes;
- If you are not happy with the person you need to share your room with;
- If you are sad and want to call your friends or family; and
- If you are a religious or spiritual person and you need support.

Tip 4:

If your request for anything is unreasonably rejected by the immigration staff, you should make a record in an incident log (including e.g., the date and time of your request, the items you have requested, and any reasons given by the staff in rejecting your request). See **Appendix 3.2**.

Tip 5:

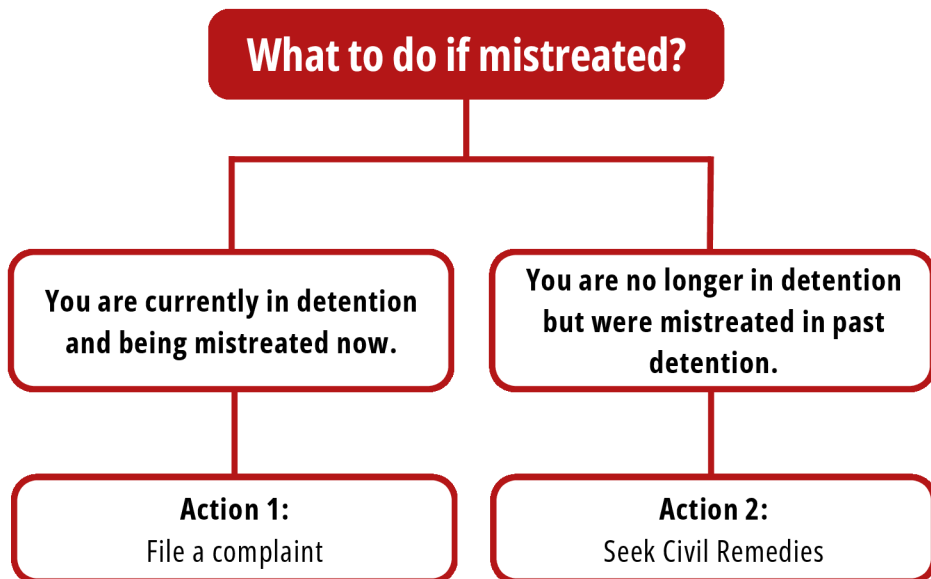
The authorities are legally required to record everything that happens to you during your detention, in an Arrest/Detention sheet, including the following:

- The reasons for your detention;
- Your treatment (e.g., use of handcuffs);
- your movements;
- all interviews;
- all requests and complaints made by you;
- facilities that you are being held at;
- any articles, services or arrangements provided to you; and
- any other matters that the officer considers important

3.2 Addressing mistreatment in detention

If you have been mistreated while you are or were in detention, you can either

- 1 File a complaint (to improve conditions or stop mistreatment), or
- 2 Seek civil remedies from courts with sufficient evidence.



3.2.1 Action 1: Filing Complaints

You are entitled to make complaints about your treatment in detention. This right is protected by:

- I(TD)O, Schedule 1, Section 15 (Complaints) for detainees in CIC
- IS(TDP)O, Section 13 (Complaints by detainees) for detainees in TKO
- Prison Rules, Part I, Division 5, Subdivision 2, Section 95 (Duty as to reports and complaints): for detainees in TTGCI or NKCI.

The complaint system is not confidential. Although the person you are complaining against should not learn of the complaint, other officers and staff could find out about it.

How do I make a complaint?

1. Keep an incident log

You can use an incident log to record events, issues, and problems which happen in detention, such as:

- Appointments with duty lawyers, interpreters, or medical professionals
- Communication issues, delays or difficulties
- Medical issues or symptoms
- Details of treatment in detention
- Unreasonable treatment by Immigration Officers
- Conflict or confrontation with other detainees and/or Immigration Officers

Sample Incident Log:

| | Date | Time | Place | Officer involved | Details of what happened |
|---------------------|------------|------|---------------------------------------|-------------------------------------|---|
| Example Incident #1 | DD.MM.YYYY | 9:00 | CIC, 3 rd Floor, Room XXXX | Officer XXXX Superintendent XXXX | <i>The Officer shouted [] at me Denied medical treatment, [symptoms] I was kept in solitary confinement for [] days because of [] I was handcuffed, but this was not needed because [] I was strip searched in front of more than one Officer</i> |
| Example Incident #2 | | | | | |

This can be attached to a complaint letter to support your complaints.

2. Complain to Superintendent

You can write complaint letters to the Superintendent/authorised officers.

Some tips:

- Make a complaint in writing as soon as possible after the event.
- Keep a copy for yourself, if possible.
- Include the date, time, and place of event.
- State the name and rank of the Immigration Officer(s) involved.
- Provide physical descriptions if name(s) of officer(s) involved is/are unknown.
- Explain the details of the event and the treatment you received.

Sample complaint letter

Dear Superintendent,

My name is _____ (identification number: XXXXX). I am currently detained at [detention center] because of _____. I have been detained for _____ months in Room _____. I am writing this letter to complain about _____.

This happened on _____, at _____, in Room _____. Superintendent _____ and Officer _____ ignored my request when I told them I was feeling ill. My friend, _____, who is also detained in [detention center], also saw how the officers ignored my request.

Please also find attached a log of all the incidents that took place. I would like the Superintendent to deal with this issue as soon as possible.

Yours sincerely,
[Your name]

Introduction: Introduce yourself and where you are detained, explain why you are writing this letter, and briefly outline your complaint.

Details of the complaint: Describe the event(s). Provide as many details as possible and be specific. Examples: (1) failure to provide medical care, (2) inhumane living conditions, or (3) unauthorised strip search.

If you are complaining about more than one problem, write down the details about all of them. Explain that you have been keeping an 'Incident Log' and include a copy of the log (keep the original). Explain how you would like for them to respond and deal with your complaint.

See **Appendix 3.3**.

The Superintendent should record and investigate as soon as possible. They can meet you privately.

3. Complain to Justices of the Peace

Justices of the Peace are people appointed by the Government who can visit anyone in detention. They can check that detainees are held in accordance with the law and can hear and investigate complaints from detainees. They should record their visits and bring any complaints to the attention of Director or Deputy Director of Immigration (in CIC or TKO) or the Commissioner of Independent Commission Against Corruption (TTGCI/ NKCI).



Justices of the Peace should visit detention facilities regularly (for example, every two weeks in CIC). If you are not sure when they will come you can ask the officers.

4. Complain to the Ombudsman

An ombudsman is a specific government officer that handles complaints from members of the public who believe they have been treated unfairly by a public body.



香港申訴專員公署

OFFICE OF THE OMBUDSMAN, HONG KONG

You can also make complaints to the Ombudsman using one of the following ways:



- By **post**:
 - Address: Office of the Ombudsman
30/F China Merchants Tower
Shun Tak Centre
168-200 Connaught Road Central
Hong Kong
 - Postbox: G.P.O. Box No. 3300, Hong Kong



- By **email**:
complaints@ombudsman.hk



- By filing in an **online complaint form**:
<https://www.ombudsman.hk/onlinecomplaintform/?lang=en>

To lodge a complaint, you may:

1) Write a letter of complaint together with a signed **Reply Form** (see **Appendix 3.4**); or

2) Fill out the postage-free **Complaint Form** (see **Appendix 3.5**)

Office of The Ombudsman, Hong Kong
Reply Form for Lodging a Complaint

Case Number: _____ (the official use)

Notes for lodging a complaint:

- Any person who knowingly makes a false statement or misleads The Ombudsman or any other person in the exercise of the power under The Ombudsman Ordinance commits an offence and is liable to a fine at level 3 and to imprisonment for six months.
- The Ombudsman Ordinance stipulates that The Ombudsman shall not undertake or continue an investigation into a complaint if the complainant is unable to accurately, or the complainant cannot be identified or traced. To ascertain the complainant's identity and traceability, this Office requests the complainant to provide his/her full name (as recorded on the identity document) and postal address, and a copy of his/her Hong Kong Identity Card or Passport (page with photo) or the Certificate of Incorporation/Registration for a body corporate. Instead of providing a copy, the complainant may attend this Office to show the original of his/her identity document. Should the complainant fail to meet the above request, The Ombudsman will not be able to further process the complaint.
- The complainant consents to:
 - The Ombudsman copying this complaint form and any other information from the complainant, including his/her personal data, to any party concerned for the purpose of handling this complaint (please see Note 4 below); and
 - Any party concerned providing the complainant's personal and other relevant information to facilitate The Ombudsman's handling of this complaint.
 The complainant may be required to separately sign a consent form when The Ombudsman considers it necessary or there is a request by the party concerned against.
- Notwithstanding Note 3(1) above, this Office would in general not disclose the complainant's identity document or similar matter as it is necessary to facilitate the handling of the complaint. The complainant may, by stating his/her wish clearly in this complaint form, withhold consent to the disclosure of any of his/her personal data or complaint information to the public concerned. However, in this circumstance, The Ombudsman may not be able to process the complaint satisfactorily or at all.
- All personal and other data submitted will only be used for purposes which are directly related to the performance of the statutory functions of The Ombudsman. The complainant has the right to request access to and correction of personal data in accordance with the Personal Data (Privacy) Ordinance. Such requests should be addressed to the Chief Manager of this Office, with the complaint case number quoted, if available. This Office may charge a fee for supplying copies of such personal data.
- The original of this complaint form and any material provided will be disposed of according to the Office's record management policy and normally will not be retained to the complaint. The complainant should not submit any original material.
- Under The Ombudsman Ordinance, The Ombudsman may investigate acts of maladministration by Government departments and statutory bodies specified, and subject to the restrictions stipulated, in the Ordinance. More detailed information is provided on the Office's website (www.ombudsman.hk).
- The Ombudsman may, if she thinks fit, ask the parties under complaint to respond to the complainant and her in parallel. The Ombudsman will examine such response, the complainant's views on the responses (if any) as well as any other relevant information/evidence, before concluding her inquiry into the case.
- Upon completion of inquiry/investigation into the complaint, this Office will inform the complainant of the result in writing, and copy its reply to all the parties under complaint.
- This Office has a Complaints Charter setting out our commitments as well as complainants' responsibilities. Please visit the Office's website (www.ombudsman.hk) for the details.

I/We, being the complainant(s), acknowledge the content of the above Notes and attach herewith the following documents:

☐ A copy of my/each of our identity document(s)

☐ Authorisation letter (the body corporate)

☐ Further details about my/our complaint/copies of supporting documents

Signature and (if applicable) Company Chop: _____ Date: _____
Please delete on appropriate.

(1/2012-4)

Office of The Ombudsman, Hong Kong
Complaint Form

Enquiry line: 1828 0122
Fax line: 2882 8148
Email: omb@ombudsman.hk
Website: www.ombudsman.hk

Please read the "Notes for lodging a complainant" before completing the form.
All fields must be filled in, unless otherwise specified.

Part I: Particulars of the Complainant

The complainant must be the aggrieved person or body corporate, or if the aggrieved person is unable to act for himself/herself, his/her representative.

Individual Complainant

Name in English: Mr. _____
Name in Chinese: 先生 _____
Hong Kong Identity Card / Passport* No: _____
(Please fill in the above fields as recorded on your identity document and provide a copy of your identity document (see Note 2 in 4). If you are a representative, you should, in writing, explain why the aggrieved person is unable to act for himself/herself or well as your relationship with the aggrieved person, and provide a copy of the identity document of the aggrieved person. This Office may, where appropriate, request relevant proof documents.)

Postal address: _____
Telephone no: _____ Email address: _____
(please provide as far as possible) (optional)

Body Corporate Complainant

Name in English: _____
Name in Chinese: _____
Certificate of Incorporation/Registration* No: _____
(Please fill in the above fields as recorded on the Certificate of Incorporation/Registration and provide a copy of the document (see Note 2 in 4).)

Postal address: _____
Telephone no: _____ Email address: _____
(please provide as far as possible) (optional)

Authorised representative:
Name in English: Mr. _____
Name in Chinese: 先生 _____
Post Title: _____
(A letter of authorisation from the body corporate, stamped with its official stamp and duly signed by its director/secretary, should be attached.)

*Please delete on appropriate.

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- You must provide details of your complaint, including a description of the event and the injustice sustained as a result of the alleged mal-administration of the organisation(s) concerned.
- You must attach copies of your identity documents, relevant documents and correspondence exchanged with the organisation(s).
- You cannot make an anonymous complaint or lodge a complaint more than **24 months** after you have knowledge of the subject of the complaint.
- Beware that the making of false or misleading statements may amount to criminal liability punishable by imprisonment.

3.2.2 Civil remedy (post-release)

After you leave immigration detention, you might consider claiming compensation for any mistreatment you suffered while in detention. This is called pursuing a claim for a civil remedy.

What are the benefits and risks?



Successful civil claims may result in **compensation** by way of damages or other remedies deemed appropriate by the court, depending on the individual facts of each case (e.g. the duration of detention and particulars of mistreatment).

In four 2019 cases, the court awarded HK\$80,000, HK\$100,000, HK\$180,000 and HK\$150,000 for unlawful detention for 3, 5, 20.5, and 21.5 months, respectively. In two 2014 cases, the court awarded HK\$30,000 for unlawful detention for 1.5 months, and HK\$10,000 for unlawful detention for 10 days, respectively. In the 2015 **Saeed** case, the court awarded HK\$100,000 for unlawful detention, HK\$30,000 for unlawful handcuffing, and HK\$80,000 for unlawful strip searches.

Please note that the amount of compensation awarded depends on the circumstances of each case. Examples quoted are only for reference.



It is important to consider the potential costs and time commitment required for legal actions.

Additionally, there is a chance that your case will not be successful. You may be ordered to pay the other side's legal fees or receive an adverse judgment.

You should always seek legal advice before bringing any claims.

How to pursue a civil claim?

For a claim to have a good chance of being successful, you need to show clearly that your rights have been violated and the harm you have suffered. You should provide enough supporting evidence – documents to prove what happened to you, or the impact it had on you. If your claim is successful, the amount of money you may receive will depend on how serious the harm and violations were.

Before you start legal proceedings, it is important to understand the amount of money you expect to get. This will determine which court you should use to file your claim. If you need help figuring out the right amount to ask for, you can go to a lawyer.

| Claim Amount | Court | Actions |
|------------------------------------|-----------------------|--|
| ≤ HK \$75,000 | Small Claims Tribunal | <ul style="list-style-type: none">• You should fill in Forms 1 and 2 (which can be obtained at the Tribunal Registry or the Information Centre, or downloaded from the Hong Kong Judiciary website).• In <u>Form 1</u>, you should fill in details of you and the party to be sued.• In <u>Form 2</u>, you should state the amount of the claim, the grounds of the claim and how the amount is calculated with a breakdown.• Forms 1 and 2 must be filed at the Tribunal Registry in person. You are required to pay a filing fee.• After filing the claim and paying the fee, you will be given a <u>Form 3</u> (Notice of Place and Day fixed for Hearing).• Forms for Small Claims Tribunal applications can be found at https://www.judiciary.hk/en/court_services_facilities/scf.html. |
| > HK \$75,000 but ≤ HK \$3,000,000 | District Court | <ul style="list-style-type: none">• You will need to issue a writ of summons or originating summons, to be served on the party to be sued (e.g., the ImmD).• Forms for District Court applications can be found at https://www.judiciary.hk/en/court_services_facilities/dcf.html. |

