

**Asylum seekers strip searched
by the Police and the Correctional Services**

*Submission to the
Subcommittee on Police's Handling of Searches of Detainees*

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Introduction

Society for Community Organization and Asylum Seekers' and Refugees' Voice would like to share with the public the detention experiences of asylum seekers and refugees. Asylum seekers and refugees are often arrested by the police for overstay, although they have already applied for asylum at the United Nations High Commissioner for Refugees (UNCHR).

SoCO released a research in May 2007 about detention of asylum seekers which surveyed 51 people¹ (Appendix 1). The survey showed that of those arrested **94%** have been strip body searched either by the Police or by the Correctional Services Department.

There is no strong justification to strip search asylum seekers

According to the Police Guidelines on the Searching of Detained Persons (the Guidelines) there should be a strong justification before a search can involve the removal of underwear. They should take into consideration the type of offences committed, if there is any violence upon arrest or others.

However, asylum seekers are not criminals. Often they are just arrested when walking on the street, being asked for identity papers. They have not committed any crimes or have any criminal record or exhibited. They are solely here to seek asylum at the UNHCR, having fled their country because they fear persecution for reasons of race, religion, nationality, social group membership of political opinion.

When they are taken to the police station they are strip searched, including removal of underwear. In cases where the asylum seeker is moved between the different police stations and the Immigration detention centres they have been strip searched *each* time they arrive at the police station. SoCO knows of a person who was strip searched more than **60 times** by the police.

Strip search is discriminatory and disrespectful

According to the Guidelines the Duty Officers should conduct the search with dignity and minimize embarrassment.

Also, according to the Hong Kong government's Prison Rules Chapter 234 (Subsidiary legislation) para. 9(2) the searching of a prisoner shall be conducted with due regard to the decency and self-respect. No prisoner shall be stripped and

¹ 'Research on the Condition of asylum seekers and refugees in detention centres', released 6 May 2007, Society for Community Organization. See appendix 1.

searched in the sight of another prisoner unless a senior officer considers it necessary in the interest of the security of a prison or the safety of any person (para. 9(3)).

However, according to our interviews, many have been laughed at the by the officers upon the strip search. The survey revealed that many detainees felt that the detention staff did not respect them during body search. The respondents were insulted (34%) and joked (36.2%) about their private parts by the officers. Many believe that this is due to widespread racial discrimination in the detention centres. **In fact half of the respondents actually feel that they were discriminated because of their race and 44.9% reported to have been insulted by staff.** However, as the upcoming Race Discrimination Ordinance does not cover government functions they will have no effective remedies in case of discrimination during body search.

There is no fair and transparent complaint mechanism

Also, the detainees should be informed about their right to complain. This is also stipulated in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment (Principle 13).

According to our research 85% were not explained how to submit a complaint.

Our research which includes detention both at police stations and Immigration detention centres show that the Police or Immigration may use specific techniques to discourage people from complaining.

Our research showed that as many as 54.9% of the detainees actually complained when they were in detention. Complaints were made regarding bad behavior of the police officers, strip search, food, medical treatment, use of handcuffs, poor living condition etc. One of them complained because he was actually hit by an officer.

However, there are definite barriers to carrying out complaints about the conditions of detention, which is shown in the fact that actually 60% wanted to complain but didn't do so.

The barriers are firstly that some are **discouraged** by the staff to make a complaint. Thus 48.1% of those who actually complained were persuaded to change their mind. 14.3% of them were told to write an apology letter while 46.7% were told that they could avoid trouble if they did not complain. 1 respondent was even forced to withdraw their complaint. Secondly, the staff **threats** complainants. Thus the staff threatened 52.6% when they made complaints, such being threatened that they would not be given any food and their detention length would be increased. Some were threatened that they would be locked up in a special unit or be taken to the mental

hospital.

Thirdly, 36.4% claim to have been **punished** by the staff for complaining. Among those who claim to have been punished for complaining 54.5% were taken to a special unit while 27.3% were taken to a mental hospital. 9.1% were given injection, 2 people (18.2%) were beaten.

The result is as mentioned above that many refrain from complaining (60%), fearing that they would be punished if they complained (75.9%) or taken to a mental hospital (72%).

The above highlights the need for severe monitoring of the strip search procedures conducted by the police, Correctional Services Department and the Immigration Department:

Recommendations:

1. Strip search should be conducted or authorized by the most senior officer of the respective department (Police, Correctional Services, Immigration)
2. An independent monitoring mechanism should be in place, in order to monitor searches conducted on detained persons to prevent abuse of power by the Police, Correctional Services Department and the Immigration Department.
3. The Police General Order should be reviewed and made legally binding. It should be an offence if officers abuse the power to strip search.
4. The government should ensure that there is an independent and impartial complaints mechanism. Complaints should be promptly dealt with and replied to without undue delay. The detained shall not suffer any prejudice or punishment for making a request or a complaint.
5. The government should inform detainees about all their rights in a language they understand.
6. During body search the officers should observe the decency and self-respect of the detainees. No other detainees should be present during searches.
7. The Race Discrimination Ordinance should apply to *all* government functions, especially the Police, Correctional Services Department and the Immigration Department.

Appendix 1.

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Condition of asylum seekers and refugees in detention

Executive summary (May 2007)

1. Background

What is an asylum seeker

An asylum seeker is someone who seeks protection under the Refugee Convention 1951 to be recognized as a refugee. Asylum seekers come here because they are unable to seek protection of their lives in their own country. A refugee is someone who has been recognized to be unable to return to his country because he has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, as defined in article 1 of the Refugee Convention. Getting the UNHCR recognition as a refugee does not make a person a refugee, but recognizes him to be so.

Detention of asylum seekers

According the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers 1999, detention of asylum-seekers is inherently undesirable.

However, at the moment most asylum seekers are subject to detention for overstay or illegal entry. There is no policy in granting temporary visas for people who seek asylum in Hong Kong. The Immigration Ordinance does not have specific provisions to protect refugees, and basically treat refugees as regular illegal immigrants once they overstay. The Immigration Department has rejected people who have sought to get extensions of their visas because they were seeking asylum at the UNHCR. By not extending their visas, the Immigration Department is in fact telling people to return to their country of origin, although a claim of asylum in fact means that the claimant because of fear of persecution is unable to return to his/her country of origin. Thus once rejected they are forced to overstay, left without any valid identity documents and subject to detention.

Secondly, some refugees may have to enter a territory illegally because of their country situation. For instance a person who belongs to an opposition party may have to flee his country with another identity, because passing immigration control with his own identity would lead to persecution by the government, who torture or kill people who are against the government.

It is of high importance that governments distinguish between regular illegal immigrants and refugees who have claims of asylum. The position of asylum seekers differs fundamentally from that of ordinary immigrants in that their presence in Hong Kong is due to fear of persecution. This, and the fact that asylum seekers often have had traumatic experiences, should be taken into account when considering detention based in illegal entry or presence.

Detention as a mechanism that seeks to address the particular concern of States related to illegal entry and illegal work requires great caution in its use to ensure that it does not serve to undermine the fundamental right to seek asylum.

2. Background of study

Aim of study

The aim of the study was to understand the conditions of detention of refugees, especially focusing on access to legal representation, complaints mechanism, medical care and the general treatment of refugees in detention centers. The objective is to give recommendations as to the way forward to the treatment of asylum seekers in detention.

Methodology

During the period January-September 2006 Society for Community Organization interviewed 51 asylum seekers/refugees/torture claimants who had been released from detention. At the time of interview 8 people (18.2%) were refugees, the rest of them asylum seekers and/or torture claimants. They were mostly from the African continent and some from South East Asia.

The survey used a snow-ball effect to find respondents and the questionnaires were conducted through face-to-face structured interviews. The selection criteria were that they were either current or previous asylum seekers who had been detained solely for overstaying or illegal entry.

Analysis

The survey results have been analyzed in reference to different principles and rules, which the government should adhere to. There is a vast legal framework that protects

refugee detainees.

First, there are the local Prison Rules, Chapter 234 Subsidiary Legislation (1954), which are general rules for all classes of prisoners², including rules about accommodation, food, medical treatment, communications and visits. Secondly, there is the Immigration Service (Treatment of Detained Persons) Order, Chapter 331C (1997), which contains rules about the treatment of detainees. Thirdly, of high importance is the United Nations International Covenant on Civil and Political Rights (ICCPR), which came into force in 1976 in Hong Kong, and which has been incorporated into the Hong Kong Bill of Rights Ordinance 1991.

Of key significance to the issue of detention of asylum seekers are the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999)³. These guidelines describe under what exceptional circumstances that states can resort to detention of asylum seekers and also list what procedural safeguards and conditions of detention that must be observed. Secondly, there are the United Nations Standard Minimum Rules for the Treatment of Prisoners 1957⁴. These rules set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions. Lastly, there is the United Nations Body of Principles for the Protection of All Persons for All Persons under Any Form of Detention or Imprisonment (1988)⁵, which apply for the protection of all persons under any form of detention or imprisonment.

Lastly, although not ratified but Hong Kong, is the International Convention Relating to the Status of Refugees 1951, which concerns the rights of refugees and asylum seekers.

Conclusion

The study shows that refugees in detention do not have adequate access to legal representation or medical care and that an independent and fair complaints mechanism is lacking. The study also reveals that racial discrimination is common in detention centers.

² The Prison Rules, Chapter 234 apply to all classes of prisoners except in so far as they may be inconsistent with the rules made to govern any particular class or classes of prisoners (rule 2).

³ Office of the United Nations High Commissioner for Refugees: *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* (February 1999).

⁴ Officer of the United Nations High Commissioner for Human Rights: *Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977*

⁵ Officer of the United Nations High Commissioner for Human Rights: *Body of Principles for the Protection of All Persons for All Persons under Any Form of Detention or Imprisonment. Adopted by General Assembly resolution 43/173 of 9 December 1988.*

3. Summary of findings

Profile of respondents

98% of the respondents are male and 2% are female

84.3% are between 18-39 years old.

53% are from Africa and 47% are from South East Asia.

Reason and length of detention

Reasons for detention

Most of the former detainees were detained because of overstay or illegal entry. However, it is important to observe that according to article 31 of the 1951 Refugee Convention that refugees coming directly from a country of persecution shall be exempt from being punished on account of their illegal entry or presence.

According to the survey, 75% were detained for overstaying while 7.8% were detained for illegal entrance. Although 96.9% of the cases had a UNHCR letter at hand when arrested, the police/Immigration Department did not recognize the letter and detained them anyhow.

Length of detention

*According to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers 1999, detention of asylum-seekers is inherently undesirable, but if judged necessary it should only be imposed in a non discriminatory manner for a **minimal** period (Guideline 3).*

However, when the detainees were asked about the length of detention many had been detained for a long period of time. 35.2% were detained for 1-3 months. 21.6% were detained for 6-12 months. 15.7% were detained for 1 year or above. In fact one person was detained for 2 years or above. Only 17.6% were detained for 1 month or less.

Opinion on detention

Of the 51 former detainees, the majority (92.2%) was of the opinion that detention of asylum seekers is wrong.

Asylum cases processed during detention

Asylum seekers forced to have interviews and make appeals regarding their UNHCR case in detention

Some asylum seekers interviewed felt that detention had a psychologically damaging effect on their mental health. As most of them had ongoing cases either with the UNHCR or a CAT claim, being in detention may have a negative impact on their claims, as they e.g. may not be mentally fit for an interview. For instance some have to go through the interviews with the UNHCR or the Immigration while being in detention, and some get rejections and have to make their appeals in detention. This may cause difficulties for the asylum seeker. The survey shows that 51% had to go through a UNHCR interview while in detention, and 70.5% had a CAT interview in detention.

When getting an initial rejection from the UNHCR, the asylum seeker is obliged to appeal within a month. However, making appeals in detention is not optimal as they are not able to adequately get help or get access to information. Our survey shows that 44.2% got their first rejections from the UNHCR while being in detention. In fact 6 people got both their first and second rejection while in detention, meaning that they were forced to make both the appeal and have follow up interviews while being in detention.

When asked about whether detention caused any difficulties to their claims 85.4% felt that it was difficult to provide evidence to support their case for many reasons. They said they could not contact their friends and relatives so it was very difficult for them to arrange enough documents to support their case. Also only 18.8% were able to get information about what was going on with their UNHCR case.

No access to lawyers or a fair complaints procedure

Lack of information about rights

According to the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment any person shall be provided with information on his rights and how to avail himself of such rights (Principle 13).

The survey reveals that the detention staff did not fully inform the detainees about their rights when they were detained. 86.0% of the respondents were not told about the right to challenge detention and 25.5% of them did not get any information regarding right to legal assistance. In fact only 6 people were explained how they can get legal assistance, although 17.6% said that they didn't

know how to find a lawyer. Lastly, 84.8% of the total respondents were not explained about the way to submit a complaint.

Lack of access to legal representation

Both locally and internationally there are laws which stress the right to access to legal advice.

According to the Immigration Service (Treatment of Detained Persons) Order Chapter 331 C, a detainee shall be afforded reasonable opportunity to communicate with a legal adviser (section 4)

And according to the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a detained person shall be entitled to have assistance of a legal counsel. He shall be informed of this right, and be provided with reasonable facilities for exercising it (Principle 17). Also he shall be allowed adequate time and facilities for consultation with his legal counsel (Principle 18).

The survey reveals that it is very difficult for asylum seeking detainees to gain access to lawyers. In fact 35.3% did not have any legal representative during detention. Only 4 out of the 51 respondents were helped by Legal Aid, while private lawyers helped others, usually on a pro bono basis. 57.1% of the respondents felt that it was difficult for them to contact a lawyer, and many (74.5%) felt that the time given to them to make a call to their lawyers was too short.

Lack of fair and transparent complaint mechanism

According to the government's Prison Rules Chapter 234 (Subsidiary legislation) the superintendent shall ensure that every prisoner having a complaint to make or a request to prefer to him shall have ample facilities for so doing, and he shall take all the necessary steps to redress all grievances so far as is possible (para. 95).

Every complaint made by a detainee shall as soon as possible brought to the attention of a member of the Service not below the rank of Assistant Principal Immigration Officer and recorded in the detainee's arrest/detention sheet (Immigration Service (Treatment of Detained Persons) Order, Chapter 331 C section 13).

Furthermore, no detainees shall be punished for making a request or for complaining (United Nations Body of Principles for the Protection of All Persons under Any Form

of Detention or Imprisonment Principle 33).

Lastly, the Prison Rules state that “*They shall be confined in a special cell as a punishment*” (para. 67 of the Prison Rules)) *and only offences that include disobedience, disrespectful treatment of officers, threats assaults or doing things without permission etc. can be subject to prison discipline*” (para. 61 of the Prison Rules).

However, it is very clear from the survey that there are many barriers to complaining when in detention. As many as 54.9% of the detainees actually complained when they were in detention. Complaints were made regarding bad behavior of the police officers, food, medical treatment, use of handcuffs, poor living condition etc. One of them complained because he was actually hit by an officer.

However, there are definite barriers to carrying out complaints about the conditions of detention, which is shown in the fact that actually 60% wanted to complain but didn’t do so.

The barriers are firstly that some are **discouraged** by the staff to make a complaint. Thus 48.1% of those who actually complained were persuaded to change their mind. 14.3% of them were told to write an apology letter while 46.7% were told that they could avoid trouble if they did not complain. 1 respondent was even forced to withdraw their complaint. Secondly, the staff **threats** complainants. Thus the staff threatened 52.6% when they made complaints, such being threatened that they would not be given any food and their detention length would be increased. Some were threatened that they would be locked up in a special unit or be taken to the mental hospital.

Thirdly, 36.4% claim to have been **punished** by the staff for complaining. Among those who claim to have been punished for complaining 54.5% were taken to a special unit while 27.3% were taken to a mental hospital. 9.1% were given injection, 2 people (18.2%) were beaten.

The result is as mentioned above that many refrain from complaining (60%), fearing that they would be punished if they complained (75.9%) or taken to a mental hospital (72%).

Infringement on the right to health

Worsening mental health condition during detention

According to the UNHCR Revised Guidelines on Applicable Criteria and Standards

Relating to the Detention of Asylum Seekers 1999, there are negative effects of detention on the psychological well being of those detained. Active consideration of possible alternatives should precede any order to detain asylum-seekers who are torture or trauma victims (guideline 7).

When asked about their situation in detention, they told that the traumatic effect increased while they were in detention. Detention had led to conditions, which were not present before detention. Thus 48.0% said they had difficulty in sleeping, 47.1% said they experienced depression, 33.3% had poorer concentration, 47% had had anxiety, 49.0% had more headaches, 27.5% had more flashback and 13.7% (7 people) actually thought of attempting suicide.

Inadequate medical care

There are many international rules that emphasize the right to medical care. *According to the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, medical care and treatment shall be provided whenever necessary (Principle 24).*

Also, according to the United Nations Standard Minimum Rules for the Treatment of Prisoners 1957, sick prisoners who require specialist treatment shall be transferred to institutions of civil hospitals (Art. 22(2)). The medical officers shall see and examine every prisoner as soon as possible after his admission with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures (art. 24(2)).

Lastly, the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers 1999, emphasizes the need for psychological counseling where appropriate (Guideline 10). There should also be a initial screening of all asylum seekers at the outset of detention to identify trauma and torture victims (guideline 10(I))

Despite the above rules, there is a lack of alertness among the staff of the Correctional Services Department and the Immigration Department about the fact that people who have gone through torture may have specific medical needs. In fact in 77.3% of cases, the asylum seekers were not asked by the staff if they had been tortured before they were put in detention.

Secondly, the medical care in detention seems to be far from sufficient. 45 of the former detainees had asked to see a doctor, but many (59.0%) had to wait for a long time before a doctor arrived to see him, and 5.3% never saw a doctor. As many as 55.3% claim that they were given wrong medicine. Many respondents

said that the doctor would usually just give panadol for any kind of problems, and that no thorough examination is given. Indeed several asylum seekers have explained that there were several meters between the patient and the doctor throughout consultation.

Maltreatment and racial discrimination

Maltreatment during body search

According to the Hong Kong government's Prison Rules Chapter 234 (Subsidiary legislation) para. 9(2) the searching of a prisoner shall be conducted with due regard to the decency and self-respect. Also, no prisoner shall be stripped and searched in the sight of another prisoner unless a senior officer considers it necessary in the interest of the security of a prison or the safety of any person (para. 9(3)).

Most of the respondents were stripped for body search. However, although a detainee should not be searched in front of other detainees, some respondents told that there were other people present at the time of search. In some cases there were as many as 20 detainees present with an officer. Also, during the search, many detainees felt that the detention staff did not respect them. The respondents were insulted (34%), touched (27.3%) and joked (36.2%) about their private parts by the officers. Many felt that embarrassed and ashamed.

Racial discrimination and lack of cultural sensitivity

According to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers 1999, asylum seekers should have the opportunity to exercise their religion and to receive a diet in keeping with their religion (Guideline 10(viii))

According to the International Covenant on Civil and Political Rights (art. 10) all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This right should be respected without distinction of any kind, such as race, colour, national or social origin (art. 2).

Discrimination on the grounds of race or national origin does take place in detention. Half of the respondents actually feel that they were discriminated because of their race and 44.9% reported to have been insulted by staff. 62.7%

told that the staff tried to persuade them to voluntarily return to their own country, despite the fact that they had a UNHCR or CAT claim.

Also, often the staff would disregard the fact that the detainees do not speak Chinese or that their mother tongue language is not English. In 40.9% of cases, the respondent said that the staff spoke Chinese to them. Although the staff would normally speak English, as high as 58.8% could not fully understand what was being said to them. However, as many as 50% were not provided with an interpreter.

When it comes to signing documents, 54.5% did not fully understand all the documents signed and 45.7% said that they did not have enough time to understand all the documents.

Lastly, 14.9% experienced not being given a diet, which respected their religious beliefs, e.g. Muslims being given pork.

The lack of any positive measures, such as improved access to interpreters, and sensitivity to language barriers, clearly shows that discrimination against ethnic minority detainees is taking place in detention centres.

Living conditions

Bad living conditions

According to many international and local standards, the government is obliged to provide access to basic necessities and good living conditions.

According to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers 1999, it is emphasized that asylum seekers should have access to basic necessities i.e. beds, shower facilities, basic toiletries etc. (Guideline 10 (ix)).

Also detainees shall be able to bath as frequently as necessary for general hygiene (According to the Standard Minimum Rules for the Treatment of Prisoners 1957, Art. 13).

Lastly, according to the Immigration Service (Treatment of Detained Persons) Order, a detainee shall be provided with adequate facilities and opportunity to wash, shower, shave, relieve himself and take a reasonable amount of exercise (section II)

There was a lot of dissatisfaction with the living conditions in the detention centers/police stations. 10 respondents had experienced at least one night where they were not provided with any bed. Those, however, who did have beds reported about the beds being dirty, hard and uncomfortable. 7.8% (4 people)

were not given blankets and of those who got them told that they was not in good condition. They were either dirty, small or itchy.

Regarding showers, 60.8% could not shower everyday. Some reported that they could take a shower just once in ten days or even less. The problem with shower was faced by 14 respondents at Ma Tau Kok detention centre and 8 respondents at police stations.

Also, 26% told that they were not given soap, and 14.5% said that the toothbrushes provided were used or dirty.

4. Recommendations

1. As a general principle asylum-seekers should not be detained. The government should recognize the right to seek and enjoy asylum as a basic human right. It should recognize that asylum-seekers are often forced to enter a territory illegally in order to exercise this right. The government should use alternatives to detention such as reporting requirements or temporary visas.
2. The government should ensure that detention is resorted to only for reasons recognized as legitimate, consistent with international standards and only when other measures will not suffice. Detention should only take place after a full consideration of all possible alternatives or when monitoring mechanisms have been demonstrated not to have achieved the legitimate purpose. Detention should only occur where the Immigration Department has made an individualized determination of the need to hold a specific asylum seeker. Detention should be for the shortest possible period and should only be resorted to if necessary to verify identity; to identify the basis of the asylum claim; in cases where the asylum seekers have destroyed their identity documents to mislead the authorities of the state; to protect national security and public order.
3. The government should establish a formal independent review process to assess on a case-by-case basis the necessity and proportionality of detention of all asylum-seekers.
4. The government should inform detainees about all their rights in a language they understand.
5. During body search the officers should observe the decency and self-respect of the detainees. No other detainees should be present during searches.

6. Racial sensitivity training should be provided to frontline officers when dealing with asylum seekers. Training related to the special situation and needs of asylum seekers should also be provided.
7. The government should ensure humane conditions of detention, both in police stations, airports and detention centres. This includes bedding, blankets, adequate and nutritious food, bathing facilities, toiletries and clothing.
8. The government should improve access to legal services for asylum seekers. In providing legal, medical and other services, the government shall ensure that adequate interpretation services are readily available.
9. The government should improve access to and the quality of health services, including mental health services, to detained asylum seekers. Medical personnel should receive specialized training in caring for asylum seekers, which includes identifying and responding to survivors of torture and persecution, and addressing their psychosocial needs.
10. The government should ensure that there is an independent and impartial complaints mechanism. Complaints should be promptly dealt with and replied to without undue delay. The detained shall not suffer any prejudice or punishment for making a request or a complaint.