

有關移交青山灣入境事務中心管理工作

附屬法例小組委員會

跟進 2010 年 3 月 5 日的小組委員會會議

引言

由懲教署管理青山灣入境事務中心（中心）屬有時限性的安排。中心內的被羈留者是因干犯《入境條例》而等候調查或遣送的被羈留者，而非被判刑的囚犯。現時《入境（被羈留者的待遇）令》（第115章，附屬法例E）（待遇令）已訂明該等人士的待遇。就中心的情況而言，《監獄規則》（第234章，附屬法例A）許多條文並不適用（例如囚犯福利基金）或非必需（例如有關搜查外孔的權力）。更要指出的是，超過八成的被羈留者於中心羈留時間少於兩星期。

個別事宜的回應

2. 就議員提問的事宜，我們回應如下：

(一) 羈留期

有關被羈留人士羈留期長短的資料，請見附件(一)。

(二)及(三) 短期及長期被羈留者的待遇

中心是目前唯一不只用作短期（如48小時內）羈留干犯《入境條例》人士的地點。其他羈留地點包括馬頭角羈留中心以及各管制站的羈留室。

所有被羈留者，不論其羈留期長短，都獲供應基本所需，他們亦可與親友及法律顧問聯絡。被羈留者如對所獲得的待遇有任何不滿，可作出申訴。然而，只用作短暫羈留的地點一般都只需是「辦公室的設計」，規模亦較可容納400名被羈留者的中心為小，所以不需設有診所、運動場所、洗衣房、休息室等設施。基於同樣考慮，亦無需在這些地點執行有關《待遇令》（如有關點名、單獨囚禁等事宜的條文）。事實上，現時並沒有法例訂明執法部門用作短暫羈留的設施內被羈留者的待遇。

(四) 防止違規

任何入境事務處（入境處）人員如不切實執行中心運作手冊的規定，須面對紀律處分，情況與懲教署人員違反《監獄規則》或失職相同。我們很難一概而論地比較違反《監獄規則》和違反中心運作手冊分別可帶來的法律責任及補償措施。有關事宜須根據個案的性質以及相關的情況作出考慮。如有公職人員干犯了損害囚犯或被羈留者的失德行為，即使有關的規定受運作手冊而非《監獄規則》所規範，亦不會在法律責任及補償措施方面有重大分別。

(五) 太平紳士探訪

現時太平紳士的探訪安排將繼續，不受中心管理轉移的影響。我們已建議在《待遇令》附表1中加入規則16。新規則訂明太平紳士探訪的主要安排，包括：中心監督必須向太平紳士提供便利，使他們能夠探訪被羈留者；太平紳士可在所有合理時間探訪，並可在合理期間內逗留；到訪太平紳士須將其觀察所得記錄；任何負面觀察須在切實可行範圍內，盡快呈報入境事務處處長或入境事務處副處長。其他安排大致與現時相同，並會列明於中心運作手冊。例如，入境處會聯同行政署邀請兩位太平紳士最少每兩星期探訪一次。我們認為有關安排恰當及足夠。現時太平紳士除了探訪監獄及中心外，亦會探訪其他設施（例如醫院及兒童院）。一般情況下，有關探訪的詳細安排均以行政方式列明。

(六) 《監獄規則》中不適用於中心的事宜

《監獄規則》有規範性地列明囚犯的基本需要（如食物及居室）以及其他安排（如與外界聯絡）。《監獄規則》中，因不適用於中心的情況而不會加入在《待遇令》或中心運作手冊中的事宜，見附件（二）。

(七)及(八) 中心運作手冊

中心運作手冊最新擬稿中有關被羈留人士的待遇的部份，請見附件（三）（現時只有英文本）。入境處會在接管中心前讓公眾參閱。

(九) 衛生設施及情況

中心於二零零五年啓用，設有合規格的衛生設施如沐浴間、洗衣房等，並於每個囚室內設有獨立並有清水沖廁功能的洗手間。衛生情況不會因管理工作轉移而有所改變。

(十) 與《監獄規則》看齊

正如上文第一段所指，因干犯《入境條例》而被羈留人士並非被判刑囚犯。中心的運作移交入境處後，我們會安排刊憲，終止中心作為一所「監獄」，並同時把中心加入為《入境（羈留地點）令》（第115章，附屬法例B）訂明的「中心」。基於被羈留人士的性質與被判刑囚犯不盡相同，我們認為無需將《監獄規則》中每一項條文轉載到《待遇令》。政府是按乎需要而制定新法例。正是基於此原則，我們沒有建議加入有關搜查身上外孔等權力。

青山灣入境事務中心被羈留者

羈留期

二零零七、二零零八及二零零九年，每年的平均羈留者人數分別為 373,323 和 238。

二零零九年，被羈留者的羈留期的分佈如下 -

羈留期	%
1—6 天	57.1
7—13 天	24.1
14—20 天	4.3
21—29 天	4.4
30—60 天	7.9
超過 60 天	2.2

《監獄規則》中與青山灣入境事務中心無關的事宜

監獄規則	事宜簡述	備註
9(1A)	搜查身上外孔	我們不認為有關權力對於管理青山灣中心是需要的。
17	外出許可	此條文與因干犯《入境條例》而被羈留人士無關。
21	女囚犯的子女	十八歲以下的入境被羈留者收納於屯門兒童及青少年院等設施，而非青山灣中心。
22	繳付部分罰款以獲減刑	此條文與因干犯《入境條例》而被羈留人士無關。
22A	在公眾假期獲釋	- 同上 -
34A	囚犯尿液的檢驗	我們不認為有關權力對於管理青山灣中心是需要的。
38 - 46	勞力工作	此條文與因干犯《入境條例》而被羈留人士無關。
51	因欠繳款項而被監禁的人	- 同上 -
69	減刑	- 同上 -
70	《退休金條例》、《公務人員(管理)命令》及政府規例的適用範圍	相關條文也適用於入境事務隊。
143-161	醫生的職責（例如照料患病的被羈留者）。	醫療服務將被外判。服務質素會維持現有水平。

監獄規則	事宜簡述	備註
190-191	<p>候審囚犯須與經定罪的囚犯分隔。</p> <p>監督可更改監獄內關於任何類別的候審囚犯，而顯然是不需要的慣例。</p>	青山灣中心只收納入境相關的被羈留者，而非經定罪的囚犯。
201	選擇受僱工作的權利	入境相關的被羈留者沒有受僱工作的安排。
210-214	上訴人（例如已提出《裁判官條例》（第227章）適用的上訴的人）的待遇。	青山灣中心沒有羈留有關人士。
215	因藐視等罪而被交付羈押的囚犯的待遇	- 同上 -
243-255 K	有關懲教署人員的程序規則及紀律處分和覆核及上訴	相同性質的規則列載於處長按《入境事務隊條例》（第331章）訂立的入境事務隊常規命令。
256-264B	懲教署福利基金	相同性質的規則訂於《入境事務隊（福利基金）規例》（第331章，附屬法例D）
265-272	犯人福利基金	入境相關的被羈留者沒有類似基金。

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附件(三)

Foreword

The treatment of detainees in the Castle Peak Bay Immigration Centre (CIC) is specified in the Immigration (Treatment of Detainees) Order, Cap. 115 sub. leg. E. The CIC Operational Manual (Treatment of Detainees) (hereinafter referred as Manual) provides staff of the CIC with guidance on the proper management of detainees in the CIC with regard to their daily routine and welfare as well as the security of the CIC.

Aside from the related legislation and this Manual, staff of the CIC should always refer to the prevailing orders and instructions as stipulated in the Immigration Service Standing Orders or Immigration Service Temporary Orders, the latest departmental notices / circulars and divisional / sub-divisional / sectional instructions or notices in executing their duties.

1. Visits by Justices of Peace (JP)

- 1.1 The general conditions in relation to the JP visits are provided in rule 16 of the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E).
- 1.2 Subject to the arrangement of the Director of Administration's Office, two visiting justices (VJs) shall be invited to, in company if possible, visit the Centre at least once a fortnight. The VJs would also be invited to and be provided facilities to:
- (i) hear and investigate any complaints which any detainee may desire to make to them;
 - (ii) visit detainees in separate confinement;
 - (iii) inspect the diets of the detainees; and
 - (iv) inspect any of the records of the treatment provided to detainees, such as food provision, medical services, visits received, etc.
 - (v) promote the efficiency of the service in collaboration with the Director and make inquiry into any matter referred to them by the Chief Executive;
 - (vi) furnish the information required by the Chief Executive from time to time with respect to the offences reported to them;
 - (vii) attend to all reports received as to the mind or body of any detainee being likely to be injured by discipline or treatment to which he is subjected, and to communicate their opinion to the Chief Executive;
 - (viii) organize lectures and addresses in the Centre subject to the approval of the Director, provided they do not interfere with the discipline of the Centre; and
 - (ix) inquire into the state of the Centre and report to the Chief Executive with respect to any repairs or additions which may appear to them to be necessary;
- 1.3 The names of the VJs shall be furnished by authorized contact person of the Director of Administration's Office to the Director of Immigration and the Centre shall be opened to them at all reasonable times during their tour of duty.

2 Health and Cleanliness

2.1 Exercise

- 2.1.1 Every detainee shall be provided with not less than one hour of exercise in the open air (playground or exercise yard) daily if the weather permits.
- 2.1.2 Indoor exercise will be arranged for detainee during rainy or inclement weather.

2.2 Bath

- 2.2.1 Every detainee shall be allowed to take a bath on reception, unless the Superintendent or Medical Officer otherwise directs.
- 2.2.2 Detainees will be arranged to take shower soon after the exercise period.

2.3 Cleanliness

Every detainee should keep his cell, room or dormitory, his utensils, books and other articles issued for his use, and his clothing and bedding, clean and neatly arranged.

3 Handling of Requests from Detainees

- 3.1 It is the duty of all staff to deal with requests from detainees. Under normal circumstances, detainees' requests will be put into "Request Interview Book" at respective dayrooms for the consideration of senior officers.
- 3.2 All staff shall –
 - (a) treat the detainees with kindness and humanity;
 - (b) listen patiently to any detainee who has a complaint to make; and
 - (c) inform CIO(CIC) when any detainee desires to see him or the Superintendent.

4 Medical Service

4.1 Medical examination

- 4.1.1 Every detainee shall, as soon as possible after his admission, be separately examined by Medical Officer, who shall record the state of health of the detainee, and such other particulars as he may deem necessary.
- 4.1.2 Provided that when a detainee is admitted too late to be examined on the same day he shall be examined as soon as possible on the next, and in any case within 24 hours of admission.
- 4.1.3 A sick detainee may be allocated to the Sickbay for treatment by the Medical Officer.

4.2 Final interview with Medical Officer

- 4.2.1 Every detainee shall as short a time as is practicable before release, or transferred to another place, be examined by the Medical Officer.
- 4.2.2 A detainee shall not be transferred to another place unless the Medical Officer certifies that he is fit for removal.
- 4.2.3 A detainee due for release who is suffering from an acute or dangerous illness shall, unless he refuses to stay, not be sent out of Centre until in the opinion of the Medical Officer it is safe to send him out.

4.3 Private medical adviser

Every detainee may for the purposes of his defence receive a visit from a registered medical practitioner selected by him or by his friends or legal adviser, under the same conditions as applied to a visit by his legal adviser.

5 Food and Clothing

5.1. Food Quality and Quantity

- 5.1.1 Except on the written recommendation of the Medical Officer in the case of a detainee who persistently wastes his food or on medical grounds by direction of the Medical Officer, no detainee will be given less food than is provided in normal Centre diet.
- 5.1.2 Where the Superintendent is satisfied that circumstances exist that warrant the provision of a diet that differs from the normal diet to a detainee, he may direct that the detainee be given a different diet.
- 5.1.3 A detainee who considers he should be provided with a diet that differs from the normal diet may appeal to an Assistant Director against a decision of the Superintendent not to provide him with that different diet.
- 5.1.4 Every detainee may procure for himself, or receive at proper hours, food from outside.
- 5.1.5 Every detainee who prefers to provide his own food for any meal shall give notice thereof in advance of the time the meal is required; but the Superintendent shall not permit any such detainee to receive any Centre diet for the meal for which he procures or receives food at his own expense.

5.2 Complaint on Foods

Every detainee who has any complaint to make regarding the food furnished to him, or who wishes his food to be weighed or measured in order to ascertain whether he is supplied with the prescribed quantity, should make his complaint immediately when his food is handed to him, and it shall be weighed or measured in his presence and in that of the officer deputed for that purpose.

5.3 Private clothing

Detainees are allowed to wear private clothes during the period of detention. Additional clothing may, on request, be provided to the detainees.

6 Written communication

6.1 Sending and receiving letters

- 6.1.1 Every detainee is allowed to write and send one letter per week not exceeding 4 pages of A-4 paper in length at public expense. They are also allowed to receive any number of letters from their relatives and friends.
- 6.1.2 The Superintendent may permit a detainee to write and send additional letters at public expense if the detainee has a genuine need.

6.2 Screening

6.2.1 General Mail

- (i) Unless with prior permission, detainees can only receive letters or photos/pictures;
- (ii) For receiving larger postal articles (e.g. private clothings sent by relatives), the Superintendent's prior permission will be needed.

6.2.2 Special Mail

Regarding the correspondence directed to detainee, which requires explanation or assistance (e.g. letters from Legal Aid Department, Court, etc), it will be the duty of the Detention Operation Officer to deliver the letters to the detainee. Proper records will be made on the Detainee Inward Mail Registers and the Detainee Record.

6.3 Letter Papers and Envelopes

- 6.3.1 Letter papers and envelopes can be obtained from various locations, such as dayrooms, centre hospital, reception office, etc. Staff, who issue the letter papers and envelops, shall put the registered nos. of the recipients in a book for record purpose.
- 6.3.2 The letter papers and envelopes will be marked with the recipient's registered no.

6.3.3 Subject to Senior Immigration Officer's approval, detainees may be issued with aerograms.

6.4 General arrangements

- 6.4.1 Detainees may drop their letters into the letterbox affixed at various locations.
- 6.4.2 ImmD staff will collect the letters from respective letterboxes every morning
- 6.4.3 Except with the intervening public holidays, inward and outward letters will be issued to and mailed out within 24 hours on receipt of the letters in normal working days. All inward letters will be stamped with the date of receipt.

7 **Visits**

(A) Visits by Relatives or Friends

7.1 Visit Hours

Normal visiting hours are listed below:-

Monday to Sunday (including Public Holidays): -
0900 to 1700 hours (no lunch break).

(The latest registration is by 1630 hours)

7.2 Visit Duration

Detainees can be visited for a duration of 15 minutes on each occasion.

7.3 Operation Procedures

- 7.3.1 The metal detector doorway staff will check the visitors' identities at the Gate Office before allowing them to proceed to visitors' waiting room.
- 7.3.2 Visitors shall produce their ID cards/documents to the main gate

staff for verification.

- 7.3.3 Visit room staff will verify the visitors' information against the visit cards. Visitors who are not on the visitor list provided by or agreeable to the relevant detainee will not be allowed to pay visit.
- 7.3.4 A person who is not on the visitor list but wishes to visit a detainee will be required to make registration at the Gate Office. The staff of the Gate Office will then report the registration to the officer of the Welfare Unit who will, after confirming with the concerned detainee that he/she is willing to be visited by that person and agrees to put that person on the visitor list, pass such request to CIO(CIC) for approval. The person will then be allowed to pay visit upon the inclusion of his/her name into the visitor list.
- 7.3.5 Normally a maximum of two visitors will be allowed to visit a detainee. All visitors or requests for visit are handled on a first-come-first served basis. No prior appointment is needed.
- 7.3.6 Subject to Senior Immigration Officers' approval, additional visits or extension of visits may be allowed.
- 7.3.7 Proper records shall be made on the visit cards and visit books. Information to be recorded shall include the time and date, the particular of relevant detainee and visitors, the interview room and window used, etc.
- 7.3.8 Oi/c of Visit Room shall ensure that the talk-phones installed at visit booths are cleaned daily after the visit hours.

(B) Legal Visits

7.4 Visit Hours

7.4.1 Normal visiting hours for legal visitors are as follows:

<u>Day</u>	<u>Time (hours)</u>
Monday to Friday	0900 to 1700 (no lunch break)
Saturday	0900 to 1200 (Ditto)
Sunday & Public Holiday	Closed

7.5 Working Procedures

- 7.5.1 Visit room staff will verify the identities of the legal visitors (legal adviser plus any accompanying clerk or interpreter) against the list of the legal personnels. Legal visitors should produce document(s) to prove their purpose of visit.
- 7.5.2 Legal visits will be conducted at the legal visit room.
- 7.5.3 Legal visits will be conducted within the sight but out of the hearing of the supervising staff.
- 7.5.4 Oi/c, Visit Room shall ensure proper record be made in Legal Visit Book after the visit. Information to be recorded shall include the time and date, the particular of relevant detainee and legal visitors, the interview room used, etc.

(C) Others Arrangements

- 7.6 Relevant arrangements such as the days and time for visits shall be publicly promulgated through notices at the gates of the Centre. Any changes in the arrangements must be so publicly promulgated, and as far as practicable before any changes taking effect.
- 7.7 All visitors shall go through metal detector doorway. Lockers will be provided for visitors to store their personal belongings before seeing the detainees.

- 7.8 A detainee shall not be allowed to receive articles from visitors without the approval from the Superintendent. All approved articles from outside are subject to inspection and pooling, if applicable, before issue to the respective detainee. Details of the hand-in articles would be recorded onto the ‘Hand-in Articles Records’ register.
- 7.9 An application for visits of detainees by NGOs will be considered on individual merits, including but not necessarily limited to the followings:
- purpose of visit;
 - welfare of the detainees; and
 - implication to the operation of the Centre.

8 Provision of books to detainees

Subject to the conditions as the Superintendent may determine, every detainee shall be allowed to borrow books for leisure and such other reading materials as are available in the Centre and to exchange them as often as practicable.

9 Smoking Arrangement

- 9.1 No detainee shall be allowed to smoke or to have in his possession any tobacco except in accordance with such order as may be given by the Director of Immigration.
- 9.2 Following the enactment of the Smoking (Public Health) (Amendment) Ordinance 2006 (Cap. 371) on 1 January 2007, exemption is provided to “An area set aside by the Director of Immigration under rule 11A of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) in a place specified in Schedule 2 to that Order for smoking by persons detained there”.
- 9.3 The relevant areas in which detainees may smoke are:
- (a) smoking booths; or
 - (b) toilets in dormitories.

10 Temporary retention and supply of papers, etc.

- 10.1 The Superintendent shall, on the application of any detainee, permit him to have any books, papers or documents in his possession at the time of his arrest, which may not be required to be produced in evidence, and are not reasonably suspected of forming part of any property improperly acquired by him, or are not for some special reason required to be taken from him for the purposes of justice.
- 10.2 Any such detainee shall have supplied to him, at his own expense, such newspapers, or other means of occupation as are not, in the opinion of the Superintendent, of an objectionable nature.

11 Prohibition of sale

- 11.1 Every detainee shall not sell or transfer to any other person any article whatsoever allowed to be introduced into the detainee for his own use.
- 11.2 ImmD may seize any articles transferred by one detainee to another. No detainee is allowed to participate in any form of gambling or betting.

12 Religious services

- 12.1 The religion, if any, of a detainee shall be recorded at the time of his admission and he shall be treated during his detention as being of any religion so recorded unless the Superintendent is satisfied that the detainee is an adherent of another religion or has ceased to adhere to any religion.
- 12.2 It shall not be compulsory for any detainee to attend any religious service but he shall be ordinarily entitled to attend religious services of his religion conducted in the Centre.

13 Accommodation and Bed

13.1 Certification of Accommodation

- 13.1.1 No sleeping accommodation for detainees shall be used unless it is certified by the Superintendent to be of such a size, and to be lighted, ventilated and fitted in such a manner, as is requisite for health, and when such accommodation is locked it shall be furnished with the means of enabling detainees to communicate at any time with an officer of the Centre.
- 13.1.2. Every detainee shall be provided with a separate bed.

13.2 Women's accommodation

- 13.2.1 The whole of the premises allocated to women shall be entirely separate from that allocated to men.
- 13.2.2 The keys of the premises allocated to women shall be under the control of female officers.

14 Protection from public view

When detainees are being removed to or from the Centre, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult or curiosity.