

## **Policy recommendations: Supporting the refugee community in Hong Kong during the COVID-19 pandemic**

**(This is a working document. Latest update: 2 April 2020)**

During the recent public health crisis following the outbreak of COVID-19, it is apparent that the health and well-being of everyone in Hong Kong is interdependent. As such, providing adequate care and assistance to all – including refugees, asylum seekers and other people seeking protection in the territory (hereinafter “protection claimants”) - is crucial to ensuring the efficacy of the public health response. COVID-19 does not discriminate between race, class or legal status.

We are concerned that to date the Hong Kong Government’s COVID-19 response appears to have overlooked the needs of protection claimants, who are among the most vulnerable in our society. We therefore outline the following key recommendations required to safeguard public health and ensure the safety of protection claimants during the pandemic. We have included policy examples from other jurisdictions where relevant.

### **1. Access to healthcare**

Early detection, isolation and contact tracing have been central to Hong Kong’s effective response against COVID-19 thus far. It is therefore crucial to the effectiveness of the overall public health response that those in need of healthcare or relevant medical information can promptly access it.

However, protection claimants, including those who are unable to register their Unified Screening Mechanism (“USM”) claims, have had their USM claims refused or are pursuing ongoing Judicial Review proceedings, may struggle to access healthcare at this critical time.

Protection claimants are treated as “non-eligible persons” and are unable to use public health services at the discounted price. While they may apply for medical fee waivers to set aside their fees at public hospitals, there is a lack of information about the availability of medical fee waivers and procedures are complicated and time-consuming. Protection claimants also lack the financial means to access private healthcare. Moreover, they may face language barriers in accessing healthcare.

Protection claimants with insecure immigration status are further disincentivised from seeking medical care for fear of legal ramifications and costs.

#### **1.1 Recommendations:**

- Provide clear information on how protection claimants, in particular those with insecure immigration status, can access healthcare services if they develop COVID-19 symptoms
- Make public health information available in the relevant languages, and work with nongovernmental organisations (“NGO”) to ensure protection claimants are able to access this information promptly
- Better advertise medical fee waiver applications to enable protection claimants to access public health services

### 1.2 Overseas examples

- [The UK](#) and [Scotland](#) provides free COVID-19 testing and medical treatment for refugees and asylum seekers, regardless of their legal status. Relevant information on how to access treatment is accessible online.
- [Portugal](#) is granting temporary residency rights to all migrants, including refugees and asylum seekers with pending claims, to allow them to access public services such as the national health service and welfare benefits.

## 2. Access to food and other supplies

Protection claimants are rendered entirely dependent on the Government’s limited social welfare provisions as they do not have the right to work and so cannot become self-sufficient.

We are reliably informed that since the outbreak of COVID-19 protection claimants have experienced particular difficulties in obtaining food and other daily supplies with pre-paid cards at designated supermarkets. Staple foods such as spaghetti, rice and yogurt are often out of stock due to recent spikes in demand. Further, while the value of relevant subsidies has remained static, food prices have become sharply inflated (see Table 1 below).

Protection claimants have also been unable to top-up their pre-paid cards as this requires appointments with the International Social Services (ISS) that have either been delayed due to recent events, or are unsafe due to the requirement to travel often long journeys on public transport without the provision of facemasks.

Food items	Pre COVID-19 prices (HKD)	Current prices (HKD)
Milk	35	43.9
Tomato	8	12.9
Potatoes	8	11.9
Bread	12	13.9
Chicken	35	50.9

Table 1: Inflation of food prices at Parknshop as of 30 March 2020

As a result of the low level of relevant subsidies, many protection claimants have become ordinarily dependent on NGOs that distribute food and other essential supplies. Unfortunately, some of these vital service providers, including Christian Action's Centre for Refugees at Chungking Mansions, have been forced to close it's Centre due to public health concerns arising from the outbreak of COVID-19. While the Christian Action team is still in operation in other locations, trying its best to resolve the most urgent needs, access to their services have been very limited. Affected NGOs will greatly impact this community who rely on them for additional support outside of ISS' obligations.

### **2.1 Recommendations**

- Enable ISS to provide humanitarian assistance to refugees with greater flexibility, such as by providing additional petty cash to allow refugees to shop for food and daily necessities at shops other than designated supermarkets.

### **2.2 Overseas examples**

- [The UK](#) provides £37.75 cash allowance for each asylum seeker for daily necessities.
- [Portugal](#) is granting temporary residency rights to all migrants, including refugees and asylum seekers with pending claims, to allow and encourage them to access public services such as the national health service and welfare benefits.

## **3. Reporting requirements**

Protection claimants, including minors, who are released on recognizance are subject to conditions imposed by the Immigration Department. Most often this includes a requirement to report via regular attendance in person at police stations. The need to travel - often considerable distances and on public transport - for the purposes of reporting puts protection claimants, especially young children, at risk and is against the Government's health advice to stay at home and practice social distancing.

### **3.1 Recommendations:**

- Temporarily suspend reporting requirements.
- Alternatively, significantly reduce the frequency of such requirements and make arrangements for flexible reporting, such as allowing one member of a family to report on behalf of the family, or allowing reporting to take place via telephone or video call.

### **3.2 Overseas examples:**

- The [UK](#) has temporarily suspended reporting requirements for refugees

## **4. Immigration detention**

It is unclear how many protection claimants are detained at immigration detention centres and [other statutory designated places of detention](#), including prisons.

Civil society has concerns about the substandard conditions in immigration detention centres and other designated places of detention during this time. Concerns include poor hygiene, crowded environments which makes it impossible for detainees and guards to practice social distancing, and limited access to healthcare which could potentially result in delayed treatment and as such the rapid spread of COVID-19. We stress that the Government has a duty of care to ensure the safety and well-being of those who are detained and are therefore placed entirely within the Government's care.

Immigration detention beyond short periods is only justifiable where there is a prospect of removal within a reasonable time: see the common law *Hardial Singh* principles affirmed by the Court of Final Appeal in [Ghulam Rbani \(2014\)](#). Given borders closure around the globe, it is questionable whether the continual detention of some people is lawful.

#### **4.1 Recommendations:**

- Provide clear information on steps that the Immigration Department is taking to monitor and mitigate the spread of COVID-19 in places of detention with regard to relevant public health advice. Appropriate measures should include sterilisation practices; the provision of adequate sanitation products to detainees, and provision of facilities that allow for self-isolation
- Immediately review the detention of all people held under immigration powers, prioritising those with underlying health conditions or who are otherwise at enhanced risks.
- The immediate release of all detainees who can no longer be safely and lawfully detained under immigration powers
- Immediately halt the exercise of immigration powers to detain people in light of both public health concerns and the lack of certainty regarding removal procedures.

#### **4.2 Overseas examples:**

- The [World Health Organisation's Europe Regional Office's](#) guidelines, "*Preparedness, prevention and control of COVID-19 in prisons and other places of detention*"
- The [Australian Department of Health's](#) "*Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities*"
- The [UK Government's](#) "COVID-19: prisons and other prescribed places of detention guidance"

- [The UK](#) has released more than 300 people from immigration detention centres amid concerns about the spread of COVID-19 in detention facilities. [The UK](#) has also temporarily released pregnant women in custody who do not pose a high risk of harm to the public.

## **5. Access to the Unified Screening Mechanism**

It is not clear from [the Government's announcements](#) whether the Immigration Department's Removal Assessment and Litigation Branch, which handles USM claims, is still in operation. We do not know if the Immigration Department has made arrangements to ensure that those in need of protection are able to instigate their claims in accordance with the Immigration Ordinance (Cap. 115).

Those who wish to apply for protection would only become eligible for social welfare assistance, including housing provision, after they are able to register their claims. As a result, delays in the registration of claims and the allocation of social welfare provision may place those in need at increased risk of destitution, poverty and homelessness, which then heightens their vulnerability to COVID-19.

### **5.1 Recommendations**

- Provide clear guidelines on how to access the USM, and where necessary make clear arrangements to allow people in need of protection to file non-refoulement claims
- Ensure prompt access to vital social welfare assistance, including safe and secure housing

## **6. Right to seek asylum and international protection**

The Government announced that Hong Kong's borders will be closed to most non-residents for 14 days, from 25 March – 8 April, 2020. Whilst the need for border control and relevant health and safety measures is readily apparent, it is important that any such measures do not undermine the right to seek asylum, which encompasses the right not to be returned to situations where people will be at risk of serious breaches of fundamental human rights and/or persecution (non-refoulement).

We would therefore echo the High Commissioner of Human Rights ("OHCHR"), the United Nations High Commissioner for Refugees ("UNHCR"), the International Organisation for Migration ("IOM") and the World Health Organisation ("WHO")'s [timely reminder](#) that public health responses must not and indeed need not result in closing avenues to asylum, and/or in otherwise forcing people to return to dangerous situations where they may face persecution.

## **6.1 Recommendations**

- Provide clear guidelines, especially to frontline staff at border entry points, on how the Government is managing the arrival of asylum seekers and refugees in a safe manner that respects international human rights standards;
- Arrange screening, testing, quarantines and other public health measures for incoming asylum seekers and refugees where necessary.