
RESEARCH ARTICLE

Challenges and Future Development of China's Refugee Status Determination System

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ABSTRACT

Currently, China is not only a source country for refugees but also a host country for them. Historically, China has experienced three large-scale influxes of refugees. Today, hundreds of refugees reside in Chinese cities each year. However, significant issues remain within China's refugee status determination (RSD) system. Presently, China lacks a clear definition of refugees and has not established its own RSD system. The process handled by the United Nations High Commissioner for Refugees (UNHCR) in China has led to several urgent issues that need resolution. As China increasingly engages in international refugee affairs, it is advisable to clearly define refugees and related concepts, transition the RSD work from UNHCR to the National Immigration Administration of China, and establish specific procedures for RSD. Additionally, the conditions for RSD, namely the grounds for persecution, should be interpreted in a manner localized to Chinese circumstances. An appeals mechanism should also be clearly established. Through these changes, China can effectively manage refugees domestically, enhance its international standing in global refugee issues, better fulfill its international responsibilities, and contribute to addressing the global refugee crisis.

KEYWORDS

Refugee Status Determination, Refugee Definition, China, UNHCR.

ARTICLE INFORMATION

ACCEPTED: 15 October 2024

PUBLISHED: 02 November 2024

DOI: 10.32996/ijlps.2024.6.6.4

1. Introduction

Although China is one of the major sources of refugees in the world, it has also received a large number of refugees. Between 1978 and 1982, China accepted and resettled over 250,000 Vietnamese refugees. China was one of the first countries in Asia to sign the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. China officially acceded to the Convention in 1982. After acceding to the Convention, China experienced large-scale influxes of displaced persons from neighboring countries, including the influx of ethnic Kokangs from Myanmar in August 2009 and again from February 2015 to the present, as well as the continuous arrival of ethnic Kachins from Myanmar since June 2011. Meanwhile, the UNHCR is responsible for refugee status determination (RSD) in Chinese cities. There are issues to be addressed in both large-scale RSD and urban RSD. This article first discusses China's past experiences with refugee issues. Next, it explores the relevant legal and policy frameworks in refugee practice and the existing problems in RSD. Finally, the article provides an outlook on refugee status determination (RSD) in China.

2. China's Practice in Addressing Refugee Issues

2.1 Refugee Resettlement and Assistance Practices

From 1978 to 1982, China accepted and resettled over 250,000 Indochinese refugees, most of whom were ethnic Chinese from Vietnam, with a smaller number from Laos and Cambodia. These refugees were primarily escaping political persecution in Vietnam. The Chinese government, driven by humanitarian principles and a spirit of sharing international responsibilities, resettled these refugees without discrimination based on ethnicity or nationality.

The resettlement strategy adopted was consistent with the policy from the 1960s, which focused on rural resettlement, with a primary emphasis on concentrated settlement and a secondary emphasis on dispersed settlement. Special talents among the refugees were utilized according to their skills. In collaboration with the United Nations High Commissioner for Refugees (UNHCR), China developed systematic and diverse resettlement plans. The refugees were settled in 196 units across seven provinces (autonomous regions), mainly in state-owned farms, salt fields, factories, and other state enterprises. Additionally, some were settled in collectively owned agricultural, pastoral, and fishery enterprises, as well as small businesses.

Notably, the Chinese fishermen among the refugees were organized into fishing production teams, allowing them to continue their familiar occupations and lifestyles. This personalized resettlement strategy not only helped stabilize the lives of the refugees but also contributed to the economic and social development of the local areas.

The resettlement of Laotian refugees in China began after 1978, with China accepting over 4,000 Laotian refugees, primarily transferred from refugee camps in Thailand. These refugees were mainly settled in Xishuangbanna Prefecture, Yunnan Province, which borders Laos. The Chinese government provided them with basic living necessities, including housing, employment, and medical care. In the 1990s, as the situation in Laos stabilized, the Chinese government, in cooperation with the Laotian government and the UNHCR, initiated a repatriation program for Laotian refugees. From October 1991 to the end of 1992, a total of 2,600 Laotian refugees were repatriated, surpassing the initial plan of 2,000. During this process, the Chinese government provided necessary repatriation support, while the UNHCR offered technical assistance and financial support to ensure the smooth and humane repatriation of the refugees.

China's response to the situation of Burmese border residents demonstrates its rapid reaction and humanitarian spirit. In 2009, armed conflict erupted in the Kokang region of Myanmar, leading to an influx of approximately 13,000 Burmese border residents into China. The Chinese government responded promptly, providing food, shelter, and medical services to meet the basic survival needs of the refugees. In 2011, due to conflict in the Kachin region of Myanmar, over 80,000 Kachin border residents fled to China. The government actively established camps to accommodate these Burmese border residents, setting up more than 45 camps as resettlement points. Some camps housed 300-500 people, while others had over 5,000 residents, showcasing China's proactive efforts during sudden humanitarian crises. On January 3, 2013, another armed conflict broke out in the Kachin region of Myanmar. On January 20, China established a stability command center at the Nabang frontline border in Dehong Prefecture, Yunnan Province, and initiated an emergency response plan for foreign-related incidents, providing humanitarian assistance. In 2015, conflict in the Kokang region of Shan State, Myanmar, resulted in approximately 40,000 to 50,000 people fleeing their homes and seeking refuge at the Chinese border. The Chinese government provided necessary humanitarian aid, including temporary shelter, food, and medical services. Through rapid response and effective resource allocation, the Chinese government ensured that the basic survival needs of these refugees were met and worked to stabilize the situation in the border area.

Each year, the UNHCR Representation in China approves refugee status for foreigners residing in China. These refugees primarily live in urban areas and are, therefore, referred to as urban refugees. According to the UNHCR 2024 report, as of April 2023, there were 308 recognized refugees in mainland China, including 95 from Somalia, 31 from Pakistan, 27 from Yemen, 25 from Afghanistan, 24 from Syria, 19 from Congo, and 87 from other countries.

Despite the refugee status determination being handled by the UNHCR, the daily management of these refugees is the responsibility of China's immigration departments. These departments regularly hold seminars on Chinese laws, regulations, and policies related to refugee management. In 2012, Chinese ministries of foreign affairs, public security, education, and civil affairs signed an agreement allowing refugee children to attend public schools, providing them with educational opportunities and promoting social integration. Refugee children can enjoy the same primary education benefits as Chinese citizens for free. This demonstrates the Chinese government's special support and arrangements for refugees in the absence of formal refugee laws. Additionally, the Chinese government actively supports the interaction between refugees and local communities, such as inviting them to participate in cultural activities and festival celebrations to enhance mutual understanding and friendship.

2.2 China's Management System and Legal Provisions for Refugee Issues

China's refugee management system has continuously evolved. During the massive influx of Indochinese refugees, the State Council decided to establish the Leading Group for the Reception and Resettlement of Indochinese Refugees, with its office located within the Ministry of Civil Affairs (Chinese Government Website, 2013). The office of this leading group was responsible for all activities related to the reception and resettlement of Indochinese refugees and received humanitarian aid from the UNHCR for these efforts.

On July 7, 1988, at the second meeting of the National Institutional Reform Commission, the "Three Fixes" scheme for the Ministry of Civil Affairs was reviewed and approved, confirming the Ministry as the executive branch responsible for social administration

under the State Council. The International Cooperation Department (the Office for the Reception and Resettlement of Indochinese Refugees) was established within the Ministry (Ministry of Civil Affairs Official Website). This marked the first formal establishment of a refugee management and resettlement agency in China.

Following the State Council's institutional reform in 2008, the Ministry of Civil Affairs was tasked with participating in the drafting of management measures for international refugees in China and, together with relevant departments, handling the temporary resettlement and repatriation of international refugees in China (Ministry of Civil Affairs Official Website). Based on the State Council's directives, Guangdong, Guangxi, Fujian, Hainan, Jiangxi, and Yunnan provinces, as well as autonomous regions, established provincial/region-level offices for the reception and resettlement of Indochinese refugees. In cities and counties with a significant number of Indochinese refugees, corresponding institutions were established. In regions without specific institutions, the Overseas Chinese Affairs departments managed refugee reception and resettlement (Xiao, 2011).

China joined the International Organization for Migration (IOM) in 2016. Following its accession, the National Immigration Administration was established in April 2018, taking on the responsibility for China's refugee management system. Additionally, various departments, such as the Ministry of Foreign Affairs (Ministry of Foreign Affairs Responsibilities), the Ministry of Civil Affairs, and others, are involved in refugee diplomacy, assistance, and resettlement based on their respective functions. Consequently, a multi-departmental approach, led by the National Immigration Administration and involving the Ministry of Civil Affairs and the Ministry of Foreign Affairs, has been formed to handle refugee issues in China.

China's current legal provisions concerning refugees are primarily found in the Constitution of the People's Republic of China (hereinafter referred to as the "Constitution") and the Exit and Entry Administration Law of the People's Republic of China (hereinafter referred to as the "Exit and Entry Administration Law"). China has not explicitly defined the term "refugee." Article 32, Paragraph 2 of the Constitution provides for the right to asylum for foreigners seeking refuge for political reasons. Although the term "refugee" is not mentioned, it is clear that individuals can seek asylum for political reasons and be granted protection.

Similarly, the 1985 Law on the Administration of Entry and Exit of Foreigners (repealed on July 1, 2013) did not explicitly mention the term "refugee" but included provisions relevant to refugee law (1985 Law on the Administration of Entry and Exit of Foreigners). The 2012 Exit and Entry Administration Law was the first to mention "refugee status" in legislation, preliminarily clarifying the legal status and treatment of foreigners applying for and being recognized as refugees (Liu, 2015). However, China's laws still lack a clear definition of "refugee." Although the Constitution and the Exit and Entry Administration Law include relevant provisions, they do not provide a definitive definition of the term.

China is a signatory to the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol). However, these conventions have not been incorporated into domestic law, making it challenging to define refugees based on these international agreements.

2.3 UNHCR's Actions and Cooperation in China

The United Nations High Commissioner for Refugees (UNHCR) officially began operations in China in 1979 to assist in handling the Vietnamese refugee crisis. In 1997, the UNHCR's Beijing office was upgraded to a regional representation office responsible for refugee affairs in mainland China, the Hong Kong Special Administrative Region, and the Macao Special Administrative Region (UNHCR China, 1999).

China and the UNHCR have established a strong cooperative relationship. China has reached an agreement with the UNHCR regarding refugee status determination. According to this agreement, individuals who legally enter China and apply for refugee status seek asylum through the UNHCR (Liu, 2015). The UNHCR's refugee status determination decisions are communicated to the Chinese government. Once recognized by the UNHCR, the Chinese government allows refugees to stay temporarily in China while the UNHCR seeks durable solutions, excluding local integration (UNHCR, 3rd Cycle UPR Report, 31st Session).

Currently, the UNHCR has a representation office in China, and all individuals applying for refugee status within China are assessed by the UNHCR. China does not conduct refugee status determinations or provide financial assistance for this process. China only requires that foreign nationals applying for refugee status determination through the UNHCR must provide a valid non-criminal record certificate (or "temporary residence registration form") issued by the local police station in their place of residence in China (Exit and Entry Administration Law, 2012).

According to Article 46 of the Exit and Entry Administration Law, foreigners applying for refugee status may stay in China during the refugee status determination period with a temporary identification certificate issued by public security organs. Recognized

refugees may reside in China with a refugee identification document issued by public security organs. The temporary accommodation registration form is based on Article 39 of the Exit and Entry Administration Law, which stipulates that foreigners staying in hotels in China must register their accommodation according to the relevant provisions of public security administration and submit accommodation registration information to local public security organs. Foreigners staying in residences other than hotels must register with the local public security organs within 24 hours of arrival. The 1987 Regulations on Public Security Management of the Hotel Industry (amended in 2022) further stipulate that hotels must register guests' accommodation and submit the registration forms to local public security organs within 24 hours for foreign guests (Public Security Management Regulations, 1987).

This is the only condition imposed by the Chinese government for applying for refugee status in China. The refugee status determination, resettlement, and subsequent solutions are all managed by the UNHCR. The UNHCR is responsible for informing the Chinese government of the results of refugee status determination, and the Chinese government handles subsequent management, repatriation, and related matters.

2.4 Refugee Status Determination Procedures and Conditions

Registration. Foreign nationals seeking refugee status in China must first register with the UNHCR. The registration process is initiated by sending an email to the UNHCR. Applicants must submit a copy of a valid temporary residence registration form and a copy of their passport pages, which include personal information, the Chinese visa, and the date of entry into China. Additionally, applicants need to provide their full name, nationality, passport number, telephone number, date of arrival in China, address in China, and preferred language for the interview. Applicants must also explain the reasons for leaving their country of origin and why they fear returning. Upon verifying the validity of the submitted temporary residence registration form, the UNHCR Representation in China will notify the applicant of the registration interview date. Due to the high volume of applications, there is typically a wait of over four weeks for the registration interview. When foreign nationals register for refugee status with the UNHCR, they must provide their name and address. The UNHCR Representation in China will promptly forward the names and addresses of asylum seekers to the local public security organs, regardless of whether the asylum seekers entered China legally or illegally (Liu, 2015). After registration, the UNHCR will issue an Asylum Certificate to prove that the holder is under the protection of the UNHCR and is safeguarded from being returned to their country of origin. The registration interview takes place at the UNHCR Representation in Beijing. Applicants must present their passport and temporary residence registration form for identity verification. Following the registration interview, further arrangements will be made for the Refugee Status Determination (RSD) interview. Typically, applicants must wait at least four weeks to be scheduled for the RSD interview. During the Refugee Status Determination (RSD) interview, all relevant information pertaining to the asylum application will be collected to determine refugee status. Applicants must provide detailed reasons for leaving their country of origin and explain why they fear returning. After the interview, applicants may wait several months to receive the results of the RSD interview. If refugee status is granted, the applicant must return the Asylum Certificate to the UNHCR Representation in China, Beijing office. Upon receipt of the Asylum Certificate, the UNHCR will mail the original decision letter and the refugee certificate to the applicant's known address. If the refugee status application is denied, the UNHCR Representation in China will send the Refugee Status Determination (RSD) decision letter, which includes detailed reasons for the rejection, via mail and email. The applicant has 15 days from receiving the denial decision to appeal by email or mail, stating the reasons for the appeal and providing new reasons or evidence not presented in the initial interview. The appeal will be reviewed by an officer other than the one who conducted the first interview, and a final decision will be made. If the appeal is rejected, the UNHCR Representation in China will forward the applicant's information to Chinese public security authorities, who will treat the individual as an illegal resident. The UNHCR currently offers the following three solutions:

Resettlement: This involves selecting and transferring refugees from the country of asylum to a third country that has agreed to admit them as refugees with permanent resident status (UNHCR Help China, Resettlement). Refugees can apply for resettlement to a receiving country or return to their country of origin voluntarily once the fear for their safety has dissipated.

Voluntary Return to the Country of Origin: Refugees may choose to return to their home country voluntarily if the reasons for their initial flight are no longer present.

Other Pathways to Third Countries: Refugees can move to another country through alternative means, such as private sponsorship programs to Canada or family reunification programs (UNHCR Help China, Other ways of moving to another country).

The United Nations High Commissioner for Refugees (UNHCR) conducts refugee status determination based on the 1951 Refugee Convention, the 1967 Protocol Relating to the Status of Refugees, and the Handbook on Procedures and Criteria for Determining Refugee Status (February 2019). The specific assessment focuses on whether an individual meets the criteria of persecution due to race, religion, nationality, membership of a particular social group, or political opinion. The conditions outlined by the UNHCR for "race, religion, nationality, membership of a particular social group, or political opinion" are internationally recognized standards.

Various countries adapt, restrict, or supplement these criteria based on their political, cultural, and social contexts.

3. Challenges of the Refugee Status Determination System in China

3.1 Problems Arising from UNHCR's Role in Refugee Status Determination

The United Nations High Commissioner for Refugees (UNHCR) is responsible for registering, determining, and resettling refugees in China. However, this arrangement presents several issues.

First, regarding refugee status determination, the UNHCR follows the 1951 Refugee Convention, the 1967 Protocol Relating to the Status of Refugees, and the Handbook on Procedures and Criteria for Determining Refugee Status. These guidelines assess whether individuals meet the criteria of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. Nevertheless, the UNHCR's standards may not align with those of the Chinese government. In today's highly decentralized international community, no state or international organization can compel another state to accept refugees against its will, as this is a fundamental requirement of sovereign equality among nations (Chao Yi, 2014).

Secondly, during the refugee status determination period, despite the agreement between the Chinese government and the UNHCR, the Asylum Seeker Certificate issued by the UNHCR does not hold legal validity in China. This results in an unclear legal status and residence permit for the applicants in China, complicating government management and leaving them without protection under Chinese law. After granting refugee status, the UNHCR issues a Refugee Certificate to serve as a legal residence document in China. However, neither the Asylum Seeker Certificate nor the Refugee Certificate has clear legal standing in Chinese law. If applicants fail to timely process visa or residence permit extensions according to Chinese law, it can lead to illegal residence issues, complicating entry-exit administration (Liu Guofu, 2015). Moreover, the UNHCR provides only a small amount of cash assistance to a limited number of refugees to meet their basic living needs. Due to funding constraints, asylum seekers do not receive cash assistance from the UNHCR. Only the most vulnerable refugees qualify for economic aid, and the assessment period to determine eligibility for economic assistance can take up to three months (UNHCR Help China, 2024). The lack of sufficient financial support may lead to illegal activities, increasing the societal burden and posing security risks to public safety (Liu Guofu, 2015).

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Furthermore, both asylum seekers and refugees cannot obtain legal employment opportunities in China. Without legitimate income sources, asylum seekers or refugees may fall into living difficulties, leading to illegal employment issues that complicate China's management of "three non-foreigners" (illegal entry, illegal residence, and illegal employment). The Refugee Certificate does not specify a validity period, and the UNHCR has not set a specific duration for refugees' stay in China. The Chinese government has not made clear regulations on this matter either. Reports indicate that a Pakistani refugee family recognized in 2010 had to wait over three years to be resettled in the United States, while another family waited eight years before being resettled in France. This indicates that the UNHCR has not established a set residence period for refugees in China, nor has China established resettlement and integration systems. Refugees cannot obtain permanent residence in China, and the lack of a validity period for the Refugee Certificate conflicts with indefinite residence.

A UN report marking 40 years of the UN's presence in China noted that the responsibilities of refugee registration and status determination currently undertaken by the UNHCR's Beijing office would gradually transfer to the newly established National Immigration Administration. UNHCR representative Danapala stated: "This transfer of responsibilities will take some time, but ultimately, it will become a task entirely managed and completed by the Chinese government, which is the practice UNHCR consistently encourages worldwide." Consequently, the UNHCR will transfer refugee status determination duties to the National Immigration Administration. As China's influence on the international stage continues to grow, strengthening collaboration with China to address displacement issues beyond its borders has become a new focus for the UNHCR's Beijing office.

4. Challenges Arising from the Lack of a Defined Refugee Status Determination System in China

4.1 Lack of a Clear Definition of Refugees in China

According to Chinese law, there is no clear definition of "refugee," despite relevant provisions in the Constitution and the Exit and Entry Administration Law. These provisions are relatively simplistic and can be summarized as "foreigners seeking asylum for political reasons who are granted refuge and permission to stay." China has not incorporated the 1951 Refugee Convention and the 1967 Protocol into its domestic law, nor can it define refugees based on these conventions. The absence of a clear refugee definition in China creates difficulties in determining refugee status, such as the disputed status of displaced persons from Myanmar who have fled to China due to armed conflict. China views these displaced persons as border residents fleeing internal conflict in Myanmar, not fitting the definition of refugees and, therefore, not entitled to refugee treatment. However, the UNHCR and Western countries consider the displaced persons as refugees, adhering to the broadest definition of refugees. China needs to clarify the definition of refugees to provide a legal basis for recognizing the status of displaced persons from Myanmar.

4.2 Absence of a Refugee Status Determination System

The UNHCR's role in refugee status determination in China has encountered various issues, such as inconsistent standards with Chinese government requirements, lack of legally effective identification documents, and insufficient economic assistance. However, since China has not yet established its own refugee status determination system, these problems remain unresolved. Although the Chinese government established the National Immigration Administration in 2018 and defined its responsibilities to include handling refugee applications, the conditions, procedures, and management of refugee applications have not been standardized. The division of responsibilities is still unclear, and management actions lack a legal basis. These deficiencies negatively impact China's reputation in the international community.

Establishing and improving China's refugee status determination system is crucial for enhancing its international image and effectively managing refugee issues.

5. Future Development of China's Refugee Status Determination System

5.1 Transition of Refugee Status Determination to Chinese State Authorities

If refugee status determination is conducted by Chinese state authorities, it can bring the following benefits:

Compliance with Domestic Laws and Policy Standards: By having Chinese state authorities conduct refugee status determination, all procedures and decisions can be ensured to comply with domestic laws, policies, and national security requirements. This is especially beneficial for the detailed and thorough examination of applicants' qualifications and backgrounds.

Enhanced Management Efficiency and Responsibility: Direct responsibility for refugee status determination by China can improve management efficiency, simplify processes, and avoid unclear responsibilities between international organizations and domestic institutions. This direct management also helps ensure data transparency and traceability, increasing public and refugee trust in the process.

Improved Legal Status and Protection for Refugees: If refugee status is approved by Chinese authorities, the legal status and

residency of refugees will be more clearly defined, allowing the Chinese government to provide appropriate legal protections and social services. This will also facilitate the integration of refugees and promote social stability.

Better Resource Allocation and Assistance: China can adjust its refugee assistance strategies, including financial aid, healthcare, and education, based on its own resources and capabilities, ensuring that the aid provided is more targeted and effective.

Prevention of Illegal Residency and Employment: Clear refugee status and residency regulations can effectively manage the duration of refugees' stay and employment, reducing instances of illegal residency and employment, thereby better maintaining social order and the labor market's stability.

Enhanced International Image and Diplomatic Relations: Assuming responsibility for refugee status determination and management demonstrates China's image as a responsible major power. This not only can enhance China's standing in the international community but also positively impact diplomatic relations.

5.2 Transition to a State-managed Refugee Status Determination System

Initially, the National Immigration Administration will oversee the coordination of strategies and the enforcement of policies related to refugee status determination, as well as the supervision and management of the system. According to China's current "Exit and Entry Administration Law," foreigners must register their accommodations with local public security authorities upon arrival. Therefore, it is proposed that these local public security offices handle the registration of refugee status applications, collecting relevant documentation, and conducting preliminary assessments. Additionally, a specialized refugee review department should be established under the National Immigration Administration. This department should consist of professionals trained in international and human rights law who are responsible for conducting detailed interviews and eligibility assessments, initially supported by training from the UNHCR. The final determination of refugee status would be managed by a Refugee Status Review Committee composed of legal experts, human rights experts, and government representatives. For contested decisions, a Refugee Status Appeal Committee should be established under the Ministry of Justice or the National Immigration Administration, staffed by experts different from those at the initial review, to ensure fairness and transparency in the process. This structure is designed to ensure the professionalism, efficiency, and fairness of the refugee determination process while also strengthening national security and social stability and enhancing China's international image through cooperation with organizations like the UNHCR.

The establishment of a domestic refugee status determination (RSD) process by China not only facilitates better management and support of refugees but also ensures national security and societal stability, reflecting the nation's sovereignty and legal independence. China currently possesses the necessary institutional framework—the National Immigration Administration—to take a significant step forward in refugee management. However, China lacks the legal framework to fully implement an RSD system. If China could enact laws and regulations pertaining to RSD, shift the responsibility to national authorities, and conduct determinations in accordance with domestic laws while maintaining robust cooperation with the UNHCR, it would significantly contribute to China's strength in the global refugee issue.

5.3 Defining Refugee Status

To establish a refugee status determination system, China must first clarify the definition of a refugee and its associated concepts. Currently, there is no explicit definition of a refugee in China, but based on the Constitution and the Exit and Entry Administration Law, it can be inferred that a refugee is an individual who can seek asylum due to political persecution. However, this definition is insufficient to meet the current refugee issues in China. Thus, it is necessary for China to define refugees and related concepts in line with the 1951 Refugee Convention, defining refugees as individuals who have well-founded fears of being persecuted due to race, religion, nationality, membership in a particular social group, or political opinion, and who are outside their country of origin and unable or unwilling to avail themselves of the protection of that country; or those without nationality and, due to the above reasons, are outside the country of their former habitual residence and unable or unwilling to return there.

It's noteworthy that some countries like South Korea have expanded the definition of a refugee from the 1951 Refugee Convention. South Korea specifically established the "Act on the Protection and Settlement Support of Residents Escaping from North Korea" (탈북자 보호 및 정착지원에 관한 법률), defining "defectors from North Korea" as refugees, to address the unique political situation on the Korean Peninsula. However, considering China's non-immigrant culture and weak foundation for accepting refugees, there is no expansion of this definition. Additionally, China should consider defining concepts like "asylum-seeker," "humanitarian protection," "subsidiary protection," and "temporary protection." Asylum-seekers are those who seek international protection (refugee status) from a third country but have not yet received a final decision; humanitarian protection applies to those who do not meet the refugee definition but would face serious harm (such as the death penalty, torture, or degrading treatment) if returned to their country of origin. Subsidiary protection aims to protect those facing general violence, internal armed conflict, or other

serious personal threats. Temporary protection is a mechanism provided under special circumstances to large groups fleeing armed conflict or severe violence, offering them a temporary safe environment, such as granting them residency rights.

Additionally, it is necessary to define the concept of a “safe third country,” outlining the scope of such countries. A “safe third country” refers to a nation to which a refugee or asylum-seeker can be transferred. This country is neither the refugee’s country of origin nor the initial asylum-seeking country. In this third country, refugees should be able to receive protection, avoid persecution, and have their basic human rights respected and secured. This country should have the capacity and willingness to provide the necessary safety assurances and legal procedures to ensure that refugees are not returned to the countries where they face persecution.

The concept of a “safe third country” is designed to provide a secure refuge for refugees while alleviating the burden on the initial host countries and preventing asylum seekers from lodging multiple applications in different countries to increase the likelihood of approval. For example, in Europe, based on the “safe third country” principle, asylum seekers may be transferred to the first EU country they entered or a deemed “safe” non-EU country. This practice is reflected in international law and multi-country agreements, such as the Dublin Regulation (REGULATION (EU) No 604/2013). This approach aims to ensure the reasonable management of refugee flows, protect refugee rights, and ensure cooperation and responsibility-sharing among countries in handling refugee issues.

Establishing a Refugee Status Determination System:

5.3.1. Specifying Grounds for Persecution:

Under the 1951 Refugee Convention, grounds for persecution include race, religion, nationality, membership of a particular political group, or political opinion. Countries interpret these reasons within the framework of the Convention based on their national conditions cultural and political backgrounds.

On racial issues, legal frameworks and policies vary by country. Some nations recognize racial violence or ethnic cleansing, especially in regions with historical racial conflicts like Rwanda and South Sudan. In contrast, Western countries like the USA and Canada focus on identifying and protecting individuals seeking asylum from subtle racial discrimination (e.g., in the workplace or education).

Regarding religious issues, some countries emphasize the systemic persecution of minority religious groups. For example, in the Middle East and some Asian countries, religious conflicts often involve specific minority groups like Christians and Yazidis in Iraq and Syria, who frequently face systemic persecution. Here, asylum laws and policies emphasize identifying and protecting against this form of persecution. In Western countries like Europe and North America, the asylum system may focus more on recognizing and protecting individuals who suffer discrimination or violence due to their personal religious beliefs. For instance, in the USA and Canada, asylum seekers often need to prove that they face unfair treatment or threats of violence because of their personal religious beliefs.

Regarding nationality issues, in multi-ethnic and multi-racial countries, especially those with a history of border changes or racial integration, nationality is often intertwined with racial or ethnic identity. Some countries strictly define nationality in terms of legal citizenship without involving racial or ethnic identity. This is common in countries with mature legal systems, like Germany, where nationality and ethnicity are seldom conflated in refugee status determinations, focusing instead on citizenship and legal nationality and whether it involves persecution at the state level.

Concerning political opinions, laws and policies differ significantly across countries regarding how political persecution is defined and handled. In some countries, the definition of political opinion is broad, encompassing non-violent political expression and participation. Countries like Sweden and the Netherlands consider any form of political expression or participation that leads to suppression by the government or other societal forces as political persecution. Canada’s refugee laws also accept a broad definition of political opinion, providing protection against persecution for non-violent political activities. Conversely, other countries require proof that an applicant faces actual violence or a clear threat of violence due to their political opinions. This narrower definition imposes higher proof requirements on the applicant, as seen in the UK and USA, where evidence of direct threats of violence from the government or hostile groups against political activities is often necessary.

The United States and Canada have progressive protections for the LGBTQ+ community. In contrast, some culturally conservative countries, like those in Africa and the Middle East, do not formally recognize LGBTQ+ individuals as a protected social group, facing significant legal and social hurdles. Definitions of social groups are deeply influenced by cultural and societal backgrounds. In culturally open and diverse countries, the identification of specific social groups is broader and more inclusive, whereas in

conservative countries, these groups may not be formally recognized or lack necessary legal protections.

As China becomes more influential on the global stage, adopting more relaxed refugee policies could enhance its international image and demonstrate support for international and human rights law. This could not only bolster China's positive influence in global affairs but also yield positive political and diplomatic outcomes. However, China's unique legal system emphasizes national security and social stability, necessitating that new policies align with existing laws and policy frameworks. A too lenient policy might require adjustments to existing foreign management and domestic security laws, posing various policy and legal challenges. The extent of policy relaxation should also consider domestic resource allocation and social capacity. As a populous nation, China already faces many developmental and resource distribution pressures. A lenient refugee policy could impose additional burdens on domestic public services and social welfare systems. Moreover, public acceptance and perceptions of refugee issues are crucial considerations. Positioned in a complex geopolitical environment, China's refugee policy affects relations with neighboring countries, particularly those that may experience refugee flows. While a lenient refugee policy might appear forward-looking on humanitarian grounds, potential cross-border migration and security issues must also be considered. Overall, China should adopt a stringent stance and interpret its position on "race, religion, nationality, membership in a particular political group, or political opinion" accordingly.

5.3.2. Clarification of the Refugee Status Determination Process

Currently, China's legal system does not explicitly define the procedures and appeal mechanisms for refugee status determination. The existing practice mainly follows the procedural standards of the United Nations High Commissioner for Refugees (UNHCR) to identify urban refugees. Establishing a clear refugee status determination system is essential for China, which should include the following key steps:

(1) Refugee Status Application Registration. Before applying for refugee status in China, applicants need to register first. Although theoretically, the visa category should match the purpose of the application, in practice, this is not always possible. Therefore, it is recommended to establish two pathways for application: at entry ports and domestically to optimize the management of illegal entries. Applicants must provide detailed personal information, including biometric data (such as photos and fingerprints), and fill out a temporary accommodation registration form explaining the reasons for seeking refugee status, supported by relevant evidence.

(2) Preliminary Review of Refugee Status. After submission, the refugee examination department under the National Immigration Administration is responsible for the preliminary review. This review is formal and does not entail a substantive examination. Those who pass the review will receive an "Asylum Seeker Certificate"; those who do not will be subject to humanitarian protection or voluntary repatriation or expulsion, following the principle of non-refoulement.

(3) Refugee Status Determination Interview. The interview is conducted in the designated office of the refugee examination department by officials knowledgeable in international and human rights law. They will thoroughly inquire about the applicant's background, persecution experiences, and the possibility and willingness to return to their country of origin. Detailed interview records are kept, and interpretation services are provided if the applicant does not speak Chinese or English.

(4) Refugee Status Decision. After the interview, officials compile an assessment report based on the collected information, and the Refugee Status Review Committee makes the decision on whether to grant refugee status. If granted, the applicant receives a "Refugee Certificate"; if denied, a denial notice is sent by mail to the address provided by the refugee. Refugees can appeal within 15 days of receiving the denial notice.

(5) Appeal Process. Appeals must provide new evidence that qualifies for refugee status or refute the reasons for denial. The appeal is handled by an Appeals Committee of the Refugee Status Review, different from the initial review officials, to ensure the independence of the review. Appeals must be made within 15 days of receiving the denial notice. Failure to appeal within 15 days results in the loss of the right to appeal, and the final decision is made.

(6) Final Decision and Subsequent Steps. Whether at initial review or on appeal, the final decision is notified in writing to the applicant. If successful, a refugee identification certificate is issued, or legal residency status in China; if ultimately denied, the applicant is dealt with according to Chinese law and international standards, either by repatriation or humanitarian protection.

Clarifying these steps helps to standardize the refugee application process, ensuring China's compliance with international law in handling refugee issues. It facilitates the application process for asylum seekers, protects their legal rights, promotes a humanitarian spirit, and legalizes and standardizes the process of refugee status determination, advancing the legal system in China.

5.3.3. Appeal and Complaint Mechanisms

Setting up the appeal mechanism for refugee status determination must align with Article 64 of the Immigration Law, which stipulates that administrative review is the final decision and does not allow for administrative litigation. Additionally, a complaint procedure as a monitoring mechanism ensures the fairness and transparency of the entire refugee status determination process.

(1) Appeal Mechanism

The initial review of refugee status is conducted by the refugee review department of the National Immigration Administration. According to the results, applicants can appeal within 15 days of receiving the decision notice. The appeal is the final stage of the application process, handled by the Refugee Status Review Appeals Committee, whose members differ from the initial review officials to ensure independent adjudication. Applicants must provide additional evidence or detailed rebuttals to the reasons for initial denial during the appeal. The Appeals Committee will reassess their refugee status based on the new evidence and rebuttals provided. The decision of the Appeals Committee is final and not subject to further appeal. Decisions will be communicated in writing, detailing the reasons for the decision.

(2) Complaint Mechanism

The complaint mechanism monitors the legality and compliance of the refugee application review process. Complaints can be made by applicants at any stage, targeting procedural errors or injustices encountered during the process. An independent complaint review department is established to handle complaints about the refugee determination process. This department must have high independence to effectively oversee decisions made by the refugee review department. For cases found to be erroneous or unfair, the complaint review department has the authority to request a reevaluation or appropriate adjustments by the refugee review department. The results of the complaint are also communicated in writing to the complainant, explaining the actions taken or reasons for corrections.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

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