

November 2020

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## Shedding light on RSD in China

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**Although UNHCR processes all individual refugee status claims in China, public information about this mandate RSD has been sparse. Shedding light on the current procedure helps to identify the current challenges and opportunities relating to refugee protection in China.**

The People's Republic of China acceded to the 1951 Refugee Convention and its 1967 Protocol in 1982.<sup>1</sup> Two years before, UNHCR had opened a Task Office in Beijing in response to the Indochinese refugee crisis,<sup>2</sup> in the course of which China admitted and locally settled over 280,000 refugees. In 1995, this Task Office became a Branch Office, and then in 1997 was further upgraded to a Regional Office, covering China, Hong Kong Special Administrative Region (SAR) and Macau SAR. The accompanying agreement between China and UNHCR<sup>3</sup> established that the UNHCR Beijing Office would, in consultation and cooperation with the Chinese government, have unimpeded access to refugees, and thus provided a legal foundation for UNHCR to conduct RSD in China. UNHCR continues to carry out all mandate RSD in China, and the Chinese government acknowledges the refugee status that UNHCR awards.

### The mandate RSD process

Asylum seekers are required to register themselves in person at the Beijing Office, whereupon UNHCR issues them with an asylum seeker certificate. This enables the asylum seeker to apply for a temporary resident permit from the local Chinese police authority – and thus remain legally in China while waiting for their RSD interview to take place.

There is very little publicly available information about the way in which UNHCR mandate RSD is conducted in China. Asylum applicants are required to attend in-person interviews at the Beijing Office and accounts suggest that these are usually conducted by one UNHCR officer, accompanied by a translator where needed, and focus on the reasons for which the applicant has left their country. Applicants who receive negative decisions in the first instance have a right

to have the decision reviewed by UNHCR according to UNHCR's Procedural Standards for mandate RSD and, as a general rule, should be given the opportunity to present their appeal in person. RSD decisions made by UNHCR are, however, not subject to judicial review in China; applicants whose appeals are unsuccessful have no further recourse and are considered to be residing in the country illegally. Asylum seekers also do not generally have legal representation in the RSD procedure; this may possibly be attributed to the lack of practising refugee lawyers in China and the absence of publicly funded legal aid for asylum seekers.

Those asylum seekers who are recognised as refugees receive a refugee certificate issued by UNHCR.<sup>4</sup> They are allowed to stay temporarily in China until UNHCR finds a durable solution for them, usually resettlement in a third country as China does not allow them to settle locally. They have no right to work, and rely on UNHCR to provide assistance in terms of food, accommodation, health care and education.<sup>5</sup> Those who are found not to have a legitimate ground to stay in China are considered to be illegal immigrants.

### Challenges to access

Despite the provisions of the 1995 Agreement with the Chinese government, in practice UNHCR's Beijing Office does not always have access to refugees and asylum seekers. The office is by no means close to China's borders, which is where many refugees and asylum seekers, such as North Koreans, and ethnic Kokangs and Kachins displaced by armed conflict in Myanmar, enter the country. In addition to the fact that China is a large country, as many refugees and asylum seekers arrive without proper entry documents and with limited financial

resources it is difficult for them to make their way to Beijing because of the identity document checks that they would encounter on trains, at airports and at hotels.

According to the 2003 version of UNHCR's Procedural Standards for mandate RSD, interviews must not be conducted by its own implementing partners and UNHCR should "take all feasible steps" to register applicants for RSD outside UNHCR offices when conditions in the host country make it difficult for asylum seekers to reach a UNHCR office.<sup>6</sup> Officials from the Beijing Office have been reported on occasion to have travelled to areas outside Beijing, such as to the southwestern province of Yunnan and to the southern city of Guangzhou, in order to conduct RSD, but this does not appear to be standard practice. On the contrary, the Chinese government has declined UNHCR's repeated requests to access border areas so that they can assist those in north-east China who have fled North Korea, and displaced ethnic Kokangs and Kachins in Yunnan Province. As a result, refugees and asylum seekers who could not travel to Beijing (notably those who arrived in mass influx situations) have generally not been able to access RSD in China because they cannot register and attend interviews in person.<sup>7</sup>

Under its 2003 Procedural Standards for mandate RSD, UNHCR allowed the registration and application submission procedures to be conducted by approved implementing partners. Such implementing partners are often NGOs, and the 1995 Agreement between UNHCR and the Chinese government explicitly permits UNHCR (with the agreement of the government) to establish relationships with relevant NGOs that are legally registered in the country. In theory, then, it has been possible for UNHCR to partner with NGOs located outside Beijing to allow refugees to register and submit their asylum applications locally. However, refugees remain a sensitive topic in China. I am not aware of any NGOs based in China currently openly providing assistance to refugees and asylum seekers in China. No implementing partner relationships appear to have been established by UNHCR's Beijing Office.

The recent 2020 revision to UNHCR's Procedural Standards for mandate RSD now allows, in exceptional circumstances, remote registration of applicants, and their participation via telephone or videoconference where an in-person interview cannot be conducted for reasons of safety and security, availability of resources or significant costs and/or other obstacles relating to travel or access to the applicant, or public health imperatives.<sup>8</sup> It remains to be seen how these new provisions will be implemented by UNHCR's Beijing Office.

### Future handover?

In 2019, UNHCR's representative in China, Sivanka Dhanapala, said that UNHCR expected to gradually transfer responsibility for RSD to the new Chinese National Immigration Administration, which had been established in 2018.<sup>9</sup> It is worth noting that UNHCR terminated its RSD procedure in Macau and Hong Kong after the local authorities of these two SARs established relevant mechanisms in 2004 and 2013 respectively. Since the 1990s, the Chinese government has been working on drafting a national refugee law with the assistance of UNHCR. A draft refugee regulation was submitted to the State Council for deliberation in 2008 but the draft was not adopted.<sup>10</sup> At the time of writing, no public information is available as to the progress, or lack thereof, in the making of China's national refugee regulation – but it seems unlikely that the Chinese government will take on the responsibility of RSD unless and until such a national refugee regulation is passed. While RSD in China continues to be carried out under UNHCR's mandate, more research is required in relation to these processes and associated protection challenges.

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1. For the purpose of this article, the People's Republic of China (hereafter referred to as 'China') refers to Mainland China, excluding Hong Kong, Macau and Taiwan.

2. UNHCR *UNHCR Representation in China*  
[www.unhcr.org/hk/en/about-us/china](http://www.unhcr.org/hk/en/about-us/china)

3. UN (2000) 'Agreement on the upgrading of the UNHCR Mission

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in the People's Republic of China to UNHCR branch office in the People's Republic of China. Signed at Geneva on 1 December 1995' [bit.ly/UNHCR-China-1995](http://bit.ly/UNHCR-China-1995) p71

4. UNHCR (2018) *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: People's Republic of China and the Special Administrative Regions of Hong Kong and Macao* [www.refworld.org/docid/5b56ffde9.html](http://www.refworld.org/docid/5b56ffde9.html)

5. For more discussion about UNHCR mandate refugees in China, see L Song (2020) *Chinese Refugee Law and Policy*, Cambridge: Cambridge University Press, chapter 4.1.

6. UNHCR (2003) *Procedural Standards*, p3-16. [www.refworld.org/docid/42d66dd84.html](http://www.refworld.org/docid/42d66dd84.html)

7. When arrivals have taken place at a large scale, as with arrivals of Indochinese refugees, North Korean escapees, and ethnic Kokangs and Kachins, the Chinese government has approached

these itself, with little involvement of UNHCR. See Song L (2020), chs 4.2-4.5.

8. UNHCR (2020) *Procedural Standards*, p111 and p145 [www.refworld.org/docid/5e870b254.html](http://www.refworld.org/docid/5e870b254.html)

9. Qian S (2019) 'UNHCR and China: From Help Receiver to Partners – An Interview With UNHCR Representative in China Dhanapala', 19 June 2019 [in Chinese; title translated] <https://news.un.org/zh/story/2019/06/1034911>

10. UNHCR (2013) *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: People's Republic of China* [www.refworld.org/pdfile/5135b0cb2.pdf](http://www.refworld.org/pdfile/5135b0cb2.pdf), p1

