



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



**Note on
Suspension of “General Cessation” Declarations
in respect of particular persons or groups based on acquired rights to family unity¹**

1. Introduction

1. The purpose of this Note is to clarify that it is possible as a matter of international law, and may at times be advisable, to suspend the application of a cessation declaration to particular persons or groups based on acquired right to family unity.

2. In ordinary circumstances, it would be expected that arrangements would have been made for persons with acquired family rights to stay and integrate into the host community *prior* to any “general cessation” declaration, including for example access to a legal status, such as residency, family unity visas, or citizenship. The Executive Committee of the High Commissioner’s Programme (ExCom) has called on States to consider “appropriate arrangements, which would not put into jeopardy their established situation” for persons “who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links”.² However, where such arrangements have not been agreed or are not yet in place at the date a “general cessation” declaration takes effect, a suspension of cessation would allow such persons to continue to benefit from protection as refugees, including protection from *refoulement*, until such arrangements are agreed and/or implemented.

3. The “ceased circumstances” or “general cessation” clauses in Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (1951 Convention) are silent as to the procedures to be applied. Nonetheless, UNHCR’s Guidelines on Cessation note that:

Cessation under Article 1C(5) and 1C(6) does not require the consent of or a voluntary act by the refugee. Cessation of refugee status terminates rights that accompany that status. It may bring about the return of the person to the country of origin and may thus break ties to family, social networks and employment in the community in which the refugee has become established. As a result, a premature or insufficiently grounded application of the ceased circumstances clauses can have serious consequences. It is therefore appropriate to interpret the clauses strictly and to ensure that procedures for determining general cessation are fair, clear, and transparent.³

4. While the Guidelines on Cessation do not mention the possibility of suspending the application of a cessation declaration explicitly - either generally (until a point in time) or in favour of particular persons or groups - there is nothing in international law that would prevent a State or UNHCR from doing so, especially if the suspension is in conformity with fundamental rights and in the spirit and purpose of the 1951 Convention.

¹ It is also possible that “partial cessation” declarations could be suspended along the terms of this Note. This Note deals only with whether suspension is possible as a matter of international law; its implementation in particular situations would require further examination, including the national legal context. Moreover, this Note is limited to suspension on family unity grounds, whereas there may be other reasons to justify suspension but these are not dealt with in this document.

² ExCom Conclusion No. 69 (XLIII) – 1992 – Cessation of Status, para. (e), referred to in UNHCR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, HCR/GIP/03/03, 10 February 2003, para. 22 (hereinafter “Guidelines on Cessation”).

³ UNHCR, *Guidelines on Cessation*, para. 7.

5. The term “suspension” refers to a temporary stay or interruption. It can be the interruption of a decision, opinion, proceedings, judgment or a law/statute.⁴ A stay does not reverse, annul or undo what already had been done. It merely suspends the time required for performance of the particular mandate stayed, to preserve a status quo pending appeal.⁵

6. Administrative laws in a number of countries foresee the suspension or stay of administrative decisions, subject to the principles of fairness, legality, consistency, rationality, equality, impartiality, proportionality, due care,⁶ and good faith.⁷ Subject to these principles, suspension is a procedural device used to avoid detriment to particular individuals or groups by an otherwise applicable administrative decision. These principles are reflected throughout this Note.

7. As the intention of a suspension to a general cessation declaration is to preserve the human rights of refugees, it would be permitted.⁸ If cessation were to apply to them, such refugees would be at risk of serious interference with their rights to family unity acquired in the country of asylum. Suspension would ensure that “cessation practices [are] developed in a manner consistent with the goal of durable solutions.”⁹

2. Right to family life or unity

8. The right to family unity and family life is inherent in the universal recognition of the family as the fundamental group unit of society, which is entitled to protection and assistance.¹⁰ This right is entrenched in international human rights law and applies to all human beings, regardless of their status.¹¹ In the protection of rights to family life and unity, the best interests of the child shall be a primary consideration. States are required to ensure that children are not separated from their parents against their will, except when competent authorities subject to judicial review determine this is in the best interests of the child.¹² Moreover, special protection and assistance is due to refugee children.¹³

⁴ For example, Black’s *Law Dictionary* defines “statutory suspension” as “A temporary termination of its power of law. The suspension of a statute for a limited time operates so as to prevent its operation for the time, but it has not the effect of a repeal.”

⁵ *Ibid.*

⁶ The principle of “due care” normally refers to the requirement to ensure that any decisions are made on the basis of all the relevant facts and circumstances.

⁷ These principles are found in a range of international and regional human rights instruments, such as *International Covenant on Civil and Political Rights* (“ICCPR”), Article 14 (Procedural guarantees in civil and criminal trials); *African Charter on Human and People’s Rights* (“ACHPR”), Articles 7 (right to be heard) and 26 (independence of the courts); *American Convention on Human Rights* (“ACHR”), Articles 8 (right to a fair trial) and 25 (right to an effective remedy); *American Declaration of the Rights and Duties of Man* (“ADRDM”), Articles XVIII (access to courts for enforcement of legal rights), XXIV (right to petition) and XXVI (right to due process of law for criminal prosecution); *European Convention for the Protection of Human Rights and Fundamental Freedoms* (“ECHR”) Article 6 (right to a fair trial) and Article 13 (right to an effective remedy).

⁸ See, ExCom Conclusion No. 69 (XLIII) – 1992 – Cessation of Status, para. (e). Although cessation does not automatically mean return in all cases, it has been held in a number of judgments that international human rights law may require that persons not be returned to their countries of origin if this would interfere with their rights to family life.

⁹ UNHCR, Guidelines on Cessation, para. 6

¹⁰ See e.g. UN Human Rights Committee, *General Comment No. 19: Article 23 - Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990. See also, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, Recommendation B; Summary Conclusions on Family Unity, Global Consultations on International Protection, Geneva Expert Roundtable, 8–9 November 2001.

¹¹ See e.g. *Universal Declaration of Human Rights*, Article 16; ICCPR, Articles 17 and 23; *International Covenant on Economic, Social and Cultural Rights*, Article 10. See also regional instruments, ACHPR, Article 18; ACHR, Article 17; ADRDM, Articles V-VI; ECHR, Article 8.

¹² See further, *Convention on the Rights of the Child* (“CRC”), Articles 3, 8, 9 and 10; *African Charter on the Rights and Welfare of the Child*, Articles 18 and 19.

¹³ CRC, Article 22; *African Charter on the Rights and Welfare of the Child*, Article 23.

9. While there is no universal, single definition of “family” under international law, UNHCR promotes a definition that is broad and flexible rather than formalistic, *inter alia*, in order to support the successful integration of refugee families into their new communities. A family therefore includes the spouse and dependent children, but it can also extend to individuals engaged to be married, those who have entered into a customary marriage, common law couples, and same sex partnerships. It also includes other relatives beyond the nuclear family who are dependant - socially, emotionally or economically - on members of the refugee family.¹⁴

10. Family rights acquired in the country of asylum would include those through marriage, parentage or birth where there is a link to a national of the country of asylum, e.g., being married to a national of the country of asylum and/or having children born to a father or mother who is a national of the country of asylum and/or being the child of a parent whose nationality is that of the country of asylum.

3. Distinction between suspension and partial cessation

11. Suspending a “general cessation” declaration is distinct from “partial cessation”, which has been applied in the past to particular sub-groups. On “partial cessation”, the Guidelines on Cessation provide, *inter alia*:

The 1951 Convention does not preclude cessation declarations for distinct sub-groups of a general refugee population from a specific country, for instance, for refugees fleeing a particular regime but not for those fleeing after that regime was deposed.¹⁵

12. Like “general cessation”, “partial cessation” is an assessment that “the circumstances in connexion [sic] with which he [or she] has been recognized as a refugee have ceased to exist”¹⁶ for some members of the refugee population, but not all. Partial cessation recognizes that general cessation is not appropriate for particular sub-groups, such as particular ethnic groups, groups having shown particular political allegiance, or those based on date of departure and events in the country of origin. These persons retain their refugee status.

13. In contrast, a suspension of “general cessation” takes the form of a negative injunction. Unlike “partial cessation”, the suspension does not state that the grounds for “general cessation” do not exist, but rather that alternative durable solutions are needed to address the situation of particular individuals or groups. For this reason, too, suspension of a “partial cessation” declaration is also possible. The particular circumstances at issue here relate to rights to family unity acquired in the country of asylum.

4. Practical effect of suspension

14. Persons with acquired rights to family unity without international protection needs should ordinarily be channeled into opportunities for local integration (as outlined above in paragraph 2). In specific situations, suspension could – in practical terms - reduce the need for such persons to resort to the individual “exemption” provisions in Article 1C(5) and (6) for “purely” family unity reasons, which would be unlikely to be sufficient to qualify for exemption on their own. The main purpose of suspending a cessation declaration for persons with acquired rights to family unity is to “buy time” to implement other appropriate solutions.

¹⁴ UNHCR, *Note on Family Reunification*, July 1983; UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*. See also, UN Human Rights Committee, *General Comment No. 16: The right to respect for privacy, family, home and correspondence, and protection of honour and reputation (Article 17)*, 1988.

¹⁵ UNHCR, *Guidelines on Cessation*, para. 17.

¹⁶ 1951 Convention, Article 1C(5) and (6).

15. Suspension of cessation declarations will not be suitable in all cessation situations. It should not be used to avoid or delay obligations to implement “exemption procedures”. Persons to whom suspension may be applicable cannot be denied the opportunity to apply for continued protection as a refugee under an “exemption procedure”. This may be appropriate if they have valid reasons to retain their status as a refugee.¹⁷

5. Legal effect of suspension

16. The 1951 Convention provides for the cessation of the status of a refugee in particular circumstances, but there is no obligation on a State to do so; rather Article 1C sets out the only circumstances in which refugee status may be ceased. In fact the 1951 Convention encourages, in Article 34, the assimilation and naturalization of refugees. Moreover, the search for durable solutions is a well-accepted principle of international refugee law. Suspending a general cessation declaration pending the search for a durable solution for persons with family links would be in conformity with Article 34, the refugee regime as a whole, as well as international human rights law. The Final Act of the Conference of Plenipotentiaries of the 1951 Convention stressed the importance of rights to family life and unity.

17. The 1951 Convention is not suspended as a matter of international law by the operation of a suspension to a general cessation declaration. The treaty and obligations arising thereunder remain on foot.

6. Conclusion

18. In light of the above, suspension of a general cessation declaration is an appropriate tool, subject to the following conditions:

- It is in accordance with the object and purpose of the 1951 Convention, *i.e.* to ensure the widest possible exercise of fundamental human rights and freedoms;¹⁸
- It is elaborated in a decision, by-law or other administrative instruction;
- It is applied in a non-discriminatory manner;
- It is applied in regard to refugees who have acquired rights in the country of asylum owing to family links established there;
- The full range of rights applicable to refugees are retained, including protection against expulsion or return;
- The duration of the suspension order and any extensions should be clearly set out with maximum time limits applying, which should usually not exceed one year. This would be to avoid that persons benefiting from suspension are left without a permanent legal status or solution over the long-term;
- Protection safeguards are in place to limit incentives for fraudulent marriages, or which encourage the establishment of forced or exploitative marriages, or the continuation of those marriages.

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¹⁷ Note that the concept of suspension of a general cessation declaration for persons with acquired family rights is distinct from the right to apply to be exempt from a general cessation declaration. Exemption procedures apply to two categories of persons, namely “refugees who continue to have a well-founded fear of persecution” (per ExCom Conclusion No. 69 (XLIII) – 1992 – Cessation of Status, para. (c)) and individuals who have “compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality” (Article 1C(5), 1951 Convention). While family life may be connected to one or both of these exemption grounds (e.g., if one’s family connections are the reasons for fearing persecution), it may also be unrelated and not give rise to exemption (e.g., marriage to a national of the country of asylum without continuing protection needs).

¹⁸ 1951 Convention, Preamble.