



Applicability of the “Ceased Circumstances” Cessation Clauses to Tajik Refugees Who Fled Their Country as a Result of the Civil Conflict From 1992 to 1997

A. Background

Tajikistan descended into civil conflict in 1992 following independence in 1991. According to the UN Human Development Report of 1996, during the conflict more than 48,000 people were killed and nearly one million people – one in every six Tajiks – were displaced, with more than 250,000 of these persons fleeing the country. Khatlon Province alone, where one in every four persons was uprooted and 90% of houses damaged, accounted for at least 50% of the displaced.

The largest refugee flow was to Afghanistan and to the neighbouring Central Asian countries. In most cases, people leaving Tajikistan to the Central Asian countries were ethnic Turkmens, Kyrgyz and Uzbeks.

Although a few countries recognised persons who fled during the period between 1992 and 1997 as refugees on a *prima facie* basis, many host countries in the Commonwealth of Independent States provided no clearly defined legal status to these Tajiks. Many have been tolerated by the authorities in these asylum countries through the provision of a ‘*propiska*’/permanent resident permit in the old Soviet passport or new Tajik passport.

Fighting subsided in February 1993 and large numbers of Tajik refugees and internally displaced persons (IDPs) soon began to return home spontaneously. In April 1993, UNHCR started a large-scale voluntary repatriation programme for nearly 15,000 Tajik refugees from Afghanistan. Even larger numbers of IDPs returned. From 1994 through 1996, UNHCR had a network of field offices in areas of return to monitor the protection of refugee and IDP returnees and to provide shelter reconstruction packages, reintegration assistance and mediation to regain occupied housing.

Peace was slow to develop. Negotiations under the auspices of the UN, OSCE, the Russian Federation and the Islamic Republic of Iran continued for several years, eventually leading to the signing of the General Agreement on the Establishment of Peace and National Accord in Tajikistan on 27 June 1997.

During the third round of the peace talks in Tehran, a Protocol on refugee-related issues was signed on 13 January 1997. It called upon the parties to intensify their joint efforts to secure voluntary, safe and dignified return of all Tajik refugees and IDPs to their places of origin. Under the terms of the Protocol, the Government of the Republic of Tajikistan agreed to: reintegrate returning refugees and IDPs; provide humanitarian and financial assistance; facilitate employment and housing; reinstate all their rights as citizens; and provide an amnesty for most participants in the armed conflict.

Although several *ad hoc* assisted movements had taken place beginning in 1995, formal assisted voluntary repatriation from Central Asian countries commenced only in 1998. To ensure sustainable return, UNHCR launched additional rehabilitation and reintegration programmes: 25,000 returnees were assisted to rebuild their houses, 9,000 hectares of land that had been unused for a lengthy time was rehabilitated, and many returnees were assisted to obtain legal documents necessary for their reintegration.

In 2000, the Government of the Republic of Tajikistan decided that the people who had fled as a result of the conflict could all safely come back to their country of origin and should no longer be considered in need of international protection.

National reconciliation efforts continued. The improvement of the security situation had by 2002 allowed access by UNHCR to the north-eastern part of the country, and UNHCR started activities there in 2003.

In February 2005, the country undertook nationwide elections for Parliament. Also, there was widespread agreement that Tajikistan provided a positive example of post-conflict reconciliation.

Between 1993 and 2003, an estimated total of 53,000 Tajiks have returned to Tajikistan. Although the return figures have tapered off in the recent years, returns continue to take place. The recent lowering of the UN Security Level to Phase I recognizes the improved security situation in the country. UNHCR returnee monitoring missions indicate that returnees have unimpeded access to education, health, legal, basic services and documents. All returnees continue to have access to available UNHCR re-integration assistance such as micro-credit activities. Of those interviewed in areas of return, many returnees were in possession of new Tajik passports or faced no impediments to obtain new documents.

The findings of returnee monitoring missions revealed that the major problem encountered by returnees is not protection-related, but is instead the difficult economic condition in Tajikistan. This has led to a large number of returnees to depart to the Russian Federation or former countries of asylum for better economic opportunities but the non-sustainability of return in these cases is not, notably, for protection-related reasons.

Accordingly, it is concluded that the circumstances that caused the Tajik refugee crisis of the 1990's have ceased to exist.

B. Application of the “Ceased Circumstances” Clauses of the UNHCR Statute and the 1951 Refugee Convention

In light of the above, the High Commissioner is of the opinion that persons from Tajikistan who fled their country as a result of the civil conflict that formally ended in 1997 can avail themselves of the protection of their country of nationality and should in principle no longer be regarded as refugees. Therefore, the “ceased circumstances” clauses contained in paragraph 6.A(e) and (f) of the Statute of the Office of the United Nations High Commissioner for Refugees and in Article 1.C(5) and (6) of the 1951

Convention relating to the Status of Refugees are in principle applicable to these persons.

However, in accordance with basic principles of refugee law, reaffirmed by the UNHCR Executive Committee in Conclusion No. 69 (XLIII) (1992) on Cessation of Status¹, the “ceased circumstances” clauses should not apply to individual refugees who continue to have valid grounds for claiming a well-founded fear of persecution, or who can invoke compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of Tajikistan. Persons claiming such grounds or other compelling reasons for continuing to be regarded as refugees should be managed in accordance with Section D, Review of Individual Cases, below.

Individuals who fled Tajikistan prior to 1992, or from 1992 through 1997 for reasons not related to the civil conflict, or after 1997 for any reason, may have been recognised as refugees by asylum states or UNHCR under its Mandate, likely following an individual refugee status determination. *This Memorandum, and the application of the Cessation clauses as described herein, does not apply to such persons.*

C. Legal and Practical Consequences

In States that are party to the 1951 Refugee Convention, it is ultimately the responsibility of the authorities of the country of asylum to determine the modalities for the application of the “ceased circumstances” clauses of the 1951 Refugee Convention, in accordance with domestic legislation. However, given the supervisory role assigned to the Office in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Refugee Convention, States are expected to consult with UNHCR on the modalities of the implementation of the cessation clauses.

For UNHCR, there is a presumption that persons falling under paragraph 6. A(e) and (f) of the Statute or Article 1.C(5) and (6) of the 1951 Refugee Convention no longer have a well-founded fear of persecution or other reasons to continue to be regarded as refugees. Accordingly, the Office shall consider the refugee status of persons who fled Tajikistan as a result of the civil conflict that formally ended in 1997 to cease as of **30 June 2006**, unless there are reasons in the individual case justifying continued protection or another appropriate status. This timeframe for the entry into force of the “ceased circumstances” clauses will add momentum to any final voluntary repatriation exercise, as well as encourage refugees who may invoke continuing fear of persecution or compelling reasons arising out of previous persecution to refuse to re-avail themselves of the protection of Tajikistan, to come forward and submit their claim for consideration. It will also facilitate *demarches* by individual refugees who may not wish to return to Tajikistan to seek alternative arrangements to remain in the host country.

Former Tajik refugees who remain outside Tajikistan after that date will no longer be entitled to international refugee protection, unless their continuing refugee status is individually determined (see Section D, Review of Individual Cases, below). Their continued stay in the host country will depend upon the authorization of the government concerned. Such persons should be encouraged to deal directly with the government of the host country regarding their legal status and rights in that country, taking into

¹ Available on UNHCR’s website at <http://www.unhcr.org/excom/>.

account the possibilities outlined below for integration in the former country of asylum or voluntary repatriation under the auspices of UNHCR.

It should however be noted that a majority of former Tajik refugees who remain outside of Tajikistan after that date may be in a situation of statelessness. Some of them are not registered as citizens of Tajikistan as they left Tajikistan prior to the enactment of the Tajik citizenship law and many of them have not registered the birth of their children at Tajik embassies or consulates. UNHCR will therefore continue to protect and advise individuals and search for solutions with the country of origin as well as with the country of residence to ensure that individuals have access to a nationality.

It is crucial to recall that cessation practices should be developed in a manner consistent with the goal of attaining durable solutions and cessation should therefore not result in persons residing in a host state with an uncertain status. Due regard must be given to the need to avoid individual hardship cases, particularly where the loss of refugee status might lead to an automatic loss of residence and therefore disrupt any successfully initiated integration process in the host country. Consistent with Executive Committee Conclusion No. 69, it is recommended that the authorities consider new arrangements for persons who cannot be expected to leave the country of asylum for particularly compelling reasons, such as their long stay in that country resulting in strong family, social or economic links or for those former refugees (and their children) who are or who would be at risk of becoming *de jure* or *de facto* stateless. Similarly, so as to avoid hardship cases, States should seriously consider an appropriate status, preserving previously acquired rights, for persons who have compelling reasons arising out of previous persecution for refusing to re-avail themselves of the protection of their country and recommends also that appropriate arrangements, which would not put into jeopardy their established situation, be made available to them. Such arrangements may include the grant of legal immigrant status through temporary residence, permanent residence, or naturalization.

D. Review of Individual Cases

For those UNHCR offices that have undertaken Mandate refugee status determination for Tajiks, UNHCR offices are requested to ensure that UNHCR's own application of the "ceased circumstances" clauses is done in accordance with the procedure outlined above, as further informed by UNHCR's *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)*.²

Individual refugees should submit a request for consideration of their case before the entry into force of the cessation clauses on **30 June 2006**. In particular, persons requesting the non-application of the cessation clauses should be afforded an opportunity to present the specific grounds on which they base their claim of a continuing well-founded fear of persecution in respect of Tajikistan and unwillingness to re-avail themselves of the protection of the Tajikistan government. In this connection, it must be reiterated that the "ceased circumstances" clauses do not apply to any refugee who might have fled Tajikistan prior to 1992, between 1992-1997 for reasons unrelated to the civil conflict, or after that time for any reason.

² Available on UNHCR's Refworld website at <http://www.unhcr.org/refworld/legal.htm>.

In countries that have recognised Tajiks as refugees on a group or *prima facie* basis, it may be necessary for UNHCR to assist the competent authorities to ensure that individuals claiming continuing fear of persecution are reviewed before the cessation clauses enters into force. Some individuals may have compelling reasons arising out of previous persecution for refusing to re-avail themselves of the protection of their country of origin. UNHCR Offices should request States to give due consideration to an appropriate status for such persons (*e.g.*, continued refugee status or another appropriate status on humanitarian grounds) to preserve previously acquired rights, based on the humanitarian considerations mentioned in paragraph 136, Chapter III of the *Handbook of Procedures and Criteria for Determining Refugee Status* and in Executive Committee Conclusion No. 69.

E. Voluntary Repatriation

Refugees wishing to return to Tajikistan under the auspices of the Office should register for voluntary repatriation before the entry into force of the cessation clauses on **30 June 2006**. UNHCR shall continue its existing protection and assistance to such persons until the completion of their repatriation.

Refugees who intend to return home are expected to avail themselves of this opportunity before the voluntary repatriation exercise is completed. Only exceptional cases who provide valid cause for having failed to register and return prior to completion of the exercise may still benefit from UNHCR's assistance for this purpose. In such cases, granting of material assistance for repatriation will be dependent upon the applicant fulfilling the relevant requirements, as set out in applicable guidelines, including *the Handbook on Voluntary Repatriation*. Decisions on such cases should be taken by the relevant offices in consultation with Headquarters.

F. Material Assistance

In the case of former refugees who are allowed to continue to reside in the host country, in consultation with Headquarters the relevant offices should establish a reasonable time limit for the cessation of UNHCR's essential material assistance where it was applicable. UNHCR offices are requested to exercise particular flexibility in this regard for Tajik refugees whose request for naturalization is under processing.

G. Implementation of the "Ceased Circumstances" Cessation Clause

UNHCR Offices in neighbouring countries and in any other country hosting more than 500 Tajik refugees are requested to implement the Plan of Action agreed upon on 13 October 2005 at a regional meeting in Almaty, Kazakhstan, including *demarches* with governments, public information campaigns and mechanisms for individual refugee status determination review under Article 1.C(5) and (6) of the 1951 Refugee Convention where appropriate.

It may be necessary to remind host countries that the application of the cessation clause to Tajik refugees does not herald the withdrawal of UNHCR engagement in these countries.

The measures envisaged to implement the “Ceased Circumstances” Cessation Clause should be designed to be into practice in a flexible and phased manner, particularly in neighbouring countries hosting large numbers of Tajik refugees. Factors critical to the success of implementation include: agreement on implementation procedures and timeframes among States, UNHCR, NGOs and refugees; counselling of refugees; information-sharing; supporting local integration (especially in concert with other appropriate actors) of those who remain; and providing assistance to those who repatriate.

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