Guidelines on Exemption Procedures in respect of Cessation Declarations

Division of International Protection
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ANNEXES AND TOOLS

1. INTRODUCTION

1. The "ceased circumstances" cessation clauses contained in Article 1 C (5) and (6) of the 1951 Convention relating to the Status of Refugees (1951 Convention) foresee the cessation of refugee status where the conditions in the country of origin have changed fundamentally so that international protection is no longer needed. Even in these circumstances, however, the specific situation of individual cases may nonetheless continue to warrant international protection.[1]

2. Cessation of refugee status on a group basis may be invoked via a formal declaration (or decision) on cessation by either States (for Convention refugees) or UNHCR (for mandate refugees).[2] Cessation of refugee status may be declared for a general refugee population from a specific country or for a distinct subgroup thereof (known as "partial cessation" [3]).

3. All recognized refugees who fall within the terms of a cessation declaration lose their refugee status automatically once the cessation declaration comes into effect. However, they must, upon request, have the possibility to apply for an exemption of the cessation declaration on grounds relevant to their individual case ("exemption procedures").[4] In such cases, no action should be taken to withdraw their status and associated rights until a final decision has been taken on their exemption application. In other words, an application for exemption has suspensive effect.[5]

4. Given that a decision on cessation has been taken based on fundamental changes in the country of origin, it is assumed that the majority of refugees will fall within the general cessation declaration. Exemption procedures are thus an exceptional measure, usually only applicable to a small segment of the refugee population.

5. The 1951 Convention envisions two categories of refugees who should be exempted from cessation. These are (1) refugees who continue to have a well-founded fear of persecution, despite the general positive changes in the country of origin, and (2) refugees who, due to compelling reasons arising out of previous persecution, cannot be expected to return to their country of origin (see Part 5). Exemption from cessation applies to both general and partial cessation declarations.

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1 UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees* (the "Ceased Circumstances" Clauses), 10 February 2003, available at: http://www.unhcr.org/refworld/docid/3e50de6b4.html, (UNHCR, *Guidelines on Cessation*), para. 19.

2 *Ibid*, para. 3.

3 *Ibid*, para. 17.

4 UNHCR Executive Committee of the High Commissioner's Programme, Cessation of Status, 9 October 1992, No. 69 (XLIII) - 1992, available at: http://www.unhcr.org/refworld/docid/3ae68c431c.html, (UNHCR ExCom, Conclusion No. 69), para. (d).

5 See further below at para. 29.

6. A number of regional instruments have equivalent provisions relating to cessation based on ceased circumstances[6] and these Guidelines also apply to refugees recognized under these instruments.[7]

7. The present Guidelines set out minimum standards to assist States and UNHCR in designing and implementing exemption procedures. They aim to ensure fair and efficient procedures as well as consistency across countries and are based on international legal standards as well as lessons learned from past exemption procedures. Where UNHCR establishes cessation exemption procedures in respect of mandate refugees, the same safeguards and procedural guarantees should be in place as those developed by States.

2. ROLE OF STATES AND UNHCR

8. In countries of asylum that are party to the 1951 Convention and/or 1967 Protocol (and/or regional instruments), it is the primary responsibility of the national authorities to establish the modalities for exemption procedures and ensure that protection standards and general principles of administrative law reflected in international and regional legal instruments are followed.[8] Exemption procedures need to be regulated by law, which could be a law or a policy adopted in pursuance of the relevant legislation, or an administrative decision. The criteria determining the personal scope of the declaration of cessation should be spelled out clearly in the legal act to declare cessation and/or set up the exemption procedures.

9. Governmental officials deciding on exemptions should have experience in Refugee Status Determination (RSD) and, where feasible, exemption procedures.

10. In accordance with its supervisory role,[9] UNHCR provides technical assistance and advice, as may be required by States, on the establishment of these modalities and implementation of the exemption procedures. Depending on the specificities of the country and its laws, UNHCR should to the extent possible play a role in government exemption procedures. UNHCR may, for example, act as an observer,

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6 See, 1969 Organization of African Unity (OAU) (now African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa, (OAU Convention), Article 4(e); EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (EC Qualification Directive), Articles 11 and 16; 1966 Bangkok Principles on Status and Treatment of Refugees (Bangkok Principles), Article 6 (iv).

7 Although the OAU Convention does not contain a provision which allows for exemption due to "compelling reasons", this phrase should be read as subsumed within Article 4(e) of the OAU Convention, given that, as reflected in its preambular paragraphs, the OAU Convention complements the 1951 Convention and the close connection between the purposes of the African Union and the United Nations are recognized.

8 See further below, Part 6.

9 UNHCR's supervisory responsibility is embedded in the general competence of the Office to provide international protection, *inter alia* by supervising the application of international conventions for the protection of refugees. See UNHCR Statute, para. 8, in conjunction with 1951 Convention, Articles 35 and 36; 1967 Protocol Article II. See, also, OAU Convention, Article VIII.

or play a more active role, in an advisory capacity. In countries where UNHCR conducts RSD under its mandate, UNHCR may declare cessation and carry out the exemption procedures itself.

11. Appropriate consultations should be undertaken with relevant actors, including refugees, in the design and implementation of the exemption procedures. Refugee participation in the preparations can help ensure that their concerns are properly addressed and that age, gender and diversity considerations are taken into account.[10]

12. Governments, UNHCR and other relevant local, national and international stakeholders need also to plan for and address the respective consequences of the implementation of the exemption procedures, including with regard to the question of how to deal with former refugees whose applications for exemption have been finally rejected.

13. The cessation of refugee status should be seen as part of a process. As former refugees and in the context of durable solutions, governments concerned and UNHCR retain a responsibility for individuals whose status has ceased, on a humanitarian basis, for bringing a dignified end to the cycle of displacement and for seeking alternative solutions, including, for example, residence status or voluntary return, within a reasonable period after cessation takes effect.[11]

3. RELATIONSHIP BETWEEN EXEMPTION AND OTHER STATUS DETERMINATION PROCEDURES

14. Cessation exemption procedures are in many respects similar to other RSD procedures, although they have their own distinct features. Depending on the country situation and operational circumstances, they may be established as part of or as an extension to regular RSD procedures, or as separate procedures. Separate procedures are likely to be needed when dealing with larger caseloads as regular RSD procedures may otherwise be overwhelmed.

15. Investments in cessation procedures may have benefits for the country's RSD procedures in the longer term, not least in terms of training and staffing. Exemption procedures should therefore observe similar procedural safeguards and processes (see further Part 6). There should also be good communication between

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[10] UNHCR, *Age, gender and diversity mainstreaming*, 31 May 2010, available at: http://www.unhcr.org/refworld/docid/4cc96e1d2.html, paras. 1–2; UNHCR ExCom, Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR, No. 110 (LXI) - 2010, 12 October 2010, No. 110 (LXI) - 2010, available at: http://www.unhcr.org/refworld/docid/4cbeaf8c2.html, (UNHCR ExCom, Conclusion No. 110), para. (e); See, UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: http://www.unhcr.org/refworld/docid/42d66dd84.html, (UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*), Unit 3.4.

[11] UNHCR, *Guidelines on Cessation*, para. 25 (viii). Advice on other measures is not dealt with in these guidelines.

the two processes. Any transfers of cases between the exemption and regular RSD processes are subject to national procedural rules and practices.

4. SCOPE OF EXEMPTION PROCEDURES

16. Exemption procedures are relevant only for those refugees who fall within the terms of the declaration of cessation, and whose status would otherwise cease in accordance with that declaration. Refugees not covered by the terms of the cessation who nevertheless seek to apply for an exemption should be counselled as to the reasons why they are not being included in the exemption process.

17. Asylum-seekers are generally not covered by the terms of a declaration of cessation. In principle, cessation only applies to recognized refugees and a cessation declaration cannot serve as an automatic bar to refugee claims, either at the time of a general declaration or subsequent to it.[12] Individuals with pending asylum claims at the time cessation is invoked, or at the time it comes into effect, should continue in regular RSD procedures. New arrivals and others not previously recognized or registered as refugees should also be advised to apply to regular RSD procedures.

18. Persons, who for reasons unrelated to past or future persecution, do not wish to return, should normally also not be dealt with through the exemption procedures. Such persons should ordinarily be counseled and channeled to other processes, for example for residence permits or other procedures geared towards local integration. Such individuals may, for instance, include those who have developed family ties or strong business or community links in the country of asylum. Alternative status for these individuals should be part of a package of options for comprehensive solutions, ideally to be provided for from the onset of the considerations of applying the cessation clauses.[13]

19. In certain circumstances - for example, where appropriate arrangements for local integration are not yet in place at the date cessation is effected - there may also be a possibility to suspend the application of the general cessation declaration to certain groups of refugees (e.g., based on family links with nationals of the country of asylum) for a limited period of time until solutions have been identified.[14]

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12 UNHCR, *Guidelines on Cessation*, para. 25 (ix).

13 The Executive Committee of UNHCR's Programme (ExCom) recommends in Conclusion No. 69, para. (e), that "appropriate arrangements, which would not put into jeopardy their established situation, be similarly considered by relevant authorities for those 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 there".

14 Suspension of cessation declarations is not dealt with in these Guidelines, but is covered by the relevant Note. See further, UNHCR, *Note on Suspension of "General Cessation" Declarations in respect of Particular Persons or Groups based on Acquired Rights to Family Unity*, December 2011, available at: http://www.unhcr.org/refworld/docid/4eef5a1b2.html.

5. LEGAL BASIS FOR EXEMPTION

20. There are two categories of persons for whom general cessation does not apply, and whose applications for exemption need to be considered, namely:

    - those who continue to have a well-founded fear of persecution;[15] and
    - those who have compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of the country of origin.[16]

21. It is immaterial whether refugee status was accorded on the basis of the 1951 Convention or an extended definition.[17] It is equally immaterial whether status was determined during an individual status determination procedure or granted on a *prima facie* basis. The focus should be on the reasons why the person cannot avail him- or herself of the protection of the country of origin at the present time.

5.1. Continuing well-founded fear of persecution

22. In determining whether a refugee is eligible for an exemption to cessation based on a continued well-founded fear of persecution, the adjudicator must determine, in essence, whether the individual continues to meet the refugee definition, be it under the 1951 Convention or an extended refugee definition, as applicable.[18]

23. The central questions will in such cases relate to why the individual cannot avail him- or herself of the protection of the country of origin, which can be linked to the original reason for his/her flight, or new reasons which have arisen post-departure. As there is an assumption that because of the fundamental change, the previously existing risk of persecution has been removed, the issue to consider is whether this particular individual is still at risk.

24. National procedural and operational requirements will guide whether applicants with a new basis for international protection should be referred to regular RSD procedures or can be processed through the exemption procedures.

5.2. "Compelling reasons arising out of past persecution"

25. The "compelling reasons" assessment concerns an exception to the decision that cessation is applicable and reflects a general humanitarian principle.[19] This exception is intended to cover refugees, or their family members, who have suffered "very serious persecution in the past and will therefore not cease to be a refugee, even if fundamental changes have occurred in his [or her] country of

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15 UNHCR ExCom, Conclusion No. 69, para. (c).
16 1951 Convention, second paragraph of Articles 1C(5) and (6).
17 E.g. OAU Convention, Article 1.2.
18 UNHCR ExCom, Conclusion No. 69, para. (c); UNHCR, *Guidelines on Cessation*, para. 19.
19 UNHCR, *Handbook*, para. 136; UNHCR, *Guidelines on Cessation*, para. 21.

origin".[20] The fact that past persecution was of a generalized character does not preclude the application of the "compelling reasons" exception.

26. The persecution suffered must be of such a serious nature that the person cannot reasonably be expected to return. Both objective (i.e. the nature and severity of the claimant's experiences) and subjective (i.e. the continued effect or trauma of those experiences on the claimant's physical, emotional or psychological well-being) are factors to be evaluated. However, it is not necessarily a cumulative test (see Part 6.7 on Standard of proof).

27. There is no fixed definition or scale of which acts of persecution are so severe that an exception on the basis of "compelling reasons" is warranted. Sufficient severity can be inferred from the act itself, e.g., including but not limited to genocide, torture and other degrading treatment, detention in camps or prisons, acts or threats of severe violence, including mutilation, rape and other forms of sexual assault.[21] Other relevant factors in determining the severity of persecution include the duration of the treatment and the context in which it took place. The nature of all persecution, by definition, involves serious harm or serious human rights violations and therefore the threshold for "compelling reasons" is necessarily a high one.

28. The consequences of the persecution on the individual or the likelihood of its future effects if the person were returned is also relevant to the assessment. Being resilient to adverse conditions will depend on a number of factors which differ from one individual to another. "Compelling reasons" therefore need to be examined on a case-by-case basis and consideration should be given to the claimant's age, gender, cultural background and social experiences. The assessment would take into account such considerations as:

    a. Exposure to severe forms of persecution may cause **extreme stress** and be considered a **traumatic event** for the person concerned.[22] Traumatic events include both events which are "private" (e.g. domestic violence) and "public" (e.g. conflict). Exposure to traumatic events can occur in a

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[20] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1979, re-edited, Geneva, Jan. 1992, http://www.unhcr.org/refworld/docid/3ae6b3314.html, (UNHCR, *Handbook*), para. 136. See also, UNHCR, *Guidelines on Cessation*, para. 20.

[21] Stemming from obligations according to e.g. the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 7; 2002 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 3; 1989 Convention on the Rights of the Child, (CRC), Article 37; 1948 Convention on the Prevention and Punishment of the Crime Genocide; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.

[22] In psychiatry, a traumatic event may be considered to include events in which a person is exposed to death or threatened death, or actual or threatened serious injury or violence, including sexual violence.

number of ways,[23] including 1) the individual experiencing the event(s) him- or herself, 2) witnessing, in person, the event(s) as they occurred to others, for example, a child witnessing the violent killing of a parent, or 3) learning about event(s) that occurred to a close relative or other closely connected individual(s), for instance, learning that a close family member has been the victim of murder.[24] Hence, **not only persecution suffered by the person directly but also indirectly** can have effects on an individual which are so severe that an exemption for compelling reasons may be warranted.[25] In such cases, it is essential to identify the psychological impact these events have had on the claimant, for example, through obtaining **expert evidence**.

b. Refugees who have been exposed to severe persecution may have **on-going emotional, mental, and physical problems** resulting from those experiences. There is no standard pattern of reaction to traumatic events and some individuals have symptoms for a long period of time while others recover rather quickly. Factors that influence a person's coping capacity and ability to process events include the degree and intensity of the traumatic experiences**,** a person's general ability to cope with emotionally challenging situations as well as earlier traumatization or stressful events.[26] Other responses might be the development of a deep-seated distrust of the country itself, even if it may at times seem irrational and a disinclination to be associated with it as a national.[27] While interviewers are not expected to be experts in the symptoms of trauma[28] or

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[23] See further, American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, June 2000, available at: http://www.psych.org/MainMenu/Research/DSMIV.aspx (under revision and scheduled for publication in 2013).

[24] Individuals typically considered sufficiently close, include nuclear family members or other closely connected individuals with whom the applicant has a strong physical, emotional and economic bond or relationship. See UNHCR, *Resettlement Handbook*, July 2011, Chapter 5.1.2 and the concept of family unity, available at: http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=46f7c0ee2&query=resettlement%20handbook.

[25] See also jurisprudence of the European Court of Human Rights, which has found a violation of Article 3 of the ECHR in respect of relatives of victims of serious human rights violations, for instance, *Kurt v. Turkey*, Appl. no. 15/1997/799/1002, 25 May 1998, available at: http://www.unhcr.org/refworld/docid/49997ae512.html, paras. 130–134; *Bazorkina v. Russia*, Appl. no. 69481/01, 27 July 2006, available at: http://www.unhcr.org/refworld/docid/44cdf4ef4.html, para. 139, citing *Orhan*, para. 358, *Çakıcı*, para. 98, and *Timurtaş*, para. 95; *Akhmadova and Sadulayeva v. Russia*, Appl. no. 40464/02, 10 May 2007, available at: http://www.unhcr.org/refworld/docid/47fdfb2b0.html, para. 112. The Court has found that relevant factors in such cases are the relationship between the victim and the disappeared family member, the extent to which the victim has witnessed the events leading up to the disappearance, the involvement of the victim in the attempts to obtain information about the disappeared person and the subsequent response of the authorities.

[26] See *CARE FULL, Medico-Legal Reports and the Istanbul Protocol in Asylum Procedures*, (*CARE FULL*), edited by René Bruin, Marcelle Reneman, Evert Bloemen, Pharos/Amnesty International/Dutch Council for Refugees, Utrecht, Amsterdam, 2006, pp. 46–48.

[27] A. Grahl Madsen, *The Status of Refugees in International Law*, 1966, vol. 1, p. 410. UNHCR, *Handbook*, para. 136. This reasoning is based on the idea of a "social contract" between citizen and state which is fundamentally breached by persecution.

[28] Trauma is an emotional response to a traumatic event and is often accompanied by several physical and psychological complaints, such as loss of concentration and memory, sleeping irregularities, weight loss/gain, fatigue and depression.

post-traumatic stress disorder (PTSD),[29] they should be aware of common reactions and request medical expertise as required (see further below at 51–55).[30] Risk of re-traumatization by returning the individual to the country of origin should also be taken into account.

c. **Special consideration** should be given to children, bearing in mind that they may relate to or cope with past persecutory events in different ways to adults and they may suffer the negative effects of persecution more seriously.[31] Memories of traumatic events may linger in a child and put him or her at risk of further harm – emotional or mental – upon return. The threshold for "compelling reasons" may need to be adapted to the individual child, taking into account his or her age at the time of the events, immaturity, dependency and vulnerability.[32]

d. The **location of the persecutory act or event** causing the trauma should not be determinative as to whether exemption is applicable. For example, if a refugee was attacked in the country of asylum by agents from the country of origin, he or she may still be able to invoke compelling reasons warranting international protection.

6. PROCEDURAL ISSUES

6.1. Minimum procedural standards

29. Under a cessation declaration, it is understood that refugee status will cease for the majority so procedures can be simplified. However, the procedures need to be fair, efficient and respect minimum procedural safeguards.[33] The standards set out

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[29] PTSD is an anxiety problem that develops in some people who have been exposed to extremely traumatic events. The symptoms are often grouped into the following categories: a) re-experiencing the traumatic event, b) avoiding stimuli relating to the trauma, and c) high arousal level. See further, *CARE FULL*, pp. 50–51. See also, OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("Istanbul Protocol"), 2004, HR/P/PT/8/Rev.1, available at: http://www.unhcr.org/refworld/docid/4638aca62.html, Chapter VI, Psychological Evidence of Torture. The Istanbul Protocol is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body.

[30] UNHCR, *Handbook*, para. 208.

[31] For the purposes of these Guidelines, "children" are defined as all persons below the age of 18 years.

[32] See further, UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, available at: http://www.unhcr.org/refworld/docid/4b2f4f6d2.html, (UNHCR, *Guidelines on Child Asylum Claims*), paras. 15–16.

[33] See, for instance, UNHCR ExCom, Determination of Refugee Status, 12 October 1977, No. 8 (XXVIII) - 1977, available at: http://www.unhcr.org/refworld/docid/3ae68c6e4.html, (UNHCR ExCom, Conclusion No. 8), listing a number of procedural "basic requirements"; UNHCR ExCom, General Conclusion on International Protection, 20 October 1983, No. 29 (XXXIV) - 1983, available at: http://www.unhcr.org/refworld/docid/3ae68c6818.html, para. (h), referring to "fair and equitable decision-making"; UNHCR ExCom, General Conclusion on International Protection, 7 October 1994, No. 74 (XLV) - 1994, available at:

in this section build on general principles of administrative law, including the principles of consistency, due care,[34] equality, fairness, good faith, legality, impartiality, proportionality and rationality.[35] Refugees are *inter alia* entitled to:

- be informed, in a language they understand, with reasonable notice,[36] of
  - the cessation declaration, the process, scope and rationale of cessation, the timeframe for its entry into effect, and its consequences
  - other durable solutions available, including any other legal options to remain in the country of asylum
  - the exemption procedure to be followed as well as their rights and obligations during the procedure, including deadlines
  - the possible consequences of not complying with their obligations and/or deadlines;[37]

- the right to suspensive effect until a final decision has been taken on their application for exemption from cessation;[38]

- consult and/or have in attendance a legal adviser or representative;[39]

- a competent interpreter at registration and interview, as required;[40]

- the right to be informed of the choice to have interviewers and interpreters of the same sex as themselves;[41]

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http://www.unhcr.org/refworld/docid/3ae68c6a4.html, para. (i), noting the importance of access to "fair and efficient procedures for the determination of refugee status or other mechanisms".

34 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.

35 These principles are reflected in a range of international and regional human rights instruments, such as the 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); ECHR, Article 6 (right to a fair trial) and Article 13 (right to an effective remedy).

36 What is a reasonable time-frame will depend on the country conditions, number and complexity of applications, and available resources. A full cessation process – from initial announcement until its effect - including exemption procedures, could take between six and twelve months. However, in contexts where the number of applications is expected to be limited, a shorter period may suffice. Reasonable notice of the date of effect of cessation would ordinarily not be less than three months.

37 Information campaigns on cessation should set out clearly the purpose and scope of the exemption procedures, the deadlines for application, where and how to apply. It should also entail information about due process rights, including the right to individual interviews, appeal and suspensive effect.

38 This means that no action will be taken to withdraw their rights as refugees, including to protection from *refoulement*, until a final decision has been taken on their exemption application, including exhaustion of appeals. UNHCR, *Guidelines on Cessation*, para. 25 (vii); UNHCR ExCom, Conclusion No. 8, para. (e)(vii).

39 1951 Convention, Article 16, provides that refugees enjoy the same treatment as nationals in relation to access to legal assistance, including free legal services, if available to nationals.

40 UNHCR ExCom, Conclusion No. 8, para. (e)(iv).

41 Same sex interviewer/interpreter should be made available at all stages and is particularly important in cases of women and girls who may present experiences of sexual and gender-based violence as "compelling reasons" for exemption. Wherever possible, female interpreters should be assigned to

- the right to be heard, including an individual interview at first instance.[42] This applies to all refugees wishing to make a claim in their own right, including spouses, children and other family members;[43]

- the right to file supporting documents after registration but subject to reasonable timeframes;

- be notified of the decision in writing (see further below at 65–73 and Annex F and G);

- an effective remedy for possible erroneous decisions, including an opportunity to appeal the first instance decision (see further below at 62–64).

30. Deadlines for applications, decision-making and appeal should be fixed, taking into consideration the standards under national law in the country of asylum. Given that short time-limits may undermine the fairness of the procedures, the applicant must be given reasonable time to substantiate his/her claim with statements and documentation, including where enhanced registration (described below at 42–46) is used.

31. Procedures should be accessible and designed to enable persons with disabilities to fully and fairly represent their claims with the necessary support. Particularly for persons who cannot present their claims themselves or need special assistance to do so (e.g. unaccompanied children and persons with disabilities), representatives should be appointed.[44]

6.2. Registration

32. Registration for exemption should, subject to local factors, normally begin well in advance of the date of effect of the cessation declaration (see Annex A). In situations where a significant number of applications are expected and depending on the country conditions, registration should ideally open three to six months

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interviews with female applicants. See, UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: http://www.unhcr.org/refworld/docid/3d36f1c64.html (UNHCR, *Guidelines on Gender-Related Persecution*) para. 36 (iii); UNHCR ExCom, Refugee Women and International Protection, 5 October 1990, No. 64 (XLI) - 1990, available at: http://www.unhcr.org/refworld/docid/3ae68c441f.html, para. (a)(iii). On the sex of the interpreter, see also *Istanbul Protocol*, paras. 154–155.

42 In certain situations, interviews may be replaced by enhanced registration for pre-defined groups of refugees. See further below at 42–46.

43 See, e.g. UNHCR ExCom, Conclusion on Women and Girls at Risk, 6 October 2006, No. 105 (LVII) - 2006, available at: http://www.unhcr.org/refworld/docid/45339d922.html, para. (n)(iv); UNHCR, *Guidelines on Gender-Related Persecution*, para. 36 (i); UNHCR, *Guidelines on Child Asylum Claims*, paras. 6, 70.

44 CRC, Articles 12 and 22; 2006 Convention on the Rights of Persons with Disabilities, Article 12(3); UNHCR ExCom, Conclusion on Children at Risk, 5 October 2007, No. 107 - (LVIII), available at: http://www.unhcr.org/refworld/docid/471897232.html, para. (g)(viii); UNHCR ExCom, Conclusion No. 110, para. (j). See also, UNHCR, *Handbook*, paras. 206–211.

before the date of effect of cessation. Importantly, registration must close prior to the date as of which cessation enters into effect.

33. Prior to or in parallel with the exemption procedures, registration of those wishing to opt for any local integration possibilities or voluntary repatriation can take place. Persons opting for local integration or voluntary repatriation would normally not be registered for exemption and should be counseled accordingly.

34. Registration should be open for a minimum of two months, extendable with a reasonable period as the circumstances warrant. In some countries with logistical challenges, two months may be inadequate to reach all refugee populations concerned. It is important to note, however, that open-ended registration causes many problems, not least an inability to plan for and commence exemption procedures, but also for individuals to plan for other options. Registration should generally not be re-opened following the agreed end date.

35. On an exceptional basis, individual cases with valid reasons may be registered after the registration has closed. Registration exercises are often subject to pressures from those who miss the registration deadline or who have family members who miss the date of registration. Valid excuses for not applying for exemption within the stipulated time include reasons out of applicant's own control, for example, medical reasons. An application will normally need to be made in writing giving the justification.

36. Registration teams should be deployed in their designated areas at agreed locations throughout the registration period. Past experience suggests it may be expected that the majority of persons will be registered during the initial period e.g. the first month. The size of the registration teams can then be reduced to a minimum and the emphasis put on conducting the exemption interviews.

37. Registration forms can be completed by a principal applicant or each individual applicant, including spouses, children and other family members who wish to apply for exemption in their own right. A sample registration form is available in Annex B of these Guidelines and can be modified as necessary to meet the needs of the specific setting.

38. The registration interviews are used to check or update status, family members, other basic biodata, information on the date of flight from country of origin, date of and entry point into country of asylum, place of origin, and reasons for seeking exemption. Other specific information that will help determine whether an individual falls within the scope of the cessation declaration should also be recorded.

39. ProGres or other databases should be made available at registration points wherever possible to allow for verification and data entry. The registration process should abide by the fundamental principles governing the protection of personal data, including respect for confidentiality.[45]

[45] UNHCR ExCom, Conclusion on Registration of Refugees and Asylum-seekers, 5 October 2001, No. 91 (LII) - 2001, available at: http://www.unhcr.org/refworld/docid/3bd3e1d44.html, para.

40. Access for vulnerable persons to be able to register should be ensured in line with procedural standards outlined above at 31.

41. Registered applicants are to be given an appointment slip for an exemption interview. Such applicants remain refugees until a final decision is taken on their case or the date of effect of the cessation declaration, whichever is the later date.

6.3. Enhanced registration / Simplified exemption procedures

42. As the purpose of the exemption procedures is to determine whether the specific situation of an individual merits an exception to the general rule (i.e. that status be ceased), normally both registration and an interview would need to be carried out. Enhanced registration (or simplified procedures) may, however, be used in certain situations instead of conducting interviews. This approach should only be deployed where there is a high likelihood that a sub-group of the general population will qualify for continued refugee status. In other words, enhanced registration is suitable only for cases which are likely to have a continued well-founded fear of persecution and would clearly merit an exemption based on objectively verifiable factors.

43. Whether enhanced registration is appropriate should be assessed on a situation basis, according to the specific circumstances of the refugee population concerned. A decision on the use of enhanced registration would normally be taken in conjunction with the declaration of cessation and, in any case, well in advance of the commencement of registration.

44. Enhanced registration consists of 1) all the elements of regular registration, including the collection of biodata of the applicant, and 2) a checklist of additional elements that need to be verified. The check-list needs to be developed for each caseload concerned and may include information such as nationality, ethnicity, place of origin and/or exclusion triggers. The focus should be on verifying specific facts relevant to the determination of whether the person belongs to the group that is presumed to qualify for continued international protection.

45. Enhanced registration is carried out by registration staff. Upon completion of the registration form and checklist, the assessment form (see Annex C) is given to the supervising eligibility officer for review and signature. Where the number of cases is high, it should be considered to designate specific eligibility officer(s) for this purpose.

46. This type of enhanced registration (or simplified procedures) can only result in a positive decision.[46] If there are doubts about the credibility or other information comes to light suggesting that the individual is not eligible for an exemption or the case is too complex to be determined in this procedure, a regular interview should

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(f); UNHCR ExCom, General Conclusion on International Protection, 7 October 2005, No. 102 (LVI) - 2005, available at: http://www.unhcr.org/refworld/docid/43575ce3e.html, para. (v).

[46] See further, UNHCR, *Statement on the Right to an Effective Remedy in relation to Accelerated Asylum Procedures*, 21 May 2010, available at: http://www.unhcr.org/refworld/docid/4bf67fa12.html.

be scheduled with the possibility of appeal in case of a negative first instance decision and the file transferred.

6.4. First instance interviews

47. Investing in a solid first instance exemption determination can help to ensure the integrity of the process, improve quality of decisions, reduce the need for appeals, minimize the number of decisions overturned on appeal, and avoid delays.

48. Depending on the national system, first instance interviews and decisions may be carried out either by a single eligibility officer or an eligibility committee of two or more members.

49. The interview should be documented in the Interview transcript and in the Exemption Assessment Form (see Annex D).

50. The focus of the interview will depend on the registration information and the basis for the applicant's application i.e. whether it is based on a continued well-founded fear of persecution or compelling reasons arising out of past persecution (see above Part 5). The nature and extent of the applicant's reasons may not become clear until during the interview and applicants should be given every opportunity to be heard. The assessment should be rigorous and comprehensive, in particular for refugees granted status on a *prima facie* basis and who have not previously been individually interviewed. For such refugees, the exemption interview may well be the first articulation of the reasons for their refugee status.

51. To reduce the stress of the interview, especially around past persecution, it is recommended to invest in a suitable environment. An empathetic attitude is also needed. Sufficient time should be allotted for the interview. If the stress becomes intolerable for the applicant, it may be necessary to schedule a later appointment to resume the interview, in particular if trauma symptoms present and/or the person alleges torture or other forms of atrocious persecution.[47]

52. It is important to bear in mind that reviving traumatic memories after many years can result in worsening of or reigniting symptoms of trauma.[48] Even processed events can surface indiscriminately after many years and cause problems. It is important that interviewers are sensitized and trained on how to manage such interviews to minimize the risk of causing any further harm to the applicant during the interview.[49]

53. Questions about psychological problems and sexual matters are considered a taboo in many societies and the interviewer should express respectful awareness of these conditions.[50] Where rape and other forms of sexual assault are part of the applicant's experience, it is unnecessary to establish the precise details of the act itself. However, information about events leading up to, and after the act, the

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47 *Istanbul Protocol*, paras. 93, 263. In some cases e.g. of torture victims, interviewers should not expect to get the full story during the first interview.

48 *CARE FULL*, see pp. 130–131.

49 On risk of re-traumatization of interviewee, see e.g. *Istanbul Protocol*, paras. 147–149.

50 *Istanbul Protocol*, paras. 154–155.

surrounding circumstances and details as well as the motivation of the perpetrator may be required.[51] According to the Istanbul Protocol, torture victims should not be forced to talk about any form of torture if they feel uncomfortable about it and an assessment needs to be made by the interviewer about the extent to which pressing for details is necessary for the assessment of the claim.[52]

54. Trauma specialists should be on hand for assessments in situations where it may be expected that there will be persons who have suffered atrocious forms of past persecution. In general, medico-legal reports can be of great value for the assessment of claims raising "compelling reasons".[53]

55. Mental illness is often found in persons who have been exposed to severe persecution. In such cases, the interviewer should, whenever possible, obtain expert medical advice, subject to the applicant's consent. Where applicants refuse to provide their consent, every effort must be made to explain to them the reasons for the medical assessment and the impact that the lack of such documentation may present for their case. As noted above at 31, persons with disabilities, including mental disabilities, are entitled to the necessary support in order to present their claims fully.

6.5. Credibility

56. Relevant RSD guidelines should be followed for assessing the credibility of applicants.[54] Previous documentation should be used as additional sources of information where available and appropriate.

57. Traumatization resulting from sexual assault, torture and other similar events can obstruct the normal memory and storing of events in the brain and impact on the way the applicant presents his/her claim. Research has also shown that traumatic experiences are often stored in the memory as sensations or emotions and are not immediately transcribed into personal narratives.[55] Inconsistencies and vagueness do therefore not necessarily mean that the applicant is not credible.[56] If the applicant has difficulties remembering certain events, it is recommended to come back to those issues later in the interview and ask for clarification.[57] The fact that an applicant still cannot or will not remember certain parts of his or her story may be due to a number of factors, including trauma, shame, fear of authorities or that the claimed events in fact did not occur. In such cases, the adjudicator needs to consider why the applicant is not forthcoming with the information as well as whether the missing element is material to the claim. Where trauma is a suspected reason, it is appropriate to seek expert medical advice.

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51 UNHCR, *Guidelines on Gender-Related Persecution*, para. 36 (xi).
52 *Istanbul Protocol*, paras. 135–149.
53 UNHCR, *Handbook*, paras. 208, 210.
54 *Ibid*., paras. 203–204. See also, UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, available at: http://www.unhcr.org/refworld/docid/3ae6b3338.html (UNHCR, *Note on Burden and Standard of Proof*), paras. 11–12.
55 *CARE FULL*, pp. 58–62, 74.
56 UNHCR, *Note on Burden and Standard of Proof*, para. 9; *Istanbul Protocol*, paras. 142–143. See also, *CARE FULL*, pp. 87–92.
57 UNHCR, *Handbook*, para. 199.

6.6. Burden of proof

58. The burden of proof in exemption procedures lies primarily with the applicant to show why they are still in need of international protection or have compelling reasons to be exempt. Nonetheless, the duty to ascertain and evaluate all the facts is shared between the examiner and the applicant.[58]

59. In cases of applicants presenting trauma and/or mental disability, it may be necessary to lighten the burden of proof and the adjudicator may have to seek information elsewhere, using whatever external sources of information available, including country of origin information, medico-legal reports or interviews with family members. As a rule, the examination has to be more "searching" than in other cases, involving a close examination of the applicant's past history and background.[59]

6.7. Standard of proof

60. Individuals applying for exemption based on a continued well-founded fear of persecution will need to satisfy a standard of proof similar to applicants in regular RSD procedures, i.e. they will need to prove that it is reasonably possible that he or she will be persecuted upon return.[60] The adjudicator needs to decide if, based on the evidence available, including those statements of the applicant that are accepted as credible, it is reasonably possible that the applicant continues to have a well-founded fear of persecution.[61]

61. Applicants invoking compelling reasons arising out of previous persecution have to show in a compelling manner that they suffer from atrocious past persecution. The applicant needs to make credible 1) the exposure to the event itself and/or that 2) he or she suffers from ongoing trauma as a result of the event.

6.8. Appeals

62. The exemption procedures should include at least one instance of appeal, which offers a review of all aspects of the decisions, including questions of law and fact.[62] The appeal may be based on a file review, unless the individual circumstances of the particular case call for an interview.

63. Appeal requests (see Annex E), should be submitted within a reasonable time, not usually less than one month, after the date of notification of the first instance decision.[63] Appellants should present their appeals in writing. Appellants who require special assistance to complete the appeal form may receive counseling at government offices or UNHCR. Out of time appeal requests, which are complete

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58 *Ibid*, paras. 195–196.
59 *Ibid*, paras. 210, 212.
60 UNHCR, *Note on Burden and Standard of Proof*, paras. 16–17.
61 UNHCR, *Handbook*, para. 204; UNHCR, *Note on Burden and Standard of Proof*, para. 8.
62 UNHCR ExCom, Conclusion No. 8, para. (e)(vi).
63 *Ibid*.

and in writing and present good reasons for the delay, should be treated sympathetically.

64. Appeals should be determined by a different and independent appeal body. Appeal adjudicators should not have been previously involved in decisions concerning the initial rejection for exemption of the individual in question.[64] Other further avenues of appeal from the appeal body would depend on the system in place in any given country. Preferably, UNHCR should participate as an observer and/or advisor and/or be given the opportunity to review the proposed decision before it is issued (see also above at 10).

6.9. Decisions, legal status and documentation

65. Both positive and negative decisions need to be individualized and in writing. Negative decisions must also set out the individualized basis for the decision. Applicants should be notified as early as possible, in order to better manage expectations.

Negative decisions

66. Notification of a negative decision leading to cessation of refugee status should inform the individual of the consequences of cessation, including

    - That refugee status has been ceased;
    - The implications of cessation of refugee status for the individual's legal status in the host country;
    - The effect of cessation on assistance received from the government or UNHCR;
    - That the status of individuals who received derivative status based on the ceased refugee status will also cease;
    - The right to appeal the cessation decision and the relevant procedures;
    - Procedures regarding the return of documents issued by the government or UNHCR.[65]

67. Persons whose applications for exemption from cessation are unsuccessful will cease to be refugees on the date as of which the declaration of cessation enters into effect. In cases where the cessation declaration has entered into effect before a final decision is taken, the refugee status will cease on the date when the rejection of the exemption application becomes final.

68. In cases where family members or other dependants of an individual have been granted refugee status on a derivative basis, cessation of the refugee status of the principal applicant extends to those holding derivative status. Cessation in such circumstances does not, however, affect the right of persons whose derivative status would also cease to lodge independent claims for recognition as refugees in line with these Guidelines.

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[64] UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, Units 7.1.1. and 7.3.

[65] *Ibid*, Unit 11.2.5.

69. In the interest of maintaining the integrity of documentation issued by governments and/or UNHCR, documentation on refugee status should normally be withdrawn at the time of notification of a final negative exemption decision, however not normally before the cessation declaration enters into effect. The termination of derivative status should be noted on the appropriate individual file and on any central database used to record information regarding the family member/dependent.

Positive decisions

70. Refugees who are found to continue to have a well-founded fear of persecution or compelling reasons from past persecution through an exemption procedure retain their refugee status. They may need to be provided with new documentation re-affirming their status, as necessary.

71. Positive decisions should re-affirm the refugee status of the person concerned and state that he/she is not subject to general cessation. This will ensure that the person's legal status is clear and is also important to avoid confusion with other individuals whose status has ceased with the invocation of cessation.[66]

72. The decision should also contain information about the rights associated with exemption, including, for example, that the refugee continues to be protected against *refoulement*, as well as relevant family unity rights and the range of longer-term options available to him/her.

73. Ideally, they should benefit from a more secure or longer-term status, such as permanent residency, with a view to local integration and/or naturalization.[67] Exemption indicates that the person involved is virtually non-returnable and hence long-term solutions must be sought. Nonetheless, even if they move into other stay categories, protection against *refoulement* must be assured.

7. EXCLUSION, FRAUD OR MISREPRESENTATION

74. In the context of an exemption procedure, information may come to light which suggests that the person concerned may not have been entitled to refugee status, either because they come within the scope of an exclusion clause contained in Article 1F of the 1951 Convention,[68] or because they obtained refugee status by

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66 UNHCR ExCom, Conclusion No. 8, (e)(v).

67 UNHCR ExCom, Conclusion No. 69, para. (e) recommends: "so as to avoid hardship cases, that States 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…".

68 Under Article F, persons who would otherwise meet the inclusion criteria of the refugee definition are nevertheless denied refugee status if there are serious reasons for considering that they have committed certain serious crimes or heinous acts. Detailed guidance on substantive and procedural aspects related to the application of the exclusion clauses can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003 and the accompanying Background Note.

fraud or misrepresentation material to meeting the eligibility criteria for refugee status. In connection with exemption procedures, this may result in a situation which would warrant the cancellation or revocation of the person's refugee status.

75. Cancellation has the effect of rendering refugee status null and void from the date of the initial determination (*ab initio* or *ex tunc* – from the start or from then). Cancellation would be justified if it is determined that the person concerned did not meet the inclusion criteria, or that he or she would have come within the scope of an exclusion clause at the time of recognition.[69]

76. Revocation has the effect of ending refugee status for the future (*ex nunc* – from now) and would apply, for example, to a person who has engaged in conduct since being recognized as a refugee which comes within the scope of Article 1F(a) or 1F(c) of the 1951 Convention.

77. In cases in which the reasons why the applicant does not want to return may be linked to acts which may bring him or her within the scope of Article 1F of the 1951 Convention, it will generally be necessary to assess both inclusion and exclusion criteria. Such cases should, ideally, be handled by staff with experience regarding exclusion.

[69] A fuller discussion of the standards and criteria for the cancellation of refugee status can be found in UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, available at: http://www.unhcr.org/refworld/docid/41a5dfd94.html.