

UNHCR observations with regard to the Cessation of Refugee Status

Introduction

1. According to the information provided to the Office of the United Nations High Commissioner for Refugees (UNHCR), the following refugees from Cote d'Ivoire were recognized as refugees and granted asylum in the Republic of Armenia by a decision of the State Migration Service (SMS) Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED]. These decisions were taken in accordance with the responsibilities assigned to the State Migration Service as the designated body on migration issues under Article 34 of the *Law on Refugees and Asylum* ('LRA') of the Republic of Armenia and in accordance with Article 6(2) of the LRA.¹

2. On 09 April 2015, the above-named individuals were invited to the SMS for individual interviews.² UNHCR Armenia was invited to observe the meeting with the refugees. During the meeting with the three individuals (which lasted about 40 minutes), they were presented with information about the initiation of the cessation procedure. It appears that the refugees were not in a position to consult a lawyer or prepare prior to the meeting.

3. On 14 April 2015 the State Migration Service decided to cease the refugee status and asylum in the Republic of Armenia of the above named individuals.

UNHCR's mandate and role

4. UNHCR has been entrusted by the United Nations General Assembly with a mandate to provide international protection to refugees and, together with Governments, seek solutions to the problems of refugees.³

5. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention and 1967 Protocol. Such guidelines are included in the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status ('UNHCR

¹ Article 6(2) of the RA *Law on Refugees and Asylum* provides that "[a refugee is....] a foreign national who is compelled to leave the country of his/her nationality, or, in case of a stateless person, the country of his/her former habitual residence due to generalised violence, foreign aggression, internal conflicts, massive violations of human rights, or other serious events disrupting public order".

² Two other Ivorian refugees were also invited to the interview but they did not attend as it is believed that they have left the country.

³ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950 A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (hereafter "UNHCR Statute").

Handbook'). UNHCR also provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of provisions of the 1951 Convention. These responses are provided without prejudice to UNHCR's position under the Convention on the Privileges and Immunities of the United Nations.

Legal background and context

6. As stated above, on 14 April 2015, the State Migration Service, decided to apply the cessation clause in accordance with Article 10, Para 1(5) of the *Law on Refugees and Asylum* which provides that:

1. *A person ceases to be recognised as a refugee, if he/she:
(5) can no longer refuse the protection of the country of which he/she is a national because the circumstances owing to which he/she has been recognized as a refugee have ceased to exist.*

7. This provision reflects the wording of and must be interpreted in line with Article 1C(5) of the 1951 Refugee Convention, also sometimes referred to as the 'ceased circumstances' or 'general cessation' clause, which states that:

This Convention shall cease to apply to any person falling under the terms of section A if:

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

General and procedural considerations in applying the cessation clause

8. UNHCR has developed guidance to assist in the assessment of how and to what extent conditions in the country of origin must have changed before the 'ceased circumstances' clauses can be invoked. UNHCR's Executive Committee Conclusion No. 69 (XLIII), states:

[I]n taking any decision on application of the cessation clauses based on "ceased circumstances", States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist.

... [A]n essential element in such assessment by States is the **fundamental, stable and durable character of the changes**, making use of appropriate information available in this respect, inter alia, from relevant specialized bodies, including particularly UNHCR.⁴

⁴ 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), para. 8. See also: UNHCR Handbook, Chapter III – Cessation Clauses; UNHCR Note on Cessation Clauses (30 May 1997) ('Note on Cessation'); and ExCom Conclusion No. 69 (XLIII), Cessation of Status (1992).

9. Since an unjustified or premature application of the cessation clauses results in a formal loss of refugee status, with the potential for *refoulement* or forced return of any refugee, the consequences could be extremely serious, leading to further displacement within the country of origin or renewed displacement outside, as well as risks to life and personal security.⁵ Thus, a restrictive approach⁶ in the interpretation of the cessation clauses should be taken and procedures for determining general cessation should be fair, clear and transparent.⁷

10. Furthermore, to assess that such changes are durable, a period of time will need to have elapsed to ensure that the change is well-established. UNHCR generally recommends that all developments which would appear to evidence significant and profound changes be given time to consolidate before any decision on cessation is made.⁸ All relevant factors must therefore be taken into consideration. An end to hostilities, a complete political change and return to a situation of peace and stability remain the most typical circumstances in which Article 1C(5) or (6) applies.⁹

11. Yet Article 1C(5) and (6) have rarely been invoked in individual cases, recognizing the ‘need to respect a basic degree of stability for individual refugees’. Moreover, States have not generally undertaken periodic reviews of individual cases on the basis of fundamental changes in the country of origin. These practices acknowledge that a refugee’s sense of stability should be preserved as much as possible, and are consistent with Article 34 of the 1951 Convention, which urges States ‘as far as possible [to] facilitate the assimilation and naturalization of refugees’.¹⁰

12. A declaration of cessation requires an assessment of the specific reasons which led to the granting of refugee status and should take into account the individual's continued need for international protection. The procedure should therefore allow the individual to seek continued recognition of their refugee status based on his or her individual circumstances. The procedures should ensure that a fair hearing is to be given to the refugee concerned, and, **in the event that there is any doubt as to the application of the clause in the particular case, refugee status should be maintained.** [emphasis added]¹¹

13. Procedures for the application of the cessation clauses should include safeguards based on ordinary rules of fairness and natural justice which would enable the refugee to contest the evidence supporting cessation. The deciding authority should weigh the evidence as a whole and, based on clearly established facts, determine whether all the elements of the relevant cessation clause have been fulfilled. Cessation of refugee status should only be applied when all the elements of the relevant cessation clause are clearly satisfied.¹² Furthermore, disregarding procedural safeguards in the application of the cessation clauses may result in a decision by a State contravening the 1951 Refugee Convention.

⁵ Note on Cessation 1997, paras 8 and 40.

⁶ UNHCR, Note on Cessation, para. 8.

⁷ UNHCR, Guidelines No. 3, para. 7.

⁸ UNHCR, Note on Cessation, para. 21.

⁹ UNHCR, Guidelines No. 3, para. 11.

¹⁰ *Ibid.*, para. 18.

¹¹ Note on Cessation, para. 37.

¹² *Ibid.*, para. 38.

Recent country of origin information

14. The following information available to UNHCR regarding recent developments and the present situation in Cote d'Ivoire supports this position.

15. Instability persists in the south-west of Cote d'Ivoire. In January and February 2015 attacks in the villages of Dahioké, Iratoké and Grabo caused the displacement, at its peak, of 4000 individuals and resulted in significant material losses. The affected populations can no longer go about their daily working lives, leading to food insecurity and economic dependency.

16. Political dialogue, stalled since January 2014, resumed in May, with the Government committing to a series of confidence-building and reconciliation measures. However, the transitional justice approach is seen to be one-sided, with high-profile members of the previous Government, suspected of organizing armed attacks to destabilize the country, being arrested and put on trial, including the former first Lady, who was sentenced to 20 years in prison¹³. As such, UNHCR is of the view that such a politically unstable environment does not set the stage for return or cessation of the status of refugees from Cote d'Ivoire.

17. Divisions persist within the principal political parties while prospective candidates for the 2015 presidential elections continued to consolidate support. The President of the Ivorian Popular Front (FPI) continued to clash with party hardliners over the candidacy of former President Gbagbo. The creation of the Independent Electoral Commission (IEC) was controversial. Several opposition parties criticized its composition as unfair and not transparent, announced that they would not be a part of the restructured Commission, and boycotted the re-election of the Commission's President. Ultimately, the Government took steps to amend the law on the IEC and accommodate the opposition by expanding the Bureau to nine members.

18. Deep-seated discontentment over land conflicts remains a problem, and is compounded by political, ethnic and regional tensions. Without a Government cadastral survey of the entire country, a functioning land titles office, and clarity on a number of legal points in the land law of 1998, the fundamental problems remain and could flare up anytime. The obstacles affecting some 700,000 people estimated to be stateless or at risk of statelessness are tied to the land management issue, which effectively bars non-nationals from owning land. Despite the strong political will to address statelessness in Cote d'Ivoire, there is significant ignorance on the part of the Ivorian population, especially in rural areas, of the existence of this problem and how it can be prevented.

19. Security sector reform remains problematic, despite the target date of June 2015 for the disarmament, demobilization and reintegration of former combatants, there is likely to be a surplus of about 14,000 ex-combatants to be rehabilitated and reintegrated into society.¹⁴

¹³ Human Rights Watch, Making Justice Count: Lessons from the ICC's work in Côte d'Ivoire, August 4 2015, available at: <https://www.hrw.org/report/2015/08/04/making-justice-count/lessons-iccs-work-cote-divoire>

¹⁴ UN Daily News, 13 January 2015, available at <http://www.un.org/News/dh/pdf/english/2015/13012015.pdf>.

Conclusions

20. UNHCR would like to emphasize that in view of recent developments and prevalent human rights violations in Cote d'Ivoire, it cannot be said that 'fundamental, stable and durable' changes have taken place. Thus, UNHCR notes that the prerequisites for applying the cessation clause have not been met.

21. Moreover, UNHCR understands that no European states hosting Ivorian refugees nor African states have applied the ceased circumstances clause.

22. Since potentially very serious consequences flow from the declaration of cessation for recognised refugees, including loss of rights that accompany refugee status, the burden rests on the country of asylum to demonstrate that there has been 'a fundamental, stable and durable change' in the country of origin and that the application of Article 1C(5) of the Refugee Convention is appropriate.

23. In conclusion, UNHCR considers it premature to justify the application of the cessation clauses in these cases.

UNHCR
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