



Applicability of Ceased Circumstances Cessation Clauses to Refugees from Sierra Leone

A. Introduction

1. The civil war in Sierra Leone which started in 1991 resulted in the deaths of tens of thousands of persons, the horrific maiming of many more and the displacement of as many as two million of the country's six million citizens.¹ After a succession of failed peace agreements, the peace process finally gained decisive momentum in 2001. In January 2002, the President of the country declared that the war was officially over.² The country's first democratic elections following the end of the conflict were held in May 2002 and a process of peace consolidation ensued.³ The United Nations Mission in Sierra Leone (UNAMSIL),⁴ first deployed in 1999 and at the height of its strength numbering nearly 17,500 personnel⁵, began a process of gradual reduction, with all troops having departed by 1 January 2006.⁶ UNAMSIL gave way to the United Nations Integrated Office in Sierra Leone (UNIOSIL),⁷ which is tasked with helping Sierra Leone continue consolidating peace, enhancing development and ensuring respect for human rights.

2. Since the end of the conflict, there has been significant progress in respect for fundamental rights and freedoms, in particular the rights to life, non-discrimination and fair trial.⁸ It is also acknowledged that there has been substantial progress in legal

¹ Internal Displacement Monitoring Centre, *Profile of Internal Displacement: Sierra Leone*, 15 October 2003, [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/0372C6E093AFEFEB802570C00056B6D0?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/0372C6E093AFEFEB802570C00056B6D0?OpenDocument&count=10000).

² See, for example, United States Department of State, *Background Note: Sierra Leone*, April 2008, <http://www.state.gov/r/pa/ei/bgn/5475.htm>.

³ See, for example, International Crisis Group, *Sierra Leone After Elections: Politics as Usual*, Africa Report No. 49, 15 July 2002, <http://www.crisisgroup.org/home/index.cfm?l=1&id=1489>.

⁴ Established by: *Security Council resolution 1270 (1999) [on establishment of the UN Mission in Sierra Leone (UNAMSIL)]*, S/RES/1270 (1999), 22 October 1999, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b00f22814>.

⁵ This concerns UNAMSIL's authorized maximum strength, including 260 military observers and 170 police. See: United Nations Department of Peacekeeping Operations, *Sierra Leone – UNAMSIL – Facts and Figures*, <http://www.un.org/Depts/dpko/missions/unamsil/facts.html>.

⁶ The mandate of UNAMSIL was extended for a final period of six months until 31 December 2005; see: *Security Council resolution 1610 (2005) [on extension of the mandate of the UN Mission in Sierra Leone (UNAMSIL)]*, S/RES/1610 (2005), 30 June 2005, para. 1, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=43f308d514>.

⁷ Established by: *Security Council resolution 1620 (2005) [on establishment of the UN Integrated Office in Sierra Leone (UNIOSIL)]*, S/RES/1620 (2005), 31 August 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=43f308db0>. See also the Office's website at <http://www.uniosil.org/>.

⁸ UN Security Council, *Sixth report of the Secretary-General on the United Nations Integrated Office in Sierra Leone*, S/2008/281, 29 April 2008, para. 40, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=482018e72>.

and social reforms, which have focused on recovery and peace building at both the national and district levels. The Special Court for Sierra Leone, established⁹ to try those with the greatest responsibility for the atrocities committed during the conflict, has to date indicted and put on trial thirteen persons.¹⁰ Among these was the former Revolutionary United Front (RUF) leader Foday Sankoh who, however, died before judgment could be rendered in his case. Also indicted is former President of Liberia, Charles Taylor, whose trial was moved to The Hague in June 2006 and is ongoing. In 2007, the Special Court handed down convictions in the trials involving the Armed Forces Revolutionary Council (AFRC) and Civil Defence Forces (CDF).¹¹ The Appeals Chamber of the Special Court recently doubled the sentences imposed in the CDF trial, overturning the convictions for collective punishment and recruitment of child soldiers and entering new ones for murder and inhumane acts.¹²

3. Sierra Leone's second elections since the end of conflict took place in August and September 2007.¹³ They were deemed free and fair by international observers,¹⁴ with the Presidential candidate of the governing Sierra Leone People's Party, Solomon Berewa, conceding defeat to the opposition All Peoples Congress's Ernest Bai Koroma.¹⁵ The vast majority of Sierra Leoneans displaced by the conflict have returned home. Working closely with the Government, UNHCR has assisted some 179,000 Sierra Leonean refugees in these return movements, while another 90,000 repatriated spontaneously (i.e. without organized assistance). Presently, the total number of Sierra Leonean refugees worldwide is estimated at 43,000 and there are no more internally displaced persons in the country.

⁹ The Special Court for Sierra Leone was set up jointly by the Government of Sierra Leone and the United Nations. It is mandated to "try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996". See: *Statute of the Special Court for Sierra Leone*, 16 January 2002, negotiated by the UN Secretary-General pursuant to UN Security Council resolution 1315 (2000) [on establishment of a Special Court for Sierra Leone] dated 14 August 2000, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=3b00f27814>. See also: *Letter dated 2002/03/06 from the Secretary-General addressed to the President of the Security Council*, S/2002/246, 8 March 2002, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=479de8043>, which contains the "Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone".

¹⁰ See the overview of cases on the Court's website at <http://www.sc-sl.org/cases-other.html>.

¹¹ See: *The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused)*, SCSL-04-16-T, 20 June 2007, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=467fba742>, and *The Prosecutor v. Moinina Fofana, Allieu Kondewa (the CDF Accused)*, SCSL-04-14-T, 2 August 2007, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=46e123dc2>.

¹² See: Special Court for Sierra Leone, Outreach and Public Affairs Office, *Appeals Chamber Overturns Convictions, Enters New Ones, and Increases Sentences for Former Civil Defence Forces Leaders*, Press Release, 28 May 2008, <http://www.sc-sl.org/Press/pressrelease-052808.pdf>. The full appeal judgment in *The Prosecutor v. Moinina Fofana, Allieu Kondewa (the CDF Accused)* is available at <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=484417252>.

¹³ UN Security Council, *Fifth report of the Secretary-General on the United Nations Integrated Office in Sierra Leone*, S/2007/704, 4 December 2007, paras. 2-12, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=475e43b22>.

¹⁴ *Ibidem*, para. 5.

¹⁵ Koroma won the presidential runoff election on 8 September and was sworn in as president on 19 September 2007; see: Securitycouncil.org, *November 2007 Forecast – Sierra Leone*, 30 October 2007, p. 20, http://www.securitycouncilreport.org/atf/cf/{65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/Nov_07_Forecast.pdf.

B. Application of the Ceased Circumstances Clauses of the UNHCR Statute, the 1951 Refugee Convention and the 1969 OAU Refugee Convention

4. It is UNHCR's judgement that there have been fundamental and durable changes in Sierra Leone, including those summarized above. Sierra Leoneans who were obliged to seek safety as refugees elsewhere as a result of the civil war are considered as now able to avail themselves of the protection of their country of origin. Accordingly, and following consultations with the Governments of the main countries of asylum in West Africa as well as the Government of Sierra Leone itself, UNHCR is of the opinion that the "ceased circumstances" cessation clauses contained in paragraphs 6(A)(e) and (f) of the UNHCR Statute,¹⁶ Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees,¹⁷ and Article I(4)(e) of the 1969 OAU Convention¹⁸ are applicable to refugees who fled Sierra Leone as a result of the civil war in that country. The consequences of this determination and its implementation are elaborated in the following parts of this document.

C. Legal and Practical Consequences

(i) Coming into force of cessation of refugee status

5. Sierra Leonean refugees who fled their country as a result of the civil war are deemed to no longer have a well-founded fear of persecution or other reasons to continue to be regarded as refugees. Pursuant to the determination contained in this document, their refugee status will formally cease to exist as of **31 December 2008**. Thus, subject to what is set out in Part C(iv) of this document below, they will no longer be entitled, if they remain outside Sierra Leone after that date, to claim international protection as refugees or the mandated functions of UNHCR.

(ii) Voluntary repatriation

6. The objective of the invocation of the cessation clauses is not to cause hardship or leave persons who have so far enjoyed status and protection as refugees stranded. Rather, the fundamental changes that have taken root in Sierra Leone make it no longer necessary for its citizens outside the country to be considered or treated as refugees and provide the opportunity for closure to be brought at last to their predicament of exile. This is what UNHCR and its partners shall work actively and decisively in promoting. In particular, UNHCR, the Governments concerned and other players shall take all necessary steps to promote and facilitate the return to their country of origin of Sierra Leonean refugees whose status is set to cease as of 31 December 2008.

¹⁶ *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628>.

¹⁷ *Convention relating to the Status of Refugees* ("Refugee Convention"), 28 July 1951, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3be01b964>.

¹⁸ *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Refugee Convention"), 10 September 1969, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b36018>.

7. Sierra Leonean refugees in sub-Saharan African countries wishing to repatriate voluntarily with UNHCR assistance should be encouraged to do so prior to the coming into force of the cessation of refugee status. They shall be provided assistance for transportation and a cash grant. Sierra Leonean refugees in other countries who, being in need, are unable to benefit from national or other programmes of assistance for voluntary repatriation, may seek such assistance from UNHCR, which shall strive to provide the same subject to the availability of funding.

(iii) Remainder/residence in the countries of asylum under other arrangements

8. Some Sierra Leonean refugees may have acquired the right to remain, reside or integrate in the countries in which they have thus far enjoyed asylum. Others may not be able to leave those countries for compelling personal or humanitarian reasons not necessarily connected to the grounds for refugee status, such as long stay in the country concerned or strong family, social or economic ties. In these and other appropriate cases, UNHCR shall apprise the individuals concerned of legal entitlements or options that may exist, such as under the 1979 ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment,¹⁹ to seek a right to remain accordingly. UNHCR will otherwise seek to confirm or secure with the country or countries concerned arrangements which will enable refugees seeking, or otherwise entitled, to remain in the countries of asylum under appropriate arrangements to do so. All the relevant countries should be encouraged, consistent with Executive Committee Conclusion No. 69 (XLIII) (1992)²⁰ on “Cessation of Status,” to be favourably and generously disposed to facilitating such arrangements.

(iv) Continuing need for international protection

9. In keeping with established principles of refugee law, affirmed by ExCom Conclusion No. 69 mentioned above and elaborated in UNHCR’s Guidelines on Cessation of Refugee Status of February 2003,²¹ individual Sierra Leonean 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 their country of origin, can seek exemption

¹⁹ The ECOWAS Protocol (A/P.1/5/79) is available at <http://www.sec.ecowas.int/sitecedea0/english/protocoles.htm>, together with its four related Supplementary Protocols:

- 1985 *Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*
- 1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*
- 1989 *Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment*
- 1990 *Supplementary Protocol A/SP.2/5/90 on the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment*

²⁰ UNHCR Executive Committee of the High Commissioner’s Programme, *Cessation of Status*, Conclusion No. 69 (XLIII) – 1992, 9 October 1992, <http://www.unhcr.org/excom/EXCOM/3ae68c431c.html>.

²¹ 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, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3e50de6b4>.

from the application of the cessation clauses. Their cases should be managed in accordance with Part D of this document.

(v) Right to claim refugee status by other Sierra Leoneans

10. The entry into force of the “ceased circumstances” clauses as set out in this document will not impair the right of Sierra Leoneans who subsequently leave their country of origin from applying for refugee status. They should be provided the opportunity to present and substantiate their claims for the need of international protection according to the appropriate and available national procedures.

D. Implementation of the Cessation Clauses

11. UNHCR Offices in the principal asylum countries for Sierra Leonean refugees in the West Africa sub-region (The Gambia, Guinea, Liberia and Nigeria) should undertake appropriate preparatory activities for the implementation of the cessation of refugee status as set out in this document. These should include sensitization campaigns among the Sierra Leonean refugees and communities on the upcoming cessation of their status and its implications. Their voluntary repatriation, bearing in mind the timelines also explained earlier, should be promoted. The opportunities for regularized residence and/or integration in the countries of asylum which can realistically be claimed should also be explored and, to the extent possible, facilitated. Refugees claiming to be exempted from the cessation clauses should be dealt with according to the guidelines below.

12. In countries of asylum that are party to the 1951 Refugee Convention and/or the 1969 OAU Refugee Convention, it is ultimately the responsibility of the national authorities to establish the modalities for the application of the “ceased circumstances” clauses. Relevant domestic legislation would also be applicable accordingly. Bearing in mind the supervisory role of UNHCR as per paragraph 8 of its Statute, Article 35 of the 1951 Refugee Convention and Article VIII of the 1969 OAU Refugee Convention, the Office will provide advice, technical and other appropriate support, as may be required by States, on the establishment of these modalities and implementation of the cessation clauses and managing their respective consequences in an appropriate manner.

13. It is reiterated that these modalities should be elaborated and implemented with the objective of realizing durable solutions for all Sierra Leonean refugees with priority attention to, first, voluntary repatriation and, next, regularized presence in the country of asylum under non-refugee arrangements as already explained.

14. As these efforts are taken, arrangements should be made to cater for those individuals who may seek exemption from the cessation clauses by asserting a continuing fear of persecution or compelling reasons arising out of previous persecution to refuse to re-avail themselves of the protection of Sierra Leone. They should be afforded the opportunity to present the specific grounds on which they base their claim, which should be adjudicated in a fair and proper manner.

15. Claims for the non-application of the cessation clauses based on either continuing fear of persecution or compelling reasons arising out of previous persecution have a suspensive effect on the cessation clauses themselves. Accordingly, individuals who will have lodged such claims prior to the date of coming into force of cessation, but whose claims will not have been decided upon by that date, will remain refugees pending the determination of those claims.

16. Obviously, it is important that the entitlement to seek exemption from the application of the cessation clauses should not be abused, nor managed in a manner which would ultimately defeat the purposes of their invocation. Therefore the procedures and arrangements to be elaborated by host Governments in conjunction with UNHCR for this purpose may include appropriate mechanisms for the expeditious review of claims. Where it is possible to make a determination on the claims without necessarily conducting a full review procedure at the individual level, yet without prejudicing any meritorious cases, such procedures may also be resorted to.

17. UNHCR Offices should feel free to seek the advice and assistance of the Regional Bureau for Africa and the Division of International Protection Services in establishing or implementing procedures of this nature. They should also share with host governments UNHCR Guidelines and other resources pertinent to the cessation of refugee status in general and, in particular, ways of addressing properly claims for exemption from the cessation clauses. Among others, the August 2007 report entitled “*Sierra Leone: The Influence of the Secret Societies, With Special Reference to Female Genital Mutilation*”²² by Dr. Richard Fanthorpe should be made available to the Governments. This report, which was commissioned by UNHCR, provides detailed information relevant to the evaluation of claims which may be made based on risk or fear of persecution by secret societies and enforced female genital mutilation in Sierra Leone.

E. Material Assistance

18. Subsistence assistance for Sierra Leonean refugees has already been phased down in most countries. In the West Africa sub-region, Sierra Leonean refugees choosing to integrate in their host States will receive assistance from UNHCR for the acquisition of requisite legal and identity documents. Other forms of assistance, provided through a community-based approach, shall also be available.

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²² Dr. Richard Fanthorpe, *Sierra Leone: The Influence of the Secret Societies, with Special Reference to Female Genital Mutilation*, WriteNet, August 2007, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46cee3152>.