



# Cessation of Refugee Status

## *UNHCR's Mandate and Role in the Cessation Process*

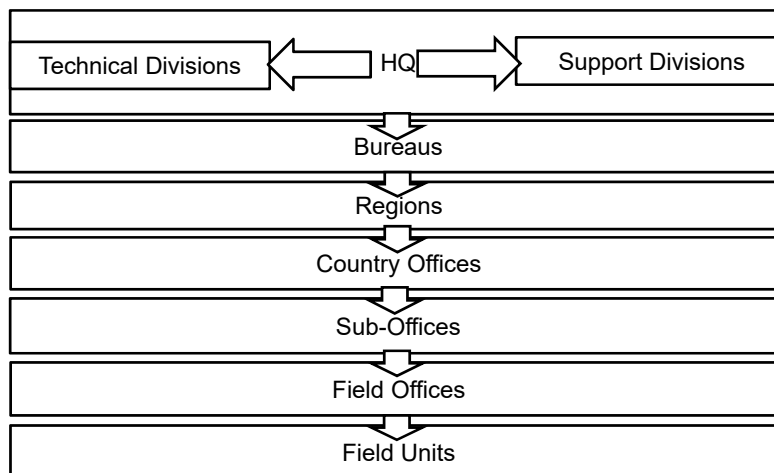
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21 November 2019 – London

## Office of the United Nations High Commissioner for Refugees (UNHCR)



- High Commissioner Filippo Grandi
- Deputy High Commissioner
- Assistant High Commissioner for Protection
- Assistant High Commissioner For Operations
- 16,371 staff worldwide (11,871 staff members)
- 137 countries and 517 locations
- \$8.591 billion global budget
- UNHCR started work on 1 January 1951
- 34 staff and \$ 300,000 budget
- Mandate expired after 3 years (the end of 1953)  
Later extended every 5 years

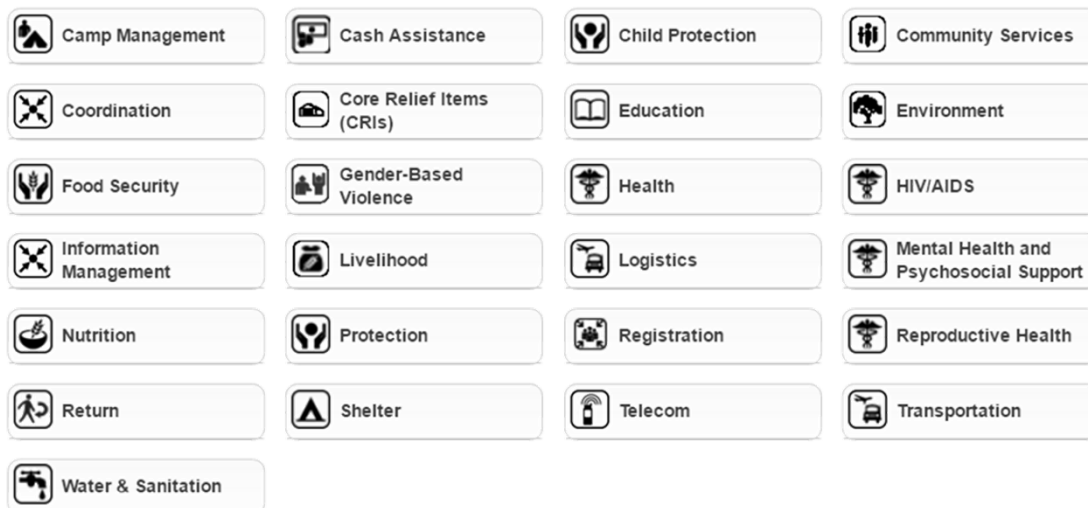
## Simplified UNHCR Structure



## UNHCR Statute & Mandate

- Established on 14th December 1950 by the United Nations General Assembly
- Mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide.
- Basis of mandate is set out in UNHCR's Statute 1950 and the 1951 Convention relating to the Status of Refugees
- Primary purpose is to safeguard the rights and well-being of refugees
- Strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.

## UNHCR's role in field operations can include:



## UNHCR Protection Worldwide

- Mandate to provide **international protection** and identify **durable solutions** for refugees
- Mandate to **supervise** the application of the **1951 Refugee Convention** and the **Statelessness Conventions** by States
- Coordinate **protection and assistance** to refugees
- Identify **specific protection needs** of individuals / groups
- Provide **advice** to governments and law court
- Work with States to find **durable solutions** for persons of concern (includes IDPs)

## UNHCR in the UK

- The UK ratified the 1951 Convention on 11 March 1954 and acceded to the 1967 Protocol on 4 September 1968.
- 1951 Convention and 1967 Protocol not directly incorporated into UK domestic law although various provisions make reference to it
- Country office headed by a Representative of the High Commissioner – since 1954
- Supervisory/advisory role: Article 35 of the 1951 Convention
- Comment on legislation and government policy
- Legal Protection:
  - Individual Cases/Referrals/CCRs
  - Legal/Court Interventions
  - Durable Solutions; Resettlement, Local Integration, Alternative Legal Pathways
  - Liaison with UNHCR offices abroad
- Audit quality of Home Office asylum decisions through the Quality Protection Partnership (formerly known as the Quality Integration Project and before that Quality Initiative Project)
- External Relations/Public Information

## Legal Protection Unit

- General role is that of an advisor and monitor
  - Provides advice and positions on refugee and asylum law and policy to the government, legal practitioners, non-governmental organisations and many others
  - Provides comments on legislation, asylum instructions
  - Where appropriate takes up cases and raises issues of concern with our counterparts in the UK Government
  - Intervenes in court proceedings, which are precedent-setting for the international protection of refugees generally
  - Provides training on a range of issues to those working with asylum seekers and refugees
  - Disseminates and provides Country of Origin Information (COI)

## Legal framework for UNHCR interventions

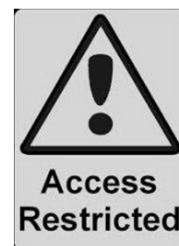
- UNHCR is permitted to intervene in protection appeals by virtue of the following:
  - Tribunals, Courts and Enforcement Act 2007 and Rule 49 Asylum and Immigration Tribunal (Procedure) Rules 2005
  - Special Immigration Appeals Commission Act 1997 and Rule 32(2) Special Immigration Appeals Commission (Procedure) Rules 2003
- Permission to the following must be sought by way of letter to the court registrar and to the parties.
  - High Court
  - Court of Appeal
  - Supreme Court
  - Scottish Courts
- Permission can be granted for written submissions only, or both written and oral submissions

## Quality Protection Partnership (QPP):

- A collaborative project between UNHCR and the Home Office under which UNHCR monitors Home Office implementation of asylum and statelessness procedures and decision-making
- UNHCR reports its findings and recommendations to the Home Office. The Home Office produces a formal response, including whether it accepts the recommendations and where it does plans for implementation

## How the QPP works

- Legal basis - UNHCR functioning in its role as supervisor of the application of the provisions of the 1951 Convention (Article 35)
- Spirit of working collaboratively with national authorities – support them to uphold their legal obligations
- Strengthen substance **and** procedure
- Access: files, Case Information Database, security clearance, co-located
- Confidentiality – important aspect of relationship
- Methodology (audit & recommendations)



## How the QPP works (cont'd)

Three dedicated UNHCR staff members are tasked to engage in a number of activities to support quality decision making:

- **Carry out audits** and producing thematic reports on asylum and statelessness procedures and decision making
- **Comment on operational policy and guidance documents** – e.g. Interview Guidance, Credibility Guidance, Dependents Guidance, Statelessness guidance, Revocation guidance etc
- **Comment on proposed changes to the Immigration Rules**-Draft and revised rules on the Statelessness determination procedure
- **Comment on training and sometimes deliver:** e.g. Foundation Training Programme, Responding to Sexual and Gender Based Violence, Credibility Training, MLR Training etc
- **Observation and Feedback on pilots/operations-** Solihull (ELAP), Cardiff (Digital recording, Summary notes), Glasgow (interpreter pilot), NGC Bootle, Calais.
- **Support creation of information and tools**
  - child-friendly leaflets
  - Structured decision-making tools / checklists/ Screening forms

## Audits Undertaken

**Quality Initiative Project (2004 - 2009)** – All reports at Home Office request. Confidential then made public by the Minister

- 1st Report : general state of play
- 2nd Report : decision-making
- 3rd Report : interviewing
- 4th Report : implementation update
- 5th Report : audit of detained /accelerated procedure (detained fast track)
- 6th Report : audit of children’s decisions

**Quality Integration Project (2010 – 2019)**

- 7th Report : revisit of DFT
- 8<sup>th</sup> Report : Family Asylum Claims – ‘Untold Stories’
- 9<sup>th</sup> Report : The principle of ‘best interests’ in Asylum
- Snapshot audits: Statelessness, digital recording, summary notes, PIF
- UNHCR Regional Studies: CREDO, Implementation of Dublin Regulation
- CCR Audit
- Ongoing- Statelessness, DAC, PIQ



## Article 1A(2) – refugee definition (inclusion)

- Familiar territory for lawyers....
- The term “refugee” shall apply to any person who:

*“... owing to **well founded fear** of being **persecuted** for reasons of **race, religion, nationality, membership of a particular social group** or **political opinion**, is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail him [or her]self of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”*

## Refugee status can be:

- **Excluded** (Art 1D, Art 1E, Art 1F);
- **Cancelled** (if incorrectly recognised);
- **Revoked** (for later criminal acts-Art 1F(a) & (c));
- **Ceased** (Art 1C); or
- **Insufficient** to prevent expulsion (Art 32) or *refoulement* (Art 33(2)).
- Home Office uses 'Revocation' as a catch all

## Application of Cessation Clauses

- Application of the cessation clauses involves the loss of protection for previously recognized refugees, depriving them of existing rights and possibly ultimately resulting in their return to a State in which they experienced persecution
- "Cessation" applies to refugees that were properly granted refugee status but ...
  - (1) because of specific actions the refugee undertook; or
  - (2) because fundamental changes in the country of origin and refugee status is no longer necessary to protect the individual



## Cessation is Appropriate:

- **Actions by the Refugee** [Art. 1(C1-4)]:
  - There is/voluntary re-availment of protection from his/her country of origin;
  - After losing his/her nationality he/she voluntarily re-acquires his /her nationality;
  - Acquisition of a new nationality and enjoyment of full protection from the country of adoption;
  - Voluntary re-establishment in the country where persecution was feared (return to country);
  
- **Change of Circumstances**
  - Change in the objective circumstances which formed the basis for the recognition of refugee status (contained in sub-para 5 and 6)

The first four clauses identify situations where a person ceases to be a refugee because of changes that have been brought about by the person. The last two clauses identify situations where a person ceases to be a refugee because conditions in the country where persecution was feared have changed, to an extent that the reasons for the person becoming a refugee no longer exist.

## Voluntary Re-availment of Protection 1C(1)

The term “re-availment” is sometimes loosely referring to situations where a person has returned to the country of origin or former habitual residence. However clause 1 properly refers to a refugee who is still outside the home country, but whose actions indicate an intention and ability to take advantage of the protection of that country.

### The Test Art. 1C(1):

- **voluntariness**; the refugee should have acted voluntarily in approaching and making requests of the authorities of their home country (e.g. application for passport or its renewal)
- **intention**; the refugee should have an intention to re-avail himself or herself of the protection of the home country, (e.g. seeking a passport or entry documents, rather than simply making contacts with authorities to obtain documents which are needed in the country of refuge such as birth certificates, marriage certificates or divorce papers)
- **re-availment**; the refugee should actually obtain formal diplomatic or consular protection (e.g. in the form of a national passport or entry permit)

## Voluntary Re-availment of Protection 1C(1) – cont'd

- Burden of Proof on government to show that refugee intended to avail him or herself of national protection.
  - Acquisition or renewal of a passport may raise questions and may raise a rebuttable presumption.
- Analysis has to evaluate:
  - Voluntariness, Intent and Actual Re-availment of the country's protection.
- Information from the refugee.
  - An evaluation of voluntariness and intent require information from the refugee. Accordingly, the refugee may be required to explain actions.
  - Note that a person may get a passport for other reasons. For instance:
    - Renewal could be automatic (not voluntary, no intent to re-avail oneself of protection)
    - Demand by asylum country – in order to obtain legal status or to travel to a third country for family reunification. In this case, voluntary but no intent to re-avail himself/herself to the protection of the country.

## Voluntarily Re-Acquisition of Nationality 1C(2)

### The Test Art. 1C(2):

Under this cessation clause, international protection is no longer necessary where a refugee who has lost his or her nationality has expressly or impliedly accepted an opportunity to reacquire it

- This clause is directed at those special cases where a refugee has lost their former nationality as a result of some individual or collective measure by the authorities of the home country
- It applies to cases where a refugee, having lost the nationality of the country in respect of which he was recognised as having well-founded fear of persecution, voluntarily re-acquires such nationality.
- As with clause 1, clause 2 can come into effect while a refugee is still outside the home country, and without his or her actually visiting that country

### Other examples where the clause may not apply:

- Where a refugee applies for, but fails to re-acquire, their former nationality
- Where the step from potential to actual nationality involves a step which should not normally be required of a person

## Voluntarily Re-Acquisition of Nationality 1C(2) – cont'd

Burden of Proof on the government to show that the refugee voluntarily re-acquired his/her nationality.

- Easy case – new law providing citizenship which the refugee can benefit from and s/he goes to embassy and is able to obtain his nationality;

However, the Re-acquisition Must be Voluntary

- The mere possibility of re-acquiring the lost nationality by exercising a right of option is not sufficient to serve as a justification for cessation.
- Can't force the refugee to take the nationality if he believes he can't return because of political turmoil or it would be traumatic, etc.

## Acquisition of a New Nationality 1C(3)

### The Test Art. 1C(3):

Burden on the government to prove:

- (1) the refugee has acquired a new nationality; and**
  - Importantly, and in contrast to the previous two cessation clauses, the element of voluntariness is not required
- (2) he or she enjoys the protection of the country of new nationality**
  - An automatic loss of refugee status may occur when refugee naturalizes in the country of asylum
  - What happens when the new nationality is imposed by law and/or the successor state is unlikely to provide protection to the refugee?
    - » Fair Process: Still need fair process, can't simply close the case upon proof of new nationality.
    - » Real Protection? Need to evaluate the new nationality and determine whether it offers effective protection
  - Whether he would be persecuted in the new state

The second element of the test is cumulative and requires that the new nationality must be effective and adequate

## Voluntary Re-Establishment in Country of Origin 1C(4)

### The Test Art. 1C(4):

Two elements are required before a person ceases to be a refugee under this clause

- (1) **voluntariness**; the refugee has returned freely to the country of origin or former habitual residence; and
  - (2) **Intention**; the refugee has demonstrated an intention, explicit or inferred, to resume a normal relationship with that country
- Return in certain circumstances may not justify the cessation of refugee status and the loss of international protection under this clause
  - These include a temporary return – up to a few weeks – to visit an old or sick parent, or to bring out relatives, friends or property, or to ‘test the waters’ as a precursor to possible voluntary repatriation, and potentially a prolonged visit where this occurs for reasons beyond the refugee’s control (*e.g. confiscation of travel documents by authorities or an outbreak of civil war*)

## Voluntary Re-Establishment in Country of Origin 1C(4) - cont’d

- Burden on the government to prove that the return is voluntary and the re-establishment has both a subjective re-affiliation as well as an objectively durable presence
  - The refugee intended to re-establish himself/herself in the COO;
    - e.g. business bought, house built crops, kids in school, etc.
  - It appears that s/he has established a permanent presence there
  - The elements of voluntariness, intent and effective protection are vital in re-establishment cases
- Finding not appropriate when:
  - Return is not voluntary (deportation, kidnapping, etc.)
  - Brief (even repeated returns) so long as the visits are of short duration and the refugee’s primary residence remains in asylum state
- Clearly the challenge in interpreting and applying the clause is to distinguish between those cases where a refugee returns briefly to the country of origin for legitimate and compelling reasons in the face of a continued risk of persecution, and cases where return, and behaviour during that return, indicates an ability and intention to enjoy a normal relationship with that country

## Fundamental Changes - 1C(5) and (6)

The 1951 Convention shall cease to apply to any person falling under the terms of Article 1(A) if:

- (5) He can no longer, because the circumstances in connection 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
  - (6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence
- Cessation clause (5) concerns persons who have nationality, while clause (6) concerns stateless persons who are able to return to their country of former habitual residence
  - They are otherwise parallel clauses
  - These two clauses reflect an intention by the Convention's founders to maintain the right of signatory States to decide how long refugees should be admitted to their territory, a wariness about equating protection with permanent residence, and a reluctance to feel obliged to continue providing assistance to refugees who could seek the protection of their country of origin

## Fundamental Changes - 1C(5) and (6) – cont'd

The Test Art. 1C(5) and (6):

- A person ceases to be a refugee under these clauses where a fear of persecution in the country of nationality or former habitual residence **no longer exists**, or any continued fear of persecution is **not well-founded**.
- The changes in circumstances should be substantial and lasting

Whether they are the result of rapid developments, or slow and subtle reforms over a number of years, authoritative evidence should exist that the changes are:

- (1) **Substantial**, in the sense that the power structure under which persecution was deemed a real possibility no longer exists;
- (2) **Effective**, in the sense that they exist in fact, rather than simply promise, and reflect a genuine ability and willingness on the part of the home country's authorities to protect the refugee; and
- (3) **Durable**, rather than transitory shifts which last only a few weeks or months (although long term possibilities (e.g. an adverse electoral result in a year's time, may be considered irrelevant)

## Who Decides?

- Who decides that the conditions have changed in that country to such an extent to warrant cessation?
- UNHCR or States may issue formal declarations of general cessation of refugee status for a particular refugee caseload
- UNHCR has such competence under Article 6A(ii) of the *Statute of the Office of the High Commissioner for Refugees* in conjunction with Article 1C of the 1951 Convention.
  - (a) to (d) is nearly identical to 1C(1-4)
  - (e) and (f) is nearly identical to 1C(5 & 6)
- Practically speaking, decisions are normally taken in conjunction with the UNHCR and other countries
  - Regional approach, etc.

## Assessment of Country Situation

- [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

UNHCR’s Executive Committee, Executive Committee Conclusion No. 69 (XLIII)  
(1992)

## Fundamental Character of Change

- Cessation based on “ceased circumstances” only comes into play when changes have taken place which address the causes of displacement which led to the recognition of refugee status

## Restoration of Protection

- Mere physical security or safety is not enough for cessation to be warranted
- There needs to be a functioning government and basic administrative structures
  - Evidenced for instance through a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood
- The standards of human rights achieved need not be exemplary
  - What matters is that significant improvements have been made, as illustrated at least by respect for the right to life and liberty and the prohibition of torture;
  - Marked progress in establishing an independent judiciary, fair trials and access to courts, as well as protection amongst others of the fundamental rights to freedom of expression, association and religion

## Enduring Nature/Durability of Change

- A reasonable period of time needs to have elapsed before the change can be seen as durable.
- Where the changes have taken place **violently**, for instance, through the overthrow of a regime, the human rights situation needs to be especially carefully assessed.
  - The process of national reconstruction and reconciliation must be given sufficient time to take hold and any peace arrangements with opposing militant groups must be carefully monitored.
  - Unless national reconciliation clearly starts to take root and real peace is restored, political changes which have occurred may not be firmly established.

## Exceptions

- **Continued international protection needs**

Some individual cases may require continued international protection. It has therefore been a general principle that all refugees affected by general cessation must have the possibility, upon request, to have such application in their cases reconsidered on international protection grounds relevant to their individual case.

- Under the 1951 Convention or pursuant to other human rights documents providing for supplementary or subsidiary protection



## Exceptions (2)

- **Compelling reasons**

- The 1951 Convention contains an explicit exception to the cessation provision, allowing a refugee to invoke “compelling reasons arising out of previous persecution” for refusing to avail himself or herself of the protection of the country of origin.
  - This exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence.
    - ex-camp or prison detainees, survivors or
    - witnesses of violence against family members, including sexual violence, as well as severely traumatised persons. It is presumed that such persons have suffered grave persecution,
    - including at the hands of elements of the local population, and cannot reasonably be expected to return.

## Exceptions (3)

The Executive Committee, in Conclusion No. 69, recommends (*not legally mandated*) that States consider “appropriate arrangements” for persons “who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links”.

## **New Applications for Refugee Status after Cessation**

Cessation cannot serve as an automatic bar to refugee claims, either at the time of a general declaration or subsequent to it. Even though general cessation may have been declared in respect of a particular country, this does not preclude individuals leaving this country from applying for refugee status

## **Due Process:**

- In general, the burden of proof is on the State to prove that the circumstances justifying cessation have been met
- However, shift of burden of proof/presumptions may apply when certain acts by the refugee are demonstrated (obtained travel documents, etc.)
- During the interview refugees may be required to explain ambiguous conduct

## Issues to Target

- Check that cessation of refugee status is the most appropriate action
- Check that the Home Office has identified and applied the correct elements
- Check that there is evidence to address the elements
- Check that the burden of proof has been discharged

→ Misconception: Human rights issues are important but not a substitute for cessation consideration

## Highlights from the CCR audit



**THANK YOU FOR LISTENING**  
**END OF SESSION**