



Return of IDPs to East Timor, from West Timor.

UNHCR/M Kobayashi

Cessation of refugee status: a guide for determining when internal displacement ends?

by Raphael Bonoan

Many of the circumstances that lead to internal displacement are similar or identical to those that cause individuals to develop a "well-founded fear of persecution" and seek international protection as refugees.

Moreover, the potential consequences of withdrawing protection prematurely or erroneously from IDPs and refugees can be equally harmful. Over the past three decades, standards and procedures have been developed through extensive dialogue between UNHCR and states parties to the 1951 Convention Relating to the Status of Refugees for determining when refugees may no longer require international protection because of changes in circumstances in their country of origin. These standards and procedures are based on Articles 1 C (5) and (6) of the Convention, which specify that a refugee shall no longer be considered as such when "the circumstances in connection with which he [or she] has been recognized as a refugee have ceased to exist".

The process of cessation of refugee status may, therefore, serve as a useful framework for determining when internal displacement ends by providing a mechanism for ascertaining whether changes in circumstances have removed the causes of displacement as well as safeguards against the wrongful termination of protection.

UNHCR guidelines on the interpretation and implementation of the 'ceased circumstances' provisions of the cessation clauses set forth two basic standards by which developments in the country of origin are to be evaluated.¹ Firstly, they must be 'fundamental' in character, i.e. developments that completely transform the political and social structure of the country of origin as well as its human rights situation.² These

include: democratic elections, declarations of amnesties, dismantlement of former security services, the establishment of an independent judiciary, adherence to international human rights and the creation of national institutions to protect human rights. Such reforms must also be evaluated "in light of the particular cause of fear" to ensure that they "remove the basis of the fear of persecution."³

The second basic standard is that of durability, i.e. changes in circumstances of a 'fundamental' nature must prove to be stable. UNHCR has suggested a minimum waiting period of 12 to 18 months to allow such consolidation to occur but also stated that this period may vary depending on the nature of the transition in the country of origin. In the context of a peaceful transition to democracy, changes in circumstances may consolidate rapidly. Conversely, developments that occur in a post-conflict environment or one of continuing violence and insecurity may require more time to become firmly established.

Since 1973, UNHCR has applied Articles 1 C (5) and (6) to refugee populations under its mandate on 22 occasions. This process involves: a) evaluating the extent and durability of change in the country of origin; b) assessing the implications of cessation for refugees and all countries involved; and c) developing specific procedures for implementing the 'ceased circumstances' provisions, such as notifying and screening refugees, arranging for repatriation and identifying alternative durable solutions for those who will not be repatriating.

To assess developments in a country of origin, UNHCR not only collaborates with the governments of countries of origin and asylum but also consults various UN agencies, international organisations, human rights groups and other nongovernmental partners. Detailed information is gathered on the: development of new political institutions; integrity of electoral processes; performance of law enforcement agencies and judicial institutions; respect for freedom of expression, movement, association, and other human rights; treatment of national, ethnic, religious minorities, and returnees; perspectives of refugees on conditions in the country of origin and the possibility of return; and implementation of peace accords (if applicable). By thoroughly analysing developments in these areas, UNHCR can establish whether the grounds for refugee status have, in fact, been removed and international protection

can be safely withdrawn. While UNHCR rigorously evaluates conditions in a country of origin, it implements the 'ceased circumstances' provisions with some flexibility. The clauses themselves contain an exemption for those refugees who have suffered such severe persecution that they cannot be expected to repatriate. In addition, refugees affected by the application of Articles 1 C (5) and (6) are given the opportunity to request an exemption from cessation and the continuation of international protection. UNHCR occasionally excludes from the application of the 'ceased circumstances' provisions a specific group of refugees that, despite changes of a 'fundamental' and 'durable' nature in their country of origin, may still face persecution upon return.⁴ UNHCR has also been known to restrict the scope of a declaration of cessation, targeting a specific subgroup of refugees within a larger refugee population.⁵ This flexibility provides another important safeguard against the withdrawal of international protection from refugees who continue to need it.

Because the Guiding Principles do not assign IDPs a legal status to which specific rights are attached, defining a cessation clause for IDPs analogous to Article 1 C of the Convention may be inappropriate [see Kalin, p15].

Nevertheless, it may be useful to suggest in general terms the possibility for situations of internal displacement to come to an end because of changed

circumstances and to provide guidance for making such a determination. This guidance will need to address a number of issues. How should developments related to situations of internal displacement be evaluated? What roles should international agencies, states, NGOs and others play in this process? What safeguards are necessary to ensure that protection is not withdrawn from IDPs who still need assistance? UNHCR standards and procedures for applying Articles 1 C (5) and (6) of the Convention may be instructive in this regard. In the absence of such guidance, however, determinations of when internal displacement ends will continue to be *ad hoc* and/or inconsistent and the risk of premature or wrongful withdrawal of protection from IDPs heightened.

Rafael Bonoan is a PhD candidate, Department of Political Science, Massachusetts Institute of Technology.
Email: rbonoan@mac.com

See Joan Fitzpatrick and Rafael Bonoan, 'Cessation of Refugee Protection' in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, forthcoming July 2003).

1. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979, re-edited 1992), paras. 135-139; Executive Committee of the High Commissioner's Program, Conclusion No. 69 (XLIII), 1992, UN doc. A/AC.96/804; UNHCR, "Note on the Cessation Clauses," UN doc. EC/47/SC/CRP.30, 30 May 1997; and UNHCR,

"Guidelines on the Application of the Cessation Clauses," UN doc. UNHCR/IOM/17/99, UNHCR/FOM/17/99, 26 April 1999. Clauses," UN doc.

UNHCR/IOM/17/99, UNHCR/FOM/17/99, 26 April 1999.

2. Executive Committee of the High Commissioner's Program, Subcommittee of the Whole on International Protection, 'Discussion Note on the Application of the "Ceased Circumstances" Cessation Clause in the 1951 Convention', UN doc. EC/SCP/1992/CRP.1, para. 11, 20 Dec. 1991.

3. UNHCR, "Note on the Cessation Clauses," para. 19.

4. See UNHCR, "Applicability of the Cessation Clauses to Refugees from Chile," UN doc. UNHCR/IOM/31/94, UNHCR/FOM/31/94, 28 March 1994, para. 5(i).

5. See UNHCR, "Applicability of the 'Ceased Circumstances' Cessation Clauses to pre-1991 refugees from Ethiopia," UN doc. UNHCR/IOM/91/99, UNHCR/FOM/91/99, 23 September 1999.



UNHCR protection officer with returnee women in Laos.