

A premature attempt at cessation

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There are many lessons to be learned from UNHCR's controversial – and ultimately reversed – decision to end refugee status for Burmese Chins in India and Malaysia.

Ethnic minority groups, including the Chin, Shan and Karen, have been fleeing Myanmar since at least as early as 1988 because of severe oppression and persecution. Those fleeing had been subjected by the Burmese national military to forced labour, arbitrary arrest/detention, custodial torture, extrajudicial deaths and sexual slavery.

The Chin in particular arrived in India and Malaysia in large numbers and, while the vast majority have since been resettled to third countries (including Australia and the US), around 35,000 Chin refugees remain in these two countries. Given that neither country has signed the 1951 Refugee Convention and neither has a formalised refugee protection regime, this group of refugees has relied on the UN Refugee Agency (UNHCR) to provide legal status and documentation, and health and education services. However, UNHCR announced in June 2018 that it would be ending the refugee status of Chin refugees in India and Malaysia with effect from 31 December 2019, citing as a reason the “improvement in conditions” in Chin State since the installation of a nominally civilian national government in 2010.

Cessation guidelines

In making this announcement UNHCR referred to the policy as “ending refugee status” and facilitating “voluntary repatriation”; the term ‘cessation’ was not used. However, the policy clearly drew upon Article 1C of the 1951 Refugee Convention, which defines the circumstances under which refugee status will cease to apply and, by so doing, the announcement amounted effectively to a declaration of a cessation of refugee status. That being said, however, the policy did not meet the requirements relating to cessation as outlined by UNHCR itself.¹ International law requires that certain

standards are met when a cessation procedure is initiated; in this instance, there were glaring substantive as well as procedural errors.

One of the guiding principles which determine the application of the cessation clause is that the developments in the country of nationality or origin which purport to evidence change of a fundamental nature must “be given time to consolidate before any decision on cessation is made”. A situation that – as in Myanmar – continues to show signs of volatility is not by definition stable, and cannot be described as durable. In fact, this clause should only (as noted in the guidelines) come into play when changes have taken place that address the causes of displacement.

Moreover, peace agreements following conflicts that have involved different ethnic groups need enhanced scrutiny, since progress towards genuine reconciliation can prove difficult in such cases. Further, in assessing the potential durability of the change, the success of practical developments such as voluntary repatriation, and the experience of returnees, should be given considerable weight, as should reports from independent observers.

In this case, UNHCR did not provide any evidence that any of the aforementioned criteria had been met. As a new democracy, the political changes Myanmar has undergone cannot be described as enduring. The Burmese national military continues to enjoy unhindered access to Chin State and to the neighbouring Sagaing Region (where Chin minorities also come from) and recent reports indicate that there are continued clashes between it and the Arakan Army (a non-State armed group) in the southern part of Chin State. In fact, the UN's own human rights expert on Myanmar has expressed alarm at the escalating violence in northern and central Rakhine State and Chin State.²

The UNHCR guidelines also state that “Cessation should ... not result in persons residing in a host State with an uncertain status”. However, in this case the governments of Myanmar, India and Malaysia offered no confirmation about documentation for the Chin community and nor did UNHCR intimate what documents the community would receive once their refugee status ceased.

The guidelines also state that: “[C]hanges in the refugee’s country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status”. Given the state of affairs in neighbouring Rakhine State, which continues to produce a steady exodus of Rohingya refugees, and in Kachin State where conflict is ongoing, UNHCR’s decision that it would be safe for Chins to return is particularly perplexing. Furthermore, UNHCR refused to comment on the safety of return to areas other than Chin State (even to Yangon), disregarding the fact that a lack of freedom of movement in the country of origin demonstrates that the changes are neither fundamental nor durable.

The guidelines indicate the critical factor as to whether the refugee can “effectively re-avail him- or herself of the protection of his or her own country”, clearly highlighting that access to basic infrastructure and livelihoods are essential constituent parts of restoring effective protection. Such effective protection, they go on to acknowledge, is more than physical security or safety; it must also encompass effective governance, a functioning law and justice system, and sufficient infrastructure to enable rights to be exercised. The guidelines point out that an important indicator of the protection situation is the general human rights situation in the country of origin – and the Myanmar government’s recent human rights record leaves much to be desired.³

Furthermore, UNHCR’s policy failed to meet a number of the necessary procedural elements required for the declaration of cessation, as outlined in these guidelines. For example, although the guidelines state that non-governmental organisations (NGOs) and refugees should be included in the

consultative process, NGOs working with Chins in India were not consulted before the policy was announced, and its announcement came as a surprise and a shock to both the community and all those working with them.

In other such situations, UNHCR has organised ‘go-and-see’ visits to allow refugees the opportunity to verify for themselves that the situation in their home country makes return viable. While UNHCR eventually indicated that such a visit was being explored in the Chin context, it never materialised and, in any event, would not have been useful since travel documentation issues mean Chin refugees could not have participated. Further, the focus of the visit was stated as being limited; conditions of safety, security and human rights – which are of primary concern to refugees – would not be covered. Moreover, notification interviews (in which refugees were asked to indicate whether they would accept or challenge the decision to cease their refugee status) had already commenced, and the outcome of any go-and-see visit could not have been made available to refugees in time to inform their decision.

Lack of information

UNHCR’s messaging to the community indicated that the repatriation policy was based on an improvement in conditions in Chin State, conditions that had been “carefully assessed” by UNHCR. However, UNHCR made no move to share information on how this conclusion had been reached. The little material that was eventually provided was on general access to health, education and documentation, without mention of other relevant elements such as safety, security, infrastructure and extent of military/paramilitary activity in returnee areas.

Chin refugees were also given negligible information about the return support UNHCR would provide. UNHCR gave no indication that it would offer an enhanced package for vulnerable groups, and also categorically stated that it would be unable to provide continued assistance to refugees upon their return and that they would have to contact local NGOs in Myanmar. This runs counter to the agency’s own guidelines and

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practice on repatriation and reintegration, which stress the importance of continued UNHCR involvement in the longer term.

Lessons from the attempt

UNHCR persisted in the implementation of the policy for nine months, expending considerable time and resources and causing much anxiety. In March 2019, however, and not least as a result of months of tireless advocacy by the Chin community, civil society and others, UNHCR finally agreed that Chin refugees require continued international protection, and withdrew the policy.⁴

The abandonment of the attempt to strip a group of its already fragile status, in a climate that is already hostile to refugees, holds many valuable lessons. First, it is imperative to remember that the cessation clause is meant to guide host States who decide to repatriate a refugee group to do so in a manner that is humane and responsible, and that ensures their dignity. For UNHCR to set this process in motion is unprecedented and, in this case, fundamentally uncalled for, given that neither of the host countries' governments nor the government of Myanmar called for such action. Second, to propose withdrawing protection in a

situation where there are no viable options for repatriation, integration or resettlement – as is the case for the vast majority of Chins in India and Malaysia – goes against the protection mandate of UNHCR. Finally, UNHCR-led repatriation must be voluntary rather than mandated; to say that return is the only option, and that those choosing to remain would face the loss of UNHCR protection, is inimical to giving refugees a choice and, had the policy gone ahead, would surely have constituted *refoulement*.

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1. UNHCR (2003) '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)' www.refworld.org/docid/3e50de6b4.html
2. Office of the High Commissioner for Human Rights 'Myanmar: UN expert expresses alarm at escalating conflict, calls for civilian protection', 18 January 2019 bit.ly/OHCHR-Myanmar-180119
3. See Human Rights Watch *World Report 2019 – Myanmar: Events of 2018*, 17 January 2019 www.hrw.org/world-report/2019/country-chapters/burma
4. UNHCR 'UNHCR says ethnic Chin refugees may require continued international protection as security situation worsens in Myanmar', 14 May 2019 bit.ly/UNHCR-Chin-Myanmar-140519