



Ceased Circumstances and the End of Refugee Status The Use of Article 1C(5) in South Africa

ADVOCACY PROGRAMME LEGAL BACKGROUNDER

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[1] Introduction

In late 2011 and early 2012 the Office of the United Nations High Commissioner for Refugees (UNHCR) recommended that refugee status cease through Articles 1C(5) and (6) of the 1951 *Convention relating to the Status of Refugees*¹ for refugees who have fled from Rwanda and Angola.² This recommendation has been met with mistaken assumptions that all refugees of those nationalities will be sent home immediately with no options to remain in host states. The international refugee legal framework requires that such a declaration can only be implemented with special procedures to identify those who may need continued international protection. A major concern in this regard is the potential breach of the principle of *non-refoulement* as enunciated, *inter alia*, in Article 33(1) of the 1951 Convention, which requires that

[n]o Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This principle is one of the cornerstones of international refugee law and is recognised as having acquired the status of *jus cogens*, meaning that it cannot be disregarded or violated under any circumstances.³ This places great importance on establishing effective procedures for cessation declarations as any premature or poorly implemented declaration may contravene this principle and undermine the integrity of the international refugee protection system.

Articles 1C(1)–(6) of the 1951 Convention are referred to generally as the ‘cessation clauses’ and delineate circumstances in which refugee status may formally end. Articles 1C(1)-(4) all deal with actions committed by the refugee himself, such as the acquisition of a new nationality, meaning that there is no state action involved in the termination of status. Protection issues are of less concern with these Articles

¹ United Nations General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951 189 UNTS 150 (entered into force 22 April 1954) [hereinafter 1951 Convention]. South Africa signed and acceded the convention on 12 January 1996.

² Specifically, the announcements state that refugee status should cease for Rwandans who fled the country before 31 December 1998 and for Angolans who fled the civil wars between 1961 and 2002; See UNHCR, *Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR’s recommendations on the applicability of the “ceased circumstances” cessation clauses* (31 December 2011) and UNHCR, *Implementation of the Comprehensive Strategy for the Angolan Refugee Situation, including UNHCR’s recommendations on the applicability of the “ceased circumstances” cessation clauses* (15 January 2012) [hereinafter UNHCR, *2012 Comprehensive Strategy for the Angolan Refugee Situation*].

³ Jean Allain, ‘The *jus cogens* Nature of *non-refoulement*’ (2001) 13 (4) *International Journal of Refugee Law* 533-558.

as the refugee has voluntarily undertaken an action that has resulted in the termination of refugee status. Articles 1C(5) and 1C(6),⁴ as mentioned above, deal with action undertaken by the host state to terminate refugee status for specific refugee populations when it is no longer needed. As opposed to Articles 1C(1)-(4), Article 1C(5) allows the state to return refugees to their home countries involuntarily when ‘the circumstances in connexion with which he has been recognized as a refugee [have] ceased to exist’. This is possible because as soon as those circumstances have been extinguished in the country of origin, the refugee no longer has the protection concerns that caused him to flee and is thus legally no longer considered a refugee.

A critical component of Article 1C(5) is the proviso which excludes refugees from losing their status who have ‘compelling reasons arising out of previous persecution’. Any cessation process involving Article 1C(5) then must establish processes that differentiate between those who may be obliged to return home and those who have compelling reasons to remain in the host state. International practice has also developed other considerations for those who have established strong social and economic links to the host state.

Cessation procedures are complex issues and in addition to the 1951 Convention, the legal framework for a ceased circumstances declaration in South Africa involves regional, international, and domestic legislation including the 1969 Organization of African Unity *Convention on the Specific Aspects of the Refugee Problems in Africa*,⁵ the UNHCR Statute,⁶ and *The Refugees Act (No. 130) of 1998*.⁷ Commenting on the international framework for cessation procedures, one leading scholar stated that ‘the treaty texts do not address many of the salient contemporary issues concerning termination of international protection’,⁸ leaving the particulars of implementation unclear. Furthermore, Article 1C(5) has rarely been used by host

⁴ Article 1C(5) and (6) are identical except Article 1C(6) is designed for stateless persons who are able to return to their country of former habitual residence due to ceased circumstances. For ease of reference, this paper will refer to Article 1C(5) in place of both Articles.

⁵ Organization for African Unity, *Convention on the Specific Aspects of the Refugee Problems in Africa*, opened for signature 10 September 1969 1000 UNTS 46 (entered into force 20 June 1974) [hereinafter OAU convention]. The OAU became the African Union (AU) in 2002.

⁶ United Nations General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, G.A./RES/428(V), U.N. GAOR, 5th Sess., ¶ 8 (a – i) [hereinafter UNHCR, *Statute*].

⁷ *The Refugees Act (No. 130) 1998* (South Africa) at section 5(2) [hereinafter *Refugees Act*].

⁸ Joan Fitzpatrick, Jeffrey & Susan Brotman, ‘Current Issues in of Protection Under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention’, *UNHCR Note*, Background paper for Global Consultations on International Protection (2001) 1 [hereinafter Joan Fitzpatrick, Jeffrey & Susan Brotman, *Current Issues in Protection under Article 1C*].

states, especially those with individual refugee status determination regimes, resulting in a lack of practical experience to draw from.⁹

This paper will analyse the legal framework established for the termination of refugee status through the invocation of Article 1C(5) in South Africa. Of particular interest is how cessation procedures may be implemented in the South African context in consideration of the current Angolan and Rwandan refugee situations. In doing so, it will focus on the exceptions to cessation declarations and the procedures that must be implemented to effectively carry out these determinations. It aims to clarify the legal obligations of South Africa so that the use of Article 1C(5) is implemented in a legal manner that upholds refugee rights.

[2] The legal basis for ceased circumstances cessation declarations

The legal framework for ceased circumstances cessation declarations in South Africa involves the 1951 Convention, the UNHCR Statute, the OAU Convention, and the Refugees Act. These instruments contain several conflicting provisions regarding the application of cessation declarations and states hosting refugee populations in Africa without domestic legislation concerning refugee issues face a complex legal web for cessation procedures. In South Africa, the Refugees Act, as the main instrument for refugee issues including cessation of status, renders the framework more straightforward. For a better understanding of cessation issues generally, this paper will look at all of the instruments relevant to African cessation procedures.

[2.1] The international legal framework

The 1951 Convention is the main international instrument for which refugee issues are handled globally. During the drafting of this convention, the first High Commissioner for Refugees, G.J. van Heuven Goedhart, stated that refugee status should 'not be granted for a day longer than absolutely necessary, and should come to an end',¹⁰ thus establishing that refugee status in host countries was not granted permanently.

⁹ According to Yasmeen Siddiqui, it has been invoked 25 times between 1973 and 2008 and in that period only five countries were located outside the global south (Czechoslovakia, Hungary, Bulgaria, Tajikistan and Romania); Yasmeen Siddiqui, *Reviewing the application of the Cessation Clause of the 1951 Convention relating to the status of refugees in Africa*, Refugee Studies Centre Working Paper No. 76 (August 2011) Annex 1, 52.

¹⁰ G.J. van Heuven Goedhart as quoted in UNHCR, *Note on Cessation Clauses*, UN Doc EC/47/SC/CRP.30 (30 May 1997) ¶ 4 [hereinafter UNHCR, *1997 Note on Cessation Clauses*].

The 1951 Convention's 'ceased circumstances' cessation clause, Article 1C(5), states:

He [the refugee] can no longer, because the circumstances in connexion with which he has been recognized as a refugee ceased to exist, continue to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.

This allows for the state to officially determine when refugee status is no longer required and potentially mandate the repatriation of refugees. It is important to note that while UNHCR may recommend that status cease for certain refugee populations, as it has done recently in regards to Rwandan and Angolan refugee populations, the decision to formally do so is held by the host state. A critical component of this clause is the exception for those with 'compelling reasons arising out of previous persecution', a phrase that has proven difficult to define and will be discussed in length below.

The 1951 Convention also defines UNHCR's role in assisting refugees in host countries as a 'supervisory' role and dependent upon the host-state's cooperation. Article 35 states:

The contracting states undertake to co-operate with the office of the United Nations High Commissioner for Refugees ... in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this convention.

Supervision is envisioned as a multifaceted obligation to enact protection efforts, conduct daily field activities, oversee state action, organise aid, and monitor non-governmental organisations work related to refugees.¹¹ As a refugee crisis or situation emerges, UNHCR acts in host countries to supervise the application of international conventions and coordinate the admission of refugees and their assets as well as enact special measures with governments to improve the situation of refugees and to reduce the number of refugees requiring protection.¹² The 'exercise of its functions' and 'application of the provisions' no doubt includes all procedures and processes related to cessation declarations.

¹¹ Walter Kalin, 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond', *Refugee Protection in International Law* (2008) 615.

¹² UNHCR Statute, above n 6, Article 8(a – i).

The UNHCR Statute also contains a ceased circumstances clause that differs slightly from the 1951 Convention. This is especially relevant in an African context where UNHCR offers more direct support to state governments. This clause states:

He [the refugee] can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked.¹³

The clause's inclusion of 'grounds other than those of personal convenience' is considered to be broader than the 1951 Convention's exception of 'compelling reasons'. The scope of 'grounds other than those of personal convenience' has been described by Grahl-Madsen as

the creation of new family ties in the country of refuge, and the rooting of one's family in the new environment, along with the severance of all ties with the country of origin as a result of persecution, war or simply lapse of time. Also one is not motivated merely by 'personal convenience' if one hesitates to return to a country where there is no abode, no vocation and nothing else which formerly bound oneself to that country.¹⁴

This exception is important as the other two legal instruments do not offer much guidance regarding cessation and as contracting states (including South Africa) are bound to cooperate with UNHCR, the Statute's 'grounds other than personal convenience' proviso carries authority as contracting states, through Article 35 of the Statute, are required to cooperate with the organisation in supervising the application of the provisions of the 1951 Convention.

The applicable regional instrument for South Africa regarding refugee issues, the OAU Convention, also contains a ceased circumstances clause. This instrument was designed for refugee situations on the African continent which generally occur with refugee populations being granted refugee status en masse (often termed *prima facie* refugees) and not on an individualised basis, as done in South Africa, which does in part explain its ceased circumstances cessation clause. Article 1(4)(e) of the OAU Convention is identical to the 1951 Convention's 1C(5) but does not include any exceptions to the cessation clause, meaning that any refugee subject to Article 1(4)(e) will no longer qualify for refugee status nor have any recourse should any protection issues remain.

¹³ Ibid, Article 6A(e).

¹⁴ Atle Grahl-Madsen, *The Status of Refugees in International Law* (1966) 408.

However, Article 5(1) of the OAU Convention states that ‘the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will’. Although Article 5 of the OAU Convention is intended to apply to voluntary repatriation measures, in the absence of any exceptions to cessation, this clause provides some assurance that no refugee shall be repatriated against his will and potentially into dangerous conditions, yet the instrument’s cessation clause provides just such a legal way for this to occur.

[2.2] South Africa’s domestic framework

The Refugees Act is South Africa’s principal piece of legislation regarding refugee issues. It came into force in 1998 and it must be applied in a manner that is consistent with the 1951 Convention and 1967 Protocol, the OAU Convention, the Universal Declaration of Human Rights, or any other international convention that is relevant,¹⁵ thus ensuring that any action undertaken must consider a broad range of international human rights instruments.

The Refugees Act’s ‘ceased circumstances’ clause is found at section 5(1)(e) which states a person ceases to qualify for refugee status if

he or she can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist and no other circumstances have arisen which justify his or her continued recognition as a refugee.

This definition closely resembles the 1951 Convention except it adds that a person will lose refugee status if ‘no other circumstances have arisen which justify his or continued recognition as a refugee’. This wording requires a more detailed examination of a refugee’s situation when terminating refugee status as it recognises that although the initial circumstances may have been extinguished, other issues may have arisen that will justify continued protection.

The intent of the cessation clause was discussed by the task team responsible for drafting the Refugees Act who stated that if cessation proceedings were to be invoked, it ‘recommends that in cases where refugee status has ceased under these principles, any final settlement be concluded in an essentially humanitarian way’.¹⁶ This statement shows that the task team was contemplating

¹⁵ Refugees Act, above n 7, section 1A(a)-(e).

¹⁶ The White Paper for Refugee Affairs Task Team, *Draft Refugee White Paper*, Notice No. 1122, *Government Gazette* 396 (18988) (19 June 1998) ¶ 2.5 [hereinafter *Draft Refugee White Paper*]. The task team consisted of Mr A F Tredoux (Chairman of the Department of Home Affairs), Dr Barney

how cessation proceedings might occur in the future and that humanitarian concerns should be taken into account when considering the termination of refugee status.

In addition to the extended cessation provision, the Refugees Act contains an exception proviso at section 5(2) which states that refugee status does not cease for a refugee 'who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality'. This definition copies the exception from the 1951 Convention and confirms the potential need for continued refugee protection for some refugees.

The Refugees Act also allows a refugee to apply for permanent residence after he or she has been recognised as a refugee and has resided in the Republic for five consecutive years.¹⁷ This process is difficult in practice requiring the refugee to produce a copy of their original refugee status document held by the Department of Home Affairs (DHA) in the refugee's case file to prove that the refugee has been in the country for five years. With this document the refugee may apply for a letter of authorisation to apply for permanent residence from the Standing Committee for Refugee Affairs (SCRA) – this letter will only be distributed to refugees that SCRA 'certifies ... will remain a refugee indefinitely'.¹⁸

Additionally, when refugee status is initially granted for an individual, SCRA may

certify that an individual will remain a refugee indefinitely, if the refugee has established compelling reasons arising out of previous persecution for refusing to return to the country of persecution, even if conditions in that country have fundamentally changed or are likely to fundamentally change in the foreseeable future.¹⁹

Thus a refugee may be deemed a refugee indefinitely either after five years during the permanent residence request or potentially from the moment the refugee is first recognised by the government. Refugees who go through permanent residence application process and are granted the letter of authorisation and those are identified by SCRA initially as refugees with continuing protection needs should thus be exempted pre-emptively from any cessation process that may occur in the future,

Pityana and Mr Jody Kolapen (South African Human Rights Commission), Ms V L A De La Hunt (University of Cape Town Legal Aid Clinic), Mr Babini Vantyu (Lawyers for Human Rights), Mr Bruno Geddo (UNHCR), Ms Vivian Taylor (Gender Commission), Mr M Tlhomelang (Department of Home Affairs), and Mr M Schoeman (Secretary of the Department of Home Affairs).

¹⁷ Refugees Act, above n 7, section 27(c).

¹⁸ The Refugees Act elaborates on SCRA's composition, functions, and duties at sections 9 – 11.

¹⁹ *Refugee Regulations (Forms and Procedure)*, Notice No. R 366, *Regulation Gazette* 6779 (6 April 2000) section 15(5) [hereinafter *Refugees Act Regulations*].

regardless of the result of their permanent residence application.²⁰ This would allow for those who have suffered severe persecution to avoid having to undergo another interview process. It is important to note that this determination involves only the refugee proving they will continue to have a well-founded fear indefinitely; it does not include other factors, such as economic and social ties to the host country (as discussed at section 2.5) and is thus applicable to refugees only on protection grounds.

The granting of permanent residence to refugees who may remain so indefinitely can also be enacted as a review by SCRA when the refugee has their refugee identity document renewed as stated at section 15(4)(a) of the Refugees Act Regulations. This review can also result in the withdrawal of status pursuant to section 36 of the Refugees Act, which can occur if the refugee status was conferred erroneously due to 'materially incorrect or false information, or was so recognised due to fraud, forgery, a false or misleading representation of a material' or due to reasons as established in section 5, including the ceased circumstances clause. In practice, this review option is rarely carried out by SCRA. Currently, SCRA has a high workload and faces a considerable backlog of individual refugee determination rejections to review and as such may not have the capacity to initiate this review process.²¹

Despite the inconsistencies between in the international instruments, cessation procedures in South Africa will follow those as established in the Refugees Act at section 5(1)(e) and 5(2) and, as noted above, the application of the Refugees Act must be interpreted and applied with due regard to relevant international instruments, thus requiring cessation procedures to consider a broad range of materials. Section 233 of the Constitution further adds to the importance of international law and norms by stating that when interpreting any legislation the courts must 'prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law'. The Draft Refugee White Paper's elaborations on cessation processes also support a humanitarian interpretation of the legislation.

²⁰ In practice, section 27(c) permanent residence applications often go unanswered and the refugee is rarely notified of any decision being made in regards to their application. The Scalabrini Centre Advocacy Programme has assisted nine clients since January 2012 with this issue. Some of these individuals lodged applications as far back as 2004, and many have lodged multiple applications. Communications with SCRA have revealed that many refugees are rejected as they do not address why they will remain a refugee indefinitely.

²¹ The backlog of Manifestly Unfounded cases with SCRA sits at 68,740; Director General of the Department of Home Affairs Mkuseli Apleni, 'Speaking notes for weekly media briefing by Home Affairs Director' (Media Release, 12 April 2012).

While the instruments themselves do not provide much guidance in terms of the interpretation of these provisions, UNHCR, through its Statute, Executive Committee declarations, Guidelines, and Handbooks, has provided authoritative guidance for ceased circumstances declarations and the associated exceptions to mandated repatriation.

**[2.3] Exceptions to cessation:
'compelling reasons arising out of past persecution'**

The 'compelling reasons' exception is intended to apply to refugees or their family members 'who have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence'.²² This exception is not necessarily based on protection concerns but reflects a general humanitarian principle that those who have suffered atrocious forms of persecution should not be expected to return home and acknowledges that even durable changes in the country of origin 'may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee'.²³ This exemption does not distinguish between persecution of a generalised or specific nature, allowing the provision to be applicable to refugees recognised under the expanded OAU definition included in the Refugees Act at section 3(b) as well as the individual definition as defined at 3(a) and in Article 1A(2) of the 1951 Convention.

The applicable considerations for this exception are both objective (the nature and severity of the claimant's experiences) and subjective factors (continued effect or trauma of those experiences on the claimant's well-being) that need to be evaluated to determine if a refugee meets the required threshold.²⁴ Determining which acts of persecution are considered severe enough is complicated by the fact that there is no set scale or definition and that all refugees, by their definition, have already endured serious levels of persecution. UNHCR outlines a number of considerations in its *Guidelines on Exemption Procedures* at paragraphs 28(a)–(d). These paragraphs state that severity can be inferred from the act itself (such as acts of genocide, torture, detention in prison) as well as the context in which the acts took place and the duration of the treatment. Additional factors involve the claimant's age, gender, cultural background, and social experiences. Possible scenarios include ex-camp or

²² UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Un Doc HCR/IP/4/Eng/Rev.1 (January 1992) ¶ 136 [hereinafter UNHCR, *Handbook*].

²³ *Ibid.*

²⁴ UNHCR, *Guidelines on Exemption Procedures in respect of Cessation Declarations* (December 2011) ¶ 26 [hereinafter UNHCR, *2011 Guidelines on Exemption Procedures*].

prison detainees, survivors of or witnesses to violence against family members (including sexual violence), severely traumatised persons, and children. Refugees' compelling reasons claims should take into consideration the level of exposure to traumatic events (both direct and indirect) and their psychological impact, the potential for ongoing emotional, physical, and mental issues stemming from traumatic experiences, and that children may relate or cope to traumatic events differently than adults. Persons in these categories are assumed to have suffered severe persecution, whether at the hands of state authorities or by non-state actors, in the country of origin or host state, and cannot be reasonably expected to return to their country of origin.²⁵

[2.4] Exceptions to cessation: 'continuing well-founded fear'

UNHCR Executive Committee conclusion No. 69 (XLIII) emphasises that ' "ceased circumstances" cessation clauses shall not apply to refugees who continue to have a well-founded fear of persecution'²⁶ and that even if circumstances have fundamentally changed, 'there may always be the specific circumstances of individual cases that may warrant continued international protection'.²⁷ In practice, this acknowledges that despite the designation of 'durable and significant' changes in the country of origin, there remain refugees who may still be at risk upon return – particularly to non-state actors – and that such claims must be taken seriously as a matter of law. According to UNHCR, refugees who may have a continuing well-founded fear must have the possibility to have their case considered on an individual basis for continuing international protection.²⁸

The main question in such cases involves determining if the refugee continues to meet the refugee definition; this determination can be linked to the original reason for flight which the refugee was recognised under or could be due to 'new reasons' that have arisen post-departure.²⁹ This determination places more emphasis on the objective element of determining the person's continuing 'well-founded fear' whereas the 'compelling reasons' exception requires a more subjective

²⁵ 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)* (2003) ¶ 20 [hereinafter UNHCR, *2003 Guidelines on International Protection*]; UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶¶ 28 (a)-(d).

²⁶ UNHCR, *Cessation of Status*, EXCOM Conclusions No. 69 (XLIII), UN Doc EC/47/SC/CRP.30 (9 October 1992) ¶ c [hereinafter UNHCR, *Conclusion No. 69*].

²⁷ UNHCR, *2003 Guidelines on International Protection*, above n 25, ¶ 19.

²⁸ UNHCR, *Conclusion No. 69*, above n 26, ¶ (d).

²⁹ UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶ 23.

and psychological analysis of the refugee's reasons for not returning to their country of origin.

[2.5] Exceptions to cessation: acquired rights for long-term refugees

In addition to the abovementioned reasons for exemption, UNHCR recommends that to avoid hardship cases, alternatives to cessation should be considered for those 'with strong economic ties and/or family and social links in the country of asylum, particularly when all or most ties in the country of origin have been lost' for refugees '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'.³⁰

This exception functions practically as a suspension of cessation and is sometimes referred to as the 'acquired rights' exception. It differs from the previous two exceptions as it arises out of humanitarian principles for general well-being and family unity, and not out of issues directly related to refugee protection, and is not found in any of the legal instruments. It provides an avenue for those refugees who '[i]n ordinary circumstances ... arrangements would have been made for persons with acquired family rights to stay and integrate into the host community prior to any "general cessation" declaration, including for example access to a legal status, such as residency, family unity visas, or citizenship'.³¹

The suspension should allow for refugees to continue residing in the host country while the aforementioned arrangements for another legal status are implemented. It is not explicitly mentioned in any of the international instruments but there is nothing in international law forbidding a suspension, especially if 'the suspension is in conformity with fundamental rights and in the spirit and purpose of the 1951 Convention'.³² Such a suspension is only temporary and merely allows the state to ensure that procedures developed for cessation practices that preserve the human rights of refugees.³³

In determining groups who might qualify a different legal status due to acquired rights, the principle of family unity and the best interest of the child are paramount. The right to family unity is protected in numerous human rights treaties

³⁰ UNHCR, *Conclusion No. 69*, above n 26, ¶ (e).

³¹ UNHCR, *Note on Suspension of "General Cessation" Declarations in respect of particular persons or groups based on acquired rights to family unity* (December 2011) ¶ 2.

³² *Ibid.*, ¶ 4.

³³ *Ibid.*, ¶ 7.

which are applicable to all people regardless of legal status.³⁴ Additionally, although there is no single definition of what constitutes a family under international law, UNHCR supports a definition that is flexible and facilitates the integration of refugee families into new communities. This definition extends well beyond the traditional notion of the family unit and includes:

the spouse and dependent children, but it can also extend to individuals engaged to be married, those who have entered into a customary marriage, common law couples, and same sex partnerships. It also includes other relatives beyond the nuclear family who are dependant – socially, emotionally or economically – on members of the refugee family.³⁵

It importantly supports the integration of refugee families into new social and cultural communities and attempts to cover all scenarios that may arise under such circumstances.

Other information applicable to acquired rights exceptions are the length of time in the host country and the social, cultural, and material links to the host country. Considering the length of stay, it has been mentioned that ‘five years is not an unreasonable estimate of the earliest point at which repatriation may be said to be unviable from a psychosocial perspective’.³⁶ Second-generation refugees, i.e. children of refugees, should also be considered under an acquired rights exception as returning to their parent’s country of origin in many cases would not constitute ‘returning home’ in any meaningful way, as the majority of their lives have been spent in South Africa. The ability for a refugee to make an acquired rights claim to stay in a host country logically becomes more persuasive as the number of years the refugee has spent in the host country increases and ties to the country of origin deteriorate.

In summary, the exceptions to a cessation declaration – the existence of a continuing well-founded fear, compelling reasons, or acquired rights – provide for the protection of refugee rights and ensure that any cessation procedures enacted do not result in the *refoulement* of refugees. Refugee rights can only be upheld if fair

³⁴ See for example *Universal Declaration of Human Rights*, 1948, Article 16(3); *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3 preamble, Articles 9, 10, 22; *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171 Articles 17, 23.

³⁵ UNHCR, *Note on Suspension of “General Cessation” Declarations in respect of particular persons or groups based on acquired rights to family unity* (December 2011) ¶ 9; See also UNHCR, *Note on Family Reunification* (18 July 1983).

³⁶ James C. Hathaway, ‘Making International Law Relevant Again’ 10 *Harvard Human Rights Journal* (1997) quoted in Yasmeen Siddiqui, *Reviewing the application of the Cessation Clause of the 1951 Convention relating to the status of refugees in Africa*, Refugee Studies Centre Working Paper No. 76 (August 2011) 37.

systems and procedures are established to determine exceptions and the practical implementation of cessation procedures is equally important.

[3] Implementation: procedural issues

The procedural requirements for ceased circumstances proceedings, like cessation exception determinations, are also not elaborated on in the legal instruments and guidance must again be sought through UNHCR materials. South Africa's domestic legislation regarding administrative fairness, *The Promotion of Administrative Justice Act (Act No. 3) of 2000*,³⁷ ensures everyone has the right to fair, lawful and reasonable administrative action and is thus critical aspect of the cessation process. These documents and legislation together provide a framework for how cessation declarations and exemption procedures should be administered.

[3.1] Scope of cessation declarations

The invocation of Article 1C(5) clause is only relevant to the refugees who fall under the terms of the declaration.³⁸ For instance, in the Angolan Declaration, UNHCR recommends that status cease for all refugees who 'fled their country [Angola] as a result of the conflicts between 1961 and 2002'.³⁹ Those who left the country due to reasons unrelated to that conflict are not covered by this current declaration and will continue to remain in South Africa in the asylum system. It is important to note that while UNHCR recommends that host states implement Article 1C(5), it is up to the host state to undertake this action and UNHCR cannot force any state to act on its recommendations.

Asylum seekers who fled their country under the terms of the cessation declaration but are still awaiting their refugee status decision are also not covered by the cessation declaration as such a declaration cannot be used a means to deny recognition of status. Cessation declarations 'cannot serve as an automatic bar to refugee claims, either at the time of a general declaration or subsequent to it'.⁴⁰ The 1951 Convention's cessation clauses as elaborated on at Articles 1C(1)-(6) all can be applied post-recognition only.⁴¹

³⁷ This Act gives effect to Section 33 of the Constitution.

³⁸ UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶ 16.

³⁹ UNHCR, *Comprehensive Strategy for Angolan Refugee Situation*, above n 2, ¶ 26.

⁴⁰ *Ibid*, ¶ 34; UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶ 17.

⁴¹ Pia Zambelli, 'Procedural Aspects of Cessation and Exclusion: The Canadian Experience' (1996) 8 *International Journal of Refugee Law* 148.

[3.2] Minimum standards and notification of cessation declarations

The establishment of minimum procedural safeguards for cessation procedures are built off the principles of consistency, due care, equality, fairness, good faith, legality, impartiality, proportionality, and rationality.⁴² The South African Constitution, through sections 33(1) and (2) which is effected by *The Promotion of Administrative Justice Act (Act No. 3) of 2000*, states that everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. This applies to refugees and asylum seekers, and to meet these minimal administrative requirements the cessation procedural process should be 'as formal as the process for grant of status, given the stakes for the individual'.⁴³

Minimum standards for the notification of a cessation declaration must involve informing refugees in a language they understand, with reasonable notice, of the declaration (its rationale, scope, process and timeframe) as well as the other durable solutions available. This notification should explain their rights including *inter alia* the right to file supporting documents, to be notified in writing of any decisions, to have a competent interpreter, to be interviewed by a person of the same sex as themselves, the right to legal representation, their right to an individual interview including those refugees who want to make an individual claim who have previously been recognised as a dependant, as well as their right to an appeal a negative decision.⁴⁴ The notice must inform refugees of their responsibilities in regards to the process such as the consequences of not complying with obligations and deadlines as well as misrepresentations, fraud, or exclusion.⁴⁵

[3.3] Registration procedures

The registration process should begin well in advance (ideally, three to six months) of the date of the effect of the cessation declaration and should be open for a period of at least two months that can be extended if circumstances require and it should also allow for individuals with valid reasons to register after the registration

⁴² UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶ 29.

⁴³ Joan Fitzpatrick, Jeffrey & Susan Brotman, *Current Issues in Protection under Article 1C*, above n 8, ¶ 63.

⁴⁴ UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶¶ 29 – 31.

⁴⁵ *Ibid*, ¶ 29.

deadline.⁴⁶ Registration must close before the date in which the cessation declaration is set to enter into effect.⁴⁷

An 'enhanced registration' process may also be established in situations where there is a high likelihood that certain sub-groups within the larger refugee population will qualify for exemptions. Such a process would alleviate the need for a large number of interviews and would lessen the burden on government officials as well as avoid potentially traumatising refugees through the interview process. Enhanced registration consists of the regular registration procedure as well as an additional checklist of additional elements developed on a situational basis that may include information such as nationality, ethnicity, place of origin (local level specifics), and/or exclusion triggers with a focus on verifying certain, specific facts relevant to the determination of whether the refugee belongs to a group that is presumed to qualify for exemption.⁴⁸ Such a procedure can only result in a positive decision – if it appears that the individual may not be eligible for an exemption then a regular interview must be scheduled to determine eligibility.⁴⁹

[3.4] The interview process: credibility and the standard of proof

In establishing an interview system, UNHCR states that 'investing in a solid first instance exemption' is recommended to help 'ensure the integrity of the process, improve quality of decisions, reduce the need for appeals, minimize the number of decisions overturned on appeals, and to avoid delays'.⁵⁰

Assessing the credibility of applicants should follow refugee status determination (RSD) guidelines issued for that state as well by UNHCR.⁵¹ The initial RSD interview should be used as an additional source of information where appropriate but it is important to note that inconsistencies or vagueness do not necessarily mean that the applicant is not credible as the number of years since the incident and the incident's traumatic nature make their recollection difficult.⁵²

⁴⁶ Ibid, ¶¶ 32, 34, and 35.

⁴⁷ Ibid, ¶ 32.

⁴⁸ Ibid, ¶ 44.

⁴⁹ Ibid, ¶ 46.

⁵⁰ Ibid, ¶ 47.

⁵¹ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims* (16 December 1998) ¶¶ 11-12. These procedures are outlined in UNHCR, *Handbook*, above n 22.

⁵² See generally Hilary Evans Cameron, 'Refugee Status Determinations and the limits of Memory' (2010) 22 (4) *International Journal of Refugee Law* 469-511; Jane Herlihy and Stuart W. Turner, 'Asylum claims and memory of trauma: sharing our knowledge' (2007) 191 (1) *British Journal of Psychology* 3-4.

As opposed to the initial RSD interview where the burden of proof lies with the applicant to prove why they cannot return to their country of origin,⁵³ when determining whether a previously recognised refugee should no longer be considered a refugee, the burden is on the government to prove that a refugee claim no longer exists.⁵⁴ In cases where the applicant has suffered severe instances of persecution resulting in post-traumatic stress or has mental disabilities, the official may find it necessary to consult external sources of information (such as country of origin information, medical reports, or interviews with other family members) to accurately determine the applicant's protection needs. The UNHCR Handbook notes that in such instances, the examination of the applicant's case must be more 'searching' than in other cases in terms of the examination of the applicant's history and background.⁵⁵

Those who apply for exemption based on a continued well-founded fear need to satisfy a similar standard of proof as done in regular RSD procedures. As UNHCR's *Note on Burden and Standard of Proof* states, the applicant must prove that it is 'reasonably possible' that they will suffer persecution upon return to their country of origin. For those who are applying for exemption based on compelling reasons arising out of previous persecution, the applicant 'needs to make credible 1) the exposure to the event itself and/or that 2) he or she suffers from ongoing trauma as a result of the event'.⁵⁶

Any decision must be issued in writing in an individual manner with negative decisions indicating the rationale for the decision.⁵⁷ In particular, negative decisions should inform the individual of the consequences of the decision such as the effect of the decision on their legal status in the country (and any dependants with refugee status based on their status), their right to appeal, the availability of assistance possible for return, and the procedures for return including documents.⁵⁸

Regarding the right to appeal, all applicants who receive a negative decision should receive at least one instance of appeal as allowed in initial status decisions that provides for 'a full review of all aspects of the decisions, including questions of law and fact'.⁵⁹ The appeal request should be submitted in writing and

⁵³ Refugees Act Regulations, above n 19, sections 11(1)-(2); UNHCR, *Handbook*, above n 22, ¶ 196.

⁵⁴ Guy Goodwin-Gill, *The Refugee in International Law* (1996) 86-87; Joan Fitzpatrick, Jeffrey & Susan Brotman, *Current Issues in Protection under Article 1C*, ¶ 54.

⁵⁵ UNHCR, *Handbook*, above n 22, ¶¶ 210 – 212.

⁵⁶ UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶ 61.

⁵⁷ *Ibid.*, ¶ 65.

⁵⁸ *Ibid.*, ¶ 66.

⁵⁹ *Ibid.*, ¶ 62 ; UNHCR, *Handbook*, above n 22, ¶ 192 (vi).

the appeal may be based on a file review with the applicant submitting their appeal in writing unless the individual circumstances of the case require an interview.⁶⁰ The appeal itself should be heard by a different and independent body not involved with the initial determination, similar to the current RSD system in South Africa.

**[4] Concluding remarks:
cessation procedures in the South African context**

It is both desirable and practical that refugee status comes to an end when situations in the country of origin allow refugees to return; the challenge is to enact provisions and procedures that allow for the lawful termination of refugee status in a way that does not infringe upon the rights of refugees.

As shown above, terminating status through the invocation of the ceased circumstances clause is a multidimensional process involving complex legal and procedural issues. This paper has attempted to clarify the legal obligations of South Africa in invoking the ceased circumstances cessation clauses. In doing so, it has shown that despite inconsistencies in cessation provisions, the termination of refugee status through these clauses in South Africa must be accompanied by legal processes that respect refugee rights as protected by a broad range of instruments such as the South African Constitution, both international and domestic legislation relating to refugee issues and administrative fairness, and international human rights instruments. While the protection of the rights of asylum seekers and refugees in South Africa is strong on paper, these protections are not always implemented on the ground. Currently, the asylum system is under stress from high numbers of asylum seekers and is short on resources to fairly administer the Refugees Act as required by law. This will have consequences for the implementation of cessation procedures and it is worth briefly exploring these issues to gauge their potential impact on the rights of those refugees facing cessation proceedings.

In the first quarter of 2012 the asylum system received 25,382 applications in total (about 6,345 applications per month) across the four refugee reception offices open for asylum applications.⁶¹ These figures put the system on pace to

⁶⁰ UNHCR, *2011 Guidelines on Exemption Procedures*, above n 24, ¶¶ 62-63.

⁶¹ Presentation to the Portfolio Committee of the Department of Home Affairs on the Status of Ports and of Entry and Asylum Seekers Management, Parliament of South Africa, Cape Town, 22 May 2012, 27 (Director General Mkuseli Apleni). The four offices are located in Musina, Pretoria, Durban, and Cape Town. The Cape Town office was closed to new applicants for asylum on 29 June 2012 but was ordered to reopen to new applicants by the Western Cape High Court on 25 July 2012.

receive over 100,000 applications during 2012. The high number of asylum applications occurs despite the introduction of more restrictive measures for asylum seekers such as the requirement of 'border passes' and pre-screening measures at the border.⁶² The large volume of applications has led to a backlog of status determination cases⁶³ which does not include cases for those asylum seekers still awaiting their initial status determination ruling. With this pressure, the Department's Refugee Status Determination Officers (RSDO) have been producing poor refugee status decisions as recorded in 2010 and again in 2012.⁶⁴ Under these circumstances, the ability of the South African government to ensure that rights are respected and administrative efficiency is delivered for refugees during cessation proceedings is questionable. This is of great concern as such matters are of critical importance to the refugee.

For those refugees who have been in the country for long periods of time, an accessible and straight-forward alternative process to cessation should be implemented to increase efficiency in line with 'acquired rights' exception elaborated on above at section 2.5. In the case of both the Rwandan and Angolan refugee situations, many of these refugees have been in the country for over 10 years and have made considerable contributions to South African society. As detailed in Section 2.2, the Refugees Act allows for refugees to apply for permanent residence after five years of continuous residence in South Africa but this process is cumbersome and involves many different procedural issues. Beyond those requirements, the five year requirement does not include the time spent by the refugee as an asylum seeker, which in the South African system is routinely measured in years despite determination processes designed to be 'generally be adjudicated within 180 days of filing a completed asylum application'.⁶⁵ With these barriers in mind, arrangements for permanent residence

⁶² Roni Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination', African Centre for Migration & Society Research Report (June 2012) 9.

⁶³ According to the Director General of Home Affairs, the current backlog of Refugee Appeal Board cases sits at 87,602 and the backlog of Manifestly Unfounded cases with the Standing Committee for Refugee Affairs sits at 68,740: Director General of the Department of Home Affairs Mkuseli Apleni, 'Speaking notes for weekly media briefing by Home Affairs Director' (Media Release, 12 April 2012).

⁶⁴ See generally Roni Amit, 'Protection and Pragmatism: Addressing Administrative Failures in South Africa's Refugee Status Determinations' FMSP Report (April 2010). This article found that out of 324 refugee status decisions, '[v]irtually none of the letters reviewed contained a proper evaluation of the asylum claim in accordance with refugee and administrative law' 8. Similar findings were reported in a follow-up report; Roni Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination', above n 62.

⁶⁵ Refugees Act Regulations, above n 19, Section 3(1); See Forced Migration Studies Programme (University of the Witwatersrand) 'National survey of the refugee reception and status determination system in South Africa' Migrant Rights Monitoring Project (MRMP) Research Report (February 2009) 7. This research report found that the average length of time for an asylum seeker in the system without

applications for refugees facing cessation proceedings should, on administrative fairness principles and humanitarian concerns, take into account the years spent as an asylum seeker and should also be as straight-forward as possible, allowing the refugee to apply in an efficient and transparent manner. This process could be constructed as a part of the exception framework and streamline the process to make it more accessible for those refugees.

Given these circumstances, ending refugee status in South Africa should provide the refugee with as many options as possible, including local integration and naturalisation. Cessation involves serious matters and the 'premature or insufficiently grounded application of the cessation clauses can have extremely serious consequences as refugees who need to remain in the country of asylum may be forced to do so illegally, or may be threatened with *refoulement*'.⁶⁶ To avoid these issues UNHCR has recommended that 'the cessation clauses to be interpreted in a restrictive way, taking into account the guidance contained in the UNHCR Handbook'.⁶⁷ The idea of a 'restrictive' interpretation of the cessation clauses has been echoed by the Task Team in the Draft Refugee White Paper when it stated that cessation should occur in an essentially humanitarian manner. Coupled with the fact that the Refugees Act must be applied in a manner consistent with other relevant international instruments, it becomes clear that cessation procedures in South Africa must be treated seriously and be implemented with the appropriate procedural safeguards and minimum standards to uphold refugee rights and avoid any instances of *refoulement*.

Even though UNHCR might be recommending host states to terminate refugee status, this does not require the state to do so. Should such an undertaking be limited by administrative and resource constraints, in the interest of refugee rights and practical logistical concerns, the host state should consider other options for terminating refugee status. One example is the South African government's granting of permanent residence to Mozambican refugees as announced in December 1996 and implemented in 1999 and 2000; this 'amnesty' programme allowed those refugees who wanted to remain in South Africa do so if they could establish their Mozambican identity and that they had arrived in the country before 1992.⁶⁸ Such a programme could be established for both Angolan and Rwandan refugees at minimal

a status determination interview was one year and three months while those who had their interview had been in the system for two and a half years.

⁶⁶ UNHCR, *1997 Note on Cessation Clauses*, above n 10, ¶ 8.

⁶⁷ *Ibid.*

⁶⁸ Jonny Steinberg, 'A Mixed Reception: Mozambican and Congolese Refugees in South Africa' Institute for Security Studies Monograph No 117 (June 2005) 15-16.

cost to allow the DHA to allocate their resources to more pressing concerns. Should the government move forward and implement the Angolan and Rwandan cessation declarations, additional support from UNHCR could be enlisted to increase capacity and knowledge of cessation issues.

As a final thought, when considering the cessation of refugee status it is worth recalling that international refugee protection's main goal is 'fundamentally oriented to creating conditions of independence and dignity which enable *refugees themselves* to decide how *they* wish to cope with their predicaments',⁶⁹ and any termination of refugee status process should aim to achieve this goal as much as possible.

References⁷⁰

Primary Sources

Constitution of the Republic of South Africa (No. 108 of 1996) (18 December 1996)
[<http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>]

Director General of the Department for Home Affairs Mkuseli Apleni 'Speaking notes for weekly media briefing by Home Affairs Director' (Media Release, 12 April 2012)
[<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=26595&tid=64246>]

Organization for African Unity, *Convention on the Specific Aspects of the Refugee Problems in Africa*, opened for signature 10 September 1969 1000 UNTS 46 (entered into force 20 June 1974)
[www.unhcr.org/refworld/docid/3ae6b36018.html]

Presentation to the Portfolio Committee of the Department of Home Affairs on the Status of Ports and of Entry and Asylum Seekers Management, Parliament of South Africa, Cape Town, 22 May 2012, 27 (Director General Mkuseli Apleni) [<http://www.pmg.org.za/> (subscription required)]

The Promotion of Administrative Justice Act (No. 3 of 2000) (South Africa) (3 February 2000) [http://www.saflii.org/za/legis/num_act/poaja2000396.pdf]

Refugee Regulations (Forms and Procedure) (South Africa), Notice No. R 366, 418 (21075) *Government Gazette* (6 April 2000)
[www.unhcr.org/refworld/pdfid/3affee564.pdf]

The Refugees Act (No. 130 of 1998) (South Africa) (2 December 1998)
[<http://www.unhcr.org/refworld/type.LEGISLATION,ZAF,3ae6b6090,0.html>]

⁶⁹ James C. Hathaway, 'Refugee Solutions, or Solutions to Refugeehood?' 24 (2) *Refuge* (2006) 4.

⁷⁰ All web URLs accessed 26 August 2012.

United Nations General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) [www1.umn.edu/humanrts/instreet/v1crs.htm]

—, *Convention on the Rights of the Child*, 20 November 1989, UNTS 1577 (entry into force 2 September 1990) [<http://www.unhcr.org/refworld/docid/3ae6b38f0.html>]

—, *Statute of the United Nations High Commissioner for Refugees*, UN Doc. A/RES/428(V) (14 December 1950) [www.unhcr.org/refworld/docid/3ae6b3628.html]

—, *Universal Declaration of Human Rights*, General Assembly Resolution 217 A (III) (10 December 1948) [<http://www.unhcr.org/refworld/docid/3ae6b3712c.html/>]

The White Paper for Refugee Affairs Task Team, *Draft Refugee White Paper*, Notice 1122, 396 (18988) *Government Gazette* (19 June 1998) [<http://www.info.gov.za/view/DownloadFileAction?id=70429>]

Secondary Sources

Allain, Jean, 'The *jus cogens* Nature of *non-refoulement*' (2001) 13 (4) *International Journal of Refugee Law* 533

Amit, Roni, 'Protection and Pragmatism: Addressing Administrative Failures in South Africa's Refugee Status Determinations' Forced Migration Studies Programme Report (April 2010) [http://www.migration.org.za/sites/default/files/reports/2010/FMSP_Protection_and_Pragmatism_Report_April_2010_doc_2.pdf]

—, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination', African Centre for Migration & Society Research Report (June 2012) [http://www.lhr.org.za/sites/lhr.org.za/files/all_roads_lead_to_rejection_research_report.pdf]

Barutciski, Michael, 'Involuntary Repatriation when Refugee Protection is No Longer Necessary: Moving Forward after the 48th Session of the Executive Committee' (1998) 10 (1, 2) *International Journal of Refugee Law* 236

Cameron, Hilary Evans, 'Refugee Status Determinations and the limits of Memory' (2010) 22 (4) *International Journal of Refugee Law* 469

Crisp, Jeff, 'The local integration and local settlement of refugees: a conceptual and historical analysis' (New Issues in Refugee Research Working Paper No. 102, UNHCR, April 2004) [<http://www.unhcr.org/407d3b762.html>]

Cwik, Marissa Elizabeth, 'Forced to Flee and Forced to Repatriate? How the Cessation Clause of Article 1C(5) and (6) of the 1951 Refugee Convention Operates in International Law and Practice' (2011) 44 *Vanderbilt Journal of Transnational Law* 711

- Fitzpatrick, Joan, 'The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection' (1999) 13 *Georgetown Immigration Law Journal* 343
- Fitzpatrick, Joan, Brotman, Susan & Brotman, Jeffrey, 'Current Issues in Cessation of Protection Under Article 1C of the 1951 refugee Convention and Article I.4 of the 1969 OAU Convention', *UNHCR Note* (2001) [<http://www.unhcr.org/refworld/pdfid/3bf925ef4.pdf>]
- Forced Migration Studies Programme (University of the Witwatersrand), 'National survey of the refugee reception and status determination system in South Africa' Migrant Rights Monitoring Project (MRMP) Research Report (February 2009) [<http://cormsa.org.za/wp-content/uploads/Research/Asylum/FMSPMRMPRefugeeReceptionReport.pdf>]
- Gallagher, Dennis, 'Durable Solutions in a New Political Era' (1994) 47 (2) *Journal of International Affairs* 429
- Goodwin-Gill, Guy, *The Refugee in International Law* (1996)
- Grahl-Madsen, Atle, *The Status of Refugees in International Law* (1966)
- Hathaway, James C., 'Refugee Solutions, or Solutions to Refugeehood?' (2006) 24 (2) *Refugee* 3
- , 'The Rights of States to Repatriate Former Refugees' (2005) 26 *Immigration and Nationality Law Review* 201
- Herlihy, Jane and Turner, Stuart W., 'Asylum claims and memory of trauma: sharing our knowledge' (2007) 191 (1) *British Journal of Psychology* 3
- Kalin, Walter, 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond' (2008) in Erika Feller, Volker Türk, Frances Nicholson (eds), *Refugee Protection in International Law* (2008) 613
- Maynard, P.D., 'The Legal Competence of the United Nations High Commissioner for Refugees', (1982) 31 *International & Comparative Law Quarterly* 416
- Office of the United Nations High Commissioner for Refugees, *Executive Committee Conclusion No. 69 (XLIII)* (1992) [<http://www.unhcr.org/3ae68c431c.html>]
- , Global Consultations on International Protection, 4th meeting, *Local Integration*, UN Doc. EC/GC/02/6 (25 April 2002) [<http://www.unhcr.org/refworld/docid/3d6266e17.html>]
- , *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees*, UN Doc. HCR/GIP/03/03 (10 February 2003) [<http://www.unhcr.org/refworld/docid/3e50de6b4.html>]
- , *Guidelines on Exemption Procedures in respect of Cessation Declarations* (December 2011) [<http://www.unhcr.org/refworld/docid/4eef5c3a2.html>]

- , *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Un Doc. HCR/IP/4/Eng/Rev.1 (January 1992)
[\[http://www1.umn.edu/humanrts/instreet/refugeehandbook.pdf\]](http://www1.umn.edu/humanrts/instreet/refugeehandbook.pdf)
- , *Implementation of the Comprehensive Strategy for the Angolan Refugee Situation, including UNHCR's recommendations on the applicability of the "ceased circumstances" cessation clauses* (15 January 2012)
[\[http://www.unhcr.org/refworld/pdfid/4f3395972.pdf\]](http://www.unhcr.org/refworld/pdfid/4f3395972.pdf)
- , *Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the "Ceased Circumstances" Cessation Clauses* (31 December 2011)
[\[http://www.unhcr.org/refworld/type.GENERAL,,,4f33a1642.0.html\]](http://www.unhcr.org/refworld/type.GENERAL,,,4f33a1642.0.html)
- , *Note on Burden and Standard of Proof in Refugee Claims* (16 December 1998)
[\[http://www.unhcr.org/refworld/docid/3ae6b3338.html\]](http://www.unhcr.org/refworld/docid/3ae6b3338.html)
- , *Note on Cessation Clauses*, UN Doc. EC/47/SC/CRP.30 (30 May 1997)
[\[http://www.unhcr.org/refworld/docid/47fdfaf1d.html\]](http://www.unhcr.org/refworld/docid/47fdfaf1d.html)
- , *Note on Family Reunification* (18 July 1983)
[\[www.unhcr.org/refworld/docid/3bd3f0fa4.html\]](http://www.unhcr.org/refworld/docid/3bd3f0fa4.html)
- , *Note on International Protection*, UN Doc. A/AC.96/799 (25 July 1992)
[\[http://www.unhcr.org/refworld/type.UNHCRNOTES,,,3ae68bfe18.0.html\]](http://www.unhcr.org/refworld/type.UNHCRNOTES,,,3ae68bfe18.0.html)
- , *Overview Note on Angolan Refugees and Cessation of Status* (14 July 2011)
- Siddiqui, Yasmeen, 'Reviewing the application of the Cessation Clause of the 1951 Convention relating to the status of refugees in Africa', Working Paper No. 76, Refugee Studies Centre (August 2011)
[\[http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper76.pdf/view\]](http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper76.pdf/view)
- Steinberg, Jonny, 'A Mixed Reception: Mozambican and Congolese Refugees in South Africa' Institute for Security Studies Monograph No 117 (June 2005)
[\[http://www.iss.co.za/pubs/monographs/No117/Contents.htm\]](http://www.iss.co.za/pubs/monographs/No117/Contents.htm)
- Tarwater, Jeremy R., 'Analysis and Case Studies of the "Ceased Circumstances" Cessation Clause of the 1951 Refugee Convention' (2001) 15 *Georgetown Immigration Law Journal* 563
- Zambelli, Pia, 'Procedural Aspects of Cessation and Exclusion: The Canadian Experience' (1996) 8 *International Journal of Refugee Law* 144