

Danish Refugee Council

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SOMALIA (45)

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TELEFAX

Date: 18-03-98
To: UNHCR ROBNC, Att. Carl Söderberg / Kallu Kalumiya
Fax no.: + 46 8 457 4885
From: Nina Lassen
Re: Ceased Circumstances Cessation Clause to Refugees from Civil Conflict
Number of Pages: 2 including this cover page.

Message:

The Danish Immigration Service has in a number of cases applied the ceased circumstances cessation clause to refugees from Northern Somalia. In its reasonings, the Immigration Service is referring to "the generally improved situation" in the Northeastern and Northwestern Somalia.

On 27 March 1998, the Danish Refugee Appeals Board will review the first case of this kind in order to decide, as a *matter of principle*, whether to approve of the above practice.¹

Important to mention is that these are not only the first Somali cases of this kind, it is also the first time at all that the Board will consider applying the *ceased circumstances* cessation clause to refugees in Denmark. It is therefore a whole new practice which is about to be initiated.

UNHCR has in its "Note on the Cessation Clauses" of 30 May 1997 (EC/47/SC/CRP.30), para. 25, on the question of applying the ceased circumstances clause to refugees from civil conflict where a State has fragmented into different - peaceful - parts without any part attaining statehood, concluded that "... in northwestern Somalia, the lack of a functioning central authority, the absence of administrative structures, the widespread presence of mines resulting in serious lack of security and general absence of governance are elements which militate against the application of the cessation clause." (attached for easy reference).

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¹ The cases in question do *not* necessarily concern refugees belonging to the majority clan/the clan in power. For example, the clan-relationship of the refugee whose case is to be decided on 27 March is Darod/Harti/Dhulbahabte/Mohamoud Garad. His mother is Habr Yonis. He originates from Buuhoodle and Las Anod in the Sool region.

As the position of UNHCR on this partly legal question of interpretation will be highly relevant to the decisions to be taken by the Board - and in particular to the position of DRC's members of the Board - we would like to know whether the above-mentioned note of 30 May 1997 is still mirroring the position of UNHCR on the interpretation and application of the ceased circumstances cessation clause:

- 1) in general;
- 2) in relation to refugees from civil conflict where the state has fragmented into different parts without any part attaining statehood; and
- 3) in relation to refugees from northwestern Somalia in particular.

Moreover we would like to know the position of UNHCR in relation to

- 4) the application of the ceased circumstances cessation clause to refugees from Northeastern Somalia.

As mentioned above, the Refugee Appeals Board is expected to review the first case of this kind already on 27 March. We therefore kindly request you to treat this as an urgent matter.

Best regards,

Nina Lassen
Asylum Department

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES



UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

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FACSIMILE MESSAGE

To: Ms. Nina Lassen, Danish Refugee Council	Destination fax number: 91 45 07 45 33 73 52 60
From: Kallu Kalumiya Regional Representative for the Baltic and Nordic Countries	Return fax number: 46 (0)8 457 48 87 Tel: 46 (0)8 457 48 82 Email: nilsson@unhcr.ch
Date: 26 March 1998	No. of pages including this page:

Subject: Application of the cessation clauses to northern Somalia

Dear Ms. Lassen,

Further to your telefax enquiry dated 18 March 1998, I wish to take this opportunity to confirm that UNHCR has not changed its official position with regard to the above-mentioned subject since its *Note on the Cessation Clauses* dated 30 May 1997.

The general position stated in the Note regarding the application of the cessation clause to refugees from civil conflict where the state has fragmented into different part without any part attaining statehood remains the valid position.

The statement that the lack of a functioning central authority, the absence of administrative structures, the widespread presence of mines resulting in serious lack of security and general absence of governance" as elements which militate against the application of the cessation clause in regards to NW Somalia is no longer valid. Nonetheless UNHCR continues to take the position that the "ceased circumstances" cessation clause should not be applicable to Somalis from NW Somalia albeit on different grounds.

In relation to refugees from NW Somalia, UNHCR's position is that while we acknowledge that the situation in this part of Somalia has fundamentally changed in the sense that there now exists a functioning governing central authority with a functioning system of administration and there also exists a basic economic system, refugees from this part of Somalia are still not able to fully "re-avail themselves of the national protection" (para 25 of the Note) of their country, that is, Somalia, given that they have no recourse to diplomatic protection, including the securing of a valid

national travel documents for purpose of return to their country. This seriously affects their fundamental right to return to their country. While effective protection exists within this part of Somalia, refugees further abroad are not in a position to re-avail themselves of this national protection." This would militate against the application of the cessation clause to such refugees. At the practical level, UNHCR is concerned that should international protection be withdrawn and the refugees are unable to return, they would be put in a 'limbo' situation and the host State may need to consider an alternative status to enable them remain until they are able to return.

Another factor which militates against the application of the 'ceased circumstances' cessation clause is that UNHCR considers that the changes in NW Somalia are too recent for a definitive conclusion to be made that such changes are durable. Consideration should be given to the fact that Somalia had faced violent upheavals over the last eight years, therefore the changes in NW Somalia should be given more time to consolidate and stabilise (para 22 of the Note).

In relation to the situation in NE Somalia, the above reasoning applies mutadis mutandis.

With best regards,

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Kallu Kalumiya' with a stylized flourish at the end.

Kallu Kalumiya