UNHCR POSITION ON RETURNS TO UKRAINE

March 2022

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Introduction

1. On 21 February 2022, after several months of military build-up on the Ukrainian border, the Russian Federation recognized the self-proclaimed Donetsk People’s Republic and Luhansk People’s Republic and ordered troops into these two regions. The Russian Federation announced a ‘special military operation’ against Ukraine on 24 February 2022, and the Russian military began operations across the country. As at 2 March 2022, Ukrainian troops defended the cities of Kyiv and Kharkiv from attacks, with civilians hiding in metro stations and bomb shelters to avoid frequent shelling. The Ukrainian government has issued a decree for the general mobilization of adult males, and men aged 18 to 60 have reportedly been prevented from leaving the country.

2. Various actors have expressed concern that the conflict could lead to a deteriorating human rights situation and could cause loss of civilian life. In response to the conflict, the European Union (EU), the United States and others imposed sanctions against the Russian Federation, causing a drop in the value of the Russian Rouble. Ukraine and the Russian Federation held talks on 28 February 2022 at the Belarus border.

3. Prior to the escalation of the conflict, Ukraine was already in the midst of a “protracted humanitarian crisis”, with an estimated 2.9 million persons in need of humanitarian assistance mostly in the eastern oblasts. Additionally, there were almost 1.5 million internally displaced persons (IDPs) registered in Ukraine. The country also hosts refugees and asylum-seekers from Afghanistan, Syria, the Russian Federation, Somalia, Iraq, Iran, Belarus and other countries. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the conflict “threatens to trigger a humanitarian catastrophe in Ukraine and also in neighbouring countries that are already seeing a massive influx of people fleeing hostilities.”

4. By 27 February 2022, an estimated 352 civilians had been killed, including 14 children, and another 1,684 had been injured. An estimated 874,026 persons had fled the country as at 1 March 2022, with the flow continuing at a rapid pace. The line of cars waiting to cross at the Medyka border crossing with Poland on 27 February 2022 was over 20 miles long; 45,200 persons arrived in Poland in just 15 hours. Neighbouring countries—including Hungary, Moldova, Poland, Romania and Slovakia—had begun to receive Ukrainians fleeing the conflict as at 27 February 2022, and were preparing for large numbers of arrivals; by 1 March 2022, Poland had received 453,982 arrivals, Romania had received 44,540, an estimated 116,348 persons had crossed into Hungary, 67,000 to Slovakia and another 79,315 into Moldova.
Access to the Territory and International Protection

5. As the situation in Ukraine remains fluid and uncertain, UNHCR acknowledges the positive stance of several countries on access to asylum and calls on all countries to allow civilians of all nationalities fleeing Ukraine non-discriminatory access to their territories and to ensure respect for the principle of non-refoulement at all times.

6. Temporary protection under the EU Temporary Protection Directive may be one way to ensure protection coherence and the harmonisation of State responses in the EU and to provide immediate protection from refoulement and basic standards of treatment. UNHCR is aware of and welcomes discussions in this regard.

7. All claims of nationals and former habitual residents of Ukraine seeking international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law. UNHCR is concerned that recent developments in Ukraine are giving rise to an increase in international protection needs for people fleeing Ukraine, whether as refugees under the 1951 Convention or regional refugee instruments, or as beneficiaries of other forms of international protection.

8. In view of the volatility of the situation in the entire territory of Ukraine, UNHCR does not consider it appropriate to deny international protection to Ukrainians and former habitual residents of Ukraine on the basis of an internal flight or relocation alternative.

9. For individuals whose claim had been rejected prior to recent events, the current situation in Ukraine may give rise to changed circumstances, which need to be considered if a new asylum claim is submitted.

10. There may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention. In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.

Sur Place claims by Nationals and Habitual Residents of Ukraine

11. Many Ukrainians (or former habitual residents of Ukraine) residing in other countries currently benefit from legal statuses, related to, for example, studies or work, granted before the escalation of the conflict. UNHCR recommends, where possible and appropriate, to extend existing legal statuses for as long as necessary. Persons benefiting from such arrangements should not be prevented from applying for asylum.

Designation of Ukraine as Safe Country of Origin

12. In the current circumstances, UNHCR does not consider Ukraine a “safe country of origin”. States should remove Ukraine from “safe country of origin” lists. UNHCR accordingly calls on governments not to apply accelerated procedures with reduced procedural safeguards (including non-suspensive appeals) to applications for international protection by Ukrainian nationals or habitual residents of Ukraine; and not to subject these persons to different reception conditions than other applicants for international protection.

Refugees and Asylum-Seekers (Other Nationalities)

13. People of nationalities other than Ukrainian may also choose, or be compelled, to leave Ukraine as a result of developments related to the conflict, and should be allowed to do so. Some of these persons may have been recognized as refugees, granted complementary protection or registered as asylum-seekers in Ukraine. Afghan and Syrian nationals are among the largest groups of asylum-seekers and
refugees in Ukraine, along with nationals of the Russian Federation and other countries. Ukraine has been and remains a country hosting refugees and people otherwise in need of international protection. If travelling onwards in search of safety, these persons should be referred to national asylum procedures for consideration of their applications for international protection. In addition, there may be foreign nationals or stateless persons who resided in Ukraine and who had not (yet) applied for international protection in Ukraine before they were compelled to leave the country due to the current circumstances. UNHCR recommends that these persons be referred to the national asylum procedure in the country where they seek international protection.

Non-Return Advisory

As the situation in Ukraine is volatile and may remain uncertain for some time to come, UNHCR calls on States to suspend the forcible return of nationals and former habitual residents of Ukraine, including those who have had their asylum claims rejected. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security situation in Ukraine has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection.

UNHCR will continue to monitor the situation in Ukraine with a view to assessing the international protection needs arising out of the current situation.


