



July 2014

International Protection Considerations Related to the Developments in Ukraine – Update I

Recent Developments in Ukraine

1. Since UNHCR's previous position issued in March 2014,¹ the situation in Ukraine has continued to deteriorate. The wave of violent demonstrations in the aftermath of the "referendum" held in Crimea on 16 March 2014, involving separatist groups, pro-government groups and other demonstrators, and the escalation of the violence in Donetsk and Luhansk regions after the "referendum" on "self-rule" conducted there on 11 May 2014 are evidence of the continuing unrest.²
2. The protests which started on Maidan Square in late 2013 resulted, in February 2014, in the removal from office of President Yanoukovich, who had been a strong supporter for the Autonomous Republic of Crimea, as well as southern and eastern parts of Ukraine. These regions, with a large Russian-speaking population, largely condemned the protests and refused to recognize the interim Government which they considered as pro-Western and as having come into power in an illegal manner. In late March the United Nations General Assembly rejected the Crimea vote, adopting a resolution affirming the "territorial integrity of Ukraine within its internationally recognized borders".³ Subsequently, protests in the southern and eastern regions of Ukraine escalated, which resulted in regular and intense fighting with the Ukrainian government having launched military action against armed groups with a perceived separatist agenda or otherwise opposed to the Ukrainian Government. In Donetsk and Luhansk region, leaders of this movement declared independence from Ukraine after "referenda" held on 11 May 2014.⁴ On 25 May 2014, Ukraine held Presidential elections resulting in the victory of Petro Poroshenko.⁵

¹ UN High Commissioner for Refugees (UNHCR), *International Protection Considerations related to developments in Ukraine*, 5 March 2014, <http://www.refworld.org/docid/5316f7884.html>.

² Office of the United High Commissioner for Human Rights (OHCHR), *Report on the human rights situation in Ukraine*, 15 June 2014 <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>. See also: New York Times, op-ed by Adrian Karatnycky, *The Pushback in Ukraine*, 23 May 2014, http://www.nytimes.com/2014/05/24/opinion/the-pushback-in-ukraine.html?_r=2.

³ United Nations General Assembly, *Resolution adopted by the General Assembly on 27 March 2014. 68/262. Territorial integrity of Ukraine*, A/RES/68/262, 1 April 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262.

⁴ The Guardian, *Ukraine crisis: Donetsk region asks to join Russia*, 12 May 2014, <http://www.theguardian.com/world/2014/may/12/ukraine-crisis-donetsk-region-asks-join-russia>.

⁵ The Guardian, *Petro Poroshenko wins Ukraine presidency, according to exit polls*, 25 May 2014, <http://www.theguardian.com/world/2014/may/25/petro-poroshenko-ukraine-president-wins-election>.

3. The overall situation remains volatile and political differences have hardened, in particular in eastern parts of Ukraine where the situation has continued to escalate.⁶ Fighting between government operations and armed groups has increased.⁷ Residents in many eastern regions live in an insecure environment, coupled with increasing economic and social hardship.⁸ The presence of armed groups and weapons has increased in the Donetsk and Luhansk regions. Human rights abuses are reportedly no longer only targeted at journalists, elected representatives, local politicians, civil servants and civil society activists. At present, abductions, detentions, acts of ill-treatment and torture, and killings by armed groups are affecting the broader population of the two eastern regions, which are marked by an atmosphere of intimidation and consequent fear.⁹ Hate speech and threats are also reportedly contributing to a deepening of the division between communities.¹⁰ In Crimea, the introduction of Russian Federation legislation has been reported to create a “legislative limbo” for many people and concerns for their future.¹¹ Persons in Crimea known to be “Pro-Ukrainian” and others, depending on their profile and their individual situation,¹² are also reported to be facing personal intimidations and threats, often by non-state actors.¹³
4. In a press briefing, the then President of the Security Council expressed support for the unity, territorial integrity and sovereignty of Ukraine, and emphasized the importance of all political actors in Ukraine exercising maximum restraint. The Security Council President furthermore called for an inclusive dialogue recognizing the diversity of the Ukrainian society.¹⁴ Representatives of the international community issued a joint statement on 17 April 2014, calling on all concerned to refrain from using violence.¹⁵ After President Poroshenko called for a unilateral cease-fire to move forward a broader peace plan, armed groups in eastern Ukraine were initially reported to have rejected the offer.¹⁶ At the time of writing, a fragile agreement on a temporary ceasefire reportedly ended; new military action, including aircraft and artillery attacks, is being reported in the east.¹⁷

Internal Displacement

5. UNHCR observes a rise in the number of internally displaced persons (IDPs). Through reports received by local authorities and NGOs and through monitoring on the ground, UNHCR can confirm that some 54,400 persons have been internally displaced, comprising over 12,200 persons

⁶ Associated Press, as reported in (amongst others): US News, *2 Russian journalists killed in mortar fire in east Ukraine; EU to send Ukraine \$680 million*, 17 June 2014, <http://www.usnews.com/news/world/articles/2014/06/17/report-journalist-killed-in-eastern-ukraine>.

⁷ On 3 June, the Prosecutor General Oleg Mahnitsky announced that 181 people had been killed since the start of the Government’s security operations on 14 April to regain control in the eastern regions. Of those killed, 59 were reported to be soldiers, while the remaining were reported to be residents. See e.g. Institute for War and Peace Reporting (IWPR), *Ukraine Prosecutor Says Militants Responsible for 181 Deaths So Far*, 3 June 2014, <http://iwpr.net/report-news/ukraine-prosecutor-says-militants-responsible-181-deaths-so-far>.

⁸ OHCHR, *Report on the human rights situation in Ukraine*, 15 June 2014, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

⁹ OHCHR, *Report on the human rights situation in Ukraine*, 15 June 2014, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

¹⁰ Hate speech is reported to be “particularly obvious in social media”, see OHCHR, *Report on the human rights situation in Ukraine*, 15 June 2014, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>, para 122.

¹¹ See “[T]he introduction of Russian Federation legislation, in contradiction with the United Nations General Assembly resolution 68/262 and applicable bodies of international law, hampers the enjoyment of human rights and fundamental freedoms” and “it has created a legislative limbo as, while Ukrainian legislation was supposed to remain in force until 1 January 2015, the legal institutions and framework are already required to comply with the provisions of legislation of the Russian Federation. Thus for instance, NGOs are no longer able to register”, in: OHCHR, *Report on the human rights situation in Ukraine*, 15 June 2014 <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

¹² See, for example, Agence France Presse (AFP) [as reported in the Huffington Post], *Crimea’s Gay Community Fears For Life Under Russia*, 9 April 2014, http://www.huffingtonpost.com/2014/04/09/crimea-gay-community-_n_5119452.html?utm_hp_ref=politics&ir=Politics.

¹³ OHCHR, *Report on the human rights situation in Ukraine*, 15 June 2014 <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

¹⁴ UN News Centre, *Security Council holds ‘urgent’ meeting on situation in Ukraine*, 28 February 2014, <http://www.un.org/apps/news/story.asp?NewsID=47253&Cr=ukraine&Cr1#.UxRQrYUhlA0>.

¹⁵ The Geneva Statement was issued on 17 April 2014 by representatives of the European Union, the United States, Ukraine and the Russian Federation. It sets out concrete steps to de-escalate tensions and restore security. See: European Union External Action, *Joint Statement. Geneva Statement on Ukraine*, 140417/01, 17 April 2014, http://eeas.europa.eu/statements/docs/2014/140417_01_en.pdf.

¹⁶ The New York Times, *Rebels Reject Ukrainian Leader’s Cease-Fire Idea*, 18 June 2014, <http://www.nytimes.com/2014/06/19/world/europe/putin-and-poroshenko-ukraine.html?ref=world>.

¹⁷ See e.g. The New York Times, *Fighting Intensifies in Ukraine After Cease-Fire Is Ended*, 1 July 2014, <http://nyti.ms/1z4yKSB>.

from Crimea and some 42,200 from the east (this latter figure includes an estimated 15,000 IDPs in the city of Sviatohirsk, in Donetsk province).¹⁸ However, taking into account the absence of a centralized registration system and the fact that many IDPs do not register themselves, UNHCR estimates actual numbers of IDPs to be considerably higher. Many persons fleeing the eastern Oblast of Donetsk and Luhansk do not wish to provide their identity for fear of potential reprisals and prefer to remain unregistered. Previously, most IDPs were staying in central and western Ukraine, but an increasing number is now remaining in eastern Ukraine.

External Displacement

6. Some 14,000 Ukrainians or habitual residents of Ukraine have applied for asylum since the beginning of the year. These claims have been made mainly in the Russian Federation, Poland, Belarus, the Czech Republic and Romania. So far the breakdown of these claims is as follows: 549 Ukrainians have applied for international protection in Poland¹⁹ and 2,037 for refugee status in the Russian Federation.²⁰ In addition, 11,491 Ukrainians have applied for temporary asylum in the Russian Federation during the same period.²¹ The authorities in Belarus report 40 asylum-seekers from Ukraine as of 13 June. The Czech authorities report 116 asylum applications filed by asylum-seekers from Ukraine as of end May 2014. The Romanian authorities report 21 asylum-seekers as of 31 May.
7. In addition, according to information available to UNHCR, Poland has for instance given three different types of residence permits to 5,559 Ukrainians since the beginning of the year.²² In the Russian Federation, 88,610 Ukrainians have benefited since January 2014 from four different types of programmes and residence permits distinct from refugee status or temporary asylum.²³

Reasons for Displacement and Protection Challenges

8. Individuals and families report having left their places of origin for diverse reasons. Some Crimean Tatars say they fear limitations on their religious and cultural expression, political activists and journalists report harassment, and others who have fled Crimea have economic, professional or family ties with Ukraine, and say that they do not wish to acquire Russian citizenship. Most are moving to Kyiv and Lviv regions. Displacement from some locations in Donetsk and Luhansk regions started in the days leading up to the “referendum”, when political activists and journalists claimed that they started to feel pressure from separatist activists. After the “referendum”, the violence between armed groups and Ukrainian forces led many civilians to leave. Other individuals report risks of abduction, personal threats, extortions and other forms of violence and intimidation. Many of those leaving chose to remain in rural areas in the eastern regions of Ukraine. Many have reported facing harassment when crossing checkpoints, if they are perceived as leaving the region altogether.²⁴
9. Displaced persons in Ukraine face a number of common challenges in obtaining access to social services, especially if they are not in possession of documentation or can no longer access their bank accounts. They face difficulties in obtaining residence registration because they are staying in temporary shelters or renting from landlords unwilling to allow them to register for tax-related reasons. Without residence registration, they cannot register business activities and can face further obstacles in accessing other administrative services. In order to register as unemployed, displaced persons need to provide documentary evidence that they are no longer working at their

¹⁸ Information available to UNHCR (obtained by local authorities, NGOs and monitoring by UNHCR and partners in 22 regions in Ukraine).

¹⁹ UNHCR Warsaw, report dated 20 June 2014.

²⁰ Based on information provided to UNHCR by the Russian Federation’s Federal Migration Service.

²¹ See previous footnote.

²² Poland has reportedly extended visas for Ukrainians already in Poland, granted residence permits to some Ukrainians on labour related grounds, and has applied exemptions from visa requirements in certain cases, including for medical reasons.

²³ Based on information provided to UNHCR by the Russian Federation’s Federal Migration Service.

²⁴ Information available to UNHCR.

previous place of employment, and as most left abruptly, they do not have sufficient evidence to prove that they qualify for this assistance.²⁵

10. While authorities, as well as friends, family and civil society at large, make temporary shelter available, housing opportunities are generally located in rural areas where jobs or other livelihood opportunities are slim. This makes it difficult for displaced people to re-gain self-sufficiency. Not every Ukrainian has relatives in a different part of the country which can take care of them temporarily. On an emergency basis, many provinces have recently started making available sanatoriums, dormitories and summer camps for the temporary collective shelter of IDPs. However, the funding for these centres is not secured, and it is unclear for how long IDPs can stay in these facilities. Some incidents of evictions and threats of evictions from temporary accommodation centres have been reported to UNHCR, especially when the centres needed to revert to their ordinary use. For example, some IDPs had to leave a summer camp so that children could arrive for their scheduled holidays. By the autumn, people will need to move out of centres that are not winterized, and funding will need to be in place to heat other centres. While emergency needs are being met, the prospects for shelter in the medium term remain precarious.²⁶
11. Displaced persons generally have access to public health care, though having lost their incomes and support networks, they report to have increasing difficulties to pay for medication. Civil society has generously donated food, clothing and other household items to support displaced persons, but levels of support vary and do not fully meet identified needs.
12. Persons displaced from Crimea cannot benefit from the use or value of their property on the peninsula. Having been displaced for several months, they say they are running out of savings and are in need of long-term housing, which, so far, has not been made available. People have been displaced from the east in significant numbers since early June 2014. Regional authorities are making arrangements to receive them, but their resources are already stretched, particularly in the provinces bordering Donetsk and Luhansk provinces. UNHCR has, together with local authorities, NGOs and UN agencies, conducted vulnerability and needs assessments for IDPs in 16 regions and UNHCR is launching projects with NGOs to provide legal assistance and distribute humanitarian assistance on the basis of identified needs.²⁷ The Office is also working on self-reliance projects working with, among others, the Ministry of Social Policy, to introduce a cash-grant system targeting vulnerable IDPs. No major incidents of discrimination or violations of human rights were reported by IDPs. Ethnic minorities generally speak of positive relations with host communities.²⁸
13. UNHCR is advocating with the Government to adopt specific legislation on IDPs and facilitate the effective exercise of their rights. The "*Law on the rights and freedoms of citizens and legal regime on the temporary occupied territory*", adopted on 15 April 2014, includes safeguards relating to freedom of movement of Ukrainian citizens between Crimea and the rest of Ukraine.²⁹ It also allows for the restoration of identity cards, for students to transfer among public universities, and the exercise of voting rights. In addition, various ministries have adopted specific regulations and procedures to simplify access to education, medical care and other social benefits for IDPs originating from Crimea. So far, there is no legislative framework to cover IDPs from the east, and they cannot benefit from the simplified procedures in place for persons from Crimea. UNHCR continues to work with the authorities and civil society with a view to ensuring that all IDPs enjoy the same rights and freedoms as other citizens of Ukraine.

²⁵ Information available to UNHCR.

²⁶ Information available to UNHCR.

²⁷ UNHCR, *Profiling and Needs Assessment of Internally Displaced Persons (IDPs)*, 23 May 2014, <http://unhcr.org.ua/attachments/article/971/IDP.pdf>.

²⁸ OHCHR, *Report on the human rights situation in Ukraine*, 15 June 2014, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

²⁹ Law no. 1207-VII, <http://zakon2.rada.gov.ua/laws/show/1207-18> (in Ukrainian); for unofficial English translation, see <http://unhcr.org.ua/en/2011-08-26-06-58-56/news-archive/1231-internally-displaced-people>.

Nationals and Habitual Residents of Ukraine who seek international protection - Individual Asylum and Refugee Status Determination Procedures

14. All claims of persons from Ukraine filing international protection claims should be processed in fair and efficient procedures in accordance with existing asylum or refugee status determination (RSD) frameworks.³⁰ For some individuals whose claim had been rejected previous to the current events, the situation now may give rise to changed circumstances, which need to be considered if a new asylum claim is submitted. Claims for international protection of persons having been involved in recent developments, including, for example, political activists, journalists and human rights defenders may need to be given particular attention. Persons with such and other relevant profiles may be in need of international protection in accordance with the 1951 Convention, for reason of (imputed) political opinion or for reasons related to other 1951 Convention grounds.
15. All claims should be considered on an individual basis, carefully taking into account the particular circumstances of each case. There may be persons who have been associated with excludable acts in the sense of Article 1F of the 1951 Convention.³¹ 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.

Internal Flight or Relocation Alternative

16. An analysis of the possible application of an internal flight or relocation alternative (IFA/IRA) requires an assessment of the “relevance” as well as the “reasonableness” of the proposed IFA/IRA.³² In the current circumstances in Ukraine, an IFA/IRA is likely to be relevant for many individuals in areas of the country not affected by recent events.³³
17. If relevant, it must be determined, on a case-by-case basis, whether an IFA/IRA is “reasonable”, taking into account the personal circumstances of the applicant.³⁴ A number of factors need to be considered in order to evaluate whether the individual would be able to live a relatively normal life without undue hardship in the area of relocation, given his or her situation. These include the safety and security situation in the proposed area of relocation, respect for human rights in that area, and the possibilities for economic survival.³⁵ Particular attention must be given to the extent to which the applicant can expect to access accommodation, livelihoods and essential services.³⁶

³⁰ Applicable frameworks include that of the 1951 Convention relating to the Status of Refugees [*Convention Relating to the Status of Refugees* (“1951 Convention”), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>] and its Protocol [*Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>], the EU Qualification Directive, relating to refugees or persons in need of subsidiary protection [European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)* (“Qualification Directive”), 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>] or other applicable regional frameworks; in the unlikely event that asylum-seekers from Ukraine would seek international protection in other parts of the world, other regional frameworks would apply; the OAU Convention [*Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>], and the Cartagena Declaration [*Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>]. Unlike the OAU Convention, the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation.

³¹ UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, <http://www.unhcr.org/refworld/docid/3f5857684.html>.

³² The decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned. See UNHCR, *Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative* Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/pdfid/3f2791a44.pdf>, and paras. 33- 35. UNHCR considers that a similar analysis would apply when the applicability of IFA is considered in the context of determining eligibility for subsidiary protection.

³³ For an IFA/IRA to be relevant, the proposed area of relocation must be practically, safely and legally accessible. Further, where the claimant has a well-founded fear of persecution at the hands of the State and its agents, there is a presumption that consideration of an IFA/IRA is not “relevant” for areas under the control of the State. If the applicant fears persecution by a non-state agent of persecution, the ability to pursue the claimant in the proposed area and the State’s ability to provide protection there must be considered. See previous footnote, paras. 9 – 21.

³⁴ Ibid. paras. 25–26.

³⁵ Ibid. paras. 24, 27–30.

³⁶ See paras. 8–13 above on protection challenges for IDPs.

A further element to be taken into account is the extent to which support from family or community is available in the proposed area of relocation. For Crimean Tatars and persons originating from the east without family and community links in other parts of Ukraine, such support networks may not be available. To assess the reasonableness of the IFA/IRA, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation, and the living conditions of IDPs.

Sur Place claims by Nationals and Habitual Residents of Ukraine

18. An increase of *sur place* asylum applications by Ukrainian nationals has been reported in several States, including Poland and the Russian Federation. Since many Ukrainians (or former habitual residents of Ukraine) benefit from other residency statuses or visas before the escalation of unrest and violence in Ukraine, related to, for example, studies or work, there is a potential for escalating numbers of *sur place* claims. Against this background, UNHCR recommends, where possible and appropriate, to have these statuses/visas extended as long as the situation has not stabilized. Persons benefiting from such arrangements would of course not be prevented from applying for asylum, if they wish to do so.

Designation of Ukraine as Safe Country of Origin

19. Several European countries have designated Ukraine as a so-called “safe country of origin”. This means that applications for international protection of Ukrainian nationals or habitual residents of Ukraine may be dealt with in an accelerated procedure with reduced procedural safeguards. In particular, the asylum-seeker may not be allowed to file or await the outcome of an appeal in the country where (s)he is seeking asylum (non-suspensive appeal). The safe country of origin designation may also negatively impact the reception conditions for asylum-seekers originating from such a country. In the current circumstances, UNHCR considers a designation of Ukraine as a “safe country of origin” not appropriate, and recommends States to remove Ukraine from “safe country of origin” lists.

Refugees and Asylum-Seekers (Third Country Nationals)

20. Depending on how the situation develops, third country nationals may also choose or be compelled to leave Ukraine, as a result of recent developments or in anticipation of a further escalation of the situation. Among these persons, there may be those who were recognized as refugees in Ukraine or registered as asylum-seekers. Afghan and Syrian nationals are among the largest groups of asylum-seekers and refugees in Ukraine.³⁷ Ukraine has been and remains a transit and destination country for refugees and people otherwise in need of international protection from third countries. If travelling onwards, these persons should be referred to national asylum procedures for consideration of their applications for international protection. In addition, there may be third country nationals or stateless persons who resided in Ukraine before seeking international protection elsewhere and who had not or not yet applied for international protection in Ukraine. UNHCR recommends that these persons also be referred to the national asylum procedure in the country where they seek international protection.

Designation of Ukraine as Safe Third Country

21. UNHCR does not consider it appropriate for States to designate or maintain a designation of Ukraine as a so-called “safe third country”. The designation of a country as a “safe third country” may result in a request for international protection not being considered on its merits but declared inadmissible, or processed in an accelerated procedure with reduced procedural safeguards. Even before the current unrest, UNHCR considered that Ukraine should not be considered as a safe third country, on account of identified shortcomings in the national asylum system.³⁸ UNHCR requests States to consider asylum applications from third country nationals who previously

³⁷ See UN High Commissioner for Refugees (UNHCR), *UNHCR Mid-Year Trends 2013*, <http://www.unhcr.org/52af08d26.html>, and its annexes (Excel tables) at <http://www.unhcr.org/statistics/mid2013stats.zip>. Detailed statistics available to UNHCR.

³⁸ UN High Commissioner for Refugees (UNHCR), *Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine*, July 2013, <http://www.refworld.org/docid/51ee97344.html>.

resided in or transited through Ukraine in fair and efficient procedures with the full range of procedural guarantees in place.

Third Country Nationals and the Use of Readmission agreements

22. UNHCR would, in the current circumstances, advise caution as regards the return of third-country nationals to Ukraine in accordance with the terms of bilateral or regional readmission agreements. Readmission agreements usually exclude, in principle, asylum-seekers or persons in need of international protection from their scope. However, where such agreements are applied to third country nationals in combination with a “safe third country” designation, their application can result in individuals being sent back to Ukraine who have not had an opportunity to submit a claim for international protection or who have not had such a claim reviewed on its merits in a fair procedure.

Updating and review

23. UNHCR’s position will be reviewed as the situation evolves and will be updated as necessary.

UNHCR
1 July 2014