

Ukraine



As a Country
of Asylum



Observations on the Situation
of Asylum-seekers and Refugees
in Ukraine

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Executive Summary

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated to monitor the implementation of the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*)¹ by virtue of its Statute in conjunction with Article 35 of the *1951 Convention* and Article II of the *1967 Protocol*.
2. Ukraine has set the goal of bringing its laws, policies and practices regarding asylum into line with international and European standards. Given the impact of legislative and administrative reforms in Ukraine since December 2010, and in the interest of some European countries in examining whether it is possible to return of asylum-seekers to Ukraine on the basis of the “safe third country” concept, UNHCR has undertaken to assess Ukraine’s asylum system and to make concrete recommendations regarding the existing gaps. The present paper provides an assessment of the Ukrainian asylum system, including access to procedures, quality of the asylum adjudication mechanisms, and treatment of unaccompanied children, as well as reception, accommodation and detention issues.²
3. UNHCR concludes that, despite significant progress in recent years, Ukraine’s asylum system still requires fundamental improvements: it does not offer sufficient protection against *refoulement*, and does not provide asylum-seekers the opportunity to have their asylum claims considered in an efficient and fair procedure. Therefore, Ukraine should not be considered as a safe third country and UNHCR further urges States not to return asylum-seekers to Ukraine on this basis.

¹ See respectively <http://www.refworld.org/docid/3be01b964.html> and <http://www.refworld.org/docid/3ae6b3ae4.html>

² UNHCR’s previous assessment of the asylum system in Ukraine was conducted in 2007. See *UNHCR’s position on the situation of asylum in Ukraine in the context of the return of asylum-seekers*, October 2007, <http://www.unhcr.org/refworld/docid/472f43162.html>

Introduction to the Asylum System in Ukraine

Introduction

4. Ukraine is a State Party to the *1951 Convention* and its *1967 Protocol*. Ukraine acceded to both instruments without reservations on 10 January 2002. Ukraine is also a State Party to almost all relevant human rights conventions, including the European Convention on Human Rights.³ Ukraine adopted its first refugee law in 1993 followed by related implementing provisions and has made numerous legislative changes in the area of asylum in particular since 2011. In the decade or more since Ukraine acceded to the *1951 Convention*, it has restructured its central asylum authority on nine separate occasions.
5. Ukraine is both a country of destination and transit for asylum-seekers. It is a country of destination in particular for asylum-seekers who have strong communities (e.g., the Afghan community) or linguistic/cultural ties (e.g., persons from Commonwealth of Independent States countries) in Ukraine. However, many asylum-seekers may view Ukraine primarily as a country of transit. This phenomenon relates both to push and pull factors. Asylum-seekers face numerous challenges in Ukraine, as detailed below, and given the limited chances of being recognized as a refugee, as well as the sometimes insurmountable obstacles in attaining self-sufficiency, many asylum-seekers choose to move on to third countries in search of international protection.⁴ In addition, the proximity of the European Union (EU)—where international protection, reception and integration standards are much higher—exerts an additional powerful pull factor. Furthermore, many asylum-seekers are drawn to EU countries either through family ties or the availability of support from their ethnic communities.⁵
6. In the period 1996–2012, Ukraine received a total of 27,297 asylum applications and granted refugee protection to 6,147 persons. While recognition rates were higher in the earlier years of Ukraine's asylum system in the late 1990s, recognition rates have steadily declined since 2000. Over the past five years (2008–2012) out of a total of 7,850 asylum-seekers, only 632 persons have received refugee status, while 89 have received complementary protection (a form of protection that began to be issued in 2012).⁶ In the period 2008–2012, 270 refugees were naturalized as Ukrainian citizens. As of the end of 2012, approximately 2,500 persons with refugee status were residing in Ukraine, as many refugees had left Ukraine, usually not to the country of origin. The government does not operate a voluntary repatriation program.
7. Over recent years, Ukraine has had an average of 1,500 asylum applicants per year. The largest numbers of asylum-seekers in 2012 came from the following countries, often after transiting through the Russian Federation: Afghanistan, Somalia, Syria and Kyrgyzstan.⁷
8. This paper provides an assessment of the current state of Ukraine's asylum system, eleven years after the country acceded to the *1951 Convention*. The paper starts with an overview of the legislative and administrative reforms of the last two years. It then proceeds with a discussion of issues related to access to the territory and the asylum procedure, as well as detention of asylum-seekers. The quality of the first instance asylum procedure as well as the appeal stage is analyzed, and the related risks of *refoulement* are explored. After a section on the specific situation of unaccompanied and separated children in the asylum procedure, the paper then offers an overview of reception conditions and prospects for local integration. It concludes with overall conclusions.

³ Among others, Ukraine has ratified the following international human rights instruments, with date of ratification in parenthesis: *International Covenant on Civil and Political Rights* (1973), *International Convention on the Elimination of All Forms of Racial Discrimination* (1969), *Convention on the Elimination of Discrimination against Women* (1981), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (1987), *Convention on the Rights of the Child* (1991), *Convention on the Rights of Persons with Disabilities* (2010), and the *European Convention for the Protection of Rights and Fundamental Freedoms* (ECHR) (1997).

⁴ For additional information on the impact of the ineffectual asylum system on movements across Ukraine's western border to the EU, see Council of Europe Parliamentary Assembly, "Management of mixed migration and asylum challenges beyond the European Union's eastern border", Report, Doc. 13163, 08 April 2013, <http://goo.gl/j3lXU>; Council of Europe Parliamentary Assembly, "Management of mixed migration and asylum challenges beyond the European Union's eastern border", Resolution 1933 (2013), <http://goo.gl/sloFc>; and also Human Rights Watch, *Buffeted in the Borderland: The Treatment of Migrants and Asylum Seekers in Ukraine*, December 2010, <http://goo.gl/1guG7>

⁵ On the importance of family and ethnic ties in affecting migration patterns, international research has shown that existing diasporas are "by far the most important determinant of migration flows even after accounting for the usual variables affecting bilateral migration costs such as distance, colonial links and linguistic proximity", Michel Beine, Frederic Docquier, and Ozden Caglar, *Diasporas*. World Bank, Policy Research Working Paper, 4984: 2009; p. 33.

⁶ Based on data provided by the national asylum authority in the period 2008–2012.

⁷ For further details see below at para. 59.

Recent Legislative and Administrative Developments

9. On 22 November 2010, in the context of the 14th EU-Ukraine summit, the EU shared its Visa Liberalization Action Plan (VLAP) with Ukraine setting out the conditions for the introduction of visa-free travel between Ukraine and EU Member States. This plan has had a tangible, but insufficient impact on the tempo of legislative and administrative reform related to the asylum system in Ukraine. The VLAP invigorated the political will to modify legislation to bring it into line with international and European standards. The various improvements in the asylum system in Ukraine required under the Action Plan for the introduction of visa-free travel are to be introduced and assessed in two phases, namely:

1st phase (legislative and policy framework):

Adoption of legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and EU standards, providing grounds for international protection (including subsidiary forms of protection), procedural rules on examination of applications for international protection, as well as rights of asylum seekers and refugees.

2nd phase (benchmarks for effective implementation):

Effective implementation of asylum legislation, including provision of adequate infrastructure (including reception centres) and strengthening of responsible bodies, in particular in the area of asylum procedures, reception of asylum seekers and protection of their rights (including documentation of asylum seekers and refugees in order to ensure effective access to their rights), as well as integration of refugees.

10. Ukraine and the EU are also discussing the possible signing of an Association Agreement at the end of 2013, and on this basis, Ukraine has adopted a plan for furthering the country's integration into the EU. This plan prioritizes the successful implementation of the Visa Liberalization Action Plan.⁸ Given this commitment to bringing national law into line with European standards, Ukraine is expected to undertake a raft of further initiatives to reform the legislative and administrative framework for migration and asylum.

Legislative Reforms of 2011-2013

11. In 2011, Ukraine adopted through presidential decree the *Concept of the State Migration Strategy*.⁹ For the first time, the country has adopted a comprehensive strategy related to migration. The strategy includes many positive developments. It emphasizes the need to combat "racism, xenophobia and religious intolerance" and to cooperate with civil society in the implementation of migration policy. Ukraine's migration strategy underlines the importance of "implementation of universally recognized international principles and rules of international law relating to the protection of refugees and persons in need of complementary or temporary protection, or asylum in Ukraine, bearing in mind the principle of *non-refoulement*." The integration of migrants is also prioritized. In sum, the strategy lays out an inclusive, rights-oriented approach towards migration management in Ukraine.
12. In its efforts to comply with the asylum chapter of the VLAP, Ukraine adopted a new Refugee Law on 28 July 2011.¹⁰ This law was a step in the right direction and introduced several positive concepts. A complementary form of international protection was introduced covering persons facing a threat of the death penalty, torture, or inhuman or degrading treatment in their country of origin. The law provided for a unified asylum-seeker certificate, replacing a complex system whereby different certificates were issued at various stages of the procedure. The law enhanced family unity by ensuring that minor children are granted refugee status on a derivative basis together with their parents when the latter are recognized as refugees. The law also extended the validity period of the refugee

⁸ *Plan of priority measures for integration of Ukraine in the European Union, 2013*, Cabinet of Ministers of Ukraine Order 73-r dated 13 February 2013, Art. 3(8), <http://goo.gl/okmTJ>

⁹ See <http://goo.gl/D9Hc7>

¹⁰ See Law of Ukraine *On Refugees and Persons in Need of Complementary or Temporary Protection in Ukraine* (No. 3671-VI) (hereinafter "*Refugee Law*"), unofficial English translation, <http://www.refworld.org/docid/51cd36464.html>

document to five years, making it easier for refugees to exercise a range of rights and eventually to integrate.

13. As will be discussed further below, the Refugee Law continues to be undermined by the existence of serious gaps that result in a lack of due process and social protection for asylum-seekers in the procedure. The definition of complementary protection in the law is narrower than that for subsidiary protection provided for in the EU,¹¹ as it does not extend protection to persons fleeing indiscriminate violence in situations of international or internal armed conflict.¹²
14. Subsequent to the passage of the new Refugee Law, parliament adopted a law to harmonize other legislative acts with the Refugee Law.¹³ This law is a positive step, in that it will make it easier for refugees and persons with complementary protection to exercise a variety of social and economic rights, such as the right to receive unemployment assistance and medical care. However, the Ukrainian authorities adopted a minimalist approach to this harmonization act, approving changes to only 25 laws rather than the 39 suggested by UNHCR.¹⁴ In particular, the law does not provide asylum-seekers with adequate reception conditions or possibilities to become self-reliant, as they have extremely limited social and economic rights.
15. During the period January 2011–March 2013, Ukraine adopted 22 laws and some 29 Cabinet of Ministers' resolutions and ministerial instructions related to asylum and migration. Further legislative work is in the pipeline.¹⁵
16. The rapid pace of legislative reform is creating challenges. Legislative initiatives are not well coordinated and frequently appear to be drafted hastily. The speed with which they are adopted provides insufficient opportunity to consult civil society and national and international experts, including UNHCR, in the process of drafting relevant implementing instructions.¹⁶ In addition, insufficient consideration is given to international and European standards in the area of asylum. When it is consulted in a timely manner, UNHCR continues to lobby for adherence to the relevant international and European standards. For example, UNHCR, jointly with its civil society partners, has developed and shared with the authorities comparative tables showing how Ukrainian asylum legislation falls seriously short of European standards, as well as proposals for amendments to the country's Refugee Law.¹⁷ As recently as April 2013, the Ukrainian government has reiterated its commitment to meeting international and European standards in the area of asylum law.¹⁸ Nevertheless, the current legislative framework fails to embrace relevant standards.¹⁹ Furthermore, as outlined in greater detail below, the implementation of the law and related regulations is an additional challenge.

- 11 In EU law, a person is eligible for subsidiary protection if return to his/her country of origin would expose him/her to a real risk of serious harm as defined under Article 15 of the Qualification Directive. See EU: Council of the EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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)*, 20 December 2011, OJ L 337; December 2011, pp. 9–26, <http://www.refworld.org/docid/4f197df02.html>
- 12 That is, the Ukrainian law has no equivalent to Article 15 (c) of the Qualification Directive.
- 13 *On introduction of changes to several legal acts of Ukraine on questions of refugees and persons in need of complementary, temporary protection*, No. 5290-VI, 18 September 2012, <http://zakon1.rada.gov.ua/laws/show/5290-vi>
- 14 See "UNHCR concerned about gaps in draft law aimed at harmonization of legislation on protection of refugees," 29 May 2012, <http://goo.gl/M4Vil>
- 15 For information on asylum-related legislation and by-laws in Ukraine, see <http://goo.gl/egipH>
- 16 Article 35 of the 1951 Convention obliges states to share with UNHCR information about draft legislation and to cooperate with UNHCR in exercise of its duty to supervise the Convention.
- 17 Tables are available at <http://unhcr.org.ua/uk/resursi/materiali-seminariv>
- 18 Government Portal, *Mykola Azarov: Ukraine to strengthen work in the direction of protection of refugees' rights*, 2 April 2013, <http://goo.gl/BYDRG>
- 19 For example, the comparative table prepared by UNHCR, updated as of 30 April 2013, provides 33 pages of changes needed in Ukraine's refugee law to bring it into line with international and EU standards; <http://goo.gl/KwptC>

Administrative Reforms

17. Ukraine created a State Migration Service (SMS) in December 2010 to take responsibility for a broad range of issues related to migration, including developing migration policy, fighting illegal migration, registering foreigners, and addressing asylum issues.²⁰ According to a 2011 presidential decree, the SMS is responsible for developing recommendations for the Ministry of Interior (MoI) regarding government policy, and then implementing the MoI's policy, in the areas of "migration (emigration and immigration), including combatting illegal migration, registration of individuals, refugees and other groups of migrants specified by law."²¹ This decree also clarifies the role of the MoI in coordinating the SMS's work, stating that the MoI adopts orders guiding the work of the SMS; the Minister selects the head of the SMS and gives consent to other senior appointments; the MoI is ultimately responsible for policy decisions in the field of migration, while the SMS prepares policy recommendations.
18. Local human rights organizations have raised concerns about this arrangement, noting that "instead of creating a new civilian state body which would merge the fragmentary powers of various departments regarding work with foreigners and would take on functions regarding migration issues which are not appropriate for law enforcement and enforcement structures, yet another body for overseeing foreigners has been created in Ukraine, a kind of 'daughter enterprise' of the Interior Ministry..... [F]or Ukraine such experience can hardly be considered optimum since Ukraine's Interior Ministry is not a body implementing general internal policy, but merely an instrument for fighting crime and a means of maintaining law and order...".²²
19. Each of the 27 regional directorates of the SMS has a unit or section responsible for conducting refugee status determination interviews and facilitating the integration of refugees. These units - with a total of 155 staff members - report to the head of the SMS's regional directorate. As some Ukrainian regions receive very few asylum applications, it appears that the workload among regions is uneven, with some staff overloaded and others handling so few cases that they cannot develop sufficient experience and qualifications. In UNHCR's opinion, it would be considerably more efficient to process asylum applications in a smaller number of regions where the vast majority of asylum applications are filed.
20. At the central level, the SMS has a Department of Refugees' and Foreigners' Affairs. This Department has a wide range of responsibilities, including asylum issues (e.g., taking the final decision on refugee status, local integration, and temporary accommodation centres), detention of irregular migrants, readmission, temporary residence of foreigners and immigration policy. Though 13 persons are reported to be working in the area of asylum, most staff members in the Department do not have responsibilities devoted solely to asylum: for example, one unit in the Department has responsibility for both the accommodation of refugees in open centres and the detention of illegal migrants in migrant custody centres. This mixture of responsibilities is problematic, as the Department cannot espouse a clear mission for refugee protection and maintain focus on implementation of asylum policy, while simultaneously being responsible for various aspects of immigration control. Instead, asylum is continually at risk of dropping lower in the Department's priorities, since immigration control commands significant attention at higher levels, particularly within the Ministry of Interior and other ministries involved in law enforcement. The Department does not have its own budget; therefore, it has limited autonomy to allocate resources for implementation of its asylum mandate.

²⁰ Decree of the President of Ukraine "On optimizing the system of central executive bodies" dated 9 December 2010 No. 1085/2010, <http://zakon2.rada.gov.ua/laws/show/1085/2010>

²¹ *Provisions on the State Migration Service*, adopted by the Presidential Decree of 6 April 2011, No. 405/2011, Art. 3, <http://zakon1.rada.gov.ua/laws/show/405/2011>

²² Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine – 2012*, Kharkiv: 2013, p. 201, <http://goo.gl/xGeCh>

21. UNHCR is further concerned about the administrative structure of the asylum authority in that the Department does not have sufficient autonomy to be considered a “determining authority” competent to take decision on refugee status. According to EU standards, a “determining authority” examines applications for international protection and has the competence to take decisions “individually, objectively and impartially” with the engagement of personnel who have knowledge of asylum law and access to country-of-origin information for handling asylum applications.²³ This implies the existence of an institutional framework that gives decision-makers the autonomy to decide impartially who is in need of international protection and who is not, based on the substance of their claim alone, without being distracted by competing professional responsibilities, such as migration control. All staff members involved in the decision-making process should be suitably qualified and trained personnel. Under the current arrangements, the Department for Refugees’ and Foreigners’ Affairs lacks these key attributes. A decision on refugee status/complementary protection must be counter-signed by multiple officials who are outside of the Department and have no knowledge or training in the area of asylum law.²⁴ The interviewer’s recommendation is easily overturned by other officials who get engaged in multiple layers of review. Under these conditions, decision-making related to refugee status and complementary protection is vulnerable to influence by other factors, such as concerns about the control of irregular migration, for which the SMS is also responsible.
22. The challenges with building the new SMS must be considered within the broader context of the system of public administration in Ukraine as a whole. Social science researchers note that Ukraine faces challenges related to good governance, including the scope of corruption.²⁵ For example, the Legatum Prosperity Index ranked Ukraine 71st out of 144 countries for 2012. The worst sub-ranking in this composite index was in the area of governance, where Ukraine ranked 121 out of 144 countries.²⁶ Furthermore, according to Transparency International’s Corruption Perceptions Index, Ukraine ranked 144 out of 182 countries in 2012.²⁷ Transparency International’s national partner organization in Ukraine concluded

*Corruption in Ukraine is a systemic problem existing across the board and at all levels of public administration. Both petty and grand scale corruption are flourishing. Among the institutions which are perceived by the public to be highly corrupt are political parties, legislature, police, public officials and the judiciary. Ukrainian society can be characterized as a society with a high tolerance for corrupt practices.*²⁸

²³ EC Council Directive 2005/85/EC of 1 December 2005, *On minimum standards on procedures for granting and withdrawing refugee status*, <http://www.refworld.org/docid/4394203c4.html>, Art. 2(e); Art. 8(2)-(3).

²⁴ For example, the decision must be signed by the Head of the Regional Directorate of the SMS who is responsible for all migration issues—including control of illegal migration—in a given region; the staff in these positions do not generally have any background in asylum issues. The Heads of the Regional Directorates have reporting lines at the central level to the Head of the Department for Administration and Regional Development who in turn reports to the Head of the State Migration Service. Meanwhile, the Head of the Department of Refugee Affairs, who must endorse each case, reports to the First Deputy Head of the State Migration Service. Each decision on eligibility or ineligibility for refugee status or complementary protection must be endorsed by the First Deputy Head or Head of the State Migration Service. As a result of this complex structure, many units within the State Migration Service can influence the decision on granting or denying international protection. Many of these individuals are simultaneously responsible for migration control. For the organigramme of the SMS, see <http://www.dmsu.gov.ua/uk/pro-gmsu/struktura.html>

²⁵ According to the UN, good governance is characterized by the following qualities: respect for the rule of law, consensus oriented, participatory, effective and efficient, accountable, transparent, responsive, equitable and inclusive “What is Good Governance,” <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

²⁶ See <http://www.prosperity.com/CountryProfile.aspx?id=804>

²⁷ See http://www.transparency.org/country#UKR_DataResearch. As described at the site: “The Corruption Perceptions Index ranks countries/territories based on how corrupt a country’s public sector is perceived to be. It is a composite index, drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions.”

²⁸ TORO Creative Union, *National Integrity System Assessment, Ukraine, 2011*, p. 18, http://www.transparency.org/whatwedo/nisarticle/ukraine_2011

23. Freedom House, which attempts to measure the degree of democracy and political freedom and produces the annual survey, *Freedom in the World*, demoted Ukraine from “free” to “partly free” in 2011, and it remains at that level in early 2013.²⁹ In a recent report, Freedom House concluded that “[i]ndeed, corruption is an enduring problem in Ukraine, plaguing every part of the Ukrainian government”.³⁰
24. This broader context complicates efforts to build a new SMS that is transparent, accountable, efficient, responsive and free of corrupt practices.

Recommendations:

- Adopt legislation to fill the persistent gaps between Ukrainian asylum legislation and international and EU standards.
- Provide the conditions for meaningful inclusion of civil society, as well as national and international experts, including UNHCR, in the drafting of legislation and by-laws related to asylum.
- Ensure that a Department with a clear and exclusive mandate for asylum has institutional and budgetary autonomy and authority, as well as relevant expertise, to take decisions on granting refugee status and complementary protection, in line with EU standards.

²⁹ Freedom House, *Freedom in the World: Ukraine 2011*, <http://www.freedomhouse.org/report/freedom-world/2011/ukraine>; see also *Freedom in the World: Ukraine 2013*, <http://www.freedomhouse.org/report/freedom-world/2013/ukraine>

³⁰ Freedom House, “Sounding the alarm, part 2: Protecting Democracy in Ukraine”, July 2012, p. 15, <http://goo.gl/nmOXk>

Access to the Asylum Procedure

25. Persons seeking international protection in Ukraine may express their wish to seek asylum upon first contact with the authorities, namely to officials of the State Border Guard Service of Ukraine (“SBGS”). UNHCR supports the efforts of the SBGS to facilitate access to the asylum procedure. For example, UNHCR has cooperated with the authorities to place information stands on how to apply for asylum at international airports and temporary holding facilities in border-crossing points, though such information needs to be readily available at the numerous other border crossing points and detention facilities. Furthermore, the SBGS has developed a curriculum for human rights training of border guard officials, including a segment on international refugee law jointly taught with UNHCR staff. The SBGS has gradually improved the access of UNHCR and its partner organizations to border-crossing points and detention facilities under its jurisdiction for the purpose of providing legal counselling on the asylum procedure to persons detained for irregular border crossing, mainly to the EU.
26. Ukrainian law obliges the SBGS to transfer asylum-seekers to the State Migration Service and to respect human rights in all dealings with persons at the border.³¹ In 2012, the SBGS reports receiving just five asylum applications at border entry points to Ukraine. During the same period, the SBGS denied 16,272 persons access to the territory, and while most were undoubtedly refused entry for valid reasons, this number includes some individuals from refugee-producing countries such as Syria who require enhanced attention to meet their protection needs. So far, despite some progress noted, the SBGS still needs to adopt procedures on protection-sensitive screening of persons entering the country; thus, the SBGS has limited capacity to identify persons with international protection needs, as well as other vulnerable persons, such as victims of trafficking, among the flow of migrants and to prevent their *refoulement*.³² Given the large number of border-crossing points, it is not possible for any independent institution to verify whether it is indeed the fact that only a handful of individuals applies for asylum upon arrival each year and that the obligation to refer persons to the asylum procedure is uniformly respected. Despite its repeated requests, UNHCR does not yet have predictable access to Kyiv’s Boryspil International Airport and is concerned about reports that individuals sometimes remain in the airport for several days in unsuitable conditions without access to legal assistance. As human rights commentators have noted, “there is no legislation currently in force that would regulate detention in transit zones of the airports.”³³
27. It is challenging to measure lack of access to the territory and to seek legal redress, as these persons are often sent back across borders before having contact with UNHCR or lawyers working in Ukraine. However, in early 2012, UNHCR became increasingly concerned about asylum-seekers’ lack of access to the territory following two cases in which lawyers resorted to the European Court of Human Rights to issue interim measures under Rule 39 after the Ukrainian authorities had reportedly denied asylum-seekers access to the territory. These incidents and initiated training activities have helped to bring about some improvements: for example, in early 2013, the Ukrainian border authorities allowed a stowaway on a ship moored in a Black Sea harbour to disembark for the purposes of applying for asylum, and in other instances, some individuals have been given access to the asylum procedure at border-crossing points.
28. Ukraine’s Refugee Law and common administrative practices create serious challenges for asylum-seekers in accessing the procedure to determine their status.
29. Ukrainian law restricts access to the asylum procedure in two ways. First, Ukraine’s Refugee Law states that persons who have lawfully entered the territory of Ukraine should apply for asylum within five working days, while those who have entered the territory unlawfully should apply “without delay.”³⁴ The law is vague on the penalties for not registering within these time limits, which creates a danger of their inappropriate application. The requirement to register within five days is not compliant with international and EU standards, which state that asylum applications shall not be re-

³¹ See *Refugee Law*, Art. 5(1)(2).

³² For more on protection-sensitive screening, see *Refugee Protection and Mixed Migration: A 10-Point Plan of Action (Jan 2007)*, No. 19, <http://www.unhcr.org/refworld/docid/45b0c09b2.html>

³³ “Alternative reports by human rights organizations submitted to the UN as a part of Ukraine’s Universal Periodic Review,” 2012, p. 50.

³⁴ *Refugee Law*, Art. 5(1), 5(2).

jected on the sole basis that they were not filed as soon as possible.³⁵ Furthermore, in this “five-day rule”, Ukrainian legislation replicates the provisions of a law which the European Court of Human Rights found unacceptable, stating that “the automatic and mechanical application of such a short time-limit for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention.”³⁶ It therefore remains important to remove the “five-day rule” from the legal framework.

30. Second, persons can be denied access to the asylum procedure on the grounds that they are determined to be engaged in “impersonation.”³⁷ This term is interpreted broadly to mean that in any case where the individual gives information related to his identity that contradicts data already available to the authorities—even if there is a reasonable explanation for the divergence—the asylum application is rejected. The decision to reject a person on grounds of “impersonation” is to be taken within one day, thus making it difficult to conduct a thorough assessment of the individual’s reasons for giving the false information. The substance of the individual’s application for asylum is not given due consideration. This is inconsistent with international standards, as contradictory, false or falsified information regarding the asylum-seeker’s identity should not lead to an automatic rejection of the asylum application without an examination of the substance of the claim.³⁸ This could lead to a violation of the principle of *non-refoulement*. What needs to be assessed is whether there is a plausible explanation for any contradictions.³⁹ While EU standards allow for a case to be prioritized for accelerated consideration, they do not allow for the designated authority to automatically refuse consideration of an application because of contradictory information on the asylum-seeker’s identity.⁴⁰
31. In 2012, the SMS rejected the asylum applications of 35 persons based on a one-day review.
32. Delayed implementation of laws also restricts access to the asylum procedure in Ukraine. Over various periods, the asylum procedure has not worked at all due to administrative reforms. As noted by Human Rights Watch, “From August 2009 through August 2010 it was impossible to be granted asylum in Ukraine because there was no government authority authorized to do so.”⁴¹ In the fall of 2011, access to the asylum procedure was blocked again in many regions due to the transfer of authority from the previous administrative structure (the State Committee on Nationalities and Religions) to the SMS. As local human rights organizations have noted, “unfortunately through 2011, newly created SMS existed only on paper, which resulted in denying many people in need of protection, a due and careful examination of their claims and decisions on their claims.”⁴² As a result of these administrative gaps, many asylum-seekers could not file applications and be documented by the authorities, as is also evident from the fact that only 890 asylum applications were submitted in 2011 compared with 1,500 in 2010 and 1,860 in 2012.⁴³ Living precariously without legal documents, they were exposed to police detention and harassment; some chose to move onward to other countries where protection is more accessible. Fortunately, in 2012-2013, the migration services have been working more smoothly, illustrating the importance of administrative stability for ensuring the right to apply for asylum.

- 35 EC Council Directive 2005/85/EC of 1 December 2005, “On minimum standards on procedures for granting and withdrawing refugee status”, Art. 8.1.
- 36 *Jabari v. Turkey*, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, para. 40, <http://www.unhcr.org/refworld/docid/3ae6b6dac.html>.
- 37 *Refugee Law*, Art. 5(6).
- 38 UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 35, <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.
- 39 UNHCR, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, p. 28, <http://www.unhcr.org/refworld/docid/42492b302.html>. Also, UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (“UNHCR Detention Guidelines”)*, 2012, para. 25, <http://www.unhcr.org/refworld/docid/503489533b8.html>.
- 40 EC Council Directive 2005/85/EC of 1 December 2005, *On minimum standards on procedures for granting and withdrawing refugee status*, Art. 23.4(d).
- 41 UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 16/21 - Ukraine*, A/HRC/WG.6/14/UKR/3, para. 66, <http://goo.gl/jf2qC>; Human Rights Watch, *Buffeted in the Borderland: The Treatment of Migrants and Asylum Seekers in Ukraine*, December 2010, p. 31, <http://www.hrw.org/sites/default/files/reports/ukraine1210WebVersion.pdf>.
- 42 “Alternative reports by human rights organizations submitted to the UN as a part of Ukraine’s Universal Periodic Review,” 2012, p. 55.
- 43 See table at para. 59 below.

33. Administrative barriers continue to hinder access to the asylum procedure in Ukraine. As regional migration services lack a budget to hire interpreters, they may insist that asylum-seekers must bring their own interpreter in order to apply for asylum. While Ukrainian law stipulates that the State Migration Service “shall provide an interpreter” for interviews, it also states that asylum-seekers have the right to provide their own interpreter.⁴⁴ This “right” can easily be interpreted by the cash-strapped SMS as a “responsibility.” UNHCR is concerned about the quality and unbiased character of interpretation provided in these circumstances. Furthermore, this arrangement makes it extremely difficult for persons speaking certain languages to gain access to the asylum procedure. For example, UNHCR is aware of a case of a Tigrinya-speaker who could not gain access to the asylum procedure for several months because the asylum-seeker could not identify an interpreter, and the SMS did not take the responsibility for finding a solution. These provisions contravene UNHCR’s guidelines,⁴⁵ as well as EU standards that asylum applicants “shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary... these services shall be paid for out of public funds”.⁴⁶ Similarly, some regional migration services occasionally request asylum-seekers to fulfil requirements not set by the law. The additional requirements may serve to deter asylum-seekers and thus limit the workload of the SMS. For example, occasionally asylum-seekers are requested to bring a letter of permission from their landlord stating their address. If a landlord refuses to sign such a letter—and landlords regularly refuse to sign these documents in order to avoid disclosing to the tax authorities that they are renting out the property—the asylum-seeker is denied the right to apply for asylum. An individual’s exercise of his right to apply for asylum should not be contingent upon the actions or inactions of a private third-party.
34. Lack of administrative capacity imposes further restrictions on access to the asylum procedure. At various points, a regional SMS directorate may have a waiting list of a month or more before it can accept an asylum application. Sometimes regional directorates run out of blank asylum-seeker certificates and need to wait for a fresh batch to be printed. For example, for more than three months in 2013, the migration service in Odesa has been unable to process applications normally, due to lack of blank asylum-seeker certificates. In Kherson, a criminal investigation at the SMS office there has paralyzed the processing of cases, and asylum-seekers registered there are unable to renew their asylum-seeker certificates or transfer their cases elsewhere.

Recommendations:

- Establish protection-sensitive screening procedures, as well as related training, so that border guards can accurately and efficiently identify persons with protection needs at international borders.
- Establish more detailed instructions to ensure full implementation of national laws regarding the obligation of border guard officials to hand over asylum-seekers to the SMS.
- Ensure access of NGO lawyers and UNHCR to border crossing points, including Boryspil International Airport.
- Amend asylum legislation to remove the five-day time limit for filing an asylum application and the automatic rejection of asylum applications where the individual’s personal data contradicts other information available about the individual.
- Issue clear instructions to regional offices of the SMS to eliminate all extra-legal requirements imposed on individuals who apply for asylum.
- Allocate sufficient human and financial resources to enable the regional directorates of the SMS to receive asylum applications in a timely manner.

⁴⁴ *Refugee Law*, Art. 8 (3).

⁴⁵ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (“UNHCR Handbook”), December 2011, HCR/1P/4/ENG/REV. 3, <http://www.refworld.org/docid/4f33c8d92.html>, para. 192(iv).

⁴⁶ EC Council Directive 2005/85/EC of 1 December 2005, *On minimum standards on procedures for granting and withdrawing refugee status*, Art. 10.1(b).

Detention of Asylum-seekers and Restrictions on Freedom of Movement

Legislation

35. According to Ukrainian law, a person who is in the country without a legal basis for stay is guilty of an administrative violation.⁴⁷ Similarly, an individual who crosses or attempts to cross a state border irregularly is guilty of an administrative violation.⁴⁸ In line with Art. 31 of the *1951 Convention*, Ukrainian law does not penalize the illegal entry of an asylum-seeker, as long as s/he approaches the authorities “without delay”. (Indeed, 51% of asylum applicants in 2012 entered Ukraine irregularly.) However, persons who attempt to move onwards to the EU by irregularly crossing the western Ukrainian border may be found guilty of an administrative violation. In practice, this occurs most frequently when persons are detained without passports and/or visas for entry into the EU while attempting to cross the state border outside the designated border-crossing points. Persons who have committed administrative violations relating to the legality of their stay or illegal crossing of the state border are subject to forcible return or forcible expulsion from Ukraine if they cannot prove they have a legal basis for stay in Ukraine.⁴⁹ Pending their forcible expulsion, they can be detained for up to twelve months in a Migrant Custody Centre (MCC).⁵⁰
36. Since some individuals do not have access to the asylum system in Ukraine due to the obstacles described above, and others correctly conclude that they have significantly lower chances of obtaining protection in Ukraine as compared to in neighbouring countries, significant numbers of asylum-seekers seek to move onwards to the EU. If the authorities apprehend them and they are determined to be illegally present on the territory of Ukraine, they face up to twelve months in detention for purposes of forcible expulsion.
37. While Ukrainian law previously required that such detention be authorized by a court, the current law gives the SMS and the State Border Guard Service the authority to detain a person in a MCC without a decision of the court.⁵¹ The decision to abolish judicial review in the context of detention is not in line with international and national legal standards.⁵² The ECHR requires that a court should speedily review the lawfulness of detention, a position echoed in UNHCR’s guidelines.⁵³ Similarly, the Ukrainian constitution requires that detention should be authorized by a court within 72 hours.⁵⁴ Nevertheless, migrants can be detained for longer periods before they are brought to court for a hearing on their forcible expulsion. While in recent practice, courts have continued to render a simultaneous decision on both detention and expulsion, UNHCR is concerned that this practice may change, given that administrative bodies are empowered to authorize detention without the deci-

⁴⁷ *Code of Administrative Offences*, Art. 203.

⁴⁸ *Code of Administrative Offences*, Art. 204(1).

⁴⁹ *Law On the legal status of foreigners and stateless persons*, Art. 26(1) [on forcible return] and Art. 30 [on forcible expulsion]. The difference between forcible return and forcible expulsion is as follows: The decision on forcible return is made by an administrative body (SMS, SBGS, Security Service) and the individual is given up to 30 days to leave the country by his/her own means. The decision on forcible expulsion is taken by an administrative court, and the individual is detained pending his/her expulsion. For an unofficial translation of this law, see <http://goo.gl/0aNrL>.

⁵⁰ *Ibid.*, Art. 30(4). In many English-language publications, these facilities are referred to as “Migrant Accommodation Centres” (MACs), but this euphemistic translation gives the mistaken impression that these are open facilities that provide shelter. In fact, they are closed administrative detention facilities.

⁵¹ See Cabinet of Ministers Resolution, No. 1110, as amended on 16 February 2012, para. 6, <http://goo.gl/e77sa>; Law on changes to several legal acts of Ukraine in connection with the adoption of the law on the legal status of foreigners and stateless persons, 16 October 2012, 5453-VI, Art. 4, <http://zakon2.rada.gov.ua/laws/show/5453-vi>. As concerns have been raised about the constitutionality of this measure and its compatibility with Article 5 ECHR, the authorities often continue to seek a judicial decision as the basis for detention in the MCC. This practice is compatible with the guidance provided by the Plenum of the Higher Administrative Court in its *Resolution on judicial practice for consideration of refugee status, complementary or temporary protection, forced return, forced expulsion of foreigners or stateless persons from Ukraine, as well as cases regarding the stay of stateless persons on the territory of Ukraine*, 16 March 2012, <http://goo.gl/pfODC>.

⁵² This point is also made in Council of Europe Parliamentary Assembly, “Management of mixed migration and asylum challenges beyond the European Union’s eastern border”, para. 45, Report, Doc. 13163, 08 April 2013, <http://goo.gl/L5yt1>.

⁵³ ECHR, Art. 5(4); see also *UNHCR Detention Guidelines*, Guideline 7, para. 47 (iii).

⁵⁴ Constitution of Ukraine, 28 June 1996, Art. 29, <http://www.president.gov.ua/en/content/constitution.html>

sion of the court. Draft legislation to correct this shortcoming is currently pending in the Ukrainian parliament.⁵⁵

Due Process

38. The initial court decision on forcible expulsion often involves serious violations of due process. Many detainees do not have access to legal counsel prior to the court hearing, as they are held in “temporary holding facilities” under the control of the State Border Guard Service. While according to Ukrainian law, as of 2013, free legal aid should be provided in such cases, UNHCR is aware of recent cases in which persons detained near the border had no access to legal counseling until after a court had authorized their expulsion and detention, for example, in the situation of a group of Palestinians from Syria who were not able to access legal assistance and the asylum procedure until after a court had already ordered their deportation⁵⁶ NGO lawyers may be denied access to these individuals for several days, while the detainees are being questioned about illegal human smuggling activities.⁵⁷ As a result, many individuals do not have access to a lawyer prior to the court hearing on forcible expulsion and detention. The individual is not usually given a written notification of the date of his court hearing, so even if he has access to a lawyer, he often cannot inform the lawyer of the court date. The court hearings may be conducted without an interpreter, or with interpretation into a language (e.g., English) that the individual does not understand. The court provides its written decision to the State Border Guard Service, and individuals only rarely receive copies of this crucial document.
39. Asylum-seekers face numerous challenges in appealing against decisions regarding their detention and expulsion. First, they are routinely denied a copy of the judicial decision on their detention and expulsion, so they cannot determine together with their legal counsel the reasoning against which they should argue. Second, the law provides for only a five-day time limit to file an appeal.⁵⁸ It is not possible for most individuals to file in that time period as they do not know the Ukrainian language, do not have access to legal counsel, or even a copy of the first-instance court decision. Furthermore, after the first-instance decision, they are further isolated when a significant geographic distance to the MCC. This complicates the issue of geographic jurisdiction. For example, an individual can receive a deportation order from a district administrative court in Zakarpattya, which he should then appeal to the Appellate Administrative Court in Lviv, while being detained a seven-hour drive away from Lviv in Chernihiv. Under these conditions, it is almost impossible for the individual to secure legal counsel and file an appeal within five days.
40. As a result, many individuals file a request to reinstate the terms of appeal. Generally, these requests are positively considered, but this step adds to the length and uncertainty surrounding the appeals procedure. Administrative appeals courts have a heavy caseload, and reviews of detention for purposes of deportation are not given priority consideration, especially since applicants frequently file after the terms of appeal have expired. In several jurisdictions, but particularly in Lviv which handles a large proportion of these cases, it takes approximately six months for cases to be heard.

⁵⁵ See the draft law *On introduction of changes to several legal acts of Ukraine on improving the conditions of judicial protection of foreigners and stateless persons*, No. 2743 of 5 April 2013, <http://goo.gl/XzmZj>. The Council of Europe and UNHCR have both welcomed this draft legislation. See Council of Europe, “Ukraine: Efforts to improve policies and practices of detention of foreigners”, 4 July 2013, http://www.coe.int/t/democracy/migration/default_en.asp; UNHCR, “UNHCR welcomes the legislative initiative to improve detention procedures in Ukraine,” 26 June 2013, <http://goo.gl/kND5X>.

⁵⁶ See the law *On free legal aid*, 3460-17 of 4 August 2011, <http://zakon1.rada.gov.ua/laws/show/3460-17/page>. According to UNHCR guidelines, detainees should have access to free legal assistance on the same basis as nationals, and this should be available as soon as possible so that detainees understand their rights. *UNHCR Detention Guidelines*, Guideline 7, para. 47 (iii).

⁵⁷ In most cases, the individuals are treated as witnesses to the human smuggling case; they are frequently questioned in this regard by the Security Service of Ukraine (SBU).

⁵⁸ *Code of Administrative Court Procedure*, Art. 183-5.5. “Peculiarities of administrative proceedings in the cases regarding the expulsion of aliens and stateless persons”.

41. Even if a case is decided in favour of the applicant, the procedures for the court to inform the SMS of the decision are cumbersome, involving circuitous chains of communication by post. UNHCR is aware of cases where it has taken two months for an individual to be released from detention after a positive court decision.
42. While in the MCCs, many individuals get access to legal assistance through UNHCR's partners for the first time. Those who express a fear of persecution in their country of origin may then file an asylum application. In the past, the migration authorities have been reluctant to give these applications substantive consideration: in 2010–2011, some 210 asylum applications were filed from MCCs, and none was admitted to the full asylum procedure. However, in 2012, this practice began to change, with over 70% of applications being given substantive consideration.

Conditions of Detention

43. There are currently two MCCs in Ukraine—located in remote rural areas of the Volyn and Chernihiv regions; they have a combined capacity of 373 persons.⁵⁹ Through early 2013, the conditions at the MCCs were monitored regularly through an observatory mechanism organized by the International Organization for Migration with participation of civil society and on occasion foreign embassies. This mechanism led to various improvements, such as in the quantity and quality of food provided in the MCCs. While different gaps continue to be noted in the context of monitoring visits—such as limitations on showering and use of telephones—the authorities have shown some readiness to address these gaps. This is a welcome improvement from 2007 when the Committee Against Torture noted “with concern the poor and overcrowded conditions of detention for asylum-seekers.”⁶⁰
44. Nevertheless, in early 2012 after the extension of the detention period from six to 12 months, a hunger strike led to unrest and the deployment of special security forces at one MCC.⁶¹ As individuals are spending a longer time in detention, they need opportunities for meaningful activities, such as educational programmes or vocational activities, in order to relieve tensions; however, lack of funds and the remote location of the MCCs make it difficult to meet these needs. When asylum-seekers and refugees are released from detention, the MCCs have no money to transport them to Temporary Accommodation Centres, so they are expected to travel on their own.
45. The detention of asylum-seeking families with children, as well as unaccompanied children, is particularly problematic. UNHCR urges states to consider all appropriate alternative care arrangements in the case of children accompanying their parents, not least because of the well-documented deleterious effects of detention on children's well-being, including on their physical and mental development.⁶² In Ukraine, only minimal educational support—8 hours of instruction per week—is available for children in the MCCs. Furthermore, as a general rule, unaccompanied or separated children should not be detained.⁶³ UNHCR notes that progress has been made in Ukraine with respect to the detention of unaccompanied children: in 2012, over 20 persons claiming to be unaccompanied and separated children were detained pending the resolution of the dispute regarding their age; in 2013, UNHCR is not aware of any detained persons claiming to be unaccompanied children. (For more on the situation of unaccompanied and separated children see paras. 87–99 below.)

⁵⁹ The MCCs were built with funding from the EU. There are plans to open two more MCCs, each with a capacity for detaining 100 persons, in Donetsk and Mikolaiv provinces. Given that the existing two MCCs had only 90 detainees (14% of total capacity) as of April 2013, the justification for constructing additional MCCs may require further scrutiny.

⁶⁰ Committee Against Torture, 38th Session, CAT/C/UKR/CO/5, 3 August 2007. The improvements, as well as continuing challenges in terms of detention conditions, were also noted by the Council of Europe Parliamentary Assembly, “Management of mixed migration and asylum challenges beyond the European Union's eastern border”, paras. 63–66, Report, Doc. 13163, 08 April 2013, <http://goo.gl/ib144>

⁶¹ UNHCR press release, “End of hunger strike at the detention centres for foreign nationals in the Volyn and Chernihiv regions,” 22 February 2012, <http://goo.gl/DtikS>

⁶² *UNHCR Detention Guidelines*, Guideline 9.1, para. 53.

⁶³ *Ibid.*, para. 54.

Concerns about the Necessity and Lawfulness of Detention

46. As of April 2013, 28% of the individuals under administrative detention at the MCCs were asylum-seekers. In its 2009 report, the Working Group on Arbitrary Detention of the Human Rights Council noted “lacuna in the laws which results in asylum seekers not being automatically released as soon as they have submitted their asylum application” and urged Ukraine to “ensure that delays in the processing of asylum requests do not have a bearing on the length of detention and to prevent unnecessary detention of asylum seekers.”⁶⁴
47. UNHCR has stated that detention of asylum-seekers should be avoided and subject to a test of necessity.⁶⁵ This is consonant with general principles of human rights law which require that detention must be *necessary in all the circumstances* assessed against the facts of the individual case at hand and proportionate to the purpose served by the detention. The general principle of proportionality requires decision-makers to strike a balance between the importance in a democratic society of securing the immediate fulfilment of the obligation in question and the public policy objectives of limiting or denying the right in question.⁶⁶
48. In the case of asylum-seekers, a particular concern is that the legal aim of administrative detention – to ensure that the person concerned is physically available for forcible expulsion – cannot be met, as their removal would constitute *refoulement*.⁶⁷ Asylum-seekers cannot be expelled before the final closure of their asylum cases, as States would otherwise not be able to be sure to uphold their *non-refoulement* obligations. In the context of Ukraine, this may take a year or more, considering the lengthy period required for judicial review. UNHCR has frequently pointed out that the detention of asylum-seekers in this context is likely to be arbitrary, since if the asylum-seeker’s case is under consideration, s/he cannot be deported according to the provisions of international and Ukrainian law.⁶⁸ If an individual cannot be deported, there is no rationale to detain him/her for the purposes of deportation. Despite administrative and judicial appeals raising this argument, the authorities continue to detain asylum-seekers whose cases are under substantive consideration, with some exceptions having been made for individuals who claimed to be unaccompanied minors.
49. The authorities note that they continue to detain these individuals in order to identify them for purposes of deportation. While detention for minimal periods may be permissible to carry out initial identity and security checks, it is incumbent on the authorities to undertake identification with due diligence, avoiding delays that unnecessarily prolong the individual’s detention.⁶⁹ Currently Ukrainian law does not provide for any periodic review of the ongoing necessity of detention and whether the authorities’ efforts to identify the individual are conducted with due diligence (though draft legislation currently under consideration by the parliament would correct this gap).⁷⁰ UNHCR is aware

⁶⁴ *Report of the Working Group on Arbitrary Detention [Mission to Ukraine]*, 9 February 2009, Human Rights Council, 10th session, A/HRC/10/21/Add.4.

⁶⁵ *UNHCR Detention Guidelines*, p. 21.

⁶⁶ *Vasileva v. Denmark*, ECtHR Applic. No. 52792/99 (25 September 2003), para. 37.

⁶⁷ See, *Al-Tayyar Abdelhakim v. Hungary*, Application no. 13058/11, Council of Europe: European Court of Human Rights, 23 October 2012, <http://www.unhcr.org/refworld/docid/50866bd52.html>; UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Alaa Al-Tayyar Abdelhakim v. Hungary*, 30 March 2012, Application No. 13058/11, <http://www.unhcr.org/refworld/docid/4f75d5212.html>; *Hendrin Ali Said and Aras Ali Said v. Hungary*, Application no. 13457/11, Council of Europe: European Court of Human Rights, 23 October 2012, <http://www.unhcr.org/refworld/docid/50866af03cd.html>; UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Said v. Hungary*, 30 March 2012, Application No. 13457/11, <http://www.unhcr.org/refworld/docid/4f75d5e72.html>

⁶⁸ This is also the approach of the European Court of Human Rights, see *Lokpo and Toure v. Hungary*, no 10816/10 at paras. 19–24. See also *Al-Tayyar Abdelhakim v. Hungary*, Application no. 13058/11, Council of Europe: European Court of Human Rights, 23 October 2012, <http://www.unhcr.org/refworld/docid/50866bd52.html>, UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Alaa Al-Tayyar Abdelhakim v. Hungary*, 30 March 2012, para. 3.3 (page 8), Application No. 13058/11, <http://www.unhcr.org/refworld/docid/4f75d5212.html>. See also ECtHR, *R.U. v. Greece*, ECtHR, App. No. 2237/08, 7 June 2011, <http://www.unhcr.org/refworld/docid/4f2aafc42.html>, at para. 94: ‘ [I] l ressort du droit international et national, à savoir les articles 31-33 de la Convention de Genève relative au statut des réfugiés [] que l’expulsion d’une personne ayant soumis une demande d’asile n’est pas permise jusqu’au traitement définitive de ladite demande .

⁶⁹ UNHCR, *Detention Guidelines*, p. 17. The European Court of Human Rights has found that expulsion must proceed with ‘due diligence’ or else the length of the proceedings can be found excessive. See *Quinn v. France* A 311 (1995); 21 EHRR 529 para 48; *Chahal v. UK* 1996-V; 23 EHRR 413 para 113.

⁷⁰ See the draft law *On introduction of changes to several legal acts of Ukraine on improving the conditions of judicial protection of foreigners and stateless persons*, No. 2743 of 5 April 2013, <http://goo.gl/PAExk>

of cases where individuals, particularly those from Somalia, have been administratively detained on multiple occasions for the purposes of deportation, even though the authorities have been unable to deport the individual in the past and presumably understand that they will be unable to effect the deportation in the foreseeable future.

50. As noted by the Working Group on Arbitrary Detention, “Where the chances of removal within a reasonable delay are remote, the Government’s obligation to seek for alternatives to detention becomes all the more pressing.”⁷¹ Currently, Ukrainian law does not foresee any alternatives to detention, such as release on bail, community-based supervision, or designated residence at a particular accommodation centre.

Summary

51. Ukraine imposes prolonged periods of administrative detention upon asylum-seekers without providing avenue to effectively challenge the detention once ordered or considering alternatives to detention.

Recommendations:

- Ensure that persons detained for administrative migration-related violations have prompt access to legal counsel and interpretation services.
- Amend legislation to introduce alternatives to detention in cases of administrative migration-related violations, particularly when the individuals involved are seeking asylum.
- Amend legislation to ensure that detention must be authorized by a court, rather than an administrative body, as well as to ensure that children and persons with special needs, including pregnant women, torture and trauma victims/survivors, unaccompanied elderly persons and persons with mental and physical disabilities should not be detained.
- Provide resources so that detainees at MCCs have meaningful activities and support, such as education, language classes and psychological support as needed, as well as transportation to Temporary Accommodation Centres upon release.
- Continue to facilitate the external monitoring of the conditions of detention in the MCCs and introduce improvements to ensure that the material conditions and regime at the MCCs are appropriate to the legal status of those who are detained.
- Introduce expedited, automatic and periodic judicial review of any detention to ensure the regular in-merit examination of the legal basis for, and the conditions of, detention in an individualized manner.

⁷¹ WGAD, *Opinion No. 45/2006*, UN Doc. A/HRC/7/4/Add.1, 16 January 2008, para. 25, <http://goo.gl/vOaHv>

Quality of the Asylum Procedure

First Instance Procedure and Practice

52. The asylum procedure, administered by the State Migration Service, combines the determination of refugee status and complementary protection into one procedure. The length of the procedure is fixed by law and must be completed within a maximum period of six months.⁷² UNHCR is aware that in some cases, the maximum period has been exceeded because the SMS has been awaiting security notifications from the State Security Service (SBU); however, the courts have clarified that the SMS is obliged to make a recommendation on the granting of international protection in the established time period, if necessary without awaiting the notification from the SBU.⁷³
53. The asylum procedure consists of three stages. First, upon receipt of an application, the SMS takes a decision on whether to accept the application. The law provides for the rejection of applications from persons who have filed repeated applications or who have given false information about their identity (see above at para. 30).⁷⁴ In principle, the SMS should document the asylum-seeker with a certificate (“*dovidka*”) on the day that the individual applies for protection;⁷⁵ however, in practice, many asylum-seekers face difficulties in obtaining the certificate. Sometimes they must wait for weeks in line to submit their application. Even after they submit the application, it usually takes the SMS a few days to issue the certificate due to the cumbersome procedure for obtaining an authorizing signature.
54. Second, the SMS conducts an admissibility assessment consisting of registration, medical screening and an interview with the applicant. Mandatory HIV testing is conducted during the medical screening, in contradiction to WHO standards.⁷⁶ The SMS is required to make the admissibility assessment within fifteen working days of receiving the asylum application. Decisions about admissibility are made at the level of the regional directorates of the SMS.
55. The scope to dismiss cases at the admissibility stage is broad. The law provides for the rejection of cases if they are deemed abusive or not to fulfil the criteria for refugee status or complementary protection. This is much broader than the concept of “manifestly unfounded” in EU asylum practice, or according to UNHCR’s standards.⁷⁷ The logic is circular: asylum-seekers have to prove that they need international protection in order to have an opportunity to present their case in full. As a result of this restriction, many persons are not admitted into substantive asylum procedure. In 2010-2011, over 45% of cases were rejected at this admissibility stage, and thus denied access to a substantive status determination procedure. In 2012, a smaller, but still significant, percentage – 34% – was rejected at the admissibility stage.

Quality of the
Asylum Procedure

⁷² *Refugee Law*, Art. 8.1 and Art. 9.1.

⁷³ See, for example, the decision of the Odesa District Administrative Court of 25 March 2013, No. 815/602/13-a available at <http://reyestr.court.gov.ua/Review/30297850>

⁷⁴ *Ibid.*, Art. 8.6.

⁷⁵ Ministry of Internal Affairs of Ukraine, Order No. 649 *On Approval of the Rules for Application Review and Documents Preparation Required for Decision-Making on Recognition as Refugee or Person Who Needs Complementary Protection, or for Decision-Making on Loss and Deprivation of the Refugee Status and Complementary Protection, and on Revocation of the Decision on Recognition as Refugee or Person Who Needs Complementary Protection* of 7 September 2011 (translation), <http://www.unhcr.org.ua/img/uploads/RulesMOIOrder649E.pdf>; Art III (3)(2).

⁷⁶ See the SMS’s “Questionnaire for a person applying for recognition as a refugee or person in need of complementary protection,” Question 1.21, <http://www.unhcr.org.ua/img/uploads/docs/applicationRefugeeStatusE11.pdf>

⁷⁷ In European asylum law, if a person making an asylum application raises no issues of relevance to refugee status, then his application can be subject to prioritised or accelerated review. Cf. EC Council Directive 2005/85/EC of 1 December 2005, *On minimum standards on procedures for granting and withdrawing refugee status*, Art. 23.4(a). UNHCR refers to such cases as “those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum.” See UNHCR, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, No. 30 (XXXIV) The problem of manifestly unfounded or abusive applications for refugee status or asylum (1983), para. (d), <http://www.refworld.org/docid/4b28bf1f2.html>

56. Third, if the case is taken into the substantive procedure, the SMS conducts an additional interview and writes an assessment which must be signed by the head of the regional directorate of the SMS and then sent together with the file to the Department of Refugees' and Foreigners' Affairs in Kyiv for review and endorsement. The final decision on each case is taken by signature of the Head and/or Deputy Head of the SMS, and not by staff of the Department.

Concerns about Quality of Refugee Status Determination

57. Various commentators have noted that there are significant gaps with respect to the quality of decision-making on refugee status. For example, the Committee on the Elimination of Racial Discrimination notes, "Despite the formation of a new State Migration Service in December 2010 and the adoption of the new migration policy in May 2011 aimed at the facilitation, *inter alia*, of processing of about 2,000 asylum claims per year, the Committee notes the need for well-founded decisions in the refugee status determination procedure..."⁷⁸ Similarly, recent reports by the Council of Europe, Human Rights Watch, and Pro Asyl raise various concerns about the quality of asylum procedure, including concerns about the attitude of staff, the nature of the personal interviews, lack of interpretation and corruption.⁷⁹
58. UNHCR's own assessment leads to further concerns about the quality of decisions taken in Ukraine's procedure of refugee status determination. This assessment begins with an overview of recognition rates in Ukraine. In 2011, there were 890 applicants; the recognition rate in 2011 was 15.3%, with 133 persons receiving refugee status out of 868 decisions taken. In 2012, the number of asylum applications jumped to 1860 persons, as a backlog of applicants had formed. Furthermore, some persons who had been previously rejected in refugee status wished to ask for their case to be considered for complementary protection, which the Refugee Law of 2011 had introduced. In 2012, the asylum authority took decisions regarding 1,200 persons (on admissibility and substance), granting refugee status to 63 persons and complementary protection to 89 persons. This is a recognition rate of just 12.7% – a decrease from the previous year, despite the introduction of an additional form of protection in 2012 (complementary protection) and the fact that the top three countries of origin (i.e. Afghanistan, Syria and Somalia), which comprise over 60% of asylum applications in Ukraine, are affected by armed conflict.
59. UNHCR is concerned that many individuals with international protection needs cannot find protection in Ukraine. For example, in 2010-2011, 411 Somalis applied for refugee status in Ukraine, but only six of them were recognized; the situation improved slightly in 2012, with a total of 45 Somalis receiving international protection (a recognition rate of 15%, which is quite low compared to rates of 40-90% recently reported in EU countries).⁸⁰ Persons from countries in the former Soviet Union have particularly low chances of obtaining refugee status in Ukraine. Of the 755 persons from Kyrgyzstan, Uzbekistan and the Russian Federation who applied for international protection in the last three years (2010-2012), only three received protection. These results raise concerns about whether decision-making in these cases is fair, objective and non-discriminatory. See the table on next page for further details on recognition of asylum-seekers of different nationalities, representing the top ten countries of origin.

⁷⁸ *Concluding observations of the Committee on the Elimination of Racial Discrimination*, 2 September 2011, CERD/C/UKR/CO/19-21/R.1.

⁷⁹ See Council of Europe Parliamentary Assembly, "Management of mixed migration and asylum challenges beyond the European Union's eastern border", Report, Doc. 13163, 08 April 2013, para. 25; Human Rights Watch, 2010; ProAsyl, "Corruption in the Immigration Detention and Asylum System of Ukraine," December 2011, <http://bordermonitoring-ukraine.eu/files/2012/01/corruption.pdf>

⁸⁰ UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, p. 7, <http://www.refworld.org/docid/4e2ee002.html>

	Country										ALL COUNTRIES
	Afghanistan	Somalia	Kyrgyzstan	Uzbekistan	Syrian Arab Republic	Russian Federation	Palestine	Georgia	Pakistan	Iraq	
2010											
Applications	427	240	281	87	29	37	44	22	38	27	1,500
Decisions	440	215	87	95	33	36	40	30	36	36	1,323
Refugee Status	101	1	0	0	0	1	1	2	0	3	135
Recognition Rate	23.0%	0.5%	0.0%	0.0%	0.0%	2.8%	2.5%	6.7%	0.0%	8.3%	10.2%
2011											
Applications	324	171	78	9	55	19	23	19	20	14	890
Decisions	273	135	213	11	26	16	23	11	14	6	868
Refugee Status	110	5	0	0	1	0	9	0	0	0	133
Recognition Rate	40.3%	3.7%	0-0%	0.0%	3.8%	0.0%	39.1%	0.0%	0.0%	0.0%	15.3%
2012											
Applications	548	274	136	57	309	51	29	24	12	53	1,860
Decisions	251	290	136	52	92	36	25	14	7	45	1,200
Refugee Status	36	4	1	0	2	1	1	0	0	2	63
Complementary protection	17	41	0	0	16	0	2	0	0	8	89
Protection Rate	21.1%	15.5%	0.7%	0.0%	19.6%	2.8%	12.0%	0.0%	0.0%	22.2%	12.7%

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Asylum Procedure

60. In reviewing decisions taken by the SMS, UNHCR has noted that various substantive areas of asylum decision-making require further attention. There is broad application of the safe third country notion, particularly relating to persons who transited through the Russian Federation before entering Ukraine. As a result, many individuals who spent short periods of time in Russia have their asylum applications rejected, even though there is no way for them to return to Russia to seek protection.
61. Cases are often rejected for lack of credibility because the individuals do not have documentary proof of past persecution. This is the result of two persistent problems in decision-making. First, decision-makers do not sufficiently analyze whether asylum-seekers can be reasonably expected to have access to this type of evidence. UNHCR is aware of many SMS decisions that quote selectively from the *UNHCR Handbook* on this matter. The decisions refer to the fact that as a general legal principle, the burden of proof is on the person submitting a claim who should provide the relevant facts, but they omit the Handbook's further references to the principle of "benefit of the doubt" and the fact that asylum-seekers rarely have documentary evidence to prove every element of their claims.⁸¹ Second, decision-makers tend to engage in analysis of past events, but give insufficient attention to whether the individual has a fear of persecution in the future if returned to the country of origin. This makes it particularly difficult for individuals to establish refugee claims if they managed to leave their home countries in time to prevent persecution from occurring.⁸² It also makes it difficult for persons to establish that they have become refugees *sur place*.⁸³
62. The SMS has not yet provided guidance or training to decision-makers on the grant of complementary protection, and as a result, decision-making practices vary significantly from region to region. Overall, UNHCR expected the introduction of the complementary form of protection to expand the number of beneficiaries of international protection in Ukraine; however, data for 2012 did not show this. In 2012, only 5.3% of asylum decisions resulted in refugee status, with 7.4% receiving complementary protection, for an overall recognition rate of 12.7%, compared to 2011 when 15.3% received refugee status (complementary protection was not yet available). This is a cause for serious concern, as it suggests that some refugees may be receiving complementary protection. Also, a narrow application of complementary protection results in refusing asylum-seekers with international protection needs. For example, UNHCR has repeatedly noted to the authorities the need to provide a form of international

⁸¹ See *UNHCR Handbook*, paras. 195–197; 203–204.

⁸² According to UNHCR, "While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor." See UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, para. 19; *UNHCR Handbook*, para. 43.

⁸³ *UNHCR Handbook*, paras. 94–96.

protection to persons from Syria in light of the serious human rights violations and conflict currently taking place there. Nevertheless, in 2012, more than 80% of Syrian asylum-seekers were rejected.

63. Exclusion analysis requires more attention. As SMS staff do not undergo specialized training in handling exclusion cases and the SMS has no special unit for this complex area of law, the authorities avoid conducting a full exclusion analysis, but seek other grounds for rejecting asylum applications from persons who are facing criminal charges in their countries of origin.⁸⁴ For example, the individuals may be rejected on the basis of having spent time in a safe third country, or having filed their asylum application with undue delay. Asylum applicants who are the subject of an extradition request from a CIS country are nearly always refused refugee status, usually on admissibility grounds. In some cases where the SMS has rejected such individuals, UNHCR has conducted refugee status determination under its mandate and found that the individuals were indeed refugees, later successfully resettling them to third countries.
64. Since the government authorities do not grant refugee status to many individuals with international protection needs, UNHCR continues to conduct refugee status determination under its mandate in Ukraine, particularly in cases where the Ukrainian authorities have failed to recognize the refugee status of persons with international protection needs and as a result, these refugees are facing serious threats to their physical safety, or have vulnerabilities, such as psychological or medical conditions, that cannot be adequately addressed in Ukraine. In order to address these protection problems, UNHCR submits such refugees for resettlement to third countries. In 2011-2012, UNHCR submitted 170 refugees for resettlement.
65. Several factors contribute to this situation in which the SMS cannot yet ensure a high quality of decision-making at first instance.
66. First, structural factors diminish the quality of decision-making. The long chain of decision-making requires approvals from individuals at both regional and central levels. For example, the head of a regional directorate of the SMS has responsibilities ranging from registration of foreigners to combatting illegal migration, as well as signing decisions on admissibility of asylum applications and recommendations regarding refugee recognition. These heads are typically former Ministry of Interior officials with no training in asylum law, and in the organigramme of the SMS, they do not report to the Department of Refugees' and Foreigners' Affairs. This administrative structure creates a potential for conflict of interest in decision-making at the admissibility stage of decision-making. Furthermore, as responsibility for refugee affairs is split into different stovepipes within the SMS's structure, real accountability for the quality of decision-making is difficult to establish.
67. Second, insufficient allocation of resources has a direct impact on quality. Office premises of the SMS in the regions are inadequate, usually with no dedicated interview space to ensure privacy. Eligibility officers often sit together in one room where they conduct interviews simultaneously. In the absence of confidentiality, asylum applicants report they do not feel secure in putting forward all the elements of their refugee claim, particularly if these relate to sensitive political or personal matters. The regional directorates have not yet received a budget allocation for hiring interpreters, so they make informal arrangements or ask asylum applicants to bring their own interpreters. These interpreters are not properly trained and may have insufficient command of the language and a conflict of interest in interpreting for persons with whom they have prior relationships. As there is no transparent mechanism of compensation, interpreters come under pressure to ask for money or other favours. This situation seriously compromises the integrity of decision-making. Despite their significant level of responsibility, eligibility officers are paid at a low scale (around the equivalent of \$200 per month), which makes retention of highly-qualified individuals, particularly with foreign language skills, problematic.⁸⁵ Very few eligibility officers speak English or other foreign languages.
68. Third, eligibility officers are not equipped with the tools they need to do their work properly. Offices generally have antiquated computers and copy machines; many eligibility officers lack a reliable internet connection, which limits their ability to do research on conditions in the applicants' countries of origin. The SMS's specialized unit on country of origin information (COI) research received external funding for several years, but was not continued when the external funding ended. Eligibility officers without access to the internet or a specialized COI unit, and lacking the ability to read documents in English, are not able to use the available evidence about the situation in applicants' countries of origin. There is no systematic programme of training for eligibility officers; most are

⁸⁴ For further guidance on exclusion analysis, see *UNHCR Handbook*, chapter IV and UNHCR, *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, HCR/GIP/03/05, <http://www.refworld.org/docid/3f5857684.html>

⁸⁵ As of mid-2012, the minimum wage in Ukraine was the equivalent of \$137 per month.

trained on-the-job by their colleagues. In particular, the lack of training on credibility analysis and interviewing techniques impacts on eligibility officers' ability to make a fair assessment of whether applicants have established their need for international protection. Many new eligibility officers were recruited with the creation of the SMS, but they have had few opportunities for training.

69. Fourth, asylum applicants do not have access to a safe and effective complaints mechanism to raise concerns about their access to the asylum procedure, the quality of decision-making or allegations of corruption. Indeed, reputable international NGOs have gathered extensive evidence of corruption in the asylum procedure in Ukraine.⁸⁶ It is difficult to comment authoritatively on the extent of corruption within the asylum procedure, as most asylum-seekers and refugees are reluctant to make formal complaints for fear of retribution. UNHCR regularly receives oral complaints that corruption occurs, and was particularly concerned when an analysis of the government's decisions in 2011-2012 revealed that the vast majority of persons who were recognized as refugees had not been beneficiaries of free legal aid through UNHCR's NGO partners. That is, based on the available data, it appears that persons who applied for refugee status without legal aid were more likely to receive refugee status than those who received legal aid through a network of lawyers trained and supported by UNHCR. Indeed, as noted above, corruption is a pervasive problem in Ukraine, and there are significant reasons to believe that the asylum system is particularly at risk of corrupt practices. Eligibility officers are under-paid and interpreters are not paid at all. The migration services do not systematically post anti-corruption messages or information about where to file complaints. The hotline of the SMS has not proven an effective mechanism for finding relief. Asylum-seekers are particularly vulnerable, lacking knowledge of the local language, asylum procedures and their rights. They may not understand that the asylum procedure is supposed to be free-of-charge. In this regard, UNHCR notes that in recent months the SMS has undertaken some measures to address corruption, including the bringing of criminal charges against two officials allegedly involved in corruption schemes related to the asylum system in two districts of Ukraine. It is hoped that this indicates the will to tackle this pervasive issue further on a more systemic basis.
70. Fifth, asylum-seekers have legitimate concerns about the protection of the information they provide in their asylum application. While Ukraine's Refugee Law states that the sharing of information contained in the asylum application with the country of origin shall be avoided, it does not set forth the possible exceptions.⁸⁷ Fearing disclosure of information that could lead to harm of themselves or their relatives, asylum-seekers are reluctant to speak openly about key elements of their refugee claim. UNHCR is aware of a recent case in which the authorities of the country of origin were even given access to a refugee in detention.

Recommendations:

- Review the structure of decision-making on refugee status to streamline decisions to be made by persons specifically trained on asylum law.
- Allocate sufficient resources to create conditions for quality decision-making, including resources for country-of-origin information, interpretation (including facilities for remote interpretation by video connection), interview rooms, and internet connections.
- Establish training programmes for eligibility officers, including use of the European Asylum Curriculum.
- Provide written technical guidance to eligibility officers on issues of concern, particularly the issue of "safe third country," credibility assessment, exclusion and complementary protection.
- Implement anti-corruption policies within all phases of the asylum procedure, including posting of anti-corruption messages and ensuring proper staffing and response by the SMS hotline.
- Ensure the confidentiality of information provided in asylum applications, particularly vis-à-vis the country of origin, through amendment of the Refugee Law and its implementation.

⁸⁶ See Human Rights Watch, 2010; ProAsyl, "Corruption in the Immigration Detention and Asylum System of Ukraine," December 2011, available at <http://bordermonitoring-ukraine.eu/files/2012/01/corruption.pdf>.

⁸⁷ Art. 10(3) of the *Refugee Law* states that the "executive authorities shall...avoid sending queries with the applicants' personal information to specialized law enforcement bodies (services) of the applicants' countries of origin..." [emphasis added].

Second and Third Instance Procedure and Practice

71. Ukrainian law provides for both administrative and judicial review of first-instance asylum decisions. Asylum-seekers can file an administrative appeal to the SMS if they have received a negative decision by the regional directorate of the SMS on acceptance of the asylum application or admissibility of the application.⁸⁸ An asylum-seeker can also appeal against these decisions, as well as against negative decisions of the SMS, to the district administrative court, and further to the appellate administrative court.⁸⁹ The Higher Administrative Court is the court of cassation for such cases.⁹⁰
72. The SMS also has the right to appeal if the lower court takes a decision in favour of an asylum-seeker. In practice, the SMS files appeals against nearly all the cases they lose in court. As a result, some asylum-seekers are subject to exceedingly long proceedings, first winning a court case and then having the positive decision overturned at a higher instance court. This system leads to mounting frustration among asylum-seekers and also imposes an unnecessary burden on the courts.
73. Various factors impede asylum-seekers' access to an effective remedy against a negative first-instance decision of the SMS. The law allows only five working days in which to file an appeal, and the government does not provide free legal aid to assist individuals in filing these appeals.⁹¹ Furthermore, the asylum-seeker receives a standard rejection letter written in Ukrainian which gives only the reasons in law as to why the asylum application was rejected. In most cases, the rejection letter says that the individual was rejected as a refugee because he does not fulfil the refugee definition. Substantive reasons for the rejection are not listed in the notification given to the asylum-seeker. To see the reasons in fact as to why s/he was rejected, the asylum-seeker or his/her lawyer must request access to the assessment of the case, which is available in the SMS file. While in principle, the SMS is supposed to provide free legal assistance related to the asylum procedure, in practice the SMS usually fails to provide individuals with legal counselling about how to appeal against the rejection.⁹² Thus, in order to file an appeal, an applicant must take several steps within five working days: understand the legal reasons for rejection; obtain legal assistance (which the government does not supply); request and obtain access to his/her file in order to prepare the appeal; and prepare the text of the appeal. As a result of the short time limits, appeals must be drafted very quickly and often on the basis of incomplete information, with a negative impact on their overall quality and prospects for success. The short time limits for lodging appeals, particularly coupled with the lack of free legal aid, render the judicial remedy ineffective for most asylum-seekers, as filing an appeal is excessively difficult.
74. Asylum-seekers must renew their asylum-seeker certificates frequently, as the certificate is valid for an initial period of two months and renewed thereafter on a monthly basis. They face particular challenges in renewing the certificates while they are in the appeals stage. When asylum-seekers appeal to the courts against negative decisions, the regional directorates of the SMS cannot prolong the validity of their asylum-seeker certificate until they receive a confirmation from the SMS in Kyiv that the court has opened consideration of the case and that the SMS has delegated the regional directorate to represent the interests of the SMS.⁹³ This usually takes 2–3 weeks in Kyiv, and sometimes even months in other regions. In the meantime, the asylum-seeker is undocumented, despite his best efforts to follow the asylum procedure, a violation of an asylum-seeker's right to have documentation certifying his/her status and to remain on the territory of the state pending the

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⁸⁸ *Refugee Law*, Art. 12.

⁸⁹ *Refugee Law*, Art. 12; *Code of Administrative Court Procedure of Ukraine*, Art. 2.2.

⁹⁰ *Code of Administrative Court Procedure of Ukraine*, Art. 20.3.

⁹¹ *Refugee Law*, Art. 8.9; Ukraine's "Law on free legal aid" is to be implemented gradually. It provides that detainees will begin to receive free legal representation from January 2013; asylum-seekers will begin to receive free legal assistance on refugee status determination procedures in January 2014; the full range of free legal aid services, including legal representation in court, will be available only from 2017. See Law 3460-17, 4 August 2011, <http://zakon1.rada.gov.ua/laws/show/3460-17/page>.

⁹² *Refugee Law*, Art. 8.7; 9.1 (1).

⁹³ This procedure is foreseen by Ministry of Internal Affairs of Ukraine, Order No. 649 *On Approval of the Rules for Application Review and Documents Preparation Required for Decision-Making on Recognition as Refugee or Person Who Needs Complementary Protection, or for Decision-Making on Loss and Deprivation of the Refugee Status and Complementary Protection, and on Revocation of the Decision on Recognition as Refugee or Person Who Needs Complementary Protection* of 7 September 2011, Art. 4.7.

examination of the asylum application.⁹⁴ Persons without state-issued asylum certificates are at risk of fines, detention and *refoulement*. In this situation, individuals opt to limit their movements to avoid detection by the authorities. UNHCR issues its protection letters to persons in this situation who are registered with UNHCR - an average of some 90 letters per month in 2012. However, these letters do not provide a legal basis for asylum-seekers' stay on the territory of Ukraine.

75. The judiciary experiences challenges in consideration of asylum cases. Many courts have insufficient funds for interpretation, and therefore may not be able to afford the asylum-seeker meaningful participation in the court hearing. Until recently, there was no specialization within the administrative courts on asylum cases, which comprise less than 1% of the cases heard by administrative judges. As many judges were hearing only a few asylum cases a year, they were unable to develop their experience and expertise in this complex area of law, where specialized knowledge of international jurisprudence and countries of origin is required. For example, in a survey conducted in 2011, it was found that fewer than 15% of court decisions in asylum cases made any reference to country of origin information.⁹⁵ The courts struggle to correctly apply the evidentiary and credibility principles of international refugee law, imposing an unreasonably high standard of proof on the asylum-seeker and imposing a full burden of proof on the asylum-seeker.⁹⁶ In further analysis of decisions in 2012, UNHCR observed that many of these same problems persisted. In addition, UNHCR noted that courts often reject an asylum-seeker's appeal exclusively on the basis that the individual had not previously experienced persecution; assessment of the individual's future risk in the country of origin is absent. Finally, though Ukraine's Constitution provides for the direct application of international law, in practice the courts rarely apply the *1951 Convention's* provisions directly.
76. However, in a positive step in early 2012, several district administrative courts have introduced specialization, with asylum cases being assigned to a handful of judges who are now developing greater expertise. It is hoped that the quality of judicial decision-making related to asylum will grow. In 2012, in Kyiv and Odesa (the jurisdictions with the largest caseloads), UNHCR's partner lawyers obtained court decisions in favour of asylum-seekers in 25% of cases.⁹⁷ Despite these positive trends, UNHCR is concerned that some of this expertise may be squandered, as recent legislation has transferred jurisdiction in deportation cases from the administrative courts to the courts of general jurisdiction.⁹⁸ These courts have not yet developed experience relating to international protection, so they will need to build their capacity in considering international protection needs in the context of deportation.
77. The Plenum of the Higher Administrative Court (HAC) gives critical guidance to lower administrative courts in adjudicating asylum cases. In 2012, the Plenum of the HAC issued an updated Resolution that advises courts on the interpretation of the new legislative framework related to asylum and deportation.⁹⁹ The interpretation is carefully guided by international standards, and while the Resolution does not have the status of law, courts increasingly consider it as an important source of guidance on interpretation of international and Ukrainian law. The Plenum of the HAC and UNHCR have provided joint training to judges on this Resolution, and the National School of Judges has engaged in providing regular training on refugee matters in its training courses.

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⁹⁴ European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, Art. 6, 29 June 2013, L 180/96, <http://www.refworld.org/docid/51d29db54.html>

⁹⁵ AstapovLawyers, "Analysis of the court practice of the Ukrainian administrative courts dealing with the complaints of the asylum seekers challenging the negative decisions of the migration authorities on their applications", May 2011, Attachment 1, <http://goo.gl/VgQy4>

⁹⁶ AstapovLawyers, "Analysis of the court practice of the Ukrainian administrative courts dealing with the complaints of the asylum seekers challenging the negative decisions of the migration authorities on their applications", May 2011, p.4. The report found that "[t]he burden of proof in the majority of cases is placed with the applicant. Only in 35 cases out of 102 the courts fairly divided the burden of proof between the parties." See <http://goo.gl/mmks7>

⁹⁷ UNHCR's Ukrainian language web-site includes a description of 68 court cases regarding asylum from 2012 in which courts took decisions in favour of asylum-seekers. The site includes links to the registry of the court, so the official text of each decision is readily available. See the link on "national judicial practice in refugee cases" at <http://goo.gl/IH2w2>

⁹⁸ The courts of general jurisdiction can act as administrative courts for the consideration of these cases. See the *Law on changes to several legal acts of Ukraine in connection with the adoption of the law on the legal status of foreigners and stateless persons*, 16 October 2012, 5453-VI, Art. 1, <http://zakon2.rada.gov.ua/laws/show/5453-vi>

⁹⁹ Available at http://zakon1.rada.gov.ua/laws/show/v_001760-09.

78. Thus, while asylum-seekers must overcome various impediments to file a judicial appeal, the judiciary has an increased capacity to review first-instance decisions in accordance with international and national law. The judiciary has demonstrated its commitment to developing its expertise the area of international asylum law.

Recommendations:

- Revise procedures for renewal of asylum-seeker certificates to ensure complete continuity of documentation throughout the entire asylum procedure, including throughout the period of appeals.
- Extend the time limits within which an appeal must be filed and make progressively available free legal aid to asylum-seekers in line with European standards.¹⁰⁰
- Support the administrative courts' efforts to increase use of specialization and introduce more systematic training in international standards pertaining to refugee protection.

Risk of *Refoulement*

79. Despite active interventions by UNHCR and human rights lawyers to prevent forcible return of persons with international protection needs, UNHCR continues to document cases of *refoulement* from Ukraine. Comprehensive data is not available, particularly as *refoulement* at the border remains a largely hidden phenomenon. However, based on available information, in 2012, UNHCR counted three persons as having been *refouled*. This compares to 13 persons in 2011, five in 2010, 17 in 2009 and 12 in 2008.
80. Most *refoulement* from Ukraine has occurred in one of the following four situations. First, given that persons with international protection needs may not receive legal aid or interpretation at border crossing-points or temporary holding facilities, they are not able to apply for asylum before their deportation and detention is ordered. They are at risk of *refoulement* if the authorities are able to remove them expeditiously. However, in practice, logistical and financial considerations prevent a quick removal, and persons are held in detention at Migrant Custody Centres for several months. In 2012, UNHCR decided to strengthen its civil society partners to provide legal assistance in these centres, so more individuals are aware of the possibility of applying for asylum and able to do so and are able to challenge deportation orders. This step has reduced the risk of *refoulement* from the centres; however, this protection mechanism is dependent on UNHCR's funding, and there is need to ensure that free legal aid is provided to detained foreigners, in line with Ukraine's new legal framework.
81. Second, persons under extradition arrest also face limitations in their access to the asylum procedure. In cases that have come to its attention, UNHCR has observed that the SMS frequently rejects as inadmissible most asylum applications from persons facing extradition, meaning that these cases are not given "independent and rigorous scrutiny" as required by the jurisprudence of the European Court of Human Rights.¹⁰¹ As noted above, the SMS has limited capacity to conduct analysis to assess whether such applicants should be excluded from refugee status because there are serious reasons for considering that they committed a serious non-political crime falling within the scope of Art. 1(F) of the 1951 *Convention*.

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¹⁰⁰ EC Council Directive 2005/85/EC of 1 December 2005, *On minimum standards on procedures for granting and withdrawing refugee status*, Art. 39.2

¹⁰¹ *M. and Others v. Bulgaria* [application no. 41416/08] para. 127.

82. In the past, appeals did not necessarily suspend the extradition. In 2011–2012, for instance, three asylum-seekers were extradited despite holding valid asylum-seeker certificates.¹⁰² However, the new Code of Criminal Procedure, which came into force in November 2012, has strengthened the protection of asylum-seekers facing extradition requests, as it expressly prohibits extradition of a person whose asylum application is under consideration, including at the level of legally available appeals.¹⁰³
83. Ukraine has signed an agreement with fellow CIS countries obliging it to cooperate with all CIS countries in tracing criminals or persons suspected in having committed a crime.¹⁰⁴ This unconditional obligation can conflict with responsibilities under the *1951 Convention*. Furthermore, in most cases where asylum-seekers are the object of an extradition request, the requesting country is a CIS country and fellow signatory of the Minsk Convention.¹⁰⁵ The Minsk Convention does not include sufficient human rights guarantees in the context of extradition, and is thus at odds with Ukraine's obligations under other international law.¹⁰⁶ The Chisinau Convention,¹⁰⁷ though ratified by only six CIS countries so far, secures a better level of protection of human rights in the context of extradition, and Ukraine's accession to this treaty could send a valuable message to other countries in the region.
84. As a result of the poor quality of decision-making by the SMS in cases involving exclusion analysis, UNHCR identifies several individuals each year whose asylum claims have been rejected by the national authorities, but whom UNHCR assesses to have refugee protection needs. Upon the rejection of their asylum claims by the national authority, they may be extradited and face persecution in their countries of origin. In such situations, *refoulement* can be prevented in two different ways. First, as Ukrainian law prohibits the extradition of individuals who have been recognized as refugees by other states-parties to the *1951 Convention*, an individual who has been recognized as a refugee by a third-country should enjoy protection against *refoulement*.¹⁰⁸ Second interim measures of the European Court of Human Rights (under Rule 39) or a positive decision by that court can also stop the extradition. UNHCR is aware of at least two instances in 2012 where the European Court of Human Rights imposed interim measures to halt the extradition of an asylum-seeker. However, these measures are not always effective. For example, in 2012, Ukraine extradited a refugee who had been recognized both under the UNHCR mandate and by another state-party to the *1951 Convention*.¹⁰⁹ Furthermore, while these mechanisms to protect persons facing extradition are usually effective, they do not absolve Ukraine of its own obligations to provide adequate protection of human rights, including the international protection needs of refugees, in the context of extradition, as set forth in international law.¹¹⁰
85. Third, UNHCR remains concerned about the rejection of asylum-seekers at the border which may result in their *refoulement*. As noted above, UNHCR is aware of two instances in 2012 where asylum-seekers tried to obtain access to the asylum procedure at the border and were denied; only the intervention of the European Court of Human Rights under its interim measures (Rule 39) was able to prevent their *refoulement*. Also, the fact that persons from at-risk countries, such as Syria, are rejected at the border, suggests indirectly that there may be a broader problem of asylum-seekers being denied access to the territory of Ukraine. UNHCR continues to underline "the fundamental

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¹⁰² These decisions were taken before the new *Code of Criminal Procedure* came into effect. UNHCR Press Release, "UNHCR condemns *refoulement* of a refugee to the Russian Federation," 16 August 2012, <http://goo.gl/qY3dl>

¹⁰³ *Code of Criminal Procedure*, 13 April 2012 4651-VI, Art. 590 (4), entered into force on 20 November 2012, <http://goo.gl/tYefX>

¹⁰⁴ *Agreement of states-participants of the Commonwealth of Independent States on the inter-governmental search of persons*, 10 December 2010, http://zakon2.rada.gov.ua/laws/show/997_n30

¹⁰⁵ *Convention on Legal Aid and Legal Relations in Civil Family and Criminal Cases*, 1993, <http://www.unhcr.org/4de4edc69.html>

¹⁰⁶ The Minsk Convention foresees quite limited grounds for a requested state to refuse the extradition of an individual; extradition cannot be refused on the grounds that the individual will face serious human rights violations in the requesting country. See Art. 57 of the Minsk Convention, http://zakon1.rada.gov.ua/laws/show/997_009/ed19941110.

¹⁰⁷ *Chisinau convention on legal aid and legal relations on civil, family and criminal cases*, 2002.

¹⁰⁸ *Refugee Law*, Art. 31(2), 31(3); *Code of Criminal Procedure*, Art. 589(2).

¹⁰⁹ UNHCR Press Release, "UNHCR condemns *refoulement* of a refugee to the Russian Federation," 16 August 2012, <http://goo.gl/QfIBk>

¹¹⁰ See UNHCR, *Guidance Note on Extradition and International Refugee Protection*, April 2008, <http://www.unhcr.org/refworld/docid/481ec7d92.html>

importance of the observance of the principle of *non-refoulement* – both *at the border* and within the territory of a State.”¹¹¹

86. Finally, UNHCR is deeply concerned that *refoulement* appears to have occurred as a result of the abduction of an asylum-seeker from the territory of Ukraine. In October 2012, a Russian asylum-seeker disappeared from outside the premises of UNHCR’s NGO partner, and re-appeared two days later in a Russian detention facility.¹¹² The authorities refused to investigate the incident, with the official spokesman of the Ministry of Interior stating that it is a political matter when a foreign security service conducts an operation on Ukrainian territory, not a criminal matter.¹¹³ UNHCR is also aware of two previous serious allegations of abduction relating to an UNRWA-registered Palestinian refugee and an Uzbek asylum-seeker. These incidents were not investigated satisfactorily.

Recommendations:

- Conduct a full, substantive assessment of applications for refugee status/complementary protection by applicants who are facing extradition, including exclusion analysis where appropriate before any extradition is considered.
- Ratify the 2002 Chisinau Convention on legal aid and legal relations on civil, family and criminal cases, which provide safeguards for asylum-seekers and refugees in the context of extradition.
- Provide training to prosecutors and judges on issues relating to refugee and human rights protection in the context of extradition, including reference to the new Code of Criminal Procedure.
- Conduct thorough investigations into any allegations of incidents that may have resulted in *refoulement*.

Risk of
Refoulement

¹¹¹ UNHCR, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009, No. 6 (XXVIII), *Non-refoulement* (1977) at para. c, emphasis added; <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>

¹¹² UNHCR press release, “UNHCR seeks information on fate of disappeared asylum-seeker” 25 October 2012, <http://goo.gl/8ouol>

¹¹³ “The Interior Ministry of Ukraine said that the intelligence agencies of the Russian Federation did not have to share with them the plans about Razvozhaev”, Ukrainian National News, 25 October 2012, <http://goo.gl/1FWAU>

Unaccompanied and Separated Children

Legislation

87. Ukraine's Refugee Law makes provision for unaccompanied and separated children to be able to apply for asylum. On 31 July 2012, an interagency instruction was adopted to clarify the mutual responsibilities of various government agencies in protecting and assisting unaccompanied and separated children who are seeking asylum.¹¹⁴ The gradual implementation of this instruction is yielding positive developments for the protection and reception of these children.
88. According to the law, when government authorities identify unaccompanied or separated children who wish to apply for asylum, they should notify the SMS and the custody and guardianship authorities.¹¹⁵ Within three days, the custody and guardianship authorities appoint a legal representative, and then the legal representative may file the asylum application on the child's behalf.¹¹⁶
89. Within the asylum procedure, Ukrainian law provides for special protection of unaccompanied and separated children. The law provides that family tracing shall be initiated¹¹⁷ and that all asylum applications from unaccompanied and separated children shall be taken into the substantive procedure.¹¹⁸ During the personal interview, the child's legal representative is required to be present; the presence of a psychologist, pedagogue and a licensed advocate is also required during the personal interview.¹¹⁹ The child is to be temporarily accommodated in a children's institution pending the decision on his/her asylum application.¹²⁰
90. The legal framework also addresses the situation of children whose age is disputed. If there are justified doubts that the asylum-seeker is a child, the SMS obtains the informed consent of the child and his/her legal representative for age assessment at a medical facility. During the age assessment, physical, cultural and psychological factors shall be taken into consideration.¹²¹ However, there are currently no instructions governing the conduct of age assessment. (For further details see paras. 93–95 below.)

Appointment of Legal Representatives

91. Until recently, unaccompanied and separated children encountered serious obstacles in making an asylum application, often because the authorities did not appoint a legal representative. This was observed *inter alia* by the Committee on the Rights of the Child, which noted in 2011 its concern about

*legal and administrative shortcomings with respect to the access of asylum-seeking and refugee children to State assistance and services, such as medical and psychological treatment and interpretation. The Committee is particularly concerned at restrictions in access to the asylum procedure of unaccompanied and undocumented asylum-seeking children due to the failure of the State party to appoint legal representatives to them.*¹²²

¹¹⁴ *Instruction for cooperation of organs of administrative power in work with children separated from their families who are not citizens of Ukraine and who have approached the competent organs with an application for refugee status or complementary protection*, Instruction 604/417/793/499/518 of 7 July 2012, (hereinafter "Instruction on Unaccompanied Children"), <http://zakon1.rada.gov.ua/laws/show/z1292-12>.

¹¹⁵ *Refugee Law*, Art. 5.3.

¹¹⁶ *Refugee Law*, Art. 7.4; *Instruction on Unaccompanied Children*, Art. 2.7.

¹¹⁷ *Refugee Law*, Art. 7.11.

¹¹⁸ *Refugee Law*, Art. 8.1.

¹¹⁹ *Refugee Law*, Art. 9.3, 9.4.

¹²⁰ *Instruction on Unaccompanied Children*, Art. 2.9.

¹²¹ *Instruction on Unaccompanied Children*, Art. 2.8.

¹²² *Concluding observations: Ukraine*, Committee on the Rights of the Child, 21 April 2011, CRC/C/UKR/CO/3-4, para. 72, <http://www.refworld.org/docid/4dcb87f22.html>

92. However, with the legal circumstances now clarified in an inter-agency instruction, UNHCR has noted a marked improvement in the appointment of legal representatives for unaccompanied and separated children. Though there is still need to reduce the time period necessary for the appointment of a legal representative, as of April 2013, all the unaccompanied children registered with UNHCR have a duly appointed legal representative. With the assistance of a legal representative, unaccompanied children are able to apply for asylum. In 2012, 73 unaccompanied children applied for asylum.

Age Assessment

93. As in many countries, there is concern in Ukraine about adults abusing the asylum system by stating that they are minors. However, given the additional challenges for children in accessing the asylum system, as well as some children's reluctance to enter state-run children's shelters which lack specialized social services for foreigners, Ukraine has the unusual phenomenon of children exaggerating their age to enter the asylum procedure on a more straightforward basis as adults. UNHCR is aware of several cases in which children have told the SMS that they are 18, in order to have smoother access to the asylum procedure and access to documentation.
94. In order to prevent abuse by adults, Ukraine is increasingly using age assessment to challenge the stated age of teenagers. While age assessment should only be applied in cases of doubts about the child's age, UNHCR is aware of cases where age assessment was conducted for children who held court decisions, passports or birth certificates showing them to be children and for children whose physical appearance did not give rise to any reasonable doubt as to their being children.
95. Ukraine has not established instructions or procedures for how age assessment should be conducted in the asylum and migration context; thus, there is considerable variation among medical professionals about how the assessment is conducted and the margin of error which is given for the results. Some children have reported to UNHCR that they were not asked to give consent for the age assessment procedure. As currently conducted, the examinations do not comply with the requirements of a multi-disciplinary and least-invasive approach.¹²³ They may include dental examination, physical development assessment and the use of x-rays; however, the assessments do not touch upon cognitive, behavioural or psychological maturity. Doctors, including paediatricians and radiologists, perform age assessments, but social workers and child development specialists are not involved. Professionals involved in the process are seldom familiar with the child's cultural and environmental background, and lack specific training or guidelines for how to conduct age assessment. Some age assessment reports purport to establish a precise age, or give a small range of ages, which cannot be supported by scientific evidence. Children are generally not being given the benefit of the doubt in the context of imprecise age assessments, and they have no means of appealing against the results of the age assessment, even if they later obtain documentary evidence of their real age. Since mid-2012, the Ministry of Health has led a working group to establish procedures for age assessment, but the procedures have not yet been finalized.

Reception of Unaccompanied and Separated Children

96. Reception conditions for unaccompanied and separated children are critically inadequate. According to the Refugee Law of 2011, unaccompanied and separated children are supposed to be accommodated in children's institutions or in foster families.¹²⁴ While they had previously housed unaccompanied children, the Temporary Accommodation Centres (under the SMS) are not legally designated as children's institutions, so after passage of the law, they were no longer authorized to accept unaccompanied and separated children. Instead, children are supposed to be placed in children's shelters or foster care placements overseen by the Ministry of Social Policy. However, there have been gaps in handing over this responsibility. The Ministry of Social Policy does not have any specialized procedures, trained personnel or assistance for accommodation of unaccompanied

¹²³ Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, <http://www.unhcr.org/refworld/docid/4ff535f52.html>; see also the Council of Europe Commissioner on Human Rights, "Methods for assessing the age of migrant children must be improved" CommDH018 (2011), 9 August 2011, <http://goo.gl/GUWb5>.

¹²⁴ *Refugee Law*, Art. 5(3).

asylum-seeking children. The children's shelters are semi-closed institutions, usually designed for younger Ukrainian children, rather than teenaged foreigners. Asylum-seeker children in these shelters complain of unreasonable restrictions on their freedom of movement, social isolation, and lack of educational opportunities; some have run away from these institutions. No unaccompanied or separated children have yet been placed in foster care arrangements.

97. As a result, many unaccompanied and separated children continue to be left without access to state-run accommodation centres or children's shelters: as of April 2013, only 25% of unaccompanied and separated asylum-seeking children registered with UNHCR receive accommodation from the state authorities. Left without adequate care, they have to find their own informal care arrangements within their community and survive without any social or financial assistance. While some of these arrangements are adequate, most do not provide a protective environment. Children live in overcrowded conditions, often mixed with adults who are not in a care-giving relationship, and sometimes with persons of the opposite sex. No government agency is monitoring these care arrangements, and civil society's capacities cannot adequately fill the gap. These living arrangements create serious risks for exploitation and abuse of unaccompanied and separated children.¹²⁵ These children are easy prey for human smugglers and traffickers; in 2012, more than a third of unaccompanied and separated children registered with UNHCR lost contact with the organization.
98. The Ukrainian authorities have plans to address this gap in reception of unaccompanied and separated children through creating a specialized children's institution on the basis of a Temporary Accommodation Centre in Kyiv region (Yagotin).¹²⁶ It is hoped that sufficient resources will be allocated to complete this step in the near future, since the current situation puts these children at unacceptable risk.
99. While the best interest of the child is not enshrined as a guiding principle in the law regarding the protection of unaccompanied children who are seeking asylum, the authorities engage practically in determining the best interests of unaccompanied and separated children. Currently UNHCR convenes regular multi-functional committee meetings to assess the best interests of individual children. Various government agencies, including the SMS, Ministry of Social Policy, Children's Services and Departments of Education, are gradually beginning to play a more significant role in these meetings and follow-up on individual cases.

Recommendations:

- Continue to train government authorities on implementation of the inter-agency instruction on unaccompanied and separated children who are seeking asylum, ensuring prompt appointment of a legal representative and smooth access to the asylum procedure.
- Adopt domestic regulations concerning age assessment in light of international recommendations.
- Provide adequate conditions for reception of unaccompanied and separated children, including their specific needs, preferably through the opening of a specialized section for unaccompanied and separated children at the new TAC in Kyiv region.
- State authorities should gradually assume leadership of the multi-functional committee for best interests determination in cases of unaccompanied and separated asylum-seeking children.

¹²⁵ For further analysis of the risks associated with the poor reception conditions, see Katherine Williamson, "Between a Rock and a Hard Place: Unaccompanied children seeking asylum in Ukraine," *New Issues in Refugee Research*, No. 223, October 2011, pp. 18-20.

¹²⁶ *National Plan for Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society until 2020*, 22 August 2012, Art. 7.4, <http://goo.gl/gjqhO>

Accommodation and Other Reception Assistance for Asylum-Seekers

Legislation

100. Ukrainian law affords asylum-seekers few social and economic rights. Asylum-seekers have the right to work only under onerous conditions. In order to obtain a work permit, they must be admitted to the substantive stage of the asylum procedure and prove that there are no citizens able to take the proposed job. Additionally the employer must pay a fee equivalent to four months' of minimum salary.¹²⁷ It is extremely difficult for asylum-seekers to fulfil these conditions, particularly as their certificates are valid for a short time period (1–2 months). In terms of accommodation, asylum-seekers are allowed to live in hotels, with relatives, in rented accommodation or in temporary accommodation centres.¹²⁸ Asylum-seekers are treated as any other foreigners in terms of their access to medical care: they must pay for medical assistance, even in cases of emergencies.¹²⁹ Asylum-seeking children have access to free public and secondary education.¹³⁰ Asylum-seekers have limited possibility to receive charitable gifts, e.g., financial or material assistance, as taxes must be paid on all charitable gifts amounting to more than one monthly minimum wage per year. For taxes to be paid, the recipient of the charitable gift must hold a tax identification code that can be issued only on the basis of a valid identification document.¹³¹ The asylum-seeker certificate is not considered a valid identification document.¹³²

Gaps in Reception Conditions

101. The Committee on the Elimination of Racial Discrimination noted in 2011:

*with concern that, while a number of projects and studies were taken to provide housing to refugees and asylum-seekers, including in Odessa Oblast, the number of refugee and asylum centres and the funding thereof remain inadequate (art. 5 e) iii)). The Committee recommends that the State party further improve conditions for the reception of refugees and asylum-seekers by opening new temporary accommodation centres, particularly in Kyiv and Kharkiv, ensuring transparent criteria for admission to centres, and providing assistance to those who cannot be accommodated therein.*¹³³

102. While the country receives an average of 1,500 asylum applications per year, only 320 spaces are available in temporary accommodation centres (TACs). The government has acknowledged that the number of spaces is insufficient.¹³⁴ These limited spaces are not allocated according to transparent criteria, and vulnerable individuals often cannot secure a space. The capital Kyiv, where a large proportion of asylum applications are lodged, does not have yet have a TAC.¹³⁵ Lack of funding leads to poor conditions at the TACs. The authorities lack money to make the regular repairs needed to control dampness and mold. Heating and plumbing systems are in need of repair. Residents complain about insufficient allocation of food and that the food is frequently of poor quality or past its expiry date. Cleaning supplies are procured sporadically.

¹²⁷ Law On employment of the population, No. 5067-VI, Art. 42. The employer's fee is being introduced in line with a Cabinet of Ministers Resolution adopted in late May 2013, with a fee totaling 4,588 UAH (approximately \$573). See Cabinet of Ministers simplifies order of issuing permits needed to employ foreigners and stateless persons, 28 May 2013, <http://goo.gl/5mwO5>

¹²⁸ Refugee Law, Art. 13.

¹²⁹ See the Cabinet of Minister's Resolution, No. 667 of 22 June 2011, <http://goo.gl/MZYsX>

¹³⁰ Law of Ukraine "On general and secondary education", <http://zakon3.rada.gov.ua/laws/show/651-14>, Art. 6.

¹³¹ Tax Code of Ukraine, Art.170.7.3(4), Arts. 164 and 167, <http://goo.gl/2qiyR>

¹³² Law of Ukraine On the legal status of aliens and stateless persons, Art 1.16, <http://zakon1.rada.gov.ua/laws/show/3773-17>; Law On immigration, Art. 1.7, <http://zakon1.rada.gov.ua/laws/show/2491-14>

¹³³ Concluding observations of the Committee on the Elimination of Racial Discrimination, 2 September 2011, CERD/C/UKR/CO/19-21/R.1.

¹³⁴ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Ukraine, A/HRC/WG.6/14/UKR/1, 13 August 2012, para. 96, <http://goo.gl/2Er7c>

¹³⁵ The SMS proposes to open a TAC in Kyiv region with 150 beds in 2014.

103. Most asylum-seekers are left to fend for themselves. The authorities do not provide language courses, social assistance or employment assistance. Most asylum-seekers cannot work legally since they are unable to obtain a work permit as required by Ukrainian law. This means that most asylum-seekers in Ukraine have no temporary accommodation, social assistance, right to work or even the ability to receive charitable assistance without putting their donor in conflict with the law. In an effort to survive, some attempt to work illegally, particularly at markets. This puts them at risk of additional protection problems. UNHCR provides limited assistance to the most vulnerable through a network of NGOs, but it is not sustainable for UNHCR to continue to provide this assistance in a country like Ukraine, a middle-income country that can easily support the small numbers of asylum-seekers on its territory.
104. UNHCR notes that migrants in administrative detention enjoy greater rights than asylum-seekers, as migrants in detention are entitled to material assistance (such as clothing) and free basic medical care.¹³⁶
105. Asylum-seekers frequently complain about the difficulty of finding and paying for suitable housing. In a participatory assessment with asylum-seekers published in 2011, UNHCR found that most asylum-seekers are living in small, crowded apartments in old Soviet-era buildings at the edges of the major cities. Many individuals spend half their monthly income on rent. They rarely have formal rental agreements, and thus live in constant fear of eviction.¹³⁷
106. In line with a new legal framework introduced at the end of 2012, asylum-seekers, like other foreigners who are temporarily in the country, are required to register their place of stay in Ukraine.¹³⁸ In order to be registered, asylum-seekers must take their asylum-seeker certificates to the SMS's "passport table" in their area of residence. They are required to present an agreement with their landlord in order to get residence registration. Since under Ukrainian law, asylum-seekers do not have the right to receive social assistance, or the possibility of working legally, they are often poor and in a weak position to demand that their landlords provide a written agreement. It is well-known that many landlords in Ukraine refuse to provide written agreements to tenants. Even if a landlord does provide an agreement, asylum-seekers can be confronted with additional demands, such as that the landlord appears personally at the passport table to confirm the validity of the agreement. Since an asylum-seeker certificate is valid for a short period, an asylum-seeker can be required to renew his document and his temporary registration every month. This imposes extremely high burdens on both the asylum-seeker and his landlord. As a result, very few asylum-seekers are able to obtain registration at their place of stay.
107. Costly administrative fines (equivalent to \$63) can be imposed on such persons due to their lack of registration. So far, the State Migration Service has been imposing such fines only exceptionally, giving people time to adjust to the new system. However, the system itself is problematic, and there is concern that fines will be imposed more frequently in the future.
108. Furthermore, it is not possible for asylum-seekers to obtain registration in homeless shelters, since shelters provide assistance only to foreigners who legally reside in Ukraine.¹³⁹ According to Ukrainian law, asylum-seekers "stay" in Ukraine on a temporary basis, but do not "reside," which involves permanency. Asylum-seekers therefore do not have a right to benefit from assistance to the homeless.
109. Ukraine provides asylum-seeking and refugee children access to free primary and secondary education. However, the education system falls short of assuring the full and effective participation of foreign children, including asylum-seeking and refugee children, in mainstream education. The public schools do not have specialized programmes or assistance for teaching foreign children Ukrainian as a foreign language. While some teachers and school directors display remarkable

¹³⁶ Compare the free medical aid and non-food items to be provided to detainees according to the Ministry of Internal Affairs decree 336/268/254 of 17 April 2012, <http://zakon2.rada.gov.ua/laws/show/z0748-12>.

¹³⁷ See UNHCR, *Listening to the Voices of Refugees and Stateless Persons in Ukraine*, 2011, p. 35.

¹³⁸ See in particular the Ministry of Interior's Order No. 1077 of 22 November 2012 regarding registration of place of residence and place of stay of physical persons in Ukraine, chapters 4–5, <http://zakon1.rada.gov.ua/laws/show/z2109-12>

¹³⁹ *On the principles of social protection of homeless persons and children without care*, Law of 2 June 2005, No. 2623-IV, Art. 4.1, <http://goo.gl/zoS0b>; Also Inter-ministerial order *On confirming an order for cooperation of subjects that give social services to homeless citizens*, 19 February 2009 No. 70/411/101/65/19/32, Art. 2.7, <http://goo.gl/ftRm9>

goodwill and provide individual assistance at their own initiative, this is not done systematically. Many children are expected to learn the language on their own. Schools are not required to address newcomers' specific needs.

110. Older children likewise face challenges in learning the language and may also be placed in lower grades with much younger children. This has a negative impact on their motivation to go to school. Catch-up classes are not available for adolescents, though some schools may establish ad-hoc programmes at their own discretion. Asylum-seeking and refugee children are not considered to fall into the category of "vulnerable children" who can benefit from individual programmes of instruction at school. Several refugees have been able to study and receive secondary education certificates from "evening schools" – a form of secondary-school equivalency programme for adults. However, refugees do not have systematic access to this programme. Unfortunately, the authorities do not collect information about drop-out rates among refugee and asylum-seeking children, so it is difficult to know the extent of this phenomenon.
111. In order to obtain a school certificate or diploma, a child or his/her parent must hold an identity document. As asylum-seeker certificates are not considered identity documents under Ukrainian law, asylum-seeking children cannot obtain proof of their educational achievements. This hinders prospects for future integration.
112. In sum, Ukraine has very limited capacity to receive asylum-seekers and meet their basic needs for food, shelter, education and medical care.

Recommendations:

- Improve the conditions at the temporary accommodation centres by allocating sufficient resources for necessary capital repairs and monitoring the quality of food distributions.
- Expand the availability of temporary accommodation centres, particularly by allocating the resources for opening a centre in Kyiv region.
- Amend legislation to ensure that asylum-seekers receive free access to necessary health care, including at least emergency care and essential treatment of illnesses.
- Amend legislation to provide a reasonable mechanism for meeting the basic needs of asylum-seekers through employment, social assistance, or provision of temporary accommodation.
- Amend the instructions regarding registration of asylum-seekers' place of stay to return to the previous good practice of requiring asylum-seekers to orally provide accurate information about their place of temporary accommodation.
- Ensure full access and meaningful participation of refugee and asylum-seeking school age children in education in Ukraine, including appropriate alternatives to classroom-bound education for adolescents.
- Include asylum-seeking and refugee children into the existing list of vulnerable categories of children entitled to individual forms of instruction.
- Adopt regulations to ensure that asylum-seeking children can receive school certificates.
- Ensure that access of refugees and asylum-seekers to "evening schools" is guaranteed by the national authorities.

Local Integration of Beneficiaries of International Protection

Legislation

113. Ukraine's Refugee Law gives refugees and persons with complementary protection the same rights and obligations as Ukrainian nationals, including rights to employment, education and social assistance.¹⁴⁰ Refugees are considered permanent residents from the moment of their recognition, while persons with complementary protection have the legal status of a person who stays in Ukraine legally for an unlimited period of time.¹⁴¹ The Refugee Law provides for issuance of documents to refugees and persons with complementary protection for a period of five years, subject to annual re-registration.¹⁴²
114. Other legislative acts have recently been harmonized with the Refugee Law, thus ensuring that the social and economic rights of refugees and persons with complementary protection are enshrined in relevant legislative acts.¹⁴³ Refugees can apply for Ukrainian citizenship three years after having received refugee status.¹⁴⁴
115. On 22 August 2012, the Cabinet of Ministers adopted the *National Plan for Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society until 2020*.¹⁴⁵ Among various other activities, the Plan envisages provision of Ukrainian language training and cultural orientation classes to refugees and persons with complementary protection, as well as work with host communities to increase levels of public tolerance. Steps will be taken toward provision of public housing to vulnerable refugees. Government staff will receive training in working with refugees. The authorities will convene local integration working groups in refugee-hosting regions. It is helpful that the plan outlines the role of various line ministries in facilitating refugee integration. Also, the Plan includes UNHCR as a partner in implementation. Adoption of the Plan indicates an effort of the Government of Ukraine to facilitate integration of refugees into Ukrainian society, recognizing the potential they bring to the host community. In the framework of the EU-funded project "Local Integration of Refugees" UNHCR has supported the Government to develop the Plan (although most of UNHCR's comments were ultimately not adopted by the government) and welcomes the government's intention to assume responsibility for integration of refugees.

Current Situation

116. Ukraine currently hosts approximately 2,500 persons with refugee status and complementary protection.
117. The authorities are giving increased attention to the issue of local integration. The passage of the National Plan for Integration is a positive step. Several regions of Ukraine have launched consultations on developing regional-level plans for facilitating integration of refugees. Unfortunately, the authorities have not allocated any budgetary resources for implementation of the national or regional level integration plans, thus reducing the likely effectiveness of the plan.
118. The SMS has augmented its capacity to address refugee integration by establishing social integration units within the SMS at the central level, as well as in the Kyiv, Kharkiv and Odesa regional offices.

¹⁴⁰ Law of Ukraine "On refugee status and persons in need in complementary, temporary protection," Art. 15.

¹⁴¹ Ibid., Art. 14.

¹⁴² Ibid., Art. 10(11).

¹⁴³ Law On introduction of changes to several legal acts of Ukraine on questions of refugees and persons in need of complementary or temporary protection, No. 5290-17, 18 September 2012, <http://goo.gl/GI6TA>

¹⁴⁴ Law On citizenship of Ukraine, 2235-14, Art. 9.3, <http://zakon1.rada.gov.ua/laws/show/2235-14>

¹⁴⁵ Available at <http://goo.gl/zR9vY>

119. Despite the positive intentions and until the National Plan for Integration of Refugees is implemented with a reasonable level of budgetary support, the authorities currently provide extremely limited support to refugees. A newly recognized refugee receives a one-time grant amounting to the equivalent of just over \$2. The authorities do not provide any language training, cultural orientation, or access to unemployment assistance and benefits. The absence of a social housing scheme further limits integration prospects in Ukraine. While some assistance is currently provided by UNHCR and NGOs, these are temporary programmes supported by external funding, mainly through the EU. Nevertheless, this limited support has shown how refugees can successfully integrate in Ukraine if they are given basic tools to learn the language, find work, go to school or open a business.¹⁴⁶
120. Various line ministries with responsibilities relevant to local integration, such as the Ministry of Education and Science, Youth and Sport of Ukraine and the Ministry of Social Policy of Ukraine, have not yet demonstrated practical engagement regarding the local integration of refugees. The National Plan for Integration assigns to each ministry specific tasks, and this may prove a useful encouragement to them in including refugees in their usual programs.
121. Despite these efforts, the real social situation of many refugees remains difficult. While formally refugees have unimpeded access to the labour market, they frequently cannot exercise this right in practice. Many employers are unwilling to deal with “foreigners”; refugees’ skills and qualifications frequently do not correspond to the needs of the Ukrainian labour market. Usually the miniscule wages that official employers offer to refugees cannot cover the cost of housing, so most refugees continue to rely on unofficial/semi-official employment working in wholesale and retail markets in Ukraine. This aggravates their exclusion from the receiving society. Refugee women are in a particularly difficult situation, as employment at the markets is generally not available to them. Since they do not establish a record of official employment, refugees are not eligible to receive public unemployment benefits if they lose their jobs.
122. Similarly, though refugees have a right to social benefits, they may face significant barriers in accessing them. With poor knowledge of the Ukrainian language, they have difficulty approaching government structures. If they do, they frequently meet civil servants with a poor knowledge of refugees’ rights and are asked to bring additional documents or evidence of their right to obtain services.
123. Issues regarding the documentation of refugees were successfully resolved in 2012, and recognized refugees are now receiving documents valid for five years. They have access to Convention Travel Documents; however, as Ukraine is not a signatory to the European Agreement on the Abolition of Visas for Refugees, they may experience limitations on their freedom of movement.¹⁴⁷ Refugees continue to face challenges in obtaining administrative assistance from the Ukrainian authorities to issue documents or certificates relating to civil status, leading to violations of Article 25 of the *1951 Convention*. Furthermore, access to documentation is currently problematic for persons with complementary protection. The Refugee Law adopted in 2011 necessitated the introduction of a new document conferring complementary protection. The authorities have not yet begun printing such documents. As a result, persons who have been granted complementary protection still possess only an asylum-seeker certificate and cannot enjoy the much broader rights associated with complementary protection. In effect, complementary protection has not yet started to function despite the fact that it was formally introduced nearly two years ago.

¹⁴⁶ For personal stories of refugee integration in Ukraine, see *New Home Ukraine: Stories of successful integration of refugees*, UNHCR, Kyiv, 2012, http://unhcr.org.ua/attachments/article/608/UNHCR_en_web2.pdf.

¹⁴⁷ This treaty entered into force on 9 April 1960; see Council of Europe, *European Agreement on the Abolition of Visas for Refugees*, 3 September 1960, ETS 031, <http://www.refworld.org/docid/3ae6b38918.html>

Public Attitudes

124. Public attitudes toward foreigners also impact on refugees' capacity for local integration. Ukrainian human rights organizations have noted that "the level of animosity within Ukrainian society to foreigners has over recent years been slowly, but steadily rising, and that specifically migrant-phobia has become the most widespread form of xenophobia in Ukraine."¹⁴⁸ Sociological studies show that while Ukrainians' attitudes toward foreigners were broadly accepting in the 1990s, the situation began to deteriorate around 2000 when Ukrainians began to perceive a larger socio-cultural gap between themselves and foreigners. However, there are also indications that the level of xenophobic attitudes has stabilized, or that attitudes toward foreigners have even become slightly more positive, since the mid-2000s.¹⁴⁹
125. Overall, Ukraine is considered to have inadequate anti-discrimination laws. As a result, the Committee on the Elimination of Racial Discrimination has recommended that Ukraine:
- accelerate the adoption of a comprehensive Anti-Discrimination Act to stipulate, inter alia, the definition of direct and indirect as well as de facto and de jure discrimination, as well as structural discrimination, liability for natural and legal persons extending to both public authorities and private persons, remedies to victims of racial discrimination as well as the institutional mechanisms necessary to guarantee the implementation of the provisions of the Act in a holistic manner.*¹⁵⁰
126. In 2012, Ukraine adopted a law on combatting discrimination.¹⁵¹ However, human rights criticize the law as inadequate; among other shortcomings, they find that the law makes it very difficult for victims to prove discrimination and achieve redress in the courts.¹⁵² Human rights organizations have formed a coalition to advocate for amendments to the law in order to improve protection against discrimination.¹⁵³
127. The Ukrainian authorities do not have an adequate mechanism for tracking hate crimes. While various initiatives were undertaken in the past, in 2010, Ukraine dismantled the State Committee on Ethnic and Religious Affairs, the Inter-Departmental Working Group against Xenophobia and Ethnic and Racial Intolerance, as well as the separate departments of the Ministry of the Interior for investigating and combating crimes involving racial or ethnic hatred. The authorities do not gather statistical data disaggregated by ethnicity, gender and age on the victims of racial discrimination; there is no accurate data regarding the occurrence of hate speech and hate crimes, the number and nature of cases brought against perpetrators, convictions obtained, sentences imposed and compensation awarded. Observers remain concerned about the lack of demonstrated commitment by law enforcement to investigate hate crimes and recognize their racist or discriminatory nature. As a result, it is widely assumed that many hate crimes are un-reported.
128. In the absence of government efforts to track hate crimes, monitoring is done by NGOs.¹⁵⁴ Since the fall of 2010, these sources have recorded significant numbers of hate crimes, including physical assaults. While in 2010, 14 racially-motivated assaults were recorded, 23 attacks were documented in 2011, and 20 in 2012. Among the documented cases in 2012 was one attack against an asylum-seeker from the Democratic Republic of Congo. Another human rights organization identified 36 victims of hate crimes in 2012.¹⁵⁵

Local
Integration

¹⁴⁸ Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine – 2012*, p. 183.

¹⁴⁹ National Institute for Strategic Studies, "Evaluation of the state of tolerance in Ukrainian society: risks and possibilities in the formation of national unity," undated article, <http://www.niss.gov.ua/articles/500>

¹⁵⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination, 2 September 2011, CERD/C/UKR/CO/19-21/R.1.

¹⁵¹ *On the principles for preventing and countering discrimination in Ukraine*, Law of 6 September 2012, No. 5207-VI, <http://zakon2.rada.gov.ua/laws/show/5207-17>

¹⁵² See "Statement on Discrimination (Ukraine), 12 September 2012," <http://noborders.org.ua/en/useful-documents/analytics/statement-on-discrimination-ukraine>

¹⁵³ Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine – 2012*, p. 182.

¹⁵⁴ The website for the Diversity Initiative is <http://diversipedia.org.ua/eng/> and for the Congress of National Communities of Ukraine is <http://www.kngu.org/KongrEng/AboutEng.htm>

¹⁵⁵ Kharkiv Human Rights Group, "Number of hate crimes on the increase," 14 May 2012, <http://goo.gl/FuWqP>

129. While some reported cases resulted in charges of hooliganism being brought against alleged perpetrators, the sanctions for hooliganism are not affected by the aggravating factor of being “committed on motives of racial, ethnic or religious intolerance;” thus racial or ethnic discrimination is not taken into account in these cases.¹⁵⁶ Respected human rights organizations in Ukraine have identified racial and ethnic profiling as a persistent problem in past years.¹⁵⁷

Summary

130. With limited assistance to facilitate their integration and surrounded by an often uncomprehending public with little experience of minority groups, refugees and persons with complementary protection face sometimes insurmountable challenges in finding employment, accessing social services, and integrating into the local society.

Recommendations:

- Strengthen anti-discrimination legislation in line with the standards established in the International Convention for the Elimination of All Forms of Racial Discrimination.
- Re-establish a unit responsible for training law enforcement on identification of hate crimes and gathering data on the occurrence of these crimes.
- Cooperate with civil society in promoting more tolerant public attitudes towards ethnic and religious minorities, including asylum-seekers and refugees.
- In implementing the national plan on local integration of refugees, take into full consideration the recommendations of the “Strategy for Action” developed as a part of the EU-funded study regarding local integration of refugees in Ukraine; many of these recommendations have not yet been implemented.¹⁵⁸
- Allocate sufficient resources for the implementation of the national plan on local integration of refugees. Develop the plan further and review it on the annual basis to meet refugee integration needs.
- Ensure the full participation of relevant ministries in the refugee integration process.

¹⁵⁶ *Criminal Code of Ukraine*, Art. 296.

¹⁵⁷ See for example articles by the Kharkiv Human Rights Protection Group, <http://www.khpg.org/en/index.php>, as well as analysis prepared by Association of Ukrainian Monitors on Human Rights Conduct in Law Enforcement, <http://umdpl.info/eng>

¹⁵⁸ Andrysek, O. and T. Rantala, “The local integration of refugees in the republic of Belarus, republic of Moldova and Ukraine: A strategy for Action,” 2008, http://ukr.unhcr.org.ua/files/tex9t_eng.pdf

Conclusions

131. UNHCR has worked closely and intensively with the Ukrainian asylum authorities since the country's accession to the *1951 Convention*. Despite some improvements with regards to legislation, unaccompanied and separated children, and the quality of judicial review in asylum cases, Ukraine's asylum system still has serious gaps.
132. Ukraine is a middle-income country in Europe with a population of some 46 million people. On average, about 1,500 persons apply for asylum each year, and these applicants are scattered amongst various medium-sized cities. Overall, the demands of the asylum system in Ukraine are modest. With political will, a stable and professional administrative authority, a reasonable allocation of financial resources, as well as continued and dedicated engagement with UNHCR and other relevant international actors, Ukraine can implement the above recommendations and meet international and European standards in the area of asylum.
133. Nevertheless, in light of the shortcomings described above, UNHCR concludes that Ukraine is failing to provide sufficient protection against *refoulement*, and does not provide asylum-seekers with the opportunity to have their asylum claims considered in an efficient and fair procedure. Ukraine therefore should not be considered as a safe third country. UNHCR further urges States not to return asylum-seekers to Ukraine on this basis.