

The forgotten victims of war: Ukraine's stateless

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War has exacerbated the severe difficulties faced by stateless people in Ukraine. Barriers to accessing humanitarian aid, safe passage and protection need to be addressed.

Due to the challenges that stateless people face with their lack of or limited documentation, many of those living in war-torn Ukraine have been unable to flee; they also face obstacles in seeking international protection and are often unable to receive humanitarian aid.¹ Despite the gravity of the situation, however, the issue is not receiving sufficient attention.

Statelessness has a grave impact on millions of people worldwide, depriving them of fundamental rights such as identity, education, child protection, development, health care, employment, property, freedom of movement and freedom from arbitrary detention.² As is often the case around the world, it is difficult to accurately assess the numbers of stateless people in Ukraine; this is due to the nature of statelessness, the difficulty of locating stateless people, and muddled documentation mechanisms. The last census in Ukraine, in 2001, recorded 82,550 stateless people while UNHCR in 2021 estimated there to be “at least 35,000 stateless and people with ‘undetermined nationality’”.³ These estimates fail to account for some groups, such as children born after 2014 in the territories of Crimea, Donetsk and Luhansk, and a significant proportion of the Roma population.⁴ The issue is compounded by the fact that many stateless people may not want to be identified because they fear the consequences of residing in Ukraine without papers or with non-standard forms of identification.⁵

The historical demographics of stateless people in Ukraine are diverse, and include those who were not able to prove their registration in Ukraine after the demise of the Soviet Union, those who were caught in complex

bureaucratic processes, formerly deported people such as the Crimean Tartars, and the Roma. Although systemic issues of discrimination are present, statelessness in Ukraine has more to do with regulatory and administrative gaps, which emerged due to the geopolitical and territorial upheaval following the dissolution of the former Soviet Union.

The different successor States of the former Soviet Union passed migration and nationality laws at different times, and also began to issue passports at different times, exacerbating the risk of statelessness. Some Ukrainians effectively became stateless when they returned to their homeland after the collapse of the Soviet Union to discover that they were considered as foreigners in the newly independent Ukraine.⁶ It was also not uncommon for people to hold passports of the defunct Soviet Union without being able to acquire a passport of any newly formed State.⁷

The current situation in Ukraine

Efforts to enable the voices of stateless people in Ukraine to be heard are not new⁸ and may indeed have had a positive impact on domestic policy, which now recognises that stateless people exist and may have rights. At the same time, there are still barriers to exercising these rights, notwithstanding the legal and policy changes. Whether or not a stateless person may access their rights depends heavily on such factors as documentation, proof of residence, ethnicity, and the competence of authorities dealing with their application. In addition to inconsistent practices, discrimination is also a problem. There are reports of stateless

people, Roma and third-country nationals being turned down at the EU border, facing detention-like conditions, and/or being subject to secondary screening.⁹

In a welcome sign of progress, in May 2021 the Ukrainian government introduced a Statelessness Determination Procedure (SDP). An applicant must first successfully go through the SDP and then apply for temporary residence. These are two separate procedures. It is important to note that the whole process does not guarantee a permanent residence and thereby the possibility of acquiring Ukrainian nationality. The process is time and resource-intensive, offering no guarantees for regularisation of residence status; at the same time, those applying may face risks such as detention. This explains in part why few stateless people in Ukraine have gone through the process. Up to the time of the Russian invasion on 24th February 2022, only 55 people had acquired temporary residence in Ukraine through the SDP, while 1000 applications were pending.¹⁰ There has been little progress since then. Due to the invasion, population registers in Ukraine were closed for some time and the SDP was halted, although it was later restarted in select areas. Government services are overwhelmed due to the war.

The vast majority of stateless people in Ukraine do not have a regular residence status or standard forms of identification. This leaves them vulnerable in the current war. In addition to an already dire restriction of rights, in practice it means that they do not have access to international protection. Worse yet, it can also mean that they have no freedom of movement and cannot even become internally displaced because in order to travel outside of their locality, people currently have to pass military checkpoints where standard forms of identification are required.

Due to the difficulties of functioning in a war zone, Right to Protection (R2P), one of UNHCR's implementing partners in Ukraine, lost contact with a third of the stateless people with whom it had been in contact. Of those with whom R2P managed to re-establish contact, about 75% had not moved anywhere and had not been able to seek safety. In interviews, these people cited fear of being detained and

interrogated while crossing military checkpoints due to lack of valid identity documents; lack of knowledge about safe routes; fear of separation from their children when they have no proof of parentage; and, lastly, lack of any assistance at destination. Since most stateless people do not possess standard documents, they do not have access to housing for displaced persons, cannot register as internally displaced and cannot access humanitarian assistance. The interviews revealed that stateless people feel safer in the neighbourhoods that they know.

Lack of access to humanitarian aid alone is a serious challenge for stateless people in Ukraine. Ukrainian legislation requires NGOs to report on all aid distributed to people, identifying recipients by their tax number. Aid recipients are required to provide their tax number in order to receive any kind of assistance, no matter how small or essential that assistance may be, such as foodstuffs or medicine. Stateless people can therefore only survive by finding unofficial jobs, which is practically impossible in wartime, or by relying on private volunteers who do not have strict reporting rules (although this can lead to abuses and fraud).

Outside Ukraine

According to R2P, less than 10% of undocumented stateless people left Ukraine in March 2022, when the border crossings were relatively easier. Even if a stateless person is able to leave his or her locality and is not turned back at the border, they are likely to encounter new challenges once outside Ukraine. The implementation of laws such as the EU Temporary Protection Directive (TPD) can vary substantially depending on country, border crossing, immigration office, municipal authority, or even the attitudes of these authorities.

As mentioned above, only 55 stateless persons were recognised and granted temporary residence status in Ukraine prior to 24th February, 2022 (the date of Russian full-scale invasion of Ukraine). Therefore, the vast majority of stateless people in Ukraine are not eligible for protection under the TPD as they lack the necessary documentation and proof of residence. The issue is compounded because

not all European countries have a Statelessness Determination Procedure. Those that do may not have a formal statutory mechanism, often lack knowledge and sufficiently qualified staff, and do not provide any information or free legal aid to stateless people.

To make matters worse, Ukrainian consulates are only dealing with requests from Ukrainian nationals and the State Migration Service has no regulations on the issuance of documents to stateless people abroad, even for those who were recognised as stateless in Ukraine. All this creates a vicious circle for stateless people who have fled Ukraine.

There is also fear among those without sufficient documentation that even if they are able to leave Ukraine to seek safety, they will not be able to return. Given the lack of proper regulatory frameworks to safeguard stateless people's rights, that fear is well grounded. It could create a limbo for such people, where they cannot return to Ukraine but would not be able to stay in the country that is temporarily hosting them.

Recommendations

We propose three main recommendations for action.

Firstly, address the barriers that endanger stateless people in Ukraine in order to ensure access to humanitarian aid and safe passage. Every person in Ukraine, whether displaced or residing in conflict-affected areas, should have access to humanitarian assistance regardless of their documentation. To ensure this, the Ukrainian government should lift the requirement for recipients of humanitarian aid to provide a tax number. International NGOs and UN agencies should include stateless people in their lists of people to receive assistance, taking into account their lack of standard documentation, and should work with State actors to raise greater awareness about statelessness.

Secondly, ensure an inclusive, human rights-based response in Europe. Everyone fleeing the war in Ukraine should be guaranteed access to the territory of Europe regardless of documentation or residence status, as mandated

by the EU and UNHCR, and in line with the principles of international law including the right to claim asylum. EU Member States should extend eligibility for temporary protection to all stateless people and those at risk of statelessness from Ukraine, regardless of documentation or residence status.

Thirdly, make progress on a comprehensive, integrated approach to preventing and ending statelessness. In March 2023, R2P gathered representatives from the Ukrainian government, UNHCR and civil society. This consultation paved the way for further steps towards ending statelessness in Ukraine, including commitments to: identify and recognise all stateless people in Ukraine; document the different profiles of stateless people; address possible gaps that could create new statelessness cases; and elaborate a joint roadmap to resolve existing cases and prevent new cases.

Moreover, progress is needed in all European countries to prevent and reduce statelessness. Governments need to take effective measures to determine who is stateless on their territory and grant them the protection enshrined in the 1954 Convention Relating to the Status of Stateless Persons. SDPs should be established and strengthened. Safeguards should be established to guarantee that children of refugees do not grow up stateless, and statelessness among unaccompanied and separated children should be identified and their rights to a birth certificate and nationality guaranteed. States should also facilitate the naturalisation of recognised stateless people and make every effort to expedite proceedings and to reduce the charges and costs.

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