

# BRIEFING NOTE

## Access to documentation for conflict-affected persons

To be recognized as persons before the law and enjoy their human rights, individuals must have access to an **identity document**. In Ukraine, as in many other countries, an **identity document is required to exercise many rights**, including medical services, education and voting. People need identity documents to ride a train, open a bank account, travel abroad or marry. Given the importance of identity documents, the **Sustainable Development Goals (#16.9)** aim that by 2030, states will provide legal identity for all, including free birth registrations.

Conflict has set back Ukraine's progress toward this goal. **Persons affected by the conflict in the east**, as well as the occupation of the **Autonomous Republic of Crimea and the City of Sevastopol ("Crimea")**, face additional challenges in obtaining **Ukrainian identity documents (internal passports, as well as passports for travel abroad)**. This briefing note explains the challenges conflict-affected persons face in obtaining identity documents. It also provides several recommendations that would help conflict-affected persons obtain identity documents and exercise their human rights, as well as support Ukraine in its progress toward the Sustainable Development Goals.

*"Every human being has the right to recognition everywhere as a person before the law. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents."*

*Principle 20 of the Guiding Principles on Internal Displacement*



*UNHCR NGO partner "The Tenth of April" staff provides a consultation related to book-shaped passport.*

### 1. Main concern:

Compared to other Ukrainian citizens, internally displaced persons, residents of non-government-controlled areas (NGCA) in Donetsk and Luhansk oblasts, as well as residents of Crimea, face numerous extra requirements and barriers in obtaining or renewing their identification documents.<sup>1</sup> When these individuals renew their book-shaped passports (1994 specimen) or exchange to new plastic ID cards, they must undergo additional verification of their data in available electronic or paper archives. Since these archives are not available for oblasts currently outside the government's control, this complicates verification of passports and persons' identities. The verification procedures are lengthy, burdensome and costly for the conflict-affected population. In some occasions, the verification fails, leaving the person concerned without identification documents.

### 2. General rules relating issuance of passports

There are two types of valid passports in Ukraine: **book-shaped passports** (in the form adopted in 1994) and **plastic ID cards** (distributed since 2016). An important difference between the two types of documents is that **plastic ID card** does not display information about a **person's residence registration** (successor of Soviet Union's *propiska*). Instead, this information is **encrypted in the ID card** and is accessible by a specific device, which is not available in many institutions. In the book-shaped passport, **residence registration is stamped** onto a page of the passport. In Ukraine, residence registration determines the location at which a person can exercise certain rights, such as access to banking, public services and electoral rights. If people hold plastic

ID cards and they wish to confirm their residence to institutions that do not have the card-reading device, they must obtain a separate certificate of residence registration from the centers for providing administrative services (also known as TSNAPs).

Upon reaching the **age of 14, all citizens of Ukraine are obliged to receive a plastic ID card**, which must be renewed when they reach the age of 18 and subsequently every 10 years.<sup>1</sup> A citizen possessing a book-shaped passport may **voluntarily exchange** it for a plastic ID card at any time. A person who does not wish to exchange a book-shaped passport for an ID card should **update his/her photo in the book-shaped passport** within one month upon reaching the ages of 25 and 45, respectively. If they miss these deadlines, the passport will be rendered invalid. **Invalid passports cannot be renewed by inserting a photograph**; they must be exchanged for a plastic ID card. Additionally, if a person's book-shaped passport is lost, stolen or damaged, it cannot be renewed, but must be exchanged for a plastic ID card.

When renewing a book-shaped passport for any Ukrainian citizen, the **State Migration Services** verifies the information in this document against other data available in electronic or paper archives of the Unified Demographic Registry, which contains information about initial issuance of the book-shaped passport and other identity documents, e.g. passport for travelling abroad. **Children obtaining an ID card for the first time** must submit their birth certificates and documents confirming the citizenship of one or both parents (to establish that a child has the right to Ukrainian citizenship).<sup>2</sup> In general, the SMS issues plastic ID cards to children receiving their first identity documents; a book-shaped document will be issued only on the basis of a court order.<sup>3</sup>

In recent years, **Ukraine has simplified access** to documentation. Citizens of Ukraine may apply for their passports not only with the SMS, but at TSNAPs, which allows them to access multiple services at one window.

### 3. Difficulties in access to documentation for conflict-affected persons

#### 3.1. Persons with residence registration in NGCR or Crimea

Compared to other Ukrainian citizens, **IDPs and residents of NGCA/Crimea** face numerous extra requirements and barriers in obtaining or renewing their identity documents. These procedures are complex and vary by region and even by office. Different rules apply depending on whether a person is registered as an IDP or not, whether a person is from NGCA or Crimea, and whether s/he is a child or an adult.

These procedures do not take into consideration the **specific needs and constraints faced by conflict-affected persons**, which would require specific solutions. It is not appropriate to consider court proceedings as a viable alternative to simplified administrative procedures, since court proceedings take more time. Based on UNHCR's discussions with persons who lack identity documents, speed is essential. People cannot afford to wait weeks and months for their documents.

*"My IDP certificate caused a lot of difficulties when I applied for biometric passport for travelling abroad. I received it only at my third attempt. The SMS asked me to provide several additional documents, such as a receipt about my change of voting address, my birth certificate, even documents from my employer. IDPs fall under totally different conditions in comparison with other Ukrainians – as tough as possible."*

*A locally integrated IDP from Torez, residing in Kyiv*

For some IDPs and residents of NGCA/Crimea, it is important to hold a book-shaped passport that clearly states their place of residence registration. The **residence registration stamp confirms their place of origin** when they cross the line of **contact/administrative border**. It preserves their links with homes and property in NGCA/Crimea, and may serve as evidence in their applications to receive compensation for property damaged or destroyed as a result of hostilities.

The **book-shaped passport** is the **only sure proof of residence registration in NGCA/Crimea**. If a person from NGCA or Crimea obtains a plastic ID, the SMS will request proof of the place of residence. In many situations, lack of access to archives left in NGCA/Crimea precludes confirmation of residence registration. Therefore, SMS offices may issue an ID card, but refuse to upload to the ID card information about the person's residence registration. This may negatively impact on the individual's preservation of ties with NGCA/Crimea, while

<sup>1</sup> Article 21 of Law of Ukraine on Unified State Demographic Register and documents confirming Ukrainian citizenship, identifying a person or his/her special status of 20.11.2012 No.5492-VI, <https://zakon2.rada.gov.ua/laws/show/5492-17>

<sup>2</sup> Resolution of the Government of Ukraine of 25.03.2015 No.302 On Approval of Specimen, Technical Description and Procedure of Processing, Issuance, Exchange, Forwarding, Withdrawal, Return to the State, Recognition of Invalid, and Destruction of the Passport of the Citizen of Ukraine, <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

<sup>3</sup> Order of the Ministry of Internal Affairs of Ukraine of 4.06.2019 No.456 On Approval of Temporary Procedure of Issuance of Processing and Issuance of the Passport of the Citizen of Ukraine, <https://zakon.rada.gov.ua/laws/main/z0620-19>

simultaneously making it difficult for the individual to access public services linked to residence registration in government-controlled areas (GCA). Officially, these persons are homeless.

Ukrainian law restricts the location where persons can apply for identity documents. **Residents of Donetsk and Luhansk NGCA** may obtain this service **only at SMS offices** (known as ‘territorial bodies’) in Donetsk or Luhansk GCA. This means that if a resident of NGCA has relatives in Kyiv, she cannot renew her passport while staying there with her family. Instead she must travel to Donetsk or Luhansk GCA, where she may have to pay for a hotel or apartment, in order to spend the time needed to renew her documents. **Registered IDPs** can apply for documentation services at the place of their **actual residence** as reflected in their IDP certificates. In contrast, **persons from Crimea** are allowed to obtain identity documents at **SMS offices** in any part of Ukraine. The reasons for this differential approach are not clear.

The majority of persons with residence registration in NGCA/Crimea who request or renew identity documents face difficulties with verification of their current or lost passports. In normal circumstances, the SMS would consult its electronic database and paper archives. However, it is difficult for the SMS to verify data relating to citizens who reside in NGCA/Crimea: digitalization of archives was incomplete when the conflict began and many paper archives did not move to GCA.

If the **book-shaped passport is lost, damaged or expired**, the SMS conducts **additional procedures to verify** the individual’s identity. Although the reasons for these procedures may be legitimate, in practice the procedure for verifying identity can be lengthy. There are many different approaches to verifying identity in SMS offices. The lengthy procedures impose significant financial and physical burdens on residents of NGCA/Crimea.

These additional identification procedures require that an applicant presents **additional documents confirming his/her identity**, preferably with a recent photo. The regulatory framework does not prescribe a list of such documents, which gives SMS offices considerable discretion in deciding which documents to request and what constitutes an acceptable standard of proof. The SMS may request information related to the individual’s identity from other public offices. If this information is insufficient, the SMS requires that the applicant brings witnesses (relatives or neighbours who can confirm his/her identity).<sup>4</sup> The regulations do not specify the number of required witnesses; most SMS offices require up to three witnesses. Practices are inconsistent.<sup>5</sup>

The main factors impeding access to passports for those with residence registration in NGCA/Crimea include:

- Impossibility to submit document(s) with **a recent photo** and/or confirming family ties;
- Difficulties in **identifying witnesses from among family or neighbours** and arranging their travel to GCA;
- Complexity of **travelling across the contact line at least twice** and through multiple checkpoints in GCA, which is difficult for persons who do not hold valid identity documents;
- Additional **procedures to verify identity may take months**, which deters people from undertaking the process in the first place;
- Significant **financial expenses**, including for transportation and rental of housing for the period of identification procedure for themselves; if witnesses are required, their expenses must also be paid;
- A person applying to replace a book-shaped passport with an ID card may be left with no identification documents for the period of procedure<sup>6</sup> which may leave them **unable to cross checkpoints** and to access public services;
- In extreme cases, when the SMS is unable to identify a person, it refuses to issue the identity card. In such situations, a person is told s/he must **approach the court to establish the fact of his/her identity** and obtain a decision obliging the SMS to issue an identity card. However, court procedures are lengthy and burdensome, often requiring legal assistance in preparing and submitting an application, as well as representation during court proceedings. **Free legal aid** is not available to persons who lack documents. Thus, people can find themselves in a vicious circle where they need considerable resources and time to obtain the document that enables them to exercise their rights. They are left behind.

<sup>4</sup> p.43, Resolution of the Government of Ukraine of 25.03.2015 No.302 On Approval of Specimen, Technical Description and Procedure of Processing, Issuance, Exchange, Forwarding, Withdrawal, Return to the State, Recognition of Invalid, and Destruction of the Passport of the Citizen of Ukraine, <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

<sup>5</sup> Since January 2019, SMS bodies in Donetsk oblast allow confirmation of their personal identity by two witnesses instead of three for issuing ID card to a child aged 14.

<sup>6</sup> Other ID documents which person could possess include a passport for travelling abroad or a driving license. In absence of such documents, individuals applying for an ID card are advised to request issuance by SMS of a certificate confirming submission of an application for the ID.

For similar reasons, conflict-affected persons may face **barriers in obtaining a biometric passport for travel abroad**. As UNHCR partners report,<sup>7</sup> SMS practices vary across the country. In some SMS offices, persons with valid book-shaped passports containing NGCA/Crimea residence registration are told they must apply for a plastic ID card before they can apply for a biometric passport. In other offices, such persons are told they must have an IDP certificate in order to get a biometric passport. Some SMS offices refuse to issue biometric passports to IDPs, instead referring them to the TSNAPs, which charge additional fees. Moreover, several TSNAPs have orally refused to accept applications for biometric passports from persons with NGCA/Crimea residence registration. These inconsistencies create confusion and frustration; they make it harder for conflict-affected persons to travel abroad.

Persons from NGCA/Crimea can even find it difficult to get into the queue to receive services. The SMS has an **online queue**, which sends confirmation of registration by text message. In areas of NGCA/Crimea where Ukrainian mobile phone services do not work, people cannot receive confirmation of their place in the queue. They can stand in the physical queue without prior registration, but waiting times will be considerably longer, often more than one day.

### 3.2. Children who reside in NGCA or Crimea

Children who reside in NGCA/Crimea face specific difficulties.

When applying for their **first identity card at the age of 14**, children should show their birth certificate, their parent(s)' original passport (to confirm Ukrainian citizenship) and provide a copy of this passport. In many cases, this is complicated or impossible for the following reasons:

- parents cannot cross the line of contact/administrative border;
- parents lost their passports, or the passports were withdrawn due to establishing requirements on receiving passports of the Russian Federation;
- parents' Ukrainian passports have expired because the parents did not update the photos in book-shaped passports;
- children reside with grandparents in GCA, while their parents are in NGCA. In these cases, the grandparents frequently do not have legal guardianship, and they cannot present the parents' original passports;
- parents have died or are unknown or a child is in institutional care in NGCA without having had a legal guardian appointed under Ukrainian legislation;
- inconsistent practices relating to issuing of identity documents to children who reside in NGCA/Crimea.



*UNHCR NGO partner "The Tenth of April" provides a consultation to a family of undocumented persons with specific needs.*

Ukraine established an **electronic database of birth certificates** only in 2008. The **State Civil Registry** does not contain complete records of births that took place before 2008, and this complicates the issuance of identity cards to children born before 2008 in NGCA/Crimea, as paper files are not available as an alternative. The SMS requires that the birth certificate be reissued, which leads to delays in obtaining an identity document.

**Children below 16 years** of age accompanied by a parent or another responsible adult may enter GCA from NGCA/Crimea if the accompany adult has an identity document and the child has a birth certificate.

If **children are over the age of 14**, s/he can leave GCA to return to NGCA/Crimea with only a birth certificate; the child must have obtained an identity document or have a certificate issued by the SMS confirming that the child has applied for an identity document.<sup>8</sup>

<sup>7</sup> R2P, *Tenth of April*

<sup>8</sup> Resolution #367 "Procedure for entry to the temporarily occupied territory of Ukraine and exit from it" dated 4 June 2015, para. 3; A full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/367-2015-%D0%BF>; Resolution #815 "Procedure on Entry of Persons, Transfer of Goods to Temporarily Occupied Territories in Donetsk and Luhansk Regions and Exit of Persons and Transfer of Goods from Such Territories" dated 17 July 2019, para. 6; A full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/815-2019-%D0%BF>

In a further complication, if children below the age of 16 come to GCA with **only one parent** to apply for an ID, they may not be able to return to NGCA, unless the second parent has provided permission in the form of a notarized document.<sup>9</sup>

If a child below the age of 16 travels alone, the State Border Guard Service shall allow him/her to enter GCA and will notify the National Police; the police refer the child to social services.<sup>10</sup>

### 3.4. Residents of NGCA/Crimea who were born abroad

**Ukrainian citizens born abroad**, as well as their children, face additional challenges in obtaining identity documents. For example, among **formerly deported persons in Crimea (especially Crimean Tatars)**, some received book-shaped Ukrainian passports, but did not have their children included in the passports. These children must undergo procedures to verify their identity before an identity document can be issued to them. They may be requested to submit a certificate proving their registration as a citizen of Ukraine (if available) or to bring witnesses to confirm their personal identity. If this evidence is unavailable or insufficient, individuals can apply to court through a legal representative to establishing their identity and confirming that they were resident in Ukraine at the time of independence in 1991.

### 3.5. Persons from NGCA/Crimea in closed facilities

The situation is extremely complex when persons from NGCA/Crimea are held in **detention facilities or in closed medical institutions**. According to the law, these persons should approach the SMS through an authorized representative in the geographic location where they are staying.<sup>11</sup> In addition to all the complications described above, these persons face specific barriers:

- **Imprisonment complicates the procedure to verify identity**, especially for persons who have been serving long-term sentences. The longer a person has been imprisoned, the harder it is for him/her and for state bodies to find information verifying identity and citizenship of that person, including documents with recent photo, documents confirming family relationships, as well as searching for witnesses to confirm identity.
- Even if successful, identification procedures take many months. In practice, UNHCR observes that many persons remain **undocumented for at least two months after their release**. For persons from NGCA/Crimea, this means they cannot return to their homes and families; instead they are left homeless and penniless.

### Recommendations:

- Give persons with **residence registration in Donetsk and Luhansk oblasts** the right to receive services related to identity documentation in any region of Ukraine, using the same approach as is currently in place for persons with residence registration in Crimea.
- Elaborate a **unified and simplified procedure for verifying identity** during the issuance and renewal of identity documents by introducing a minimal set of documentary requires, outlining a step-by-step procedure for **SMS territorial bodies and TSNAPs**, and setting clear deadlines for obtaining relevant information from other state offices.
- Introduce **technical changes** so that residents of Crimea can benefit from the **electronic queue** and provision of information regarding time and date of passport pick up.
- Conduct **information campaigns for IDPs and NGCA/Crimea residents** to raise awareness on their rights to obtain identity documents, relevant procedures and necessary set of documents through more detailed regularly updated information on the SMS website, creating of SMS hotline for conflict-affected population and distributing information at **entry-exit checkpoints (EECPs)**.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> A full text available online (in Ukrainian): <https://dmsu.gov.ua/poslugi/pasport-gromadyanina-ukrajni/id-vidacha-pasporta-gromadyanina-ukrajni-u-formi-kartki-po-dosyagnennyu-14-richnogo-viku-vpershe.html>; para. 7, 20 of the Government Resolution #302 of 25 March 2015 on issuing ID cards. Full text in Ukrainian is available at <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

## Reference list:

- Law on Unified State Demographic Register and documents confirming Ukrainian citizenship, identifying a person or his/her special status, introducing issuing of ID cards in Ukraine: <https://zakon.rada.gov.ua/laws/show/5492-vi>
- Law on Ensuring Civil Rights and Freedoms and Legal Regime on Temporary Occupied Territory of Ukraine: <https://zakon.rada.gov.ua/laws/show/1207-18>
- Government Resolution #152 of 7 May 2014 on issuing passports for travelling abroad: <https://zakon.rada.gov.ua/laws/show/152-2014-%D0%BF>
- Government Resolution #289 of 4 June 2014 specifying issuing ID documents and documents confirming Ukrainian citizenship to Crimea residents: <https://zakon.rada.gov.ua/laws/show/289-2014-%D0%BF>
- Government Resolution #302 of 25 March 2015 on issuing ID cards: <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>
- Government Resolution #367 “Procedure for entry to the temporarily occupied territory of Ukraine and exit from it” of 4 June 2015: <https://zakon.rada.gov.ua/laws/show/367-2015-%D0%BF>
- Government Resolution #815 “Procedure on Entry of Persons, Transfer of Goods to Temporarily Occupied Territories in Donetsk and Luhansk Regions and Exit of Persons and Transfer of Goods from Such Territories” of 17 July 2019: <https://zakon.rada.gov.ua/laws/show/815-2019-%D0%BF>
- Issuing biometric documents for those registered in NGCA/Crimea: <https://dmsu.gov.ua/faq/documentuvannia-ordlo-krim.html>
- Updating photo in the passport of the citizen of Ukraine after becoming 25 and 45 years old: <https://dmsu.gov.ua/poslugi/pasport-gromadyanina-ukrajni/vkleyuvannya-fotografij-do-pasporta-gromadyanina-ukrajni-pri-dosyagnenni-25-ta-45-richnogo-viku.html>
- Issuing a passport of a citizen of Ukraine in the form of ID card when becoming 14 years old (for the first time): <https://dmsu.gov.ua/poslugi/pasport-gromadyanina-ukrajni/id-vidacha-pasporta-gromadyanina-ukrajni-u-formi-kartki-po-dosyagnennyu-14-richnogo-viku-vpershe.html>
- Issuing a passport of a citizen of Ukraine in the form of ID card (in case of exchange): <https://dmsu.gov.ua/poslugi/pasport-gromadyanina-ukrajni/id-oformlennya-pasporta-gromadyanina-ukrajni-u-formi-kartki-u-razi-obminu-pasporta-zamist-vtrachenogo-abo-vikradenogo.html>

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