



## Birth registration



Credit: UNICEF/UN0150918/Gilbertson VII Photo

### KEY MESSAGES

It is recommended to take all possible measures to facilitate the birth registration of children born in non-government controlled areas of Ukraine (hereinafter - NGCA<sup>1</sup>) and in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation<sup>1</sup> (hereinafter 'Crimea'), including the following steps:

- Ensuring that the civil registration system is in line with national and international standards and is accessible to all, without discrimination of any kind, and free of charge;
- Establishing an effective administrative procedure for birth registration that is flexible and responsive to the circumstances of families living in NGCA and in Crimea, by simplifying the documentary requirements, offering registration services available close to the contact line in the east and to the administrative border with Crimea, and disseminating information about the procedure.

### IMPACT ON SOCIAL COHESION

If the Government implements these recommendations, an increasing proportion of children born in NGCA and in Crimea will hold Ukrainian birth certificates. This will provide the foundation for safeguarding many of the child's civil, political, economic, social and cultural rights. These children will be able to access health services, enter Ukrainian schools, obtain Ukrainian passports and exercise all rights associated with citizenship. This will not only prevent statelessness, but will be an investment in the future of young Ukrainians. The Government will demonstrate an inclusive policy on protection of the rights of a child and underpin social cohesion by establishing the initial bond between the state and the individual citizen.

Recognizing that birth registration is the first step toward being recognized as a person before the law, and thus critical for the protection of human rights, in the 2030 Agenda for Sustainable Development, Goal 16.9 aims to "by 2030, provide legal identity for all, including birth registration."

### GENERAL OVERVIEW

For more than five years, the conflict in eastern Ukraine and the occupation of Crimea together with restrictions on freedom of movement have been adversely affecting large numbers of persons, including by making it more difficult for them to obtain civil registration documents issued by the Government of Ukraine. While a judicial procedure does exist in Ukraine that allows children from NGCA to obtain birth certificates, the steps are cumbersome and expensive, especially for vulnerable families. A review of the 2016-2019 (three quarters) court records and statistical information from the Ministry of Justice of Ukraine suggests that an estimated 45% of



1. General Assembly Resolution 73/263 adopted on 22 December 2018, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/263](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/263).

children reported to have been born in Donetska and Luhanska NGCA and around 12% in Crimea have obtained a birth certificate issued by the Government of Ukraine.

Additionally, a procedure entailing medical verification of births by special commissions with the involvement of international humanitarian organizations, which allows for deployment of specialists to NGCA, currently exists only on paper and would nevertheless appear to be lengthy and difficult to implement.

In early 2018, Ukraine adopted the law “On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions” (Law No 2268), which states that all documents issued in NGCA are invalid providing an exception for “documents certifying facts of birth or death of a person”. The law states that these documents may be attached to applications for birth/death registration by a civil registry office in Ukraine. However, this exception is introduced only for documents issued in Donetska and Luhanska NGCA, and not in Crimea. The Government is yet to establish an effective procedure to ensure implementation of this provision.

## MAIN CHALLENGES AND RECOMMENDATIONS

### Development of an administrative procedure



Following the enactment of the law no. 2268, the authorities have been working on development of a draft mechanism for introduction of an administrative procedure for registration of births and deaths occurring in NGCA and in Crimea. The authorities have expressed reservations regarding the authenticity of documents issued in NGCA. The Ministry for Temporarily Occupied Territories and IDPs,<sup>2</sup> in cooperation with civil society and international organizations, prepared a draft legal text setting forth the steps in an administrative procedure. On 23 October 2019, the Ministry of Justice of Ukraine announced new regulations introduced through amendments to the Cabinet of Ministers Resolution no.9 ‘On approval of the procedure on confirmation of the fact of birth of a child outside a public health facility’ of 9 January 2013.<sup>3</sup> Contrary to the UN advocacy on simplifying the procedure, these amendments establish an additional administrative layer in the civil registration process, reportedly to address concerns about the authenticity of documents issued in NGCA. Moreover, the regulations do not cover births and deaths occurring in Crimea, which still require judicial involvement. The UN remains ready to lend support in identifying reasonable measures of risk mitigation, including providing specialised training to civil registry officials working in areas close to the contact line and to the administrative border with Crimea.

A practical and effective administrative procedure for birth registration would allow parents from NGCA and from Crimea to have the birth of their child registered by civil registration authorities on the basis of their application supported with the available documents certifying birth issued in NGCA or in Crimea (e.g. the child’s birth notification, medical records). Births would be registered quickly and without charge to the parents. As the requirements would be substantially similar to those applied to all Ukrainians, this administrative procedure would be non-discriminatory.

### Recommendations:

- Introduce necessary legislative amendments to exempting birth and death-related documents issued in Crimea from the general rule of non-recognition of documents issued there. This would ensure that birth and death-related documents issued in NGCA and Crimea are treated equally.
- Establish an administrative procedure for registration of births and deaths occurring in NGCA and in Crimea; the procedure should be practical, effective and in line with law no. 2268.

### Make this procedure responsive to the circumstances of families living in NGCA and in Crimea



People incur risks and costs, and spend many hours, while crossing the contact line/administrative border, to access administrative services like birth registration. To make birth registration more accessible, it is important to offer this service close to the line of contact/administrative border in a timely manner. Mobile registration services could be deployed in the vicinity of the checkpoints/crossing points, for example.

An effective information campaign would increase public awareness of the importance of birth registration and the simplified procedures available. The goal is to ensure equal access to birth registration to all children born in the territory of Ukraine.

<sup>2</sup> The Ministry for Temporarily Occupied Territories and IDPs was amalgamated with the Ministry for Veteran Affairs. All the normative drafting work has been transferred to the new Ministry for Veteran Affairs, Temporarily Occupied Territories and IDPs.

<sup>3</sup> The text of the Resolution has not yet been published.

## Recommendation:

- Make this procedure responsive to the circumstances of families living in NGCA and in Crimea, by simplifying the documentary requirements, offering registration services available close to the contact line, and disseminating information about the procedure.

## Role of existing procedures for birth registration



The judicial procedure could continue to be used in complex cases or where there is insufficient information to make a clear finding of the fact of the child's birth. In these cases, it would be fair to waive the court fees. While the law no. 2268 contains a provision about waiving court fees in certain cases related to the conflict, the provision is ambiguously **phrased and thus** far its application is inconsistent. In addition, a procedure entailing medical verification of births could be implemented only for cases of birth in non-clinical settings.

*"I am so sorry that I have to skip along Kherson for a whole day to let my child obtain a birth certificate saying that his parents are Ukrainian citizens. I have to register my son without indicating his father as we got married in Simferopol. My husband could not come with me, as we do not have money. When will we manage to collect money for another trip? Moreover, we are not released from court fees. We lack state care and treatment".*

*Ukrainian citizen residing in Simferopol*

## Recommendation:

- Keep the existing simplified court procedure and the medical verification procedure as supplementary to an administrative one.

## LEGAL FRAMEWORK

### International standards

Birth registration is a fundamental right, recognised by Article 7 of the Convention on the Rights of the Child, and Article 24(2) of the International Covenant on Civil and Political Rights. Every child has the right to be registered at birth without any discrimination. The fulfilment of this right is essential to the realisation of all other rights, since registration establishes a government's legal recognition of a child's existence.

Birth registration is also essential to the implementation of safeguards for children who would otherwise be stateless, including the safeguards contained in the 1961 Convention on the Reduction of Statelessness.

General Comment No.7 of the Committee on the Rights of the Child, paragraph 25: "the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate."

One of the most basic institutional responsibilities of all duty bearers is to provide a person with a legal identity; this is central to good governance and is now further promoted by the Sustainable Development Goals target 16.9 'provide legal identity for all, including birth registration'.

International jurisprudence makes an exception to the general rule of non-recognition of documents issued in territories not controlled by the government. The International Court of Justice in its Namibia Advisory Opinion provided that while official acts performed by de facto authorities "are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the territory".<sup>4</sup>

### National legal framework

Birth registration in Ukraine is regulated through article 49 of the Civil Code of Ukraine, and the law «On state registration of civil status». A civil registry office under the Ministry of Justice of Ukraine conducts registrations. When the child is born in a maternity ward, a medical birth notification is issued.<sup>5</sup> If such a medical birth notification does not exist, a medical consulting commission can confirm the fact that the mother gave birth to the child up to 30 days after the birth.<sup>6</sup> Confirmation of the birth, issued by the maternity ward or the medical

4. ICJ Advisory Opinion of 21 June 1971 – Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), paragraph 125.

5 Form No 103/o. Available at: <http://zakon1.rada.gov.ua/laws/show/z1150-06>.

6 Resolution of Cabinet of Ministers of Ukraine no. 9 of 9 January 2013 'On approval of the procedure of confirmation of the fact of birth of a child outside a public healthcare facility'.

consulting commission, is necessary to register the child at a civil registry office and receive a birth certificate. Article 3(4) of the law 'On State registration of civil status' states that if no confirmation of birth by the maternity ward or the medical consulting commission exists, registration of a child with the Ukrainian civil registry is possible only with a court order that establishes the birth as a legal fact. Article 315(1.7) of the Code of Civil Procedure of Ukraine provides that the court is to consider cases where a fact of birth is impossible to establish for the purposes of the civil registry office. Article 317 of the Code of Civil Procedure sets out a simplified court procedure for the establishment of the facts of birth or death occurring in NGCA. According to this procedure, such cases may be brought before any court on the Government-controlled territory and must be heard "without delay". It also provides for immediate enforcement of judgments in these cases.

In December 2017, the Cabinet of Ministers extended the procedure on confirmation of the fact of birth of a child outside a public health facility to apply to cases of birth in NGCA. Under this procedure, special medical commissions may be formed with the involvement of international humanitarian organisations. They may deploy experts to NGCA to confirm the birth of children there. Currently this procedure exists only on paper and would nevertheless appear to be lengthy and difficult to implement. In October 2019, the Cabinet of Ministers introduced amendments to the procedure aiming to simplify the process of review of documents certifying the facts of birth or death occurring in the temporarily occupied territory, however the document has not been yet published, making it impossible to assess the impact of amendments.

In 2018 Article 2(3) of the law 'On particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine' introduced an exception to the general rule of invalidity of documents issued in NGCA for documents certifying the facts of birth or death of a person, thus allowing to attach such documents to the applications for registration of birth or death by a civil registry office. However, this exception is introduced only for documents issued in NGCA in the Donetsk and Luhansk regions, and not in Crimea. The Government is yet to establish an administrative procedure to ensure implementation of this provision. The establishment of such administrative procedure is also envisaged in the National Human Rights Action Plan (points 126(3) and 129(1)).