



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 - NGCA¹) and in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation¹ (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 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, 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.

GENERAL OVERVIEW

For more than four 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 2016-2018 court records suggests that an estimated 44% of children reported to have been born in Donetsk and Luhansk NGCA and around 11% 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 organisations, which allows for deployment of specialists to NGCA, currently exists

Only **44%** of children
born in Donetsk and Luhansk
NGCA
and **11%** in Crimea
have obtained birth certificates
issued by the Government




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

only on paper and would nevertheless appear to be lengthy and difficult to implement.

In the first half of 2018, Ukraine took the first steps toward establishing an administrative procedure for birth registration of children born in NGCA. On 18 January 2018, Parliament adopted the law no. 2268 “On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions”.² The law reaffirms the invalidity of all documents issued in NGCA, but introduces an exception for “documents certifying facts of birth or death of a person”. 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 a 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 birth and death occurring in NGCA and in Crimea. Reservations have been expressed about this approach in light of concerns about the authenticity of documents. The UN is 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.

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.

Recommendation:

- Establish an administrative procedure for registration of birth and death occurring in NGCA and in Crimea that is practical and effective and is in line with the 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, 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 in a timely manner. Mobile registration services could be deployed in the vicinity of the checkpoints, 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.

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

“I applied to court, but the judge was on leave. I had to wait over a week. I could not cross the contact line without a birth certificate. I had no place to stay, so I was forced to work for food in a café and stayed there overnight with my little child. It was tough. I wish it was easier.”

A single mother who had to bring her 3 year old child with her to obtain a birth certificate for her

2. The law entered into force on 24 February 2018.

procedure entailing medical verification of births could be implemented only for cases of birth in non-clinical settings.

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".³

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.⁴ 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.⁵ Confirmation of the birth, issued by the maternity ward or the medical 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.

3. 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.

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

5. 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'.

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)).