



Birth and death registration for residents of non-government controlled areas of eastern Ukraine

Civil documentation remains one of the most pressing issues for people living in non-government controlled areas (NGCA) of eastern Ukraine. Discriminatory practices in accessing birth and death certificates for people living in NGCA within Ukraine has been an issue of concern for the international community and civil society since the beginning of the armed conflict. Newly adopted Law No. 2268 provides a window of opportunity for simplifying the current civil registration procedure for residents of NGCA by allowing equal and effective access to civil status documents regardless of their place of residence.

Background

In April of 2018, the conflict in eastern Ukraine entered its fifth year. Although the ceasefire agreement (Minsk-II) of early 2015 remains formally in place and negotiations are ongoing (Minsk-process), localised hostilities continue along the contact line, which divides the territory into two parts, lands controlled by the Government of Ukraine and those by the authorities in NGCA. The armed conflict has caused thousands of casualties, the displacement of millions of people, and extensive destruction to houses and infrastructure. With no immediate end in sight, the conflict continues to disrupt and mire the daily lives of millions of people on both sides of the contact line, deepening their dependence on external aid, and flattening hopes for a normal life.

The humanitarian community estimates that 3.4 million people are in need of relief assistance, more than a half of whom live in NGCA.

From 1 December 2014, Ukrainian state authorities officially ceased to exercise their powers and provide services in NGCA. The documents issued by the authorities in NGCA are not recognised by the Ukrainian authorities. NGCA residents wishing to replace their lost, damaged or expired civil documents have to take costly, humiliating and perilous journeys across one of the five entry-exit checkpoints along the 500 km-long contact line with a special permit system. The documents in question range from Ukrainian identity cards, birth and death certificates, those confirming old-age or disability pensions and social benefits, as well as property and inheritance records.

Birth and death registration in Ukraine

Birth registrations in Ukraine are regulated by the Family and Civil Codes of Ukraine and the Law on state registration of civil status. Registration of birth or death, and issuance of a birth or death certificate, is carried out according to an administrative procedure by civil registration offices on the grounds of a document issued by medical facilities or through a court decision. A confirmation of birth is a special form issued by an authorised medical facility, when a child is born in a hospital maternity ward. If the child was born outside of a medical facility, a specialised medical commission can confirm the fact that the mother gave birth to the child within 17 days. Similarly, registration of death is carried out on the grounds of a confirmation of death issued by an authorised medical institution. In all other cases, registration will be possible only with a court order that establishes birth or death as a legal fact.

Since the Government of Ukraine's cessation of government powers in NGCA in December of 2014, birth and death registration occurring there has been carried out through a regular court procedure in the government controlled territories who were delegated jurisdiction in this respect. In February of 2016 the Government introduced a so-called "simplified court procedure for the establishment of the fact of birth or death in the non-government controlled territories." Under this simplified procedure, the courts have been tasked to examine "immediately" an application for establishing the fact of birth or death, provided that an application is submitted by an authorised individual from an extended list of relatives and care-takers prescribed by law, along with the payment of court fees.

The procedures for birth registration are complex, time-consuming and costly. However, without a birth certificate a child would have no access to healthcare, education or the legal inheritance of property. In addition, there would be no possibility of registering a child's place of residence or ability to cross the contact line or border with

In practice, the parents of a child born in non-government controlled territory, who want their child to receive a Ukrainian birth certificate, must come with a child to the government controlled territory through one of the exit-entry checkpoints; wait in long queues, in extreme cold or heat, exposing themselves to danger of shelling or shooting; then find means to reach one of the courts, which may be hundreds of kilometres away; file a formal legal claim with "supporting evidence," pay the court fees (UAH 352=USD15) and wait. The courts may ask for evidence – documents confirming the identity of parents, family relations, IDP or other status, medical documentation, birth certificates issued by the authorities in NGCA or witnesses' statements. Since each judge decides what is "immediately" and what "supporting evidence" she or he needs, the proceedings may take from 24 hours to several months. Once in possession of the court decision, the parents should approach state registry office for birth registration and issuance of birth certificate. During all this time, the family should stay in the government controlled territory, as they would not be allowed to exit Ukraine and return home to NGCA with a child because of the requirements introduced for the movement through the contact line – depending on the situation, the family would need birth certificates for children, notarised, authorisation of the other parent who is absent, travel permit to cross the contact line, marriage certificates, valid national ID documents or others.

a child. It would also impede access to state child support benefits (amounting to a significant sum of \$1,500 for each child).

Finally, without birth certificate, a child is at high risk of statelessness.

Nevertheless, some parents decide not to register their children for fear of reprisal from authorities of NGCA or for fear of persecution or prosecution in the government controlled territories if they were involved with the authorities in NGCA. Others yet decide not to seek Ukrainian birth certificate for political reasons.

Moreover, in December of 2017, the Government of Ukraine introduced a special procedure for confirmation of birth of children born outside of public health facilities in the non-government territories according to which birth registration can be confirmed by genetic expertise or special commissions involving international humanitarian organisations. Such commissions are required to deploy specialists, to travel across the contact line to NGCA to confirm the delivery of a child. The modalities for implementation of this procedure have yet to be identified and agreed upon. It is questionable whether such measures are in line with Ukraine's international human rights obligations. More importantly, it is unclear to which extent these measures can be implemented in non-government controlled territories.

As a result, only one-in-three children born in eastern Ukraine NGCA since 2015 have received Ukrainian birth certificates, causing an alarming number of children to be at risk of statelessness and exclusion from Ukrainian society and access to, and enjoyment of, their rights.

A similar procedure applies to death registration. Death registration and the issuance of death certificates is a precondition to access state burial support and a basis for managing inheritance claims and subsequent property transactions.

Equal and effective access to civil status acts registration

Discrimination against NGCA residents with respect to accessing birth and death registration has been an issue of concern for the international community and civil society in Ukraine since the beginning of the armed conflict. Last year, the joint efforts of UNHCR, NRC and other UN agencies and INGOs invoked international law obligations as expressed in the International Court of Justice's Namibia Advisory Opinion to promulgate some favourable solutions found in recently adopted law 2268, also known as the "Reintegration of Donbas Law" or "De-occupation Law". It deals with "*Peculiar*

aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions.". This Law provides for a blanket invalidity of all documents issued by the authorities in NGCA "except for documents certifying facts of birth or death of a person." The Law further states that these particular documents should be attached to the applications for state registration of birth or death.

While this seems to be in line with international law, Law No. 2268 did not change national laws that regulate the subject of civil registration, thereby creating a contradictory legal regime. This should be further addressed by the authorities in their proposed amendments. Law No. 2268 further provides for the exemption of court fees in cases related to the establishment of legal facts, such as birth or death. However, the provision is very complicated and if interpreted literally means that the exemption from court fees will be granted only if fact of birth or death occurred as a result of the conflict. In the four months since the law came into force, the practical evidence shows that residents of non-government controlled territories still have to go through the same time-consuming, costly and complex procedures in order to obtain birth or death certificates.

Birth and death registration are the most pressing legal concerns for residents of non-government controlled territories. Every fifth person approaching NRC's information, counselling and legal assistance (ICLA) programme seeks advice or assistance with the birth and death registration. Courts are clogged with thousands of cases that they do not have the capacity to handle. Thousands of people are forced to undertake the time-consuming, costly and perilous journey to fulfil their fundamental right to be recognised as a person and access civil status registration. Ukraine should urgently take steps to ensure equal and effective access to civil status registration to all within the territorial integrity of Ukraine in line with international law.

NRC recommendations:

- Establish an administrative procedure for registration of birth and death in line with Law No. 2268 and international standards;
- Facilitate access to civil status registration procedure through innovative programming;
- Ensure access to information and free legal aid to people living in non-government controlled territories with respect to civil status acts registration.

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