

# Birth registration

July 2018

## General Overview

The official recording of a child's birth by the Government establishes the existence of the child under law and provides the foundation for safeguarding many of the child's civil, political, economic, social and cultural rights. Article 7 of the Convention on the Rights of the Child specifies that every child has the right to be registered at birth without any discrimination. Free and universal birth registration is a critical instrument to ensuring equal access to services such as health and education, as well as to all rights associated with citizenship. Birth registration prevents statelessness.

For more than three years, restrictions on freedom of movement have been adversely affecting large numbers of persons, including for obtaining civil registration documents issued by the Government of Ukraine. While a judicial procedure does exist in Ukraine that allows children from non-government controlled areas of Ukraine ('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 43% of children reported to have been born in Donetsk and Luhansk NGCA and less than 10% in the Autonomous Republic of Crimea have obtained a birth certificate issued by the Government of Ukraine. Without birth registration in Ukraine, these children are likely to face difficulties in accessing documentation required to prove their nationality. This will have long-term negative consequences for them, impacting on their ability to obtain a Ukrainian passport. Without it, they may not be able to travel abroad, study at university, register their marriage, and even register the birth of their own children. There are long-term problems associated with the absence of birth registration. Ukraine can take measures to prevent these problems. This is an investment in the future of young Ukrainians. It will protect their rights and underpin social cohesion.

## Key message

It is recommended that all possible measures to facilitate the birth registration of children born in NGCA are taken, including the following steps:

- ensuring that the civil registration system is in line with national and international standards<sup>1</sup> and is accessible to all within the territorial integrity of Ukraine, 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, by simplifying the documentary requirements, offering registration services available close to the contact line, and disseminating information about the procedure.

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<sup>1</sup> The Convention on the Rights of the Child and International Covenant on Civil and Political Rights

## Recommendations

### **Establish an administrative procedure for birth registration for children born in NGCA**

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 “On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions”<sup>2</sup>. The law provides for the blanket invalidity of all documents issued by the de facto authorities 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 in Ukraine.

The UN welcomes this provision since international law 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”.

The next step is for the authorities to establish by-laws with detailed procedures for how the administrative procedure will work. The authorities have expressed concerns about how to maintain the integrity of this procedure, and the UN is ready to lend support in identifying reasonable measures of risk mitigation. These might include requesting additional documentary evidence in certain cases or providing specialised training to civil registry officials working in areas close to the contact line.

The UN notes, however, that currently this exception applies only to documents issued in certain areas of the Donetsk and Luhansk regions that are not controlled by the Government. It is important that a similar exception should be made for documents issued in Crimea.

An administrative procedure for birth registration would allow parents from NGCA to present the child’s birth notification along with other corroborating documentary evidence of the birth (e.g. medical records, photographs) to the civil registration authorities. 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.

### **Make this procedure responsive to the needs of parents living in NGCA**

Parents 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 and in a timely manner. Mobile registration services could be deployed in the vicinity of the checkpoints, for example.

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<sup>2</sup> The President signed the law on 21 February 2018. It was published on 23 February and entered into force on 24 February 2018. The text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/2268-viii>

An effective information campaign would increase parents' awareness of the importance of birth registration and the simplified procedures available for registering their child's birth.

The goal is to ensure equal access to birth registration to all children born in the territory of Ukraine.

### **Implement other procedures to complement the administrative procedure.**

The judicial procedure could continue to be used in complex cases or where there is insufficient evidence 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 recently adopted law contains a provision about waiving court fees in certain cases related to the conflict, the provision contains some ambiguity and thus far, court practice is mixed. In addition, a procedure entailing medical verification of births could be implemented for babies born in non-clinical settings.

## Legal framework

### International standards

Birth registration is a fundamental right, recognised by Article 7 of the Convention on the Rights of the Child,<sup>3</sup> and Article 24, paragraph 2 of the International Covenant on Civil and Political Rights. The fulfilment of the right to be registered at birth 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.<sup>4</sup>

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 which is a 'legal identity for all, including birth registration'. Birth registration also helps build a protective environment against abuse, exploitation (such as underage child labour and marriage) and violence and is essential for family reunification when a child is separated from his or her parents or legal guardians, especially during and after emergencies.

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<sup>3</sup> Ratified by the Ukrainian Parliament on February 27, 1991.

<sup>4</sup> 1961 Convention on the Reduction of Statelessness, Articles 1-4. Article 7(2) of the Convention on the Rights of the Child also requires State parties to ensure the implementation of a child's right to birth registration and to a nationality, in particular where the child would otherwise be stateless.

## National legal framework

Birth registration in Ukraine is regulated through article 49 of the Civil Code of Ukraine,<sup>5</sup> and the law «On state registration of civil status».<sup>6</sup> A civil registry office under the Ministry of Justice of Ukraine conducts registrations.<sup>7</sup>

When the child is born in a maternity ward, a medical birth notification is issued.<sup>8</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>9</sup> 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.

The law 'On State registration of civil status' article 13, paragraph 4, 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.<sup>10</sup> Article 315, paragraph 7 of the Ukrainian Code of Civil Procedure acknowledges that the Ukrainian court will consider cases where a fact of birth is impossible to establish for the purposes of the civil registry office.<sup>11</sup> This section should include description of the Article 315-1 of the Civil Procedure Code (on simplified court procedure for the establishment of the facts of birth and death occurring in the occupied territory) – as this issue should be at focus.

According to the Decree of the Cabinet of Ministers of Ukraine 'On amendments to the Procedure on Confirmation of the fact of birth of a child outside a public health facility' ('Decree of the Cabinet of Ministers') commissions may be formed involving 'international humanitarian organisations, to confirm the birth of children in NGCA'. While subject to further regulation by the Ministry of Health and Ministry of Temporarily Occupied Territories, such commissions are required to deploy specialists, to travel across the line of contact to NGCA, in order to confirm the delivery of a child. The modalities for the enforcement of the Decree have yet to be identified and agreed upon. The degree to which such measures are in line with Ukraine's international human rights treaty obligations remains to be determined, as is the extent to which the measures can be implemented in NGCA.

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<sup>5</sup> <http://zakon1.rada.gov.ua/laws/show/435-15/page2>

<sup>6</sup> Especially article 13. <http://zakon5.rada.gov.ua/laws/show/2398-17>

<sup>7</sup> <http://zakon5.rada.gov.ua/laws/show/2398-17>; <http://zakon1.rada.gov.ua/laws/show/3807-12/print1147939030773156>

<sup>8</sup> Blank No 103/o. <http://zakon1.rada.gov.ua/laws/show/z1150-06>

<sup>9</sup> <http://zakon5.rada.gov.ua/laws/show/9-2013-%D0%BF/paran8#n8>

<sup>10</sup> <http://zakon5.rada.gov.ua/laws/show/2398-17>

<sup>11</sup> <http://zakon2.rada.gov.ua/laws/show/1618-15/page7>