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**COMMUNICATION PURSUANT TO ARTICLE 15 OF THE ROME STATUTE OF
THE INTERNATIONAL CRIMINAL COURT**

**RESPONSIBILITY OF RUSSIAN FEDERATION OFFICIALS FOR
UNREASONABLE DELAY IN REPATRIATION OF UKRAINIAN CHILDREN**

Submitted to the Registry of the International Criminal Court

on October 7, 2023

by Non-governmental Organizations Regional Center for Human Rights and the Lemkin
Institute for Genocide Prevention



This Communication has been prepared following Article 15 of the Rome Statute of the International Criminal Court by two non-governmental organizations, the Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention, with the assistance of the charitable fund Save Ukraine. The Communication contains a description and evidence of the unjustifiable delay in the repatriation of Ukrainian children. This delay is seen as a purposeful policy of Russian senior officials aimed at retaining these children in Russian-controlled territory permanently. The submission sets out the details of the unjustifiable delay, which has been ongoing from February 24, 2022 to the date of submission of this Communication. According to the authors of the Communication, the unjustifiable delay in the repatriation of Ukrainian children has both the characteristics of a war crime and a crime against humanity. It also indicates the special intent of senior officials of the Russian Federation to commit the crime of genocide in the form of the forcible transfer of Ukrainian children to the Russian national group.

The Regional Center for Human Rights (RCHR) is a non-governmental human rights organization, which was created in July 2013 in Sevastopol (Ukraine). Many years of fruitful cooperation of its founders in the field of protection of human rights, both at the national and international levels preceded the establishment of the organization. Following the illegal referendum and the attempted annexation of Crimea and the city of Sevastopol by the Russian Federation, members of the organization were compelled to leave the territory of Crimea, and in July 2014 they registered a new address of the organization in Kyiv. Today the RCHR consists of lawyers with many years of practical experience in the field of human rights protection.

Since the Russian invasion of Ukraine on February 24, 2022, the RCHR has expanded its activities and begun documenting and providing legal qualifications for war crimes and crimes against humanity, committed in other territories of Ukraine. The organization is a member of the Platform for the Investigation of War Crimes in Ukraine (Ukraine 5 AM Coalition). During March 2022 - September 2023, the RCHR carried out research on identifying specific features of the crime of genocide in Ukraine, particularly its fifth element: (e) Forcibly transferring children of the group to another group.

The Lemkin Institute for Genocide Prevention is a US-based non-governmental organization focused on the prevention of genocide worldwide via education and grassroots empowerment, national and international advocacy, and legal accountability. The Lemkin Institute believes that the most important prevention work happens at the grassroots level and that true long-term human security is built over time through broad-based internal social and cultural commitments to justice.

The Lemkin Institute aims to prevent genocide globally by fighting for the unrestricted respect for human rights, the eradication of all forms of impunity for international crimes, and an end to all forms of discrimination, especially when the discrimination on which criminal conduct may operate has as a pretext the victims' national origin, ethnicity, sexuality, gender identity, language, religious or philosophical convictions, social or cultural habits, place of residence, and/or any other personal condition or circumstance related to their identity.

As part of the Lemkin Institute's work on Russia's war of aggression against the country of Ukraine, the Institute has issued several statements and alerts regarding the genocidal rhetoric and genocidal characteristics of the conflict. You can access those documents at our website: www.lemkininstitute.com.

Preliminary objections

1. On February 24, 2022, as part of the ongoing armed aggression, the Russian Federation carried out a full-scale invasion of the territory of Ukraine, which, according to Article 8-bis of the Rome Statute of the International Criminal Court (hereinafter referred to as the ICC), demonstrates elements of the crime of aggression and which has been accompanied by the commission of war crimes, crimes against humanity, and genocide. During the present full-scale invasion of Ukraine, several separate illegal actions, which have been documented since the beginning of the occupation of the Crimean peninsula in February-March 2014,, have taken on the character of patterns - large-scale and systematic violations of international law that reach the threshold of several international crimes at once. Among these crimes are the unlawful deportation and forcible transfer of Ukrainian children to the Russian national group.

2. On October 25, 2022, the Regional Center for Human Rights, in partnership with the Lemkin Institute, submitted a Communication to the International Criminal Court regarding the actions of Maria Lvova-Belova, Commissioner for Children's Rights under the President of the Russian Federation, which are alleged to contain elements of the crime of genocide as provided for in Article 6(e) of the Rome Statute. On July 25, 2023, an Addendum to the aforementioned Communication was sent to the Court. This Addendum analyzed the role of Russian citizenship imposed by the occupying state on Ukrainian orphans and children deprived of parental care. According to the authors of the submission, these imposition of Russian citizenship on Ukrainian children by senior officials of Russia indicate a specific intent to commit the crime of genocide in the form of the forcible transfer of Ukrainian children to the Russian national group and serves as one of the tools to simplify and expedite such transfer.

3. This Communication builds on the previous two and pertains specifically to the unjustifiable delay in the repatriation of unlawfully deported and forcibly transferred Ukrainian children. Such delays, which in and of themselves constitute independent war crimes and crimes against humanity, also provide evidence of genocidal intent on the part of the perpetrators.

4. As of September 5, 2023, a total of 19,546 children have been identified as deported and forcibly displaced by the competent authorities of Ukraine. Thanks to the joint efforts of legal representatives, non-governmental organizations, and the authorities of Ukraine, and despite the obstacles created by Russian agents, 386 minors have been successfully returned from the territories under the effective control of the Russian Federation.¹ Most of the minors who were returned had parents or other legal representatives. This group includes children whose relatives were detained during the "filtration" process.²

¹ <https://childrenofwar.gov.ua/>

² Researchers at Yale University have uncovered 21 "filtration" sites in the Russian-controlled territory of Donetsk in eastern Ukraine. These sites are used by Russian forces and their allies to process, register, interrogate and detain Ukrainians trying to leave Russian-occupied territory. The conditions of confinement in "filtration camps" include insufficient sanitation, shortages of food and water, cramped conditions, and reported acts consistent with torture. See also <https://ysph.yale.edu/news-article/yale-researchers-identify-21-sites-in-donetsk-oblast-ukraine-used-for-civilian>

5. Groups of children, comprising minors under the effective control of the Russian Federation and requiring reunification and/or return to Ukraine, can be divided into two legal categories: unaccompanied children³ and separated children.

6. According to General Comment No. 6 (2005) of the UN Committee on the Rights of the Child, titled “Treatment of Unaccompanied and Separated Children Outside Their Country of Origin,” the first category, unaccompanied children, encompasses individuals under the age of 18 who are not under the care of parents, relatives, or other legal or customary representatives. Separated children, on the other hand, are individuals under the age of 18 who have been separated from both parents or other legal or customary representatives.⁴

7. The distinction between the two categories hinges on the presence of the child’s parents, relatives, or other legal representatives with whom potential reunification is possible. This differentiation holds particular significance in the context of repatriation, which encompasses two distinct legal processes: family reunification and return. The latter includes, but is not limited to, placement in boarding institutions followed by transfer to foster families in the child’s country of citizenship.

8. The differences between the two categories are significant, especially in light of the current practice pertaining to the official handling of unaccompanied children in the Russian Federation. This practice involves the immediate establishment of temporary guardianship over the children, which, in accordance with Article 12 of Russian Federal Law No. 48-FZ “On Guardianship and Care,”⁵ automatically transitions to permanent guardianship or adoption after 6-8 months. This permanent guardian and adoption process primarily concerns children who were “evacuated” during the active phase of hostilities in their usual place of residence, those whose parents or legal representatives were killed, and orphans residing in boarding institutions at the start of the full-scale invasion. Following their so-called evacuation, these children are included in regional orphan databases alongside Russian citizens. Subsequently, once Russian documents are prepared for them, they are placed with Russian families through standard procedures. For instance, in her report on the activities of the Commissioner for Children’s Rights in the Bryansk region in 2022, Inna Mukhina notes: “*As of January 1, 2023, there are 347 children - orphans and children deprived of parental care - in the regional children’s database. Due to events in 2022, information on 37 minors who arrived in the region from the Donetsk People’s Republic was added to the regional children’s database.*”⁶ The pro-government media RIA.Novosti also reported on October 24, 2022: “*At the moment, there are 359 children registered in the regional [Oryol Oblast] database for children deprived of parental care, of whom 57 children came from the Donetsk People’s Republic.*”⁷

³ In this case unaccompanied children are orphans and those deprived of parental care, minors whose parents’ fate is unknown, children with disabilities in specialized institutions requiring 24-hour care, minors detained in camps or sanatoriums for the purpose of ‘re-education,’ children taken for medical interventions.

⁴ <https://www2.ohchr.org/english/bodies/crc/docs/gc6.pdf>

⁵ https://www.consultant.ru/document/cons_doc_LAW_76459/ff9a4233704115d5ac3caa40d67acbfe1445dfa8/
Protocol 1

⁶ <http://www.bryanskobl.ru/docs/ombudsman/child-report-2023.pdf>, p. 101

⁷ <https://ria.ru/20221024/deti-1826337422.html>

9. According to the testimony of Maria Lvova-Belova, the Presidential Commissioner for Children's Rights of the Russian Federation since October 2021, *“as of May 2022 (the last known published statistics), 190,000 children arrived in the territory of the Russian Federation. Among them are more than 1,700 orphans and children deprived of parental care, some of whom arrived with their guardians and legal representatives. Additionally, about 1,200 children came to Russia from boarding schools in the DPR and LPR.”*⁸ In total, this figure still does not reach the one provided as of the end of June 2023 by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, namely 3,855 people.⁹ At the same time, the difference between Lvova-Belova's numbers and those of the Ukraine Ministry of Reintegration can be explained by the fact that the illegal deportation of children is an ongoing crime. It is important to note that during the 13 months not covered by the statement of the Commissioner for Children's Rights under the President of the Russian Federation, additional children may have potentially been subjected to these unlawful actions. Furthermore, it is crucial to consider Maria Lvova-Belova's testimony, which indicates that initially, some of the children taken from the so-called LPR were returned to boarding institutions but were later deported again, this time for forcible transfer to Russian families.¹⁰

10. Unaccompanied children are the primary victims of imposed citizenship by the aggressor state and transfer to Russian families or boarding institutions in Russia.¹¹ Returning such minors is more challenging than for separated children due to a range of circumstances outlined in paragraphs 11-37.

Facts related to unjustifiable delay in the repatriation

11. The primary obstacle to the timely repatriation of Ukrainian children from territories under Russian control is the refusal of the Russian senior officials to grant permission for such returns, especially for orphans and children deprived of parental care. As of the time of submitting this Communication, the competent authorities of the Russian Federation continue to conceal information about Ukrainian children whom they classify as “evacuees,” thereby violating the relevant obligations under international humanitarian law. This includes violations of Article 50 of the Geneva Convention on the Protection of the Civilian Population in Time of War (hereinafter referred to as the Geneva Convention IV)¹², articles 74 and 78 of the Additional Protocol to the Geneva Conventions of August 12, 1949, related to the protection of victims of international armed conflicts, dated June 8, 1977 (hereinafter referred to as Protocol I), as well as articles 3, 8, 9, 10, 12, 20, 21 of the UN Convention on the Rights of the Child (UNCRC). The compounding impact of these numerous violations raises significant concerns regarding the potential infringement on these children's rights to be safeguarded against torture, ill-treatment, and any form of inhumane or degrading treatment or punishment, as stipulated in Article 37(a) of the UNCRC.

⁸ <https://www.vedomosti.ru/society/articles/2022/05/10/921474-deti-siroti-iz-dnr-smogut>

⁹ Annex 1

¹⁰

<https://www.miloserdie.ru/news/opublikovan-otchet-marii-lvovoj-belovoj-o-rabote-vo-vremya-svo-spiskov-eva-kuirovannyh-nesovershennoletnih-ne-budet-no-vsem-roditelyam-pomogut-vossoedinit-sya-s-detmi/>

¹¹ The imposition of Russian citizenship and the forcible transfer of Ukrainian children to Russian families and boarding institutions are the subject of the Communication to the ICC dated October 25, 2022 and its Addendum dated July 25, 2023, submitted to the Court by the Regional Center for Human Rights and the Lemkin Institute.

¹² https://zakon.rada.gov.ua/laws/show/995_154#Text

12. In one of her interviews in April 2023, Maria Lvova-Belova stated, “*Children placed in Russian families, many of whom were former pupils of orphanages, have endured deprivation and danger due to prolonged Ukrainian shelling. It would be a crime to disclose the list of their names and hand over these children to the Ukrainian authorities.*”¹³ In addition, the Commissioner shifts the responsibility for providing the list of deported children to the authorities of Ukraine, stating, “*Everyone on social networks is talking about different lists, and everyone requires the reunification of parents and children. In fact, this was discussed today at the UN site [...]. But we do not see a single fact, not a single document from the Ukrainian side, apart from statements on social networks and in the mass media from the country’s leadership.*”¹⁴

13. The competent authorities of Ukraine consistently demanded that the Russian Federation hand over lists of “evacuated” children. The most recent request was made on August 10, 2023, by Iryna Vereshchuk, the Deputy Prime Minister and Minister of Reintegration of the Temporarily Occupied Territories of Ukraine. She reiterated, “*We demand that Russia provide, first and foremost, the lists of such children. If they refer to it as rescue or evacuation, then we insist on the return of children from such operations. We are ready to appoint legal guardians for all of them, and we have full formal support for this process. These guardians will travel to either the territory of the Russian Federation or a third country as needed. We have made it clear that any mechanism is acceptable, but it is unacceptable to adopt our children, and it is unacceptable to place our children in illegal custody. Those Russian citizens who adopt our children will also face legal responsibility.*”¹⁵

14. On April 28, 2023, Ukraine provided the International Committee of the Red Cross (hereinafter referred to as the ICRC) with a list of personal data for over 19,000 Ukrainian children who were deported or forcibly transferred by the Russian Federation¹⁶. In contrast, the Russian Federation only provided the ICRC with information about deported children in one single case, with the intention of reuniting them with their relatives. This occurred after the International Criminal Court issued warrants for the arrest of Maria Lvova-Belova and Vladimir Putin in April 2023. At this moment the Russian side admitted that, “*there were approximately 400 children in sanatoriums in Crimea.*” However, the ICRC received information only about 16 minors who were held in camps within Russian-occupied Crimea and whose parents were temporarily located in the territory of the EU.¹⁷

15. Another obstacle posed by the Russian Federation to the return of Ukrainian children is the complexity of identifying such minors due to changes in their personal data. For example, alterations in the Russian transliteration of names, such as “Pylyp” to “Philip” or “Daryna” to “Darya,” as well as discrepancies in the reported year or place of birth, create difficulties in identification. An illustrative case is reflected in Order No. 693 issued by the Department of Social Protection of the Population of the

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<https://www.miloserdie.ru/news/opublikovan-otchet-marii-lvovoj-belovoj-o-rabote-vo-vremya-svo-spiskov-eva-kuirovannyh-nesovershennoletnih-ne-budet-no-vsem-roditelyam-pomogut-vossoedinit'sya-s-detmi/>

¹⁴ https://dzen.ru/a/ZC3IK1MyY0ZwrIBB?utm_referer=www.google.com

¹⁵ <https://www.radiosvoboda.org/a/news-vereshchuk-dity-vyvezeni-do-rosiji/32541019.html>

¹⁶

<https://suspilne.media/459779-ukraina-peredala-mkhc-imena-19-tisac-vikradenih-rf-ukrainskih-ditej-mezenceva/>

¹⁷ <https://t.me/malvovabelova/1282>

Western Administrative District of the City of Moscow, which established guardianship over “Philipp,” while according to Ukrainian documents, the boy’s name is “Philip.”¹⁸ Additionally, concerns arise regarding the age of 'Philip,' as Maria Lvova-Belova consistently underestimated it by one year.¹⁹ In another instance, the date of birth of Anastasiya, a student at a secondary vocational education institution in the occupied territory of the Kherson region, was altered to facilitate her deportation for so-called recreation within the occupied Crimean peninsula. According to the girl’s testimony, she was not the only one subjected to transfer based on forged documents.”²⁰

16. The return to the territory of Ukraine, as well as reunification with family members, is further complicated by the fact that, in legal terms, children falling under the categories defined in paragraph 5 of this Communication are solely recognized as citizens of the Russian Federation by Russian and occupying authorities. This often results in refusals by Russian or occupying authorities to grant permission for a child’s return to the territory controlled by Ukraine. They demand the presentation of documents confirming the legal status of the legal representative according to Russian legislation while refusing to acknowledge the relevant Ukrainian documents.

16.1. For instance, for several months, from June to August 2023, Mykyta’s legal representative, his grandmother Polina, stayed in the territory of the occupied city of Dzhankoy (AR Crimea) while attempting to return her 10-year-old grandson to the territory controlled by Ukraine. Mykyta is a child with a disability who was forcibly transferred as part of a group of 52 people from the Oleshky Children’s Boarding Home, initially to the occupied Crimean Peninsula, then to the Krasnodar Territory, and later to Skadovsk. The forcible transfer operation was personally overseen by Maria Lvova-Belova, along with the involvement of the Ministry of Health of the Russian Federation and the occupation administration of the city of Sevastopol.²¹ To facilitate the child’s return, Mykyta’s grandmother had to undergo a DNA test, which confirmed their genetic kinship. Simultaneously, the woman possessed Ukrainian documents, including the Decision of the Executive Committee of the Suvorov District Council in the city of Kherson appointing her as an authorized person to protect the rights and legitimate interests of her underage grandson.²² However, she was subsequently informed about the necessity to complete paperwork for the establishment of custody over Mykyta in accordance with Russian Federation legislation, as the boy had been granted the citizenship of the occupying state.²³ According to Article 35 of the Civil Code of the Russian Federation, “*Guardians and custodians may be appointed only by adult citizens.*”²⁴ Therefore, Mykyta’s grandmother was informed that she needed to acquire Russian citizenship first.²⁵

16.2. On September 2, 2023, a news article titled “**DNA examination helped reunite a child with his grandmother from Ukraine**” was posted on Maria Lvova-Belova’s official Telegram channel. In the publication, the Commissioner expressed gratitude to the occupying authorities of the Kherson region and

¹⁸ <https://twitter.com/i/broadcasts/1vAGRAVPkNvKl>

¹⁹ Annex 2, Protocol 1

²⁰ <https://www.youtube.com/watch?v=zPyWA9ZK4Qs&t=1067s>

²¹ <https://t.me/malvovabelova/762>

²² Annex 3

²³ Annex 21

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https://www.consultant.ru/document/cons_doc_LAW_5142/52dce1388868d4b254291229d03f57fd60197a0d/#dst90

²⁵ Information about the case was transferred by the CF “Save Ukraine”

the Republic of Crimea “for their assistance in organizing this challenging process,” as well as to the Russian Center for Forensic Medicine “for swiftly and generously arranging the genetic test.” It’s important to emphasize that the return process took several months, despite the grandmother having all the necessary documents issued by the Ukrainian authorities.

In a video published on her Telegram channel, Maria Lvova-Belova is seen giving a tablet to a boy. When the boy forgets about it because his attention is directed towards his grandmother, Lvova-Belova persistently tries to place the “gift” in his hands.²⁶ This is one of the methods used by Russian agents to manipulate the child’s consciousness, demonstrating to them that the Russian Federation cares about the well-being and development of children, while portraying Ukraine as the enemy.

16.3. A situation similar to those described in paragraphs 16.1-16.2 occurred with Svitlana, the guardian of 8-year-old Vsevolod, in accordance with the Decision of the Executive Committee of the Ananyiv City Council No. 89 dated April 5, 2023²⁷. Vsevolod lived with his parents in occupied Melitopol (Zaporizhzhya region). Occupation authorities removed him from his family due to the “antisocial lifestyle” of his biological relatives and placed him in a boarding school. Svitlana was informed that in order to reunite with her brother, she would need to assume guardianship over him in accordance with Russian legislation, and obtain a passport of a Russian Federation citizen beforehand. The guardianship services conveyed that after completing all the required paperwork, she and her brother would not be permitted to leave the occupied territory.²⁸ As of the submission of this Communication, Save Ukraine managed to successfully return Vsevolod to the territory controlled by Ukraine.²⁹

16.4. Another example of forcing a legal representative to assume care of a child under the control of the Russian Federation in accordance with Russian legislation involves the story of 13-year-old Artem from Mariupol (occupied Donetsk region). The boy’s father, a volunteer, was tragically killed in active combat after the start of a full-scale invasion. In 2023, the boy’s mother also passed away. Under Ukrainian legislation, Artem’s biological sister Liliya was appointed as his guardian (per Decree of the Head of the District Administration of the Zaporizhzhya City Council of the Shevchenkivskyy District No. 298 dated July 5, 2023).³⁰ Concurrently, the occupying authorities, adhering to Russian legislation, designated Artem’s biological grandmother, who resided with him in occupied Mariupol, as his guardian. However, the grandmother did not object to Artem’s sister assuming the role of legal representative. To secure permission for transporting the boy through the territory of the Russian Federation (the only available route back), his sister was compelled to obtain Russian guardianship documents. She declined, and with the assistance of the Ukrainian non-governmental organization Save Ukraine, Artem was successfully returned by an alternative means on July 26, 2023.

According to the sister, the opposition from the Russian authorities stemmed from the fact that her boyfriend is a serviceman of “Azov” and 13-year-old Artem is a witness to war crimes committed by the Russian armed forces.”³¹

²⁶ <https://t.me/malvovabelova/2082?single>

²⁷ Annex 4

²⁸ Annex 5

²⁹ Information about the case was transferred by the CF “Save Ukraine”

³⁰ Annex 6

³¹ Information about the case was transferred by the CF “Save Ukraine”

17. Another obstacle hindering the return of Ukrainian children, which is also linked to the imposition of Russian citizenship, is the forced conscription into the ranks of the Armed Forces of the Russian Federation upon reaching the age of 18, as well as the possibility of mobilization. This issue exhibits a distinct gendered nature, affecting only boys. Upon reaching the age of majority, these children, as per Article 23 of Federal Law No. 138-FZ “On Citizenship of the Russian Federation,” will be unable to renounce Russian citizenship and independently depart from Russia due to unfulfilled obligations to the Russian Federation³², specifically military duty as stipulated in Article 59 of the Constitution of the Russian Federation.³³ This obstacle pertains to both the actual risks and the subjective perception of the threat of forced conscription and/or mobilization by the children and their relatives. The authors of this Communication are aware of individuals who fell victim to unlawful deportation or forcible transfer in 2022 and, upon reaching adulthood, are hesitant to cross the border of the Russian Federation, fearing that such an attempt may culminate in conscription into the armed forces of the aggressor state.

17.1. The fear of being forcibly drafted and/or mobilized due to Russian Federation-imposed citizenship is one of the factors that compelled 17-year-old Rostyslav O. to expedite his return to the territory controlled by Ukraine from the occupied Kherson region. Prior to the occupation, Rostyslav resided in a family-type orphanage. The local occupation guardianship authorities pressured the boy’s Ukrainian adoptive parents to modify documents affirming their legal representative status under Russian law. Subsequently, the authorities threatened to strip them of parental rights because of their refusal to enroll Rostyslav in a Russian curriculum school and obtain a Russian passport for him. Fearing that Rostyslav would be conscripted into the army of the aggressor state upon reaching adulthood, his guardian father insisted on facilitating his departure to the territory controlled by Ukraine. The process was coordinated to occur via the Russian-Belarusian border, where the boy underwent a series of interviews and checks before departure. With the assistance of Save Ukraine, Rostyslav O. was successfully repatriated to Ukraine on June 28, 2023.”³⁴

17.2. Two 17-year-old boys, Bohdan and Denys, found themselves in a situation akin to that of Rostyslav O. However, in this instance, the Russian Federation persists in opposing their repatriation. As of the time of this Communication, both children remain under the control of Russia. Russian citizenship has been imposed on both of them, and Bohdan has been forcibly placed with a Russian family.

17.3.1. Bohdan is one of the children from the so-called *list 31*, who was unlawfully deported from Mariupol (Donetsk region) to the Moscow region in May 2022³⁵. In August 2022, the boy was placed under the care of a Russian citizen, Irina Rudnitska, who is a member of the Council of Foster Parents of the Moscow Region under the Ministry of Education of the Moscow Region. She received recognition from the Governor of the Moscow Region, Andrey Vorobyov, as an exemplary foster mother. At the beginning of 2023, Bohdan attempted to return to Ukraine on his own. During a briefing on April 4, 2023,

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<http://deti.gov.ru/articles/news/otvety-po-voprosam-semejnego-ustrojstva-detej-sirot-iz-dnr-i-lnr-v-rossijskie-se-m-i>

³³

https://www.consultant.ru/document/cons_doc_LAW_28399/5004a75d54e54d5824c87ac2b96954f252610504/

³⁴ Information about the case was transferred by the CF “Save Ukraine”

³⁵ Annex 2

Maria Lvova-Belova remarked, “*Yes, the guy was taken out by deception; we caught him on the border with Belarus. At the last moment, security forces managed to stop him at the border.*”³⁶ According to the boy’s representative, Kateryna Bobrovska, he was coerced into submitting a statement to the Commissioner for Human Rights in the Russian Federation, Tatiana Moskalkova, asserting that he had no objections to returning to Ukraine. Additionally, he was compelled to appear in a propaganda video.³⁷ November 19, 2023 Bohdan is set to turn 18 on November 19, 2023³⁸, which places his return to Ukraine at risk.

17.3.2. Denys, a child deprived of parental care, was a student at Kherson Lyceum No. 2. In the autumn of 2022, he was relocated from the Center for Social and Psychological Rehabilitation to the territory of the occupied Crimean Peninsula, specifically to the Luchystiy camp. Upon learning that he would not be returned, Denys sought assistance from the Center’s director, Volodymyr Sahaydak, and also confided in his godmother, Olga Horula, expressing his desire to return. The boy’s sole biological relative is his grandmother, who was unable to travel to retrieve her grandson due to her health. Subsequently, Denys was taken to the territory of the Russian Federation. Olga traveled there to bring Denys back, but she endured three days of interrogation at the Belarusian-Russian border. She was questioned about who had assisted in organizing her arrival in Russia. Later, she was coerced into appearing in a propaganda video³⁹ and subsequently deported to Belarus without Denys. According to the accounts of the children who were repatriated, Denys was sent to study at a military lyceum in Moscow. As of the submission of this Communication, he has reached the age of majority.

17.4. The mother of 17-year-old Vlad, from the occupied Kherson region, was coerced by the Russian military into consenting to his so-called vacation in the Luchystiy camp on the territory of the occupied Crimean Peninsula. According to Vlad’s account, he was made to wear a military uniform and assigned the responsibility of evacuating other children from the camp in the event that the Armed Forces of Ukraine entered its territory. Vlad believed this was because his father is a Ukrainian military serviceman, a conclusion he reached after a “preventive conversation” in the camp due to intercepted correspondence with his sister about his father. During this “conversation,” he was prohibited from expressing pro-Ukrainian views. Subsequently, the camp management unilaterally decided to enroll Vlad in a secondary vocational school in the occupied Kherson region. His mother, determined to retrieve her son, dared to venture to bring him back. However, she was detained on the territory of the occupied Crimea by armed representatives of the Russian Federation’s security forces. For an entire day, she was held in custody without being permitted to see her child. Vlad anxiously awaited his mother and was concerned that he couldn’t establish contact with her. After being questioned at the police station, Vlad’s mother was blindfolded with a balaclava and transported in an undisclosed direction. She was informed about charges of extremism. She spent another day in a basement without access to a toilet or food. Subsequently, she was compelled to undergo a lie detector test. According to her testimony, she was threatened that if she didn’t achieve a satisfactory percentage of correct answers, she would be detained and denied the opportunity to retrieve her child. During the test, she was questioned about the route she took to bring her

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<https://belsat.eu/ru/news/04-04-2023-na-belarusskoj-granitse-ostanovili-podrostka-kotoryj-hotel-vernutsya-v-ukrainu>

³⁷ Protocol 2 <https://mariupol-news.ru/society/2023/04/04/36774.html>

³⁸ Annex 2

³⁹ Protocol 3 <https://ria.ru/20230530/zaderzhanie-1875069151.html>

son back, shown a photo of Ukrainian human rights defenders, and asked which of them was involved in organizing the mission for repatriating minors. The woman successfully passed the test and managed to bring her son back to Ukrainian territory on May 29, 2023.⁴⁰

18. The intent to attract Ukrainian children after they reach adulthood to serve in the Armed Forces of the Russian Federation and, potentially, to force them to participate in armed conflicts, is evidenced, *inter alia*, by the militarization of their upbringing and education in Russia,⁴¹ the organization of summer vacations with enhanced military-patriotic training (in particular through to the program “Powers of the Caucasus” by Maria Lvova-Belova and Ramzan Kadyrov),⁴² and the selection and enrollment of Ukrainian children in cadet classes and in educational institutions overseen by the Investigative Committee of the Russian Federation.

19. On March 11, 2022, 134 pupils from boarding institutions of the so-called DPR and LPR, aged 5 to 15, were deported to the city of Azov in the Rostov Region. There, they came under the unofficial guardianship of employees from the military investigative department of the Investigative Committee of the Russian Federation for the Southern Military District⁴³. Similar informal guardianship arrangements were established by the Investigative Committee over the so-called Republican Children’s Traumatology Center of Donetsk, the Republican Children’s Clinical Hospital of Luhansk, and the Luhansk Children’s Home. Additionally, according to official information from the Investigative Committee of the Russian Federation, from February 2022 to March 2023, the committee, in collaboration with the Ministry of Defense of the Russian Federation, deported 181 orphaned children to Russia. Out of these, 28 were sent to study in cadet corps and academies of the Investigative Committee.⁴⁴ Cadet corps are primary military educational institutions that prepare young people for a military career.⁴⁵ Upon completing their training, cadets are enrolled in higher military educational institutions in Russia without having to take exams.⁴⁶ According to the testimony of the Chairman of the Investigative Committee of the Russian Federation, Aleksandr Bastrykin, in these institutions: “*All cadets are provided with uniforms, and thematic activities organized by employees of military investigative bodies are already taking place, with plans to continue this work.*”⁴⁷

⁴⁰ Information about the case was transferred by the CF “Save Ukraine”

https://news.sky.com/story/ukrainian-teenager-taken-by-russians-considered-suicide-after-solitary-confinement-12912114?fbclid=IwAR2kaoAFNTq4Wb7na8_gxX_LxuNtsfiazgyFKvoK5NHV_cR9xRjxqd1f39s

Annex 7

⁴¹ <https://almenda.org/doslidzhennya-zmistu-shkilnykh-pidruchnykiv-rosiyi/>

⁴²

<http://deti.gov.ru/articles/news/chechenskaya-respublika-prinyala-na-lagernoj-smene-sila-kavkaza-okolo-200-podrostkov-sostoyashih-na-profilakticheskom-uchete>

<https://web.archive.org/web/20221204121257/http://deti.gov.ru/articles/news/chechenskaya-respublika-prinyala-na-lagernoj-smene-sila-kavkaza-okolo-200-podrostkov-sostoyashih-na-profilakticheskom-uchete>

⁴³

<https://www.mk.ru/social/2022/03/11/rostovskie-voennye-sledovateli-vzvali-pod-opeku-deteysirov-donbassa.html>

⁴⁴

<https://pressa.sledcom.ru/ZHurnal/Magazine-3-2023/item/1809039/>

⁴⁵

https://sledcom.ru/Obrazovatelnie_uchrezhdenija_SK/Sankt-Peterburgskij-kadetskij-korpus-Sle/Istoriya-kadetskogo-dvizheniya

⁴⁶ <http://www.deti.gov.ru/detigray/upload/documents/July2023/7JkHUTqLIsZL45JDp4X1.pdf>

⁴⁷ <https://pressa.sledcom.ru/ZHurnal/Magazine-3-2023/item/1809039/>

20. Another contributing factor to the unjustifiable delay in repatriation of Ukrainian children under Russian control is the direct and unequivocal refusal of the senior officials in the Russian Federation to allow the return of unaccompanied children. This general refusal manifests itself in specific ways, such as the inability to designate an alternative legal guardian through proxy, relocating the child to different places of detention (effectively “hiding” the child), and opting to prolong the child’s stay in a Russian family rather than reuniting them with their blood relatives. The intention to keep Ukrainian children permanently in the Russian Federation⁴⁸ is underscored by statements made by senior Russian officials.

21. In relation to the repatriation of orphans and children deprived of parental care, Maria Lvova-Belova, Commissioner for Children's Rights under the President of the Russian Federation, made a statement during a briefing on April 4, 2023. She stated, “*Decisions regarding these matters will be made by the leaders of our new republics.*” When it comes to children “*placed in families [due to their forcible transfer to Russians], the decisions will be determined by their [Russian] legal representatives or [adoptive] parents.*”⁴⁹ Notably, Ukrainian authorities are excluded from the potential return process of deported or forcibly transferred orphans and children deprived of parental care.

22. However, Lvova-Belova consistently asserts that she is not holding Ukrainian children in Russia, emphasizing that “they will have the opportunity [to leave the territory of the Russian Federation] once they reach the age of 18”⁵⁰. The Commissioner's stance on refusing to repatriate Ukrainian children has remained steadfast since the outset of the full-scale invasion on February 24, 2022. For instance, during a speech at the Public Chamber of the Russian Federation on July 28, 2022, Lvova-Belova remarked, “*Vereshchuk extended an invitation to these children based on some unclear basis and claimed there are legal representatives willing to welcome them into their families. [...] None of the children expressed a desire to return. [...] Thus, there may be initial resistance, but it eventually transforms into an affection for Russia*”.⁵¹

23. In this context, it is crucial to emphasize that Russian Federation officials claim to prioritize the opinions of children who are in a vulnerable position under the control of the aggressor state when making decisions regarding them. International standards dictate that the right to consider a child’s opinion is not absolute,⁵² as the child’s perspective may not always align with their best interests, which should take precedence. However, it remains important to provide children with a genuine and effective opportunity to voice their views.⁵³ There is a lack of concrete, objective evidence confirming that the unlawfully deported or forcibly transferred children have provided their voluntary and well-informed consent to remain in Russia rather than returning to Ukraine. It should be noted that certain children may be unable to articulate their free and informed consent and express their opinions due to their age or disabilities, which may hinder their comprehension of the complete reality of the situation.

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<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

⁴⁹ <https://www.rbc.ru/politics/04/04/2023/642c14969a79475488ed6dca>

⁵⁰ <https://ria.ru/20230404/konferentsiya-1862807936.html>

⁵¹ Protocol 4 <https://t.me/malvovabelova/605>

⁵² https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf, para. 44

⁵³ CJEU, C-491/10 PPU, Joseba Andoni Aguirre Zarraga v. Simone Pelz, 22 December 2010

24. The European Court of Human Rights interprets the right to respect for private and family life (Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) as not always necessitating the child's direct input⁵⁴. Nevertheless, the Court underscores the paramount importance of consistently safeguarding the child's best interests. In the case of *Vavříčka and Others v. Czech Republic [GC]*, the Court unequivocally affirmed that “There is an obligation on States to place the best interests of the child, and also those of children as a group, at the center of all decisions affecting their health and development.” In doing so, it rejected the applicants' argument that it should primarily be the parents determining how to secure and uphold the child's best interests, and that state intervention should only be permitted as a last resort under extraordinary circumstances.⁵⁵ In this regard, not only the child's viewpoint and that of their legal representatives, but also their citizenship—Ukraine—should be factored into the assessment of the child's best interests, particularly concerning their repatriation. It is crucial to underscore that, in all cases, the child's best interests take precedence over their opinion, especially if there are reasonable grounds to believe that their opinion has been influenced by Russian authorities, as we further explain below.

25. Due to their prolonged captivity under the influence of Russian agents, a complex situation has emerged. On one hand, these agents employ various tactics to influence these unlawfully deported or forcibly transferred Ukrainian children. This includes promising or providing housing certificates, offering access to free education in secondary and higher educational institutions, providing material incentives such as clothing and gadgets, and engaging in indoctrination. They consistently convey the belief that no one in Ukraine is actively searching for them or considering their return. Consequently, some of these children may express a desire not to return to their home country. However, it remains challenging to assess the conditions under which these statements are made, primarily due to the lack of access to these children and information regarding their living conditions.

25.1. Alina, a 17-year-old girl, belongs to the group known as *list 31*⁵⁶, a group that was unlawfully deported from Mariupol (Donetsk region) to the Moscow region in May 2022.⁵⁷ Initially placed in the Polyany sanatorium, she was later moved to a Russian foster family. Alina posted a message on her Instagram page where she expressed her current situation and sentiments. She stated, “*I understand that some support Russia, some support Ukraine, but for now, I live in Russia and it seems I will live there forever. I don't fight for Russia or Ukraine; I'm just living and trying to find happiness (without taking sides). Please, no more negative messages.*”⁵⁸ Before being placed in the Russian family, Alina had reached out to Ivan, whose return story is described in paragraph 26, asking him to inform adults in Ukraine about her and seek help for her and her 15-year-old brother, who had also been forcibly deported

⁵⁴ ECtHR, *N.Ts. v. Georgia*, No. 71776/12, 2 February 2016; ECtHR, *Iglesias Casarrubios and Cantalapiedra Iglesias v. Spain*, No. 23298/12, 11 October 2016; ECtHR, *C v. Croatia*, No. 80117/17, 8 October 2020; ECtHR, *M.N. and Others v. Belgium*, No. 3599/18, 5 March 2020; ECtHR, *Petrov and X v. Russia*, No. 23608/16, 23 October 2018

⁵⁵ *Vavříčka and Others v. the Czech Republic [GC]*, §§ 286-288; see also *Parfitt v. the United Kingdom (dec.)*, §51

⁵⁶ List 31 comprises Ukrainian children who were grouped by Russian agents, gathered from the occupied cities of the Donetsk region, and subsequently relocated to institutions under the control of the occupation administrations of the “DPR”. On a single day, May 26, 2022, they were unlawfully deported to Russia, specifically to the Moscow region.

⁵⁷ Annex 2

⁵⁸ Annex 8

to Russia from Mariupol by the Russians. She shared her personal details for this purpose, but Ivan did not receive further messages from her. According to Ivan, children who had previously been in contact with others from *list 31* reported that their peers placed in Russian families were apprehensive about communicating, suspecting that their rooms were under surveillance with constant monitoring.⁵⁹ Notably, in July 2022, Alina had posted a video on her Instagram page while still in Mariupol. In the post, she tagged her location as “Mariupol Drama Theater,” added a “broken heart” emoji, and wrote the caption “I miss you.”⁶⁰

25.2. Russian authorities claim that 14-year-old Vlada has expressed her refusal to return.⁶¹ Vlada was forcibly relocated from the occupied city of Kherson to the Luchystyy camp in Crimea, ostensibly for “re-education.” The permission for this move, attributed to her legal guardian (her grandmother), was, in fact, forged by Vlada herself (the girl wanted to go with her friends). Tragically, the 62-year-old grandmother intended to retrieve her granddaughter from Crimea but passed away suddenly due to cerebral edema during the journey. Upon learning of her grandmother’s death, Vlada declined the opportunity to return to Ukraine. Nevertheless, she maintains communication with her younger brother, 12-year-old Bohdan, who resides in territory controlled by Ukraine with a family willing to welcome Vlada. As of the submission of this Communication, Vlada’s whereabouts remain unknown. Following her grandmother’s demise, Russian authorities promptly removed her from the camp, and her current location is undisclosed.⁶²

26. The refusal of higher-ranking officials to facilitate the return of Ukrainian children has also influenced the decisions of lower-level officials, including those collaborating in the occupied territories. A notable example is Svitlana Maiboroda, the director of the State Service for Family and Children Affairs in the so-called DPR (Donetsk People’s Republic), who played a role in the deportation of Ukrainian children to the Russian Federation. Maiboroda has stated *that they only transferred children to Ukraine when legal representatives and parents were involved and did not “export” them to Ukraine automatically*. However, in a contrasting perspective presented by the legal representative, Maiboroda was actively working to expedite the deportation of the children to Russia. This pertains to the case of 16-year-old Ivan and 15-year-old Maksym, who were moved by Russian agents from Mariupol and temporarily placed in Donetsk Children’s Hospital No. 5. Svitlana Maiboroda had intentions to send these boys to the Polyany sanatorium near Moscow, where Ukrainian children were subsequently forcibly transferred to Russian families (as detailed in paragraph 17). One of the children managed to contact their legal representative, who emphatically forbade consenting to any deportation to Russia, recognizing that such a decision would complicate their return. Subsequently, the legal representative engaged in a discussion with Maiboroda, offering to retrieve the boys from the sanatorium in the Moscow region rather than going to Donetsk. Maiboroda asserted that such an option was infeasible. As a result, Ivan and Maxym resorted to staging a protest and demanded that the head doctor cancel their deportation to Russia. Regrettably, their pleas went unanswered, and the deportation was only prevented through the legal representative’s efforts,

⁵⁹ <https://www.youtube.com/watch?v=cq2gEMhuDps>

⁶⁰ Annex 9

⁶¹ Annex 10

⁶² Information about the case was transferred by the CF “Save Ukraine”

supported by non-governmental organizations. Finally, he traveled to Donetsk to bring the children back.⁶³

27. Obstacles to repatriating Ukrainian children from Russian territory have also been documented involving the border service of the Federal Security Service (hereinafter referred to as the FSS) of Russia.

28. In August 2022, due to pressure from Russian agents on his parents, 17-year-old Serhiy Ch. was forcibly taken by the Russian military to Russia, where he was enrolled in a vocational and technical education institution. As Russian citizenship was imposed upon him, Serhiy Ch. made the decision to leave Russia and return to the territory under Ukrainian control. With the assistance of volunteers, the necessary Ukrainian documents for crossing the border, such as a birth certificate and notarized consent from legal representatives, were obtained for the boy. However, at the Russian-Belarusian border, Serhiy Ch. was detained by an employee of the Russian FSS. During the detention, the official asked him about tattoos and then forced Serhiy Ch. to undress. While standing in just his underwear, he had to display all his belongings, naming each item clearly for the camera. Additionally, he was subjected to physical violence, including being struck on the legs with a metal bolt.⁶⁴ Eventually, Serhiy Ch. was released, and on June 26, 2023, the 17-year-old successfully returned to Ukraine.⁶⁵

29. Nataliya, a mother who was in the process of returning four children (Karyna, 12 years old, Ivan, 16 years old, Maryna, 14 years old, and Danyla, 12 years old) - two of whom had notarized power of attorney designating her as their legal guardian - became a victim of illegal detention while attempting to cross from Henichesk (occupied Kherson region) to the Ukrainian territory controlled by Ukraine. During her detention, the children were taken away to an undisclosed location. Subsequently, it was revealed that they were placed in a hospital, where they were separated. Meanwhile, Nataliya underwent interrogation by Russian security forces, including the FSS.

The children were told that they would not be going anywhere, and Nataliya was threatened that unless she disclosed details about the organization of the return process, the children would be placed in a boarding school. However, she did not confess. Furthermore, Nataliya was threatened with a lie detector test but was eventually released after spending 2 days in detention. The children were successfully returned to the territory under Ukrainian control on May 27, 2023.⁶⁶

30. One of the obstacles hindering the repatriation of Ukrainian children is the Russian Federation's failure to fulfill its obligation under Article 26 of the Geneva Convention (IV), which pertains to the promotion of family reunification. Despite the establishment of special monitoring groups and headquarters by Russia in partnership with the so-called LPR and DPR in April 2022, tasked with

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<https://kyivindependent.com/stolen-generation-russia-systematically-abducts-children-from-ukraine-gives-them-to-russian-families/>

<https://ombudsman-dnr.ru/evakuirovannye-v-dnr-iz-mariupolya-nesovershennoletnie-ivan-matkovskij-i-maksim-bojko-peredany-opekunu-na-territoriyu-ukrainy/>

<https://www.rbc.ua/ukr/news/ukrainu-vernuli-dvuh-deportirovannyh-mariupolya-1654676198.html>

⁶⁴ Annex 11

⁶⁵ Information about the case was transferred by the CF "Save Ukraine"

⁶⁶ Information about the case was transferred by the CF "Save Ukraine"

locating the relatives of children who were forcibly transferred to the occupied territories of Ukraine or unlawfully deported to the Russian Federation,⁶⁷ the outcomes of their efforts have proven to be limited.

31. The bulletin published by the Russian Commissioner for Children’s Rights in April 2023 includes information about the promotion of reunification efforts starting from the beginning of the full-scale invasion up to the publication date, citing 16 minors from 9 families being successfully reunited.⁶⁸ However, upon verification of the information provided by Maria Lvova-Belova’s office, it appears that there are distortions in the information regarding measures aimed at returning children to their family members in Ukraine. Specifically, it has been observed that at least 5 children from the Mezhevyy family (3 minors)⁶⁹ and the Lazechko family (2 minors)⁷⁰ have encountered various additional obstacles or intimidation tactics, including the forced transfer of the children to Russian citizens within the territory of the aggressor state. Thus, there is sufficient evidence to affirm that the information on the bulletin is a disguise to cover the criminality of the actions carried out by Russian officials, including but not limited to Maria Lvova-Belova.

31.1. Yuriy Lazechko, the father of 14-year-old Daryna and 12-year-old Zakhar, who were returned from Russia on November 24, 2022, contends that the version presented in the April 2023 Bulletin by Commissioner Lvova-Belova is a distortion of the actual events. In his testimony addressed to the International Criminal Court,⁷¹ Yuriy clarifies that after the passing of his wife, who was in Russia with their children, he received messages from the Shchygry guardianship department in the Kursk region. The father was presented with two options for further action:

- 1) Sending the children to a Russian orphanage.
- 2) Entrusting the children to the custody of his wife’s parents, who are Russian citizens.

Lazechko alleges that he faced pressure from the guardianship department to transfer custody of his children to their grandparents, which he refused. Following this, his daughter Daryna was incited to write a message to her father with the text: “Please take me into custody. I don’t want to go to an orphanage.”⁷²

31.2. On October 24, 2022, Yuriy’s mother, 70-year-old Ukrainian citizen Lidiya Lazechko, traveled to Russia by bus through Poland and Belarus to pick up her grandchildren, based on a notarized father’s consent. Upon her arrival, the Shchygry guardianship department organized a meeting to determine the children’s place of residence. In the final report, Yuriy Lazechko was accused of failing to come to pick up the children, despite the well-known fact of the ongoing armed conflict and the difficulties faced by men of conscription age in crossing the Ukrainian border, which were clear to the representatives of the Russian Federation.⁷³

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<https://lug-info.com/news/lnr-i-rf-garmoniziruyut-zakonodatel-stva-dlya-ustrojstva-v-sem-i-rossii-sirot-iz-respubliki>

⁶⁸ <http://deti.gov.ru/detigray/upload/documents/April2023/OYQjD1VHtlNu74bQuDAF.pdf>

⁶⁹ <https://www.currenttime.tv/a/deportation-children-russia/32272586.html>

⁷⁰ <https://thetimeshub.in/a-fathers-struggle-to-repatriate-his-children-to-ukraine/>

⁷¹ Annex 12

⁷² Annex 13

⁷³ Ibid

31.3. To facilitate the return of the children to Yuriy and his mother Lidiya, four documents were required:

- An act of inspection of the living conditions.
- A document confirming the reason for the long-term absence of the minors' father, leaving them without parental care, and the impossibility of picking up the children in person.
- A document confirming the readiness of the Russian-language educational institution to enroll the children to continue their studies in Kyiv.
- A translation of documents confirming the amount of income and the fact of employment of the father.⁷⁴

31.4. It's important to note that according to Article 7 of the Law of Ukraine "On Education," the language of the educational process in educational institutions of Ukraine is the official language, which is Ukrainian.⁷⁵ Russian officials are well aware that education in the Russian language, particularly in Kyiv, is not available. In fact, the State Duma of the Russian Federation adopted a statement on September 27, 2017, emphasizing the importance of protecting the right of indigenous peoples and national minorities to study in their native language in Ukraine. The draft statement was submitted for discussion by representatives of all factions.⁷⁶ Therefore, requiring Yuriy to provide a document confirming the availability of Russian-language education in Kyiv was knowingly unrealistic and not in line with current Ukrainian legislation.

31.5. The family was finally able to reunite on November 24, 2022, with the assistance of Yuriy's lawyer, after the children repeatedly expressed their desire to live with their father in Ukraine. However, Yuriy had to spend over \$7,000 on lawyers and attorneys to facilitate the return of his children. Lazechko notes: *"The Russian authorities created numerous obstacles to prevent the children from leaving Russia, making the process extremely exhausting. Each time the obstacle became bigger. The children had been exposed to Russian propaganda and were in need of psychological support because they had been subjected to brainwashing. Upon their return, the two teenagers were even afraid to speak Russian in public, fearing that they could be harmed for doing so in Ukraine due to the false information they had been fed in Russia."*⁷⁷

32. Yevhen Mezhevyy is the father of three children: Oleksandra (7 years old), Svyatoslava (9 years old), and Matviy (13 years old).⁷⁸ These children were among the so-called *list 31* including individuals who were unlawfully deported from the Donetsk Children's Home to the Moscow Region in May 2022.⁷⁹ During the filtration process in Mariupol, Yevhen, their father, was detained and placed in Volnovakha Correctional Colony No. 120 in the village of Olenivka, Donetsk region (commonly referred to as the Olenivka colony), where he remained for 45 days. During this time, Mezhevyy's children were categorized as children deprived of parental care and were subsequently deported to the Polyany sanatorium in the Moscow region. While at the sanatorium, on June 16, 2022, they were informed about their imminent transfer to a Russian family.

⁷⁴ Ibid

⁷⁵ <https://zakon.rada.gov.ua/laws/show/2145-19#Text>

⁷⁶ <http://duma.gov.ru/news/14345/>

⁷⁷ Annex 12

⁷⁸ <https://zaborona.com/olenivka-doneczk-moskva-yak-mariupolecz-vryatuvav-svovih-ditej-z-taboru-v-rosiyi/>

⁷⁹ Annex 2

32.1. On that same day, Matviy, Yevhen's son, managed to make a phone call to his father. In his call, he conveyed the following message to Yevhen: *"Dad, people from social services came here, and they want to transfer us for adoption. They can't bring us back to Donetsk because there's a lot of fighting there. Our options are either going to a boarding school or being adopted. They said you have a maximum of five days."*⁸⁰ Upon receiving this information, Yevhen immediately reached out to the occupying authorities imposed by Russia. He was provided with the phone number of the head of the "DPR social service" [Svitlana Maiboroda]. She instructed Yevhen to write a statement indicating the address where he intended to live with the children and confirming that he would not take up arms against the "Republic of the DPR." As Yevhen worked to meet these conditions and sought volunteers who could help him organize a trip to the Russian Federation to retrieve his children, the staff at the Polyany sanatorium attempted to convince his son and daughters that their father would not be coming to get them. They cited various "logical" reasons, such as a lack of funds, missing documents (birth certificates for Yevhen's children had not been provided after his release from Olenivka colony), and the supposed impossibility of crossing the Russian border through Ukraine.

32.2. With the assistance of volunteers, Yevhen was able to write a series of letters to Russian authorities, including the President, demanding the return of his children. Once he arrived at the sanatorium where the children were being held, he was compelled to engage with representatives of Russian government services and undergo various screenings and checks. Ultimately, Yevhen's 13-year-old son, Matviy, was coerced into writing a statement on his own behalf, in which he requested to be placed under the care of his father. Following this, the children were released to Yevhen. According to Yevhen's account of the situation: *"What's unpleasant about this situation is that now this Lvova-Belova is claiming that she arranged my visit to the children and even provided financial assistance. When I heard that, it took my breath away."*⁸¹

33. Another circumstance that testifies both to the creation of conditions for an unjustifiable delay in repatriation, and to the presence of the intent to leave Ukrainian children under the control of the Russian Federation permanently, is the attempt by Russian agents to identify members of Ukrainian non-governmental organizations (NGOs) involved in organizing the process of returning children. This effort is aimed at discrediting these individuals within the public sphere and stopping their activities related to child repatriation.

34. As mentioned in paragraphs 17.3.2, 17.4, and 29, during the detention of legal representatives, they were coerced into providing information about the individuals or organizations that assisted in organizing the trips to the territory of the Russian Federation or the occupied territories for the purpose of child repatriation. Russian agents made efforts to identify all persons involved in the process and compelled legal representatives to contact the relevant non-governmental organization (NGO). In the cases detailed in this Communication, one such Ukrainian organization was Save Ukraine.

⁸⁰ <https://www.svoboda.org/a/papa-nas-hotvat-usynovitj-pohischennye-ukrainskie-deti-v-rossii/32270905.html>

⁸¹ <https://www.rbc.ua/ukr/stylar/distavsya-olenivki-moskvi-shchob-zabrati-1680184587.html>

35. At the time of submitting the Communication, Save Ukraine had successfully facilitated the return of 145 out of the 386 Ukrainian children who have been repatriated (38%). According to statements from the organization's employees, they discovered photographs of themselves, taken in public places, circulating online where they were falsely accused of child kidnapping. On June 1, 2023, the pro-government news source RIA.Novosti published an article titled **“The source reveals SSU’s [Security Service of Ukraine] staged a fake about Russia abducting children.”** This article claimed that *“the Security Service of Ukraine, in collaboration with the Save Ukraine foundation, is planning a propaganda campaign featuring children and their parents who were supposedly forcibly taken to Russia.”*⁸² On July 9, 2023, an article by Volodymyr Yemelienenko titled **“Ukrainian Kidnappers Turn Children into a Commodity for Western Countries”** was published on the “Russian Newspaper” [Российская газета] website. This article alleged that *“Save Ukraine volunteers with lists of Donbass orphans adopted by Russians were detained in Moscow.”* Additionally, with reference to Olga Horula, whose case regarding the return of her godson was described in paragraph 17.3.2., the article falsely suggested that the SSU had organized the logistics of moving children to Russia through Poland and Belarus, with the condition that after the children's return, interviews with Polish and Ukrainian media would be conducted *“about rescuing children from captivity. Then, as she said, if she managed to steal them, she would have to hand over the children to Save Ukraine volunteers in Latvia, Poland or Kyiv for adoption in Germany.”*⁸³ It's important to clarify that the allegations made regarding the transfer of children returned by Save Ukraine for adoption in third countries are unsubstantiated, and there have been no recorded instances of such cases. Save Ukraine has established internal policies governing the handling of cases involving minor victims of unlawful deportation and forcible transfer. These policies stipulate that no interviews or other media engagements can occur without the free and informed consent of both the child and their legal representative.

36. As of the submission of this Communication, there are Ukrainian children in the territory under the control of the Russian Federation who wish to return, but cannot do so due to artificially created obstacles.

37. 17-year-old Rostyslav L. is currently in a rehabilitation center in the occupied Crimean peninsula, specifically in the city of Kerch. He expresses a strong desire to return to Ukraine. However, there is a significant issue regarding his legal representation. The individual appointed as his legal representative, following Order No. 79 dated May 17, 2023, issued by the Chief of the Oleshky City Military Administration of Kherson Oblast,⁸⁴ is not recognized by Russian authorities. The problem stems from events that occurred prior to the full-scale invasion. At that time, a process was initiated to terminate the parental rights of Rostislav L.'s mother due to her long-term illness, which included a stroke and its resulting consequences, rendering her unable to fulfill her parental duties. Instead of continuing with this process, the occupying authorities transported Rostislav L.'s mother to Moscow and coerced her into signing documents that placed her son in a Russian educational institution, with her acting as his legal representative. Notably, the boy refused to obtain Russian citizenship. In turn, the management of the rehabilitation center has refused to provide him with the necessary medical care. Rostyslav L.'s legal representatives in Ukraine, in accordance with Ukrainian legislation, are fully prepared to take him under

⁸² <https://ria.ru/20230601/sbu-1875474678.html>

⁸³ <https://rg.ru/2023/07/05/chernye-dushi-belyh-angelov.html>

⁸⁴ Annex 20

their care. It's worth mentioning that their own son, who is the same age as Rostyslav, is Rostyslav's best friend. Both sets of potential parents have already secured housing in the territory controlled by Ukraine.

Legal qualification

A war crime under Article 8(2)(a)(vii)-2 — unlawful confinement

38. According to Article 85(4)(b) of Protocol I, “unjustifiable delay in the repatriation of prisoners of war or civilians”, when committed wilfully, is a grave breach of Protocol I⁸⁵.

39. According to the assessment of the UN Independent International Commission of Inquiry on Ukraine “Russian authorities violated their obligation under international humanitarian law to facilitate in every possible way the reunion of families dispersed as a result of the armed conflict. This may amount to the war crime of unjustifiable delay in the repatriation of civilians.”⁸⁶

40. The Report of the UN Independent International Commission of Inquiry on Ukraine contains the conclusion of experts that “*in most of the situations of transfers of children which the Commission has examined, Russian authorities did not appear to have attempted to facilitate family reunifications. In the cases reviewed, children themselves or their families took the initiative to establish contact. Russian authorities required parents and relatives to travel in person to pick up the children, which came with considerable logistical, financial, and security difficulties, as outlined below. In addition, in some of the reviewed situations, parents and relatives informed the Commission that the children were accommodated in camps and institutions where conditions were inadequate, with poor food, hygiene, and medical care, as well as bad treatment by the local staff. Family members or legal guardians who have retrieved children after transfers reported that uncertainties regarding the prospects of finding and reuniting with parents or relatives led to immense psychological suffering. This experience has deeply affected the children and they expressed a profound fear of being permanently separated from parents, guardians, or relatives.[...]. The Commission has concluded that certain situations of transfers of children which it has examined amount to the war crime of unlawful transfers and deportations of children. It also found that in those situations, the Russian authorities violated their obligation under international humanitarian law to facilitate in every possible way the reunion of families dispersed as a result of the armed conflict, which may amount to the war crime of unjustifiable delay in the repatriation of civilians.*”⁸⁷

41. The Rome Statute of the International Criminal Court does not include a direct reproduction of the norm enshrined in Article 85(4)(b) of Protocol I in the list of war crimes. At the same time, Article 20 (“War Crimes”) of the 1996 Draft Code of Crimes Against the Peace and Security of Mankind covered “unjustifiable delay in the repatriation of prisoners of war or civilians”.⁸⁸ Concerning this element of the

⁸⁵ https://zakon.rada.gov.ua/laws/show/995_199#Text

⁸⁶ Conference room paper of the Independent International Commission of Inquiry on Ukraine. Human Rights Council. 29 August 2023. Para. 741

⁸⁷ Ibid. Paras. 723-724.

⁸⁸ https://legal.un.org/ilc/documentation/english/reports/a_51_10.pdf

crime, many delegations agreed that serious violations of the laws and customs applicable in armed conflict met the criteria for inclusion in the Court's jurisdiction set out in the preamble.⁸⁹

42. In 1997, in a working document submitted to the Preparatory Commission for the Establishment of an International Criminal Court, the International Committee of the Red Cross emphasized the habitual nature of most grave breaches of Protocol I. They listed "unjustifiable delay in the repatriation of prisoners of war or civilians" among war crimes subject to the ICC's jurisdiction.⁹⁰

43. However, during the adoption of the Rome Statute on July 17, 1998, "unjustifiable delay in the repatriation of prisoners of war or civilians" was not included in the final text of the Treaty. According to the group of compilers of the Commentary on the Law of the International Criminal Court under the general editorship of Max Klamberg, a professor of public international law at Stockholm University, "this lack of full incorporation in the ICC Statute of the grave breaches mentioned in AP I may be due to the fact that AP I enjoys far less unanimity with States than the Geneva Conventions do, in which acts [serious violations] are prohibited by both international treaty and customary law."⁹¹

44. It should be emphasized that Article 85(4)(b) of Protocol I, unlike other provisions, was adopted by consensus, and unjustifiable delay in the repatriation is recognized as a war crime or a crime against the peace and security of humanity in the criminal codes of 31 states, including Azerbaijan, which is not one of the 161 states-parties of Protocol I.⁹² In addition, customary rule 128, which is contained in the collection of customary rules of international humanitarian law, provides for the immediate release of interned civilians after the end of active hostilities. According to the authors of the Communication, the same obligation obviously applies to those civilians who were unlawfully deported or forcibly relocated.

45. According to the 1987 Commentary on the Additional Protocols to the Geneva Conventions of 1977, edited by Professor of International Humanitarian Law at the University of Friborg, Yves Sandoz, with regard to civilians, the breach consists in delaying the departure of foreign nationals who want to leave the territory in accordance with Articles 35 and 134 of the 1949 Geneva Convention IV without valid and lawful reasons justifying such delay.⁹³

46. According to Gerhard Wehrle, the head of the Department of German and International Criminal Law, Criminal Procedure, and Modern History of Law at Humboldt University in Berlin, cases of unjustifiable delay in the repatriation of civilians can be qualified as **unlawful confinement**. As an example, the

⁸⁹ <https://www.legal-tools.org/doc/b50da8/pdf/>

⁹⁰ ICRC, Working paper on war crimes submitted to the Preparatory Committee for the Establishment of an International Criminal Court, 14 February 1997, p. 2

⁹¹ <https://www.legal-tools.org/doc/aa0e2b/pdf/>, p. 73

⁹² See, e.g., the legislation of Australia (cited in Vol. II, Ch. 37, §§ 664–665), Azerbaijan (ibid., § 666), Belarus (ibid., § 668), Belgium (ibid., § 669), Canada (ibid., § 671), Cook Islands (ibid., § 672), Croatia (ibid., § 673), Cyprus (ibid., § 674), Czech Republic (ibid., § 675), Estonia (ibid., § 677), Georgia (ibid., § 678), Germany (ibid., § 679), Hungary (ibid., § 680), Ireland (ibid., § 681), Lithuania (ibid., § 684), Moldova (ibid., § 685), New Zealand (ibid., § 687), Niger (ibid., § 689), Norway (ibid., § 690), Slovakia (ibid., § 691), Slovenia (ibid., § 692), Spain (ibid., § 693), Tajikistan (ibid., § 694), United Kingdom (ibid., § 695), Yugoslavia (ibid., § 696) and Zimbabwe (ibid., § 697); see also the draft legislation of Argentina (ibid., § 662), El Salvador (ibid., § 676), Jordan (ibid., § 682), Lebanon (ibid., § 683) and Nicaragua (ibid., § 688)

⁹³ <https://ihl-databases.icrc.org/ar/customary-ihl/v2/rule128>

scholar cites the Explanatory Memorandum to the (German) Code of Crimes against International Law.⁹⁴ Jean-Marie Henckaerts, the adviser of the legal department of the International Committee of the Red Cross, expresses a similar idea, pointing out that “*Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. As a result, unlike the repatriation of prisoners of war, the repatriation of evacuees may have to take place before the end of all hostilities.*”⁹⁵ In the case of refusal to fulfill such an obligation, the state that insists it carried out the evacuation has the burden of proving the legitimacy of further deprivation of liberty of civilians and preventing their repatriation. Ultimately, this position was reflected in the work Customary International Humanitarian Law, published under the auspices of the ICRC: “*In the case of unjustifiable delay in the repatriation of prisoners of war or civilians, in practice, there will no longer be a legal basis for their deprivation of liberty, and this will be tantamount to unlawful confinement.*”⁹⁶

47. Unlawful confinement is mentioned in Article 8(2)(a)(vii) of the Rome Statute, alongside unlawful deportation and forcible transfer. According to the authors of the Communication, unlawful confinement is both a unique consequence of unlawful deportation or forcible transfer and an independent war crime. It includes unjustifiable delays in repatriating “evacuees” and preventing the reunification of families separated due to the partial occupation of the territory on the opposite side in the international armed conflict. In the latter case, the perpetrator either obstructs family reunification by concealing information about the fate of its members or resists returning individuals temporarily under their effective control. *Considering the factual circumstances outlined in this Communication, there are reasonable grounds to believe that senior officials of the Russian Federation are committing a war crime in the form of unlawful confinement.*

Crime against humanity under Article 7(k) - other inhumane acts [...] intentionally causing great suffering [...] or serious harm to mental health

48. According to the authors of the Communication, the unjustifiable delay in the repatriation of Ukrainian children, the deliberate obstruction of family reunification, and the prevention of the return of minors, particularly orphans and children deprived of parental care, to the territory under the effective control of Ukraine, in connection with the large-scale and systematic character of such actions, as well as the violations of human rights accompanying sporadic cases of return, reach the threshold of a crime against humanity.

Manifestation of the dolus specialis of the crime of genocide in accordance with Article 6(e)

49. At the very least, in the context of those Ukrainian children who were unlawfully deported to the Russian Federation and later forcibly transferred to Russian families or placed in boarding institutions, there are reasonable grounds to believe that the senior officials of the Russian Federation, by unjustifiably delaying repatriation, intend to leave them in Russia forever. These children become victims of imposed

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<https://global.oup.com/academic/product/principles-of-international-criminal-law-9780198826859?cc=cz&lang=en&>

⁹⁵ <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1946&context=vjtl>

⁹⁶ <https://ihl-databases.icrc.org/ar/customary-ihl/v2/rule128>

Russian citizenship and “*deep adaptation to the Russian linguistic [and cultural] environment.*”⁹⁷ The abuse of the vulnerable position of children, the Russification and militarization of education, the imposition of Russian Orthodox traditions, attempts to bribe minors, ineffective policies in the area of finding their relatives and family reunification have already led to a situation where some Ukrainian children refuse to return to their homeland.

50. Actions aimed at the forcible transfer of Ukrainian children to Russian families or boarding institutions, together with the intent of eradicating their national identity, are equivalent to physical or biological extermination. In this regard, the Russian Federation is repeating a policy similar to that of the Nazis during the Second World War, which involved kidnapping and re-educating children from occupied territories to strengthen the aggressor state and weaken the children’s connection to their original homeland. This strengthening occurs both quantitatively and qualitatively (culturally) through the re-education and forced assimilation of children, imposing the ideology of the aggressor, whether through Germanization in World War II or through Russification today.

51. The forcible transfer of children to another human group disrupts the continuity of the identity of the target group within the child who has been transferred. Consequently, it aims to destroy all or part of that group. As explained by a Venezuelan diplomat in the original United Nations Sixth Committee debates on the Genocide Convention, the forcible transfer of children to a group where they would be given an education different from that of their own group, and would have new customs, a new religion, and probably a new language, was in practice tantamount to the destruction of their group, whose future depended on that generation of children.⁹⁸

52. In the view of the authors of the Communication, the unjustifiable delay in the repatriation of Ukrainian children, especially orphans and those deprived of parental care, as well as the lack of action in searching for the relatives of these minors and the hindrance of family reunification, provide evidence of the genocidal intent of senior officials of the Russian Federation. This intent is directed at the partial extermination of the Ukrainian national group through the permanent removal and forced assimilation of young Ukrainian citizens.

53. The Report of the Moscow Mechanism of the OSCE dated May 4, 2023 stated that “*the absence of a separate system for the repatriation of Ukrainian children brought out of the war-theatre by the enemy belligerent Russia is a violation of the right to repatriation and the duty to facilitate such return. The Mission has found that on the Russian side there is currently no functioning mechanism for the repatriation of children to Ukraine or for transport to a third country. Rather, the Mission has found a consistent pattern that suggests that efforts by the Russian authorities to allow the movement of children from Ukraine to the Russian Federation do not appear to include steps for further evacuation to third countries or back to safer areas in Ukraine. The system facilitates permanent stay and potentially unjustifiably delayed repatriation of these children, in disregard of IHL.*”⁹⁹

⁹⁷ <http://www.deti.gov.ru/detigray/upload/documents/July2023/7JkHUTqLIsZL45JDp4X1.pdf>, p.485

⁹⁸ <https://www.jurist.org/commentary/2022/04/laurie-blank-russia-invasion-ukraine-genocide>

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https://www.osce.org/files/f/documents/7/7/542751.pdf?fbclid=IwAR31e0gedGZ6YF0hKe3qJC_RfWEKySbVHjb4RF1D5V2RcETAyY09ziGZhZc, p.45

54. It should be noted that unjustifiable delay and/or the refusal to return minors to their country of origin, Ukraine, causes the concurrence of the aforementioned crimes, that is, the existence of one crime does not necessarily imply the exclusion of another. On the contrary, the facts presented herein demonstrate that the elements of each of the crimes described *ut supra* are fulfilled.

Guilty persons

President of the Russian Federation

55. According to the authors of this Communication, the unjustifiable delay in the repatriation of Ukrainian children represents a deliberate policy formulated by senior officials of the Russian Federation and executed by lower-ranking officials, both in Russia and the territories it occupies. This policy entails the intentional creation of barriers to family reunification and/or the return of children, as well as criminal inaction involving the evasion or violation of obligations outlined in the Geneva Convention IV, Protocol I, and the United Nations Convention on the Rights of the Child.

56. The intent to permanently subject Ukrainian children to Russian control has been repeatedly demonstrated by the President of the Russian Federation, Vladimir Putin. On March 9, 2022, during a meeting with the Commissioner for Children’s Rights under the President of the Russian Federation, Maria Lvova-Belova, Putin proposed transferring all unlawfully deported or forcibly transferred Ukrainian children to Russian families, irrespective of their citizenship. He also pledged to address gaps in Russian legislation that impeded the process of such forced transfers.¹⁰⁰ On May 20, 2022, Vladimir Putin signed Decree No. 330, extending the simplified procedure for obtaining Russian citizenship to “orphans and children deprived of parental care [...] who are citizens of the so-called DPR and LPR or Ukraine and are temporarily or permanently residing in the territory of the Russian Federation.”¹⁰¹ The imposition of Russian citizenship eliminated formal legal barriers to placing such children in Russian families, including through adoption procedures. On November 26, 2022, President Putin signed Decree No. 951, which, *inter alia*, established the process for applying to recognize a child under the age of 14 as a citizen of the Russian Federation, as well as the procedure for renouncing Ukrainian citizenship.¹⁰² The latter process was further regulated and simplified by Federal Law No. 62-FZ “On the Peculiarities of the Legal Status of Citizens of the Russian Federation who are Citizens of Ukraine,” enacted on March 18, 2023.¹⁰³

57. The aforementioned legislative changes in the Russian Federation, initiated by Vladimir Putin and supported by the pro-presidential United Russia party, have significantly simplified and expedited the process of changing the citizenship of Ukrainian orphans or unaccompanied children who find themselves in the Russian Federation or its occupied territories. In the Addendum to the joint Communication of the Regional Center for Human Rights and the Lemkin Institute, dated July 25, 2023, a direct link between the imposition of Russian citizenship and the forcible transfer of Ukrainian children to the Russian national group has been demonstrated. Furthermore, following a comprehensive analysis of Russian

¹⁰⁰ Protocol 5

¹⁰¹ <http://www.kremlin.ru/acts/bank/47886>

¹⁰² <http://www.kremlin.ru/acts/bank/48725>

¹⁰³ https://www.consultant.ru/document/cons_doc_LAW_442337/

citizenship legislation, the authors insist that if Russian high-ranking officials, particularly Vladimir Putin, had genuinely intended to act solely on humanitarian grounds, they would have enacted laws to facilitate access to medical care, educational services, and social benefits for these children, rather than amending legislation to simplify the acquisition of Russian citizenship.¹⁰⁴ The imposition of Russian citizenship on Ukrainian children creates significant barriers to their repatriation, as detailed in the preceding sections of this Communication.

58. On February 16, 2023, during a meeting with the Commissioner for Children’s Rights under the President of the Russian Federation, Maria Lvova-Belova, Putin stated that *“the number of appeals from our citizens regarding the adoption of children from the Donetsk, Luhansk People’s Republics, from the Kherson region, from the Zaporizhzhya [region] is increasing’ and that ‘the Institute of the Commissioner for Children’s Rights has been dealing with this issue [the transfer of Ukrainian children to Russian families] for about nine years.”*¹⁰⁵ In this context, it should be emphasized that, according to the assessment of the experts of the Moscow Mechanism of the OSCE, before the start of the full-scale invasion of the Russian Federation into Ukraine on February 24, 2022, approximately 1,000 children might have been transferred to Russian families solely from the occupied Crimean peninsula.¹⁰⁶ Ukrainian authorities demanded the cessation of this process and the return of these children to the territory controlled by Ukraine, but the Russian Federation refused to comply. These mentioned children are likely still in Russia, and contact with them has been lost.

Commissioner for Children’s Rights under the President of the Russian Federation

59. In accordance with Article 6 of the Federal Law of December 27, 2018, No. 501-FZ “On Commissioners for Children’s Rights in the Russian Federation,” the Commissioner, in order to implement the tasks assigned to him, may send motivated proposals to the subjects with the right of legislative initiative in the Russian Federation regarding the adoption or modification of legislative acts aimed at ensuring the implementation and observance of the rights and legitimate interests of children. Additionally, the Commissioner may send motivated proposals to state authorities, containing recommendations on the elimination of violations of children’s rights, as well as on the prosecution of individuals responsible for violations of the rights and legitimate interests of children.¹⁰⁷ Thus, Maria Lvova-Belova, despite having sufficient powers, did not utilize them and actively contributed to unlawful deportation and forcible transfer. Furthermore, she failed to fulfill her obligations under the Geneva Convention (IV) and Protocol (I) concerning family reunification and the repatriation of Ukrainian children.

60. As stated in paragraph 55, during the meeting with President Putin on March 9, 2022, Maria Lvova-Belova emphasized that there were legal obstacles to the transfer of Ukrainian children to Russian families. Vladimir Putin promised to eliminate these obstacles and subsequently made the necessary changes to the legislation. In turn, after the mentioned meeting, Maria Lvova-Belova announced that

¹⁰⁴ <https://www.lemkinstitute.com/ukraineproject/icc-communication>

¹⁰⁵ Protocol 6

<https://www.gazeta.ru/politics/news/2023/02/16/19762255.shtml>

¹⁰⁶

https://www.osce.org/files/f/documents/7/7/542751.pdf?fbclid=IwAR31e0gedGZ6YF0hKe3qJC_RfWEKySbVHjb4RF1D5V2RcETAyY09ziGZhZc

¹⁰⁷ https://www.consultant.ru/document/cons_doc_LAW_314643/

rule-making activities and negotiations with the so-called bodies of DPR and LPR regarding the possibility of placing Ukrainian children in Russian families were ongoing.¹⁰⁸ In parallel, the process of preparing drafts of bilateral agreements with the so-called DPR and LPR regarding adoption and the establishment of guardianship and care for Ukrainian children was initiated. In July 2022, responding to legislative initiatives in the field of simplifying the acquisition of Russian citizenship by Ukrainian children, Maria Lvova-Belova noted: *“Now that children have become Russian citizens, temporary guardianship can become permanent.”*¹⁰⁹ This position of the Commissioner is another confirmation of the intent not to return Ukrainian children.

61. In April 2022, in partnership with the so-called Special Headquarters of the LPR and DPR, initiatives were undertaken to locate the relatives of children who were forcibly transferred to the occupied territories of Ukraine or unlawfully deported to the Russian Federation. Maria Lvova-Belova personally supervised and coordinated their activities.¹¹⁰ As mentioned in paragraphs 31 and 32 of this Communication, the results of the headquarters’ activities were limited, and only 16 minors managed to be reunited with their families with the assistance of the Commissioner. However, doubts have been raised regarding the objectivity of the presentation of the circumstances of these cases and the involvement of Lvova-Belova, as stated in paragraphs 30-31.

62. Following the issuance of an arrest warrant for Maria Lvova-Belova by the Pre-Trial Chamber II of the International Criminal Court on March 17, 2023, starting from April-May 2023 she began “taking initiative” in reuniting Ukrainian families with children who were unlawfully deported or forcibly transferred. However, the Commissioner maintains that the return of orphans and children deprived of parental care is contingent on the fulfillment of certain illegal conditions, detailed in paragraphs 12, 21 of this Communication. On May 16, 2023, the Commissioner met with ICRC delegations in Russia and Belarus, and she expressed, *“We agreed to cooperate both on his requests to us and on requests that we send to the ICRC if we need additional help.”*¹¹¹ As a result of this interaction and at the initiative of relatives, particularly those permanently residing in the Russian Federation, five children were successfully reunited with their families. On August 29, 2023, one boy was reunited with his family (at the request of his aunt from St. Petersburg and his mother from Kherson)¹¹², and on September 2, 2023, four children from the occupied territories of Luhansk and Zaporizhzhya regions were returned to the territory controlled by Ukraine. It is important to note that two of the mentioned children, 9-year-old Semen and 8-year-old Alla, were forcibly transferred by the Russian military from the correctional boarding school in the city of Kupyansk to the so-called LPR in the fall of 2022 during the de-occupation of the Kharkiv region, and were only returned to their mother almost a year later.¹¹³

63. According to the authors of this Communication, the sudden increase in Lvova-Belova’s efforts regarding family reunification appears to be a superficial display connected primarily to her desire to

¹⁰⁸ Protocol 7

¹⁰⁹ Protocol 1 <https://t.me/malvovabelova/331>

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<https://lug-info.com/news/lnr-i-rf-garmoniziruyut-zakonodatel-stva-dlya-ustrojstva-v-sem-i-rossii-sirot-iz-respu-bliki>

¹¹¹ <https://t.me/malvovabelova/1419>

¹¹² <https://t.me/malvovabelova/2024>

¹¹³ <https://t.me/malvovabelova/2076>

evade responsibility for alleged international crimes. In contrast, the Commissioner herself states, “*Before the International Criminal Court issued orders against the President and me, we were already involved in family reunification efforts. We have been working and continue to work in this direction. The International Criminal Court’s orders, on the other hand, only heightened the spread of disinformation and created unnecessary tension, erecting barriers that are certainly not in the best interests of the children. Russia does not recognize the jurisdiction of the ICC, and its representatives are wanted in our country.*”¹¹⁴ According to Lvova-Belova’s own information, as mentioned in the same publication on her official Telegram channel, she facilitated the reunification of 5 children with 1 mother before the arrest warrant was issued,¹¹⁵ and after the warrant, she facilitated the reunification of 18 children with over 10 families.¹¹⁶

64. Other instances of the elements of the crimes outlined in paragraphs 38-54 can be found in the conduct of Maria Lvova-Belova, as elaborated in paragraphs 9, 12, 15, 16, 17, 18, 21, and 32 of this Communication.

Other Russian agents

65. On March 29, 2023, during her visit to the so-called DPR, Maria Lvova-Belova stated, “*Our most important task is transition from providing immediate assistance to children to establishing a systematic support system in our new regions. While initially, it was humanitarian aid, we are now developing a system for establishing guardianship bodies and commissions for minors.*”¹¹⁷ It is important to note that the bodies of guardianship and family and children’s services at the grassroots level directly impede family reunification and/or the return of Ukrainian children. Similar criminal acts committed by the guardianship department in the city of Shchygry (personal information of members is provided in Annex 14), the so-called State Service for Family and Children Affairs in the DPR (personal information of members is provided in Annex 15), and the Department for Juvenile Affairs and the Protection of Their Rights of the Yevpatoria city administration (in the so-called Republic of Crimea) (personal information of members is provided in Annex 16) are detailed in paragraphs 25, 26, 31, and 32 of this Communication.

66. According to the authors of the Communication, it is crucial to identify and hold accountable the individuals responsible at the lowest level, who serve as the actual implementers of the policy formulated by Vladimir Putin, the pro-presidential United Russia party, and Maria Lvova-Belova. These individuals should be prosecuted on a *case-by-case basis* in the national courts of Ukraine or in foreign courts, invoking the principle of universal jurisdiction. Furthermore, under Article 34 of the Civil Code of the Russian Federation, these individuals are subordinate to and under the control of the heads of executive

¹¹⁴ <https://t.me/malvovabelova/1906>

¹¹⁵ <https://t.me/malvovabelova/1023>

¹¹⁶ <https://t.me/malvovabelova/2082>

<https://t.me/malvovabelova/2076?single>

<https://t.me/malvovabelova/2024>

<https://t.me/malvovabelova/1474>

<http://deti.gov.ru/detigray/upload/documents/April2023/QYQjD1VHtlNu74bQuDAF.pdf>

¹¹⁷

<https://oddr.info/denis-pushilin-marija-lvova-belova-artur-tajmazov-i-grigorij-leps-navestili-ranenyh-detej-i-voenno-sluzhashhih/>

power in the subjects of the federation,¹¹⁸ who can themselves be considered high-ranking officials and subject to prosecution by the ICC. According to Article 20 of the Federal Law of December 21, 2021, No. 414-FZ, “On General Principles of Organization of Public Power in the Subjects of the Russian Federation,” executive power in the subjects of the Federation is headed by the governor or the head.¹¹⁹ In this context, the individuals who committed the acts described in paragraphs 38-54 include the governors of at least 19 regions where Ukrainian children were transferred to Russian families (personal data is provided in Annex 17), as well as the heads of the so-called new territories of Russia (occupied Zaporizhzhya, Kherson, Donetsk, and Luhansk regions), the Autonomous Republic of Crimea, and the city of Sevastopol (personal data is provided in Annex 18).

67. Based on the information provided in paragraphs 17 and 28 of the Communication, it can be asserted that the Federal Security Service of the Russian Federation was also involved in executing the policy aimed at unjustifiably delaying the repatriation of Ukrainian children. Their personnel conducted lengthy interrogations of the legal representatives of Ukrainian children at the border, apprehended and expelled them without their children, and conducted “preventive conversations” with the children themselves. Aleksandr Bortnikov has held the position of director of this service since May 2008, with Vladimir Kulishov serving as his first deputy since March 2013. According to Article 23 of the Federal Law of April 3, 1995, No. 40-FZ, “On the Federal Security Service,” control over the activities of the federal security service bodies, *inter alia*, is exercised by the President of the Russian Federation,¹²⁰ indicating a direct connection between the actual executors of the policy and one of its authors, Vladimir Putin.

Conclusion

68. The authors of this Communication have presented ample and compelling evidence of a consistent and systematic policy by the senior officials of the Russian Federation, intended to unjustifiably delay the repatriation of Ukrainian children.

69. These actions, in conjunction with the actions outlined in the Communication of October 25, 2022, and its Addendum of July 25, 2023, are a matter of concern for the international community. They may be classified as a war crime according to Article 8(2)(a)(vii) of the Rome Statute and a crime against humanity under Article 7(k), demonstrating the subjective element of the crime of genocide as defined in Article 6(e) of the Rome Statute of the ICC.

70. The impunity of persons who commit international crimes makes it impossible to achieve the objectives of international criminal justice.

71. The States Parties of the ICC recognize in the Preamble to the Rome Statute that war crimes, crimes against humanity, and genocide are the gravest of crimes, one that constitutes a threat to international peace and security and that therefore must not go unpunished, since the punishment of perpetrators is one of the most important means at our disposal to prevent the repeat of such crimes.

¹¹⁸ https://www.consultant.ru/document/cons_doc_LAW_5142/b9cf5888714625466f72b3702bfc31cea53d36d5/

¹¹⁹

https://www.consultant.ru/document/cons_doc_LAW_404070/c3dc1bae742d3abff618d08723f4f46a03080c4c/

¹²⁰ https://www.consultant.ru/document/cons_doc_LAW_6300/062156e13990ee15fa9a6db7c315d6ff056fd3d1/

72. Considering the objective impossibility of bringing the guilty persons to justice at the national level in this case, as well as a) the gravity of the acts committed, b) the interests of justice to prosecute those responsible for international crimes, and c) the existing reasonable basis to assume that the situation of the unreasonable delay in the repatriation of Ukrainian children falls within the jurisdiction of Articles 17 and 20 of the ICC RS,

the authors of this Communication apply to the Prosecutor of the International Criminal Court to:

1. Pursue further investigation into the situation concerning the unlawful deportations, forcible transfer, and the unreasonable delay in the repatriation of Ukrainian children, which bear the elements of the crime of genocide as outlined in Article 6(e) of the Rome Statute, in accordance with Article 15(3) of the Rome Statute.
2. Call the Pre-Trial Chamber II to consider amendments to the Decision dated March 17, 2023, pertaining to the issuance of arrest warrants for Vladimir Putin and Maria Lvova-Belova, in light of newly uncovered developments concerning the unreasonable delay in the repatriation of Ukrainian children.
3. Call the Pre-Trial Chamber II to issue arrest warrants for the individuals listed in Annexes 17-18 of this Communication due to the indications of their involvement in war crimes, crimes against humanity, and the crime of genocide as stipulated in Article 6(e) of the Rome Statute.