

**WAY HOME:** internal and external dimension of return, rehabilitation and (re)integration of children deported, forcibly transferred or otherwise separated from their families due to the armed aggression of the Russian Federation against Ukraine





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# INTRODUCTION

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As of August 15, 2023, 19,546 Ukrainian children have been identified as having been deported or forcibly transferred by Russian agents in connection with the armed aggression against Ukraine. Only 386 minors were successfully returned. This was achieved through the implementation of ad hoc return schemes by non-governmental organisations in partnership with Ukrainian state authorities, despite the obstacles created by the Russian Federation. The following factors actualize the development and implementation of a unified mechanism for return, rehabilitation and (re)integration: the low efficiency and time-consuming nature of the existing return schemes, the abuse by Russian agents of the vulnerable situation of children and their legal representatives, the refusal of the Russian Federation to return orphans and children deprived of parental care, and the risk that children will become victims of other international crimes. This mechanism is being developed and implemented within the framework of the state policy with a clear division of responsibilities, strategic planning, and allocation of financial and human resources.

The concept of a unified return mechanism and the state policy framework contained in this document are based on a comprehensive analysis of 11 international conventions, 15 resolutions, 9 regional instruments and 28 acts of so-called soft law. The proposed mechanism and policy envisage the following steps by the state, which are described in more detail in Sections 1-2, namely:

1. Adoption by the UN General Assembly of a Resolution on the obligations of the Russian Federation in the field of repatriation, return and reunification of Ukrainian children with their families in Ukraine. This Resolution should also emphasise the obligations of Ukraine, as the state of nationality of minors, and the States parties to the Four Geneva Conventions under Article 1, which is common to all these treaties. The Resolution should contain those obligations that Russia may want to exclude from the text of the agreements in the format with the third-party states and should make it impossible for any member to refuse to comply with the Resolution, and ensure the inevitability of accountability in case of violation of obligations to repatriate children and reunite families.
2. Conclusion of a series of international treaties in the format “Ukraine - third-party states” and “third-party states - Russia”.
3. Implementation of an individualized approach in any return mechanism adopted based on the Resolution and within the framework of the state policy, ensuring that independent and impartial assessment of the best interests of the child are carried out in each individual case, that safe living conditions, development and well-being of each minor are guaranteed and determined by the individual return trajectory.

However, it should still be emphasized that Russia should be excluded from the process of assessing the best interests of Ukrainian children within the framework of the return mechanism. It can only be provided with the conclusions of the third parties on the appropriateness of such an assessment and on the developed individual trajectories.

It is important to make the return mechanism and related state policy transparent and victim-centred. Competent international governmental agencies and international and national non-governmental organizations should be involved.

Only a comprehensive victim-centred and strategic approach, based on international cooperation in accordance with obligations under international law, will allow for the speedy return, rehabilitation and (re)integration of Ukrainian children deported, forcibly transferred or otherwise separated from their families due to the armed aggression of the Russian Federation. This document offers a detailed list of activities that will contribute to achieving this goal.

# SECTION 1

## **Concept of the mechanism of return, rehabilitation and (re)integration of children deported, forcibly transferred or otherwise separated from their families due to the armed aggression of the Russian Federation against Ukraine**

The concept of the mechanism of return, rehabilitation and (re)integration proposed in this policy paper aims to outline the basic principles and approaches to the creation and implementation of a unified model for the return of children deported, forcibly transferred or otherwise separated from their families due to the armed aggression of the Russian Federation back to the Ukrainian national group in accordance with existing international standards in this area.

The general principles for the concept of the mechanism and future state policy in this area are framework in nature and are set out in the policy paper as its basis. At the same time, only compliance with the existing obligations in the field of international humanitarian law and international human rights law, as outlined in this document, on the part of all stakeholder states will ensure the realization of the principle of the best interests of the child and will provide a reliable basis for legislative initiatives and international cooperation.

### **1.1. Immediate and unconditional repatriation, as well as rehabilitation and (re)integration as obligations under international law**

The legal framework for the regulation of repatriation, rehabilitation and (re)integration of minors is composed of international treaties, UN Security Council and General Assembly resolutions, regulations adopted within the EU and the Council of Europe, as well as international standards developed and recommended for implementation at the national level by the UN Committee on the Rights of the Child, UNICEF, UNHCR, OHCHR and specialized non-governmental organizations, in particular the ICRC. The proposed concepts of the mechanism and state policy were developed based on the analysis of 11 international conventions, 15 resolutions, 9 regional instruments and 28 acts of so-called soft law.

The obligation to ensure the timely and unconditional repatriation of civilians, including minors, as well as family reunification, is enshrined in a number of international humanitarian and human rights law provisions.

Article 74 of Protocol I Additional to the Geneva Conventions (1977) requires states to facilitate the reunification of families separated in connection with armed conflict by encouraging the activities of relevant humanitarian organizations<sup>1</sup>.

<sup>1</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. Access mode: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>

Article 78 of the same international treaty, which concerns the temporary evacuation of minors for security reasons and for the provision of emergency medical care, envisages that in order to return children as soon as possible, the state responsible for such a measure is obliged to form an information card with a photo and detailed information about the transferred person and send it to the Central Tracing Agency of the ICRC. This requirement is in line with the obligation of states under the UN Convention on the Rights of the Child, Article 9 of which envisages that information about children separated from their parents or other relatives as a result of deportation should be provided upon request to their legal representatives<sup>2</sup>. In this case, the ICRC acts as a kind of intermediary and facilitator of the family reunification process on a case-by-case basis.

According to Article 85(4)(b), unjustifiable delay in the repatriation of prisoners of war or civilians constitutes a grave breach of Additional Protocol I. It is important to note that the article was adopted by consensus, which indicates the customary nature of the norm and the universal recognition of its binding nature. Unjustifiable delay in repatriation as a grave breach of the laws and customs applicable in international armed conflicts within the established framework of international law constitutes a war crime<sup>3</sup>.

In Resolution 1314 (2000), unanimously adopted with the participation of representatives of Russia and Ukraine, the Security Council urges to undertake initiative to curb the cross-border activities deleterious to children in times of armed conflict, such as the cross-border recruitment and abduction of children<sup>4</sup>. In Resolution A/RES/63/241 "The Rights of the Child" (2008), the UN General Assembly condemned all forms of abduction of children, including abduction in situations of armed conflict, and called on Member States to take all appropriate measures to ensure the unconditional release, rehabilitation, reintegration of children and reunification with their families<sup>5</sup>.

## 1.2. Categories of children in need of return under international law

As of July 20, 2023, 385 Ukrainian children have been returned from Russia. More than 260,000 are still under the effective control of Russian agents, of whom 19,546 have already been identified by the competent national authorities of Ukraine as deported and forcibly transferred, but whose whereabouts are not always known<sup>6</sup>.

Most of the minors returned are those who were sent for "re-education" in camps on the territories controlled by the RF, as well as those who were deported to Russia in the

<sup>2</sup> Convention on the Rights of the Child of 20 November 1989. Access mode:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>3</sup> Legal Commentary on the Right to Challenge the Lawfulness of Detention in Armed Conflict.

Access mode:

<https://www.icj.org/wp-content/uploads/2015/09/Universal-Commentary-WGAD-PrincGuideArmedConflict-Advocacy-2015-ENG.pdf>

<sup>4</sup> Resolution 1314 (2000) / adopted by the Security Council at its 4185th meeting, on 11 August 2000. Access mode:

<https://digitallibrary.un.org/record/420507>

<sup>5</sup> Resolution adopted by the General Assembly on 24 December 2008 [on the report of the Third Committee (A/63/426)] № 63/241. Rights of the child.

Access mode:

[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_63\\_241.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_63_241.pdf)

<sup>6</sup> Official website of the platform "Children of War". Access mode: <https://childrenofwar.gov.ua/>

first months after the start of the full-scale invasion under the pretext of “evacuation”. Among them are minors whose parents were killed or detained during the “filtration” process.

The groups of minors still under the effective control of the Russian Federation include:

1. children deported together with a legal representative;
2. unaccompanied children, including but not limited to:
  - orphans and children deprived of parental care,
  - minors whose parents’ fate is unknown,
  - children with disabilities,
  - minors held in camps or sanatoriums for the purpose of “re-education”,
  - children transferred for medical intervention,
3. children in the occupied territories of Ukraine who have been separated from their parents due to military operations.

These groups fall into two legal categories: unaccompanied children and separated children.

According to the General Comment No. 6 of the UN Committee on the Rights of the Child on the Treatment of Unaccompanied and Separated Children outside their State of Origin, the **first category** covers persons under 18 who are not under the care of their parents, relatives or other representatives by law or custom. In turn, **separated children** are persons under 18 who have been removed from both parents or other representatives by law or custom<sup>7</sup>.

The difference between the two categories is in fact whether the child has parents or other relatives with whom he or she can potentially be reunited. This is especially important in the context of return, which actually means two separate legal processes, i.e. family reunification or repatriation, in particular but not exclusively, to residential care facilities with subsequent placement in foster families in the child’s country of nationality.

The differences between the two categories are also important in view of the existing practice of the Russian Federation’s treatment of unaccompanied children, which consists in the immediate establishment of temporary foster care over them, which, according to Article 12 of the Federal Law No. 48-FZ “On Guardianship and Custody”, can be replaced by permanent guardianship or adoption in 6-8 months<sup>8</sup>. These are mainly children who were taken away during the active phase of hostilities, those whose parents or legal representatives were killed, and orphans who were in residential care institutions at the beginning of the armed conflict.

<sup>7</sup> Committee on the Rights of the child. Thirty-ninth session. 17 May – 3 June 2005. General Comment No. 6 (2005). Treatment of unaccompanied and separated children outside their country of origin. Access mode: <https://www2.ohchr.org/english/bodies/crc/docs/gc6.pdf>

<sup>8</sup> Federal law of 24.04.2008 N 48-FZ (as amended on 30.04.2021) «On Guardianship and Custody». Access mode: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_76459/ff9a4233704115d5ac3caa40d67acbf1445dfa8/](https://www.consultant.ru/document/cons_doc_LAW_76459/ff9a4233704115d5ac3caa40d67acbf1445dfa8/)

Unaccompanied minors are the first victims of the imposed citizenship of the aggressor state and transfer to Russian families or Russian boarding schools. It is more difficult to return such minors than separated children due to a number of circumstances:

1. the competent authorities of the Russian Federation refuse to hand over the list of such children whom they consider “evacuated”, in violation of their obligations under international humanitarian law;
2. the identification of such minors is complicated by the change of their personal data (for example, the Russian pronunciation of the name “Pylyp” is “Philip”, “Daryna” is “Daria”, etc., the indication of an incorrect year or place of birth);
3. in legal relations arising in relation to these minors, they are recognized exclusively as citizens of the Russian Federation. In particular, after reaching the age of eighteen (the age of majority), deported boys, in accordance with Article 23 of Federal Law No. 138-FZ “On Citizenship of the Russian Federation”, will not be able to renounce Russian citizenship and leave the territory of the Russian Federation on their own due to failure to fulfil their obligation to the Russian Federation<sup>9</sup>, namely, military duty, as provided for in Article 59 of the Constitution of the Russian Federation<sup>10</sup>;
4. senior officials of the Russian Federation directly and unconditionally refuse to repatriate unaccompanied children. Such a general refusal has specific manifestations, in particular, the refusal to return a minor under a power of attorney, changing the place of holding (actually “hiding”) of the child, choosing to keep the child in a Russian family instead of ensuring reunification with blood relatives.

As for separated children, the vast majority of them are minors who have been forcibly transferred or unlawfully deported from Ukraine to the so-called re-education camps or for medical, psychological and pedagogical rehabilitation. It is also worth noting that among the separated children are those whose relatives were detained during the filtration procedures, as well as children deprived of parental care, children with disabilities and children who were in boarding institutions due to difficult life circumstances. These minors have parents, other legal representatives or close relatives.

Despite the creation in April 2022 of special monitoring groups and headquarters in partnership with the so-called LPR and DPR to search for relatives of children who were forcibly transferred to the occupied territories of Ukraine or unlawfully deported to the Russian Federation<sup>11</sup>, the results of their activities have been limited. The bulletin of Commissioner for Children’s Rights in the Office of the President of the Russian Federation for April 2023 contains information on the facilitation of reunification of only 16 minors with 9 families<sup>12</sup> since the beginning of the full-scale invasion. Whereas, verification of

<sup>9</sup> Official website of the Russian Presidential Ombudsperson for Children’s Rights. Access mode:

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

<sup>10</sup> Constitution of the Russian Federation (adopted by popular vote on 12.12.1993 with amendments approved during the all-Russian vote on 01.07.2020). Access mode:

[https://www.consultant.ru/document/cons\\_doc\\_LAW\\_28399/5004a75d54e54d5824c87ac2b96954f252610504/](https://www.consultant.ru/document/cons_doc_LAW_28399/5004a75d54e54d5824c87ac2b96954f252610504/)

<sup>11</sup> ‘Luhansk People’s Republic’ and the Russian Federation harmonize legislation to place orphans from the Republic in Russian families. Lugansk Information Centre. Access mode:

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

<sup>12</sup> Official website of the Russian Presidential Commissioner for Children’s Rights. Access mode:

<http://deti.gov.ru/detigray/upload/documents/April2023/QYQjD1VHtINu74bQuDAF.pdf>

the information provided by Maria Lvova-Belova's office suggests that the information on measures aimed at returning children to their families in Ukraine is distorted. For example, at least 5 children from the Mezhevyi<sup>13</sup> and Lazechko<sup>14</sup> families were subjected to a number of additional obstacles (the requirement to provide documents confirming, for example, the continuation of their studies in Ukraine in Russian language) or intimidated by being placed under the care of Russian citizens in the territory of the aggressor state.

Separated children also include those minors who, although not victims of forcible transfer or unlawful deportation by the Russian Federation, are in need of reunification with their parents or legal representatives due to the hostilities. Today, this process involves both non-governmental organizations and the competent authorities of Ukraine and is similar to repatriation, but from a legal point of view it is not, because the children are in the occupied territories of their state of citizenship. The same applies to child victims of forcible transfer. However, due to the possibility of returning such children exclusively through the territory of the Russian Federation (in the scenario discussed in detail below), the interests of these minors should be taken into account as much as possible when developing a unified legal mechanism for return.

### 1.3. Characteristics of existing methods of returning Ukrainian children deported and forcibly transferred by the Russian Federation

Today, there is no single legal or political mechanism for the returning of Ukrainian children unlawfully deported and forcibly transferred by the Russian Federation. Instead, each time, the legal representatives of minors have to retrieve them personally, making a so-called journey to the territory controlled by the Russian Federation, with the support of civil society. It provides for:

1. Prior to the journey itself the so-called preparatory actions should be implemented:
  - Identification of the deported child and his/her whereabouts. Usually, this information comes from the child's parents and relatives who contact non-governmental organizations directly for assistance in returning the child. In addition, rescued children can report other deported minors who were held in the same facility with them. In the latter case, it is necessary to identify them and find their relatives in order to begin the return process;
  - preparation of the necessary travel documents, passports, and other documents required by Russian agents for the return of the child (e.g., a document confirming the inability of parents to retrieve children in person; a document confirming the readiness of a Russian-language educational institution in Ukraine to enrol children for study, etc;)
  - settling all financial matters; providing the necessary materials and transportation;

<sup>13</sup> «They want to adopt us, you have five days». A father of many children from Mariupol was able to return his children who were forcibly transferred to Russia. February 19, 2023. Current Time. Access mode: <https://www.currenttime.tv/a/deportation-children-russia/32272586.html>

<sup>14</sup> A father's struggle to repatriate his children to Ukraine. The Times Hub. February 21, 2023. Режим доступа: <https://thetimeshub.in/a-fathers-struggle-to-repatriate-his-children-to-ukraine/>

developing a route that often changes as Russia blocks attempts to conduct rescue missions;

- counselling and psychological support for families of deported children: instructing them on how to act on the way, in emergency situations, and how to communicate with representatives of Russian authorities.

2) The journey to Russia and the occupied territories, reunification with the child and returning to Ukraine.

3) Post-return support:

- documenting the details of the child's stay in Russia and the territories under its control, preparing and submitting cases to national and international judicial institutions;
- providing housing and necessary means of subsistence, if necessary;
- creating conditions for physical and psychological rehabilitation.

Such a scenario is possible mainly in cases where the minor is wanted by parents or other relatives who are willing to go to the territory controlled by the Russian Federation to retrieve the child. Therefore, from a legal point of view, it is a case of family reunification. As a rule, a group of minors from one or more holding facilities is returned simultaneously. Representatives of the non-governmental organizations Save Ukraine<sup>15</sup>, SOS Children's Villages<sup>16</sup> and others are involved in the process. According to the information published on the official website of Save Ukraine Fund, since the beginning of the full-scale invasion, the fund has managed to rescue 125 deported children from Russia and 120 children from the occupied territories of Ukraine<sup>17</sup>. In an interview, a representative of SOS Children's Villages Ukraine noted that the organization had managed to return 80 children (as of the end of April 2023)<sup>18</sup>.

It is known that state authorities are involved in the process of returning child victims of deportation, which is carried out by non-governmental actors. However, the role and extent of such involvement is not detailed.

For example, in October 2022, the Ministry of Reintegration of the Temporarily Occupied Territories and the State Migration Service of Ukraine, together with SOS Children's Villages Ukraine, managed to return 37 children deported from the Kharkiv region<sup>19</sup>. Deputy Prime Minister Iryna Vereshchuk stated that there were attempts to obtain lists of deported children in Russia and called on the aggressor state to return the minors<sup>20</sup>.

<sup>15</sup> The official website of the Charitable Fund "Save Ukraine". Access mode: <https://saveukraineua.org/>

<sup>16</sup> The official website of the NGO "SOS Children's Villages". Access mode: <https://sos-ukraine.org/pro-nas/hto-my/>

<sup>17</sup> The official website of the Charitable Fund "Save Ukraine". Access mode:

[https://saveukraineua.org/returning\\_deported\\_children](https://saveukraineua.org/returning_deported_children)

<sup>18</sup> I. Solomko. The way home: what difficulties families of children deported to Russia overcome to return their sons and daughters home (2023) Access mode:

[https://ukrainian.voanews.com/a/yak\\_ukraina\\_povertaye\\_deportovanyh\\_ditey/7071411.html](https://ukrainian.voanews.com/a/yak_ukraina_povertaye_deportovanyh_ditey/7071411.html)

<sup>19</sup> 37 deported children were retrieved home from Russian territory (2022). Access mode:

<https://sos-ukraine.org/novyny/povernuly-dodomu-37-deportovanyh-ditej-z-rosiyi/>

<sup>20</sup> I. Vereshchuk: The enemy changes the names and dates of birth of children unlawfully deported from Ukraine. Espresso. June 1, 2023. Access mode:

<https://espresso.tv/vereshchuk-vorog-zminyue-imena-ta-dati-narodzhennya-nezakonno-deportovanim-z-ukraini-dityam>

The Ukrainian Parliament Commissioner for Human Rights, Dmytro Lubinets, reported attempts to establish contacts with Russia to facilitate the repatriation of children. According to him, there are “several positive cases when children were returned to us with the assistance of Moskalkova”<sup>21</sup>. In addition, it is known that the Ombudsman assisted in the return of a boy taken to Russia from the Oleshky orphanage. Local authorities were also involved in the return process<sup>22</sup>. Dmytro Lubinets urged parents looking for their children to contact the Ombudsman’s Office, which will compile lists of children and provide them to the Russian side<sup>23</sup>. Russian Ombudsperson Tatyana Moskalkova agreed to assist in family reunification, but she conditioned this on the bilateral nature of the process, stating that relatives from the Russian Federation can also demand reunification with a child who is in Ukraine. Such an “agreement” is dangerous because of the following:

1. There is no information on situations in which underage Russian citizens found themselves unaccompanied by relatives and parents in Ukraine. Instead, on the Ukrainian side, we are talking about at least 19,546 deported or forcibly transferred children.
2. For Moskalkova, “citizens of the Russian Federation” are, in particular, citizens of Ukraine who have been imposed the citizenship of the occupying power. According to Russian law, in relations with the Russian Federation, such persons are recognized as having only Russian citizenship (are not considered citizens of Ukraine).

Finally, in practice, a situation may arise when a child without parental care has relatives in both Ukraine and Russia, in which case it will be necessary to additionally assess which state’s territory would be in the best interests of the child.

On May 11, 2023, Maria Lvova-Belova, the Commissioner for Children’s Rights in the Office of the President of the Russian Federation, reported during her speech at the St. Petersburg International Legal Forum that “we were finally finished waiting for the Ukrainian Parliament Commissioner for Human Rights to contact us. They gave us a list of 11 children who, in their opinion, have relatives in Ukraine”<sup>24</sup>. However, the Ombudsman’s Office does not confirm the fact of the relevant appeal and cooperation.

The role of the state authorities in reuniting separated children with their families is mainly to collect information about those children who were deported and to facilitate the preparation of the documents necessary for their return.

<sup>21</sup> Dmytro Lubinets, Ukrainian Parliament Commissioner for Human Rights. We hope that the humanitarian corridor will begin to work with Turkey’s support. Ukrinform. Access mode: <https://www.ukrinform.ua/rubric-society/3652852-dmitro-lubinec-upovnovazhenij-verhovnoi-radi-ukraini-z-prav-ludini.html&cd=9&hl=uk&ct=clnk&gl=it>

<sup>22</sup> В Україну повернули дитину, яку рф депортувала з Херсонщини – Лубінець. (2023) URL: <https://www.ukrinform.ua/rubric-society/3692166-v-ukrainu-povernuli-ditinu-aku-rf-deportovala-z-hersonsini-lubinec.html>

<sup>23</sup> Official website of the Ombudsman’s Office of Ukraine on Facebook. Ukrainian Parliamentary Commissioner for Human Rights Dmytro Lubinets announced the details of the third round of negotiations with the Russian side in Turkey. (2023) Access mode: <https://www.facebook.com/office.ombudsman.ua/posts/pfbid0ad9DNJ8ijGSHt2bcRgLMHyKpmyhSbJTJtcopydaRJYQVKCKinXdvZJSXLN8UbxX2I>

<sup>24</sup> «Russia has never abandoned its children» - Maria Lvova-Belova spoke at the St. Petersburg International Legal Forum. Press service of the Commissioner for Children’s Rights in the Office of the President of the Russian Federation. Access mode: <http://deti.gov.ru/articles/news/rossiya-nikogda-ne-brosala-svoih-detej-mariya-l-vova-belova-vystupila-na-peterburgskom-mezhdunarodnom-yuridicheskom-forume>

At the same time, on May 15, 2023, the government initiative Bring Kids Back UA was presented, a detailed analysis of which can be found in Section 2<sup>25</sup>.

### **Significant disadvantages of the described schemes**

- 1. Sporadic nature.** “Journeys” to retrieve a child in the territory under the control of the Russian Federation are not regular but are usually organized from time to time for several legal representatives at once. Despite the existence of a certain scenario for the return, the outcome of the journey is difficult to predict. In addition, it is also necessary to consider the time required to recruit a group, prepare all the documents, and plan the details of the “operation”. The whole process looks somewhat chaotic, but a more systematic approach is not possible under the current return scenario, as it would increase the obstacles to return from the Russian Federation.
- 2. Creation of artificial obstacles by the Russian Federation.** In the process of return, Russian agents deliberately create obstacles in the form of additional checks at the border, ‘preventive conversations’ with representatives of law enforcement agencies (for example, during the 5th mission of the Save Ukraine Charitable Fund on the return of children, the Federal Security Services interrogated legal representatives of minors at the border for 13 hours<sup>26</sup>), refusal to hand over the child to the legal representative with reference to the armed conflict or ‘deficiencies’ in the documents, intimidation of criminal prosecution by Ukraine for collaboration, forced nudity, etc<sup>27</sup>.
- 3. Coercion to undergo polygraph examinations.** In some cases, parents and minors themselves were forced to undergo polygraph examinations, during which they were allegedly humiliated, threatened with denial of return in case of insufficient number of truthful answers, forced to testify against themselves and their relatives, and to provide information about the locations of the Ukrainian armed forces. The victim of such a test was 17-year-old Vladyslav, who was forcibly enrolled in a secondary vocational school by Russian agents and later sent to a “re-education camp”<sup>28</sup>.
- 4. Stressful nature of the return process.** According to the legal representatives, the process of returning of minors, which is deliberately complicated by the demands of Russian agents, is quite stressful. For example, during the 5th mission of the Save Ukraine Charitable Fund, the grandmother of two minors died suddenly, which made it impossible to continue the repatriation<sup>29</sup>. The children’s whereabouts were changed and remain unknown. Parents usually have to spend many days on the

<sup>25</sup> Bring Back Kids UA movement launched in Ukraine to return deported children - Zariivna. Ukrinform. May 15, 2023. Access mode: <https://www.ukrinform.ua/rubric-society/3709679-v-ukraini-zapocatkuvali-ruh-bring-back-kids-ua-za-povernenna-deportovanih-ditej-zariivna.html>

<sup>26</sup> Ukraine children returned from Russia after alleged deportation. Aljazeera. April 8, 2023. Режим доступу: <https://www.aljazeera.com/news/2023/4/8/ukraine-children-returned-from-russia-after-alleged-deportation>

<sup>27</sup> Krechetova D. ‘Finally, we can speak Ukrainian’: 16 more children deported to Russia and Crimea returned home. (2023) Access mode: <https://life.pravda.com.ua/society/2023/02/4/252695/>

Likhohlyad K. ‘They are a nation, and we are nobody’: stories of Ukrainian children taken by the occupiers. (2023) Accessed mode: <https://www.radiosvoboda.org/a/dity-deportatsiya-okupatsiya-save-ukraine/32256533.html>, Andreeva V. ‘Mom, come for me’. How Ukrainian women return their deported children from Russia and Crimea. (2023) Access mode: <https://life.pravda.com.ua/society/2023/04/12/253787/>

<sup>28</sup> Official Facebook page of Mykola Kuleba. Access mode:

[https://www.facebook.com/photo/?fbid=847007443447769&set=a.521827282632455&locale=uk\\_UA](https://www.facebook.com/photo/?fbid=847007443447769&set=a.521827282632455&locale=uk_UA)

<sup>29</sup> ‘I cried when I saw my mom’: Ukrainian children on return to Kyiv after time in Russian hands. CNN. April 9, 2023. Access mode: <https://edition.cnn.com/2023/04/09/europe/ukrainian-children-in-russia-return-home-intl-hnk/index.html>

road and cover thousands of kilometres, travelling through Poland, the Baltic States, and Belarus. This is often their first journey abroad<sup>30</sup>. The child's relatives are in an extremely vulnerable psychological situation.

- 5. Placing the entire burden of organizing and financing return on parents and non-governmental initiatives.** The entire burden of organizing and financing the return under ad hoc schemes falls on parents and non-governmental initiatives. According to Save Ukraine Charitable Fund, the budget for a journey for one person is about 3 thousand dollars.

It is worth emphasizing that the existing return mechanism only partially meets international standards: its implementation is not preceded by a professional assessment of the best interests of the child and his or her individual needs, and it is not supplemented by comprehensive rehabilitation and (re)integration of the child into Ukrainian society. It is mainly about the return of children deported or forcibly transferred from the occupied or recently liberated territories, which affects the vulnerability of the parents and their inability to provide the necessary recovery of the child on their own.

In some cases, minors and their family members return to high-risk territories that may harm their physical and mental health after reunification. There were cases when, upon return, a child was in difficult living conditions, including financial.

The described set of problems related to the functioning of ad hoc schemes actualizes the strengthening of Ukraine's role in the process of returning minors in accordance with its international obligations and existing standards at the universal level. Despite the initiatives of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Office of the Prosecutor General, and the Ukrainian Parliament Commissioner for Human Rights to return Ukrainian children, in particular by establishing contact with the competent authorities of the Russian Federation, the latter consistently refuses to repatriate minors in an organized manner, leaving limited opportunities to retrieve children by legal representatives only<sup>31</sup>. his position is especially dangerous in the context of deported orphans and children deprived of parental care, whose number currently totals 3,855<sup>32</sup>, since in this case it is the authorized bodies of Ukraine that are responsible for repatriation, however,

*first*, there is a legal collision regarding the authorities responsible for the return of these categories of children;

*secondly*, the Russian authorities refuse to cooperate in the return of such minors;

*thirdly*, Russian citizenship was imposed on these categories of children, which is used by the aggressor state to impede their return, treating them only as citizens of the Russian Federation.

<sup>30</sup> I. Solomko. The Way Home: what difficulties families of children deported to Russia overcome to return their sons and daughters home (2023). Access mode:

[https://ukrainian.voanews.com/a/yak\\_ukraina\\_povertaye\\_deportovanyh\\_ditey/7071411.html](https://ukrainian.voanews.com/a/yak_ukraina_povertaye_deportovanyh_ditey/7071411.html)

<sup>31</sup> «Ombudsperson for children Maria Lvova-Belova at a press briefing in the Public Chamber». Telegram channel of Maria Lvova-Belova. Access mode: <https://t.me/malvovabelova/605>

<sup>32</sup> Response to the official request of June 22, 2023

Vereshchuk: The enemy changes the names and dates of birth of children unlawfully deported from Ukraine. Espresso. June 1, 2023. Access mode:

<https://espreso.tv/vereshchuk-vorog-zminyue-imena-ta-dati-narodzhennya-nezakonno-deportovanim-z-ukraini-dityam>

At the national level, there is a lack of a comprehensive state specialized program to support parents and children affected by deportation or forcible transfer to the Russian-controlled territories. There is also no unified vision of both the return mechanism itself and the elements of rehabilitation and (re)integration required for its proper implementation. Another problem is the lack of transparency and insufficient involvement of specialized non-governmental organizations in the return process. The dispersion of responsibility due to the absence of a single competent authority in the field of return, rehabilitation and (re)integration of minors also has a negative impact.

## **1.4. Unified legal mechanism for the return of minors**

### **1.4.1. Identification of deportees**

A fundamental component of any return mechanism/scheme is the identification of the personal data and whereabouts of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine. The identification process is independent and should be carried out in parallel with the development and implementation of a unified legal mechanism for return.

The National Information Bureau (NIB), established on March 17, 2022, in accordance with Article 122 of the Geneva Convention (III) relative to the Treatment of Prisoners of War and Article 136 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, is the national mechanism for collecting information about children who were forcibly transferred to the occupied territories of Ukraine or unlawfully deported to the Russian Federation.

The NIB database contains information on forcibly transferred and unlawfully deported minors since the full-scale invasion on February 24, 2022. This information was obtained from their legal representatives or relatives, investigative, intelligence and other competent authorities, and verified information from open sources. In addition, in July 2023, the Office of the Prosecutor General, the National Police and the National Social Service were connected to the database as users.

At the same time, the data on children unlawfully deported and forcibly transferred before the full-scale invasion will not be reflected in the NIB register.

The NIB works closely with local communities in the process of identifying and locating minor victims. This practice has previously demonstrated its effectiveness in other countries where armed conflicts have occurred. For example, Angola's Norms for the Resettlement of Internally Displaced Populations and their implementing regulations (2001), among other things, required provincial authorities responsible for social assistance and reintegration to identify children separated from their families. They were also required to create a database with photos of separated children and share the information with other provinces to facilitate family reunification<sup>33</sup>.

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<sup>33</sup> Council of Ministers of Angola. Decree № 1/01. 5 January 2001. Access mode: [https://www.brookings.edu/wp-content/uploads/2016/07/Angola\\_Norms2001.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/Angola_Norms2001.pdf)

### An example of good practice

In order to properly process the large number of requests from relatives looking for their children in connection with the Rwandan genocide, the ICRC launched a centralized database in Nairobi in 1994. At the same time, in 1995, the search for a particular child was supplemented by “mass” searches, i.e. regular submission of lists of minors to representatives of the communities of their origin to establish the presence of relatives. Thanks to these efforts, more than 1,000 children were identified each month<sup>34</sup>.

In **Mozambique**, in 1988, a community-based Program of family tracing and reunification was introduced for children abducted by RENAMO (Mozambican National Resistance), as well as for those who became orphans or were separated from their parents due to the armed conflict. All activities were coordinated by the Secretariat of State for Social Action (SEAS) and implemented mainly at the provincial level, where officials and volunteers were specially trained for this purpose. In 1991, in the 3rd year of the program, 10,000 children separated from their legal representatives were identified, half of whom were successfully reunited with their families<sup>35</sup>.

### An example of good practice

In 2016, the Alliance for Child Protection in Humanitarian Action released the Field Handbook on Unaccompanied and Separated Children. This document provides clear guidelines and recommendations for those involved in the process of identification, registration, documentation, tracing, verification, reunification and reintegration of minors.

In the context of child identification, the Handbook recommends cooperation between all competent state authorities and emphasizes the importance of information campaigns. According to the authors of the document, where possible, those involved in identification should be of the same nationality and speak the same language as the children being sought.

The Handbook also contains provisions for proper documentation, search and reunification of the child with his or her family, and reintegration activities<sup>36</sup>.

In 2002, the escalation of the armed conflict in Liberia led to more than 50,000 Liberian refugees in Sierra Leone, including unaccompanied and separated children. Save the Children-United Kingdom (SC-UK) has developed a special program to reunite families in war-torn West Africa. In the course of its implementation, SC-UK worked closely with

<sup>34</sup> War and family links: The ICRC's Rwandan Unaccompanied Children programme (1994-2000). ICRC. 2001. Access mode: <https://www.icrc.org/en/doc/resources/documents/misc/57jqsv.htm>

<sup>35</sup> Catherine Panter-Brick, Malcolm T. Smith. Abandoned children. Cambridge University Press, Cambridge, UK, 2000. Access mode: [https://books.google.com.ua/books?hl=uk&lr=&id=AckBxc3OhSYC&oi=fnd&pg=PA111&dq=e+thiopia+family+tracing+and+reunification&ots=GhrpcMX7Y0&sig=i4HYoaIVZH4sXR9tm\\_Ovp8M3xU4&redir\\_esc=y#v=onepage&q&f=false](https://books.google.com.ua/books?hl=uk&lr=&id=AckBxc3OhSYC&oi=fnd&pg=PA111&dq=e+thiopia+family+tracing+and+reunification&ots=GhrpcMX7Y0&sig=i4HYoaIVZH4sXR9tm_Ovp8M3xU4&redir_esc=y#v=onepage&q&f=false)

<sup>36</sup> Field Handbook on Unaccompanied and Separated Children. Alliance for Child Protection in Humanitarian Action. 2017. Access mode: <https://resourcecentre.savethechildren.net/pdf/handbook-web-2017-0322.pdf/>

partner non-governmental organizations, the International Committee of the Red Cross (ICRC), and specialized UN agencies. For example, the ICRC was the holder and manager of the database of persons missing as a result of the conflict. Its delegations, together with the national Red Cross and Red Crescent Society, were actively involved in search activities on the ground. In six months (from January to July 2002) the SC-UK database recorded 3177 children, of whom 165 (72 girls and 93 boys) were reunited with their parents, including 27 children under the age of five. At the same time, 136 minor search requests were received by SC-UK

In this context, it should be noted that Save the Children already cooperates with SOS Children's Villages on the identification and return of Ukrainian children forcibly transferred or unlawfully deported to the territory under the control of the Russian Federation, as well as with the Regional Center for Human Rights regarding the legal aspects of return.

#### **1.4.2. Formalization of a unified legal mechanism**

The legal basis for the creation and implementation of a mechanism for return, rehabilitation and (re)integration could be the UN General Assembly Resolution "International obligations concerning the repatriation of Ukrainian children"<sup>37</sup>. Its adoption, with the participation of as many states as possible, will contribute to diplomatic pressure on Russia and reaffirm the commitment of members of the international community to their obligations to protect children in armed conflicts under international human rights law and international humanitarian law.

Although the Resolution will be of a framework nature and in fact a reproduction of existing and generally recognized obligations in international law and practice, it will allow for the involvement of UN Member States, specialized international governmental and non-governmental organizations, in guaranteeing the processes of proper identification, search, reunification and, in fact, return, rehabilitation and (re)integration, and will help speed up these processes by mobilizing the attention of the international community to the problem of returning children who were forcibly transferred to the occupied territories of Ukraine or unlawfully deported to the Russian Federation.

The adoption of the Resolution may be preceded by a study of the situation of forcible transfer and unlawful deportation of Ukrainian children by the UN Secretary-General by making a recommendation to the UN General Assembly by the Committee on the Rights of the Child on the basis of Article 45(c) of the UN Convention on the Rights of the Child<sup>38</sup>. In addition, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict should monitor the situation of Ukrainian minors taken by Russia as "abductees" until they are granted a different legal status, including unlawfully deported or forcibly transferred.

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<sup>37</sup> Draft Resolution on International obligations concerning the repatriation of Ukrainian children. RCHR. Access mode: [https://docs.google.com/document/d/1eW0Jr1FefDAwpDknarBC4Z0UjTYDID7kaW0L5HUJq0A/edit?usp=drive\\_link](https://docs.google.com/document/d/1eW0Jr1FefDAwpDknarBC4Z0UjTYDID7kaW0L5HUJq0A/edit?usp=drive_link)

<sup>38</sup> Convention on the Rights of the Child. General Assembly resolution 44/25. 20 November 1989. Access mode: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

### An example of good practice

On November 27, 1948, the UN General Assembly unanimously adopted Resolution 517 (VI) "Repatriation of Greek Children"<sup>39</sup>, which recommended the repatriation of Greek children if their parents or close relatives expressed a desire to receive them. On January 11, 1949, the UN Secretary-General requested the ICRC and the Federation to establish the necessary contacts with the Greek government and the Greek Red Cross Society, on the one hand, and with the governments and national Red Cross Societies of the states in whose territory Greek children were located (in particular, Bulgaria, Hungary, Yugoslavia) in order to implement the above Resolution<sup>40</sup>.

On November 18, 1949, the UN General Assembly adopted Resolution A/RES/288 "Threats to the Political Independence and Territorial Integrity of Greece", which once again called on states to facilitate the peaceful repatriation to Greece of all persons wishing to return. To this end, the UN Secretary-General was authorized to provide any necessary assistance to the governments of the mentioned states.

Among other things, the Resolution on a unified legal mechanism for return, rehabilitation and (re)integration should call on the Russian Federation to

- immediately provide comprehensive lists of the names and whereabouts of all Ukrainian children who have been transferred to the territory of the Russian Federation and to the territories under its effective control, indicating the legal status of each child, including cases of adoption or guardianship, and changes in personal data;
- immediately designate a separate official institution responsible for receiving and transmitting data on protected persons under its jurisdiction, including Ukrainian children who have been transferred to the territory of the Russian Federation and to the territories under its effective control;
- develop and implement clear and transparent procedures for family reunification for Ukrainian children who have been transferred to the territory of the Russian Federation and to the territories under its effective control;
- cooperate with Ukraine and/or third states, relevant international governmental and non-governmental organizations to create and ensure the effective operation of a unified legal mechanism for the return and/or reunification with their families of Ukrainian children who have been transferred to the territory of the Russian Federation and the territories under its effective control, in particular, by seeking assistance and/or good offices, with further ensuring full and unimpeded access to minors for interested parties;
- immediately stop the practice of imposing automatic Russian citizenship on Ukrainian children who have been transferred to the territory of the Russian Federation and to the territories under its effective control, and impose a moratorium on putting such children up for adoption, guardianship, foster care, or any other similar form of upbringing;

<sup>39</sup> Resolution № 517 (VI). Repatriation of Greek children The General Assembly.

Access mode: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/067/72/PDF/NR006772.pdf?OpenElement>

<sup>40</sup> Repatriation of Greek children : note / by the Secretary-General. 1952.

Access mode: <https://digitallibrary.un.org/record/1643128?ln=en>

In the Resolution, UN Member States may also request the Secretary-General, Member States, international governmental and non-governmental organizations, in particular OHCHR, UNICEF, IOM, ICRC, to pool their efforts and expertise within their mandates and urgently provide Ukraine with all necessary assistance, including organizational, informational, legal, logistical and financial, to support its efforts to identify, return, rehabilitation and reintegration of Ukrainian children who have been transferred in the territory of the Russian Federation and in the territories under its effective control, as well as good offices and/or mediation between Ukraine and the Russian Federation to establish and operate a single formal mechanism for the return and/or reunification of Ukrainian children with their families.

If it is impossible to achieve the adoption of the Resolution at the level of the UN General Assembly, efforts should be made to develop and implement a similar document at other international platforms, for example, in specialized UN institutions (OHCHR, UNICEF), in other international governmental or non-governmental organizations.

### **An example of good practice**

On June 27, 1994, the ICRC, OHCHR, UNICEF, and the International Federation of the Red Cross and Red Crescent developed and published a joint Statement on principles, which emphasized the importance of family reunification and keeping records of all evacuated children who have been separated from their relatives.

The Statement emphasized that it cannot be assumed that unaccompanied children in refugee camps in Rwanda or Burundi are orphans. From this point of view, all evacuation, accommodation and care activities should be planned in such a way as to reunite minors with their families as soon as possible. It emphasized that adoption of such children should not be considered for at least 2 years, during which all feasible steps should be taken to trace their relatives. The Statement also contains an obligation to create an information card with a photo for each minor and to transfer it to the ICRC Central Information Agency in Geneva<sup>41</sup>.

If the adoption of the Resolution is not possible at the international level, the relevant initiative should be submitted to the Parliamentary Assembly of the Council of Europe. In its resolutions, the Parliamentary Assembly of the Council of Europe has repeatedly condemned the forcible transfer of Ukrainian civilians by Russia, as well as the deportation of children, their placement in Russian families, and placement in children's shelters and summer camps. On April 26, 2023, the Resolution was adopted that was entirely devoted to the need to create all conditions for the safe return of deported children, to repress the crime and to punish the perpetrators<sup>42</sup>. However, the Resolution does

<sup>41</sup> Joint Statement on the Evacuation of Unaccompanied Children from Rwanda. UN High Commissioner for Refugees (UNHCR). June 27, 1994. Access mode: <https://www.refworld.org/docid/3ae6b31ef.html>

<sup>42</sup> Resolution 2495 "Deportations and forcible transfers of Ukrainian children and other civilians to Russian Federation or to Ukrainian territories temporarily occupied: create conditions for their safe return, stop these crimes and punish the perpetrators". (2023). Access mode: <https://pace.coe.int/pdf/161ef22c8175197109006f2900c7a6e9b71e4ec298710d83c8bb5a0080d5cbe1/res.%202495.pdf>

not impose direct obligations on Council of Europe member states, nor does it contain information on further steps to rehabilitate and reintegrate children who have been victims of deportation. It is necessary to adopt a resolution that would cover the above issues and would be structured in a similar way to Resolution 2321, which deals with the repatriation and reintegration of children whose parents, citizens of Council of Europe countries, are associated with ISIS<sup>43</sup>.

A similar resolution could also be adopted at the level of the European Union.

### **An example of good practice**

On September 15, 2023, the European Parliament adopted the Resolution addressing human rights violations in the context of the forcible deportation of Ukrainian civilians to Russia and the forcible adoption of Ukrainian children in Russia. The text of the Resolution calls on member states to facilitate the return of Ukrainian child victims of deportation and their reunification with their families<sup>44</sup>. However, the document does not include the issue of further rehabilitation and reintegration of transferred children.

At the end of February 2023, it was announced that a joint initiative of the European Commission and Poland to return deported children would be launched<sup>45</sup>. The adoption of another European Parliament resolution covering details on the identification, return, rehabilitation and reintegration of children would be a logical continuation of the EU's efforts to protect the rights of children transferred by the Russian Federation.

It is also possible and desirable to adopt a resolution at the OSCE level, even though the practical impossibility of implementing such a document and its provisions stems from the fact that Russia and Belarus participate in its work and consensus is needed among its members. Three Moscow Mechanisms have already been invoked within the OSCE, the last of which directly addressed the forcible transfer of Ukrainian children. The report documented a number of violations of obligations by the Russian Federation. In particular, the experts concluded that the Russian Federation was obstructing the reunification of children with their families and called on the state to provide lists of transferred or deported children and to introduce a procedure for their safe return. Despite the results of the mechanisms' activities, the OSCE Parliamentary Assembly has not yet adopted a single document that would reflect the consolidated position of the organization's member states.

After the adoption of the Resolution, Ukraine and the Russian Federation should conclude an agreement based on Article 36 of the Geneva Convention (IV) on the return of all

<sup>43</sup> Resolution 2321 "International obligations concerning the repatriation of children from war and conflict zones". (2020). Access mode:

<https://pace.coe.int/pdf/2045607d39010b89b07e70e5944a45f2e703ebf4aa5383fbc52582af46a750b8/res.%202321.pdf>

<sup>44</sup> RC-B9-0388/2022, European Parliament resolution of 15 September 2022 on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia. (2022).

Access mode: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320_EN.html)

<sup>45</sup> European Pravda. European Commission and Poland Launch Initiative of Search for Ukrainian Children Kidnapped by Russians. (2023). Access mode: <https://www.eurointegration.com.ua/eng/news/2023/02/27/7157002/>

children who have been forcibly transferred, unlawfully deported, or otherwise separated from their parents or legal representatives. Such return should take place under the control of Ukraine with the possible involvement of guarantors, i.e. third states (e.g., Turkey, Saudi Arabia, Kazakhstan, Vatican, etc.) or specialized international organizations (ICRC, UNHCR, etc.).

### **An example of a good practice**

In response to the ongoing fighting in the Tigray region of northern Ethiopia, consultations between the State Council for Child Welfare and UNHCR led to a decision to engage the ICRC and the Ethiopian Red Cross Society (ERCS) to reunite separated families with minors, including when family members are in different countries. Thanks to this multilateral partnership, more than 300 children have been returned from camps and transit centres<sup>46</sup>.

According to Article 45 of the Geneva Convention (IV), return can take place both to the territory of the child's state of nationality and to the territory of states that are not parties to the conflict. In accordance with Article 24 of the above-mentioned treaty, the parties to the conflict shall also facilitate the reception of orphans and children deprived of parental care in a neutral country.

The conclusion of an international treaty on the return of Ukrainian children can be modelled after the so-called Grain Initiative: when there are no direct agreements, and an entity acceptable to both states acts as a facilitator of the agreement and a guarantor of its implementation. When drafting the text of the agreement, existing international standards should be considered.

### **1.4.3. Key principles of existing international standards on repatriation, rehabilitation and (re)integration of minors from conflict zones**

Existing international standards in the field of repatriation, developed with the participation of the UN General Assembly<sup>47</sup>, OHCHR<sup>48</sup>, UNICEF<sup>49</sup>, the European Union<sup>50</sup> and the Council of Europe<sup>51</sup> can serve as a basis for Ukraine to develop its own mechanisms for the return, rehabilitation and re(integration) of Ukrainian children forcibly transferred and deported to the territories under the effective control of the Russian Federation.

1. Taking active measures to return, rehabilitate, and re-integrate children without delay is the responsibility under human rights protection of the minor's citizenship state.

<sup>46</sup> Ethiopia Situation (Tigray Region). UNCHR. 1 March – 15 March. Режим доступу: <https://data.unhcr.org/ar/documents/download/85681> Red Cross reunites families with 185,000 calls and messages in Ethiopia. ICRC. October 25, 2022.

Access mode: <https://www.icrc.org/en/document/red-cross-reunites-families-185000-calls-and-messages-ethiopia>

<sup>47</sup> Guidelines for the Alternative Care of Children : resolution A/RES/64/142 adopted by the General Assembly on February 24, 2010.

Access mode: <https://digitallibrary.un.org/record/673583>

<sup>48</sup> Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe. UN High Commissioner for Refugees (UNHCR). Access mode: <https://www.refworld.org/docid/5423da264.html>

<sup>49</sup> Inter-agency Guiding Principles on Unaccompanied and Separated Children. UNICEF.

Access mode: <https://www.unhcr.org/4098b3172.pdf>

<sup>50</sup> Action Plan on Unaccompanied Minors (2010 – 2014) SEC(2010)534. Communication from the Commission to the European Parliament and the Council. Access mode: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

<sup>51</sup> International obligations concerning the repatriation of children from war and conflict zones. Committee on Social Affairs, Health and Sustainable Development (PACE). Doc. 15055 on January 27, 2020.

Access mode: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28498&lang=en>

2. The mechanism should be safe, holistic, and balanced and based on an individualized approach and the principle of respect for the rights of the child as set out in the Convention on the Rights of the Child and other relevant international treaties.
3. Ensuring the principle of the “best interests of the child” should be paramount in all actions related to the return, rehabilitation and (re)integration of a minor in the state of citizenship. Appropriate procedures should be in place to determine the best interests of the child.
4. The mechanism should provide for cooperation and sharing of responsibilities between the relevant states, as well as ongoing consultations with representatives of civil society and international organizations.
5. Actions and policies for the return, rehabilitation and (re)integration of children should be differentiated according to the group to which the minors belong.
6. Long-term solutions for the return, rehabilitation and (re)integration of children should include the provision of an appropriate legal status for the minor that will facilitate (re)integration in the state of citizenship.
7. An individual trajectory of return, rehabilitation and (re)integration should be developed for each child. The decision on the future of the minor should be made by the competent authority of the state of citizenship of the child as soon as possible, but not longer than 6 months.
8. A gender-sensitive approach should be ensured in actions and policies on return, rehabilitation and (re)integration of children.
9. The state should take all appropriate measures at the national and international level to prevent the abduction, sale, or trafficking of children for any purpose and in any form.
10. Children should not be exposed to physical or mental harm by media coverage of any activities or events related to their return, rehabilitation and reintegration.
11. Further actions to bring to justice those responsible for unlawful deportation and forcible transfer should be based on a victim-centred approach and prevent re-traumatization of victims.

Special attention should be paid to the International Child Repatriation Guidelines developed by the Anti-Discrimination Center<sup>52</sup>, according to which the actors involved are obliged to:

- identify the main purpose of returning a child to the state of origin as the best interests of the child, family reunification and the creation of conditions for his or her safe and free development;
- distinguish between unaccompanied and separated children, adapting appropriate approaches to them;
- conditionally divide the return process into several stages:
  1. appointment of a legal representative for the child;
  2. assessment of the child’s best interests;
  3. development of an individual trajectory;

<sup>52</sup> International child repatriation guidelines. Anti-Discrimination Center.  
Access mode: <https://adcmemorial.org/en/crossborderchildhood/savereturnrules/>

4. decision-making on the return of the child by the competent authorities of the States Parties to the agreement;
  5. development and approval of a rehabilitation and (re)integration plan by the child's state of origin;
  6. repatriation within 10 days;
  7. rehabilitation, (re)integration and monitoring by the competent authority of the state of origin for 2 years after return.
- at each stage of the repatriation process, the child should be provided with any information related to his/her rights, available services, means of communication, identification of his/her family, search and selection of a further education institution or foster family, etc;
  - where possible, the repatriation of a child should be voluntary with the consent of the legal representative of the minor appointed by the state of his/her origin;
  - personal data of the child and his/her family members should be kept confidential.

#### **1.4.4. Individual trajectory of child return as the basis of the future mechanism**

An individual return trajectory is a program developed by the competent authority of the state of citizenship of the minor, taking into account the principle of the best interests of the child.

This program contains information about:

- the child's personal data, identity, family composition and origin (if possible, to obtain this information);
- the conditions in which the child will be placed after return, including all financial costs and distribution of legal responsibility, in particular with regard to the appointment of a legal representative;
- a list of measures to ensure/preserve the child's relationship with his/her family members;
- a plan for family reunification in the future;
- measures for the child's rehabilitation and/or (re)integration.

Developing an individual trajectory for a child is a solution that ensures positive long-term results. According to paragraph 5 of the Action Plan on Unaccompanied Minors adopted by the European Commission in 2010, a program of measures for the future of each unaccompanied minor should be taken by the competent authorities within the shortest possible period (maximum six months) taking into account the obligation to try to trace the family members, facilitate reunification with them, explore other possibilities for reintegration in their home society and assess compliance with the principle of the best interests of the child. In any case, the return should be carried out safely, taking into account the unique needs of the child, in particular on the basis of gender<sup>53</sup>. The necessary conditions for children with disabilities should also be ensured, including access to health care, psychosocial support and educational programs that contribute to the well-being of children and to sustainable peace and security<sup>54</sup>.

<sup>53</sup> Action Plan on Unaccompanied Minors (2010 – 2014). SEC(2010)534. PACE.

Access mode: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF>

<sup>54</sup> Resolution 2427 (2018) adopted by the Security Council at its 8305th meeting, on 9 July 2018. Access mode: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_res\\_2427.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2427.pdf)

The aggressor state should be excluded from the process of developing individual trajectories for the return of children. For security reasons, it may be provided with information only on the results of the assessment of the best interests of the child, the availability of individual trajectories and their compliance with international standards.

#### **1.4.5. Assessment of compliance with the principle of the best interests of the child**

When developing individual trajectories for minors, an assessment of the compliance of the return, rehabilitation and (re)integration program with the principle of the best interests of the child should be carried out.

The principle of the best interests of the child is a threefold concept that aims to direct substantive and procedural norms and interpretive principles to ensure the full and effective realization of all rights recognized in the UN Convention on the Rights of the Child, with the primary goal of ensuring the holistic development of minors.

The holistic development of the child refers to the well-being of a child in a broad sense which includes their basic material, physical, educational, and emotional needs as well as needs for affection and safety<sup>55</sup>.

The principle of the best interests of the child is enshrined in Article 3(1) of the Convention on the Rights of the Child<sup>56</sup> and Article 24(2) of the Charter of Fundamental Rights of the European Union. The principle applies to all children without discrimination, not only as individuals but also as a group.

The assessment of the best interests of the child is a statutory procedure that must be carried out in each individual case whenever a decision concerning a minor is to be made in the light of the specific circumstances of each child or group of children<sup>57</sup>.

Reunification with family, or in the case of orphans, foster care, is preferred over collective placement in specialized facilities as a basic approach to developing an individual trajectory. At the same time, the family is not the only important source of identity for a minor, and returned children especially need a strong sense of national belonging to restore their psychological health and stability.

According to paragraph 5.1. of the Action Plan on Unaccompanied Minors adopted by the European Commission in 2010, in many cases the best interests of the child lie in growing up in his or her own social and cultural environment<sup>58</sup>.

In the case of the forcible transfer of a Ukrainian child to a Russian family, it may be necessary to determine the balance between the existing family form of placement in

<sup>55</sup> Best interests of the child. Migration and Home Affairs. European Commission. Access mode: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/best-interests-child-bic\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/best-interests-child-bic_en)

<sup>56</sup> Convention on the Rights of the Child on 20 November 1989. Access mode: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>57</sup> EUAA: Practical Guide on Family Tracing, 2016, p. 52-53: <https://euaa.europa.eu/publications/practical-guide-family-tracing>  
UNHCR: *Safe and Sound*, 2014: <https://www.refworld.org/docid/5423da264.html>

<sup>58</sup> Action Plan on Unaccompanied Minors (2010 – 2014). European Commission. SEC(2010)534. Access mode: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF>

Russia and repatriation to Ukraine. It should be assumed that the children ended up on the territory of the Russian Federation in violation of international law, and that the forcible transfer to Russian families has signs of a crime of genocide against the Ukrainian nation. It should be taken into consideration that in his statement on January 27, 2023, UN High Commissioner for Human Rights Filippo Grandi emphasized that “granting them [children] (Russian) citizenship or their [children’s] adoption is contrary to the fundamental principles of child protection in time of war”<sup>59</sup>. At the same time, as early as July 1, 2022, based on the UNHCR Policy on the Adoption of Refugee Children, the Better Care Network NGO called for a moratorium on intercountry adoption as a response to the conflict in Ukraine. The Hague Conference on Private International Law reiterated its position on the need to focus on the protection of children in armed conflict and the inadmissibility of adoption in such circumstances<sup>60</sup>. The Ukrainian authorities also issued guidelines that clearly require host countries to register unaccompanied and separated children, as well as to notify the Ukrainian consulate and cooperate with the Ukrainian authorities to ensure all opportunities for reunification and return<sup>61</sup>.

10 On March 17, 2023, the Pre-Trial Chamber II of the International Criminal Court issued arrest warrants against Putin and Maria Lvova-Belova, who is the Commissioner for Children’s Rights in the Office of the President of the Russian Federation, in connection with the unlawful deportation and transfer of Ukrainian children from the occupied territories to the Russian Federation, having previously qualified such acts as a war crime<sup>62</sup>.

According to the assessment of the UN specialized agencies after World War II, it was repatriation that met the principle of the best interests of the child in relation to minors abducted by the Nazis and forcibly transferred to German families. Even if family reunification in the state of the child’s nationality was not possible (in the case of orphans), repatriation was still preferred. This conclusion was based on the fact that the return of children to the national group was important for the broader campaign of democratization and denazification of postwar Europe and the individual psychological rehabilitation of minors. According to UN officials, German society had not yet been cleansed of Nazism and authoritarianism<sup>63</sup>. In the case of the Russian Federation, the circumstances allow for similar considerations.

In any case, the assessment of compliance with the principle of the best interests of the child must be carried out for each child in the course of developing an individual trajectory.

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<sup>59</sup> Max Funder. U.N. refugee chief: Russia violating principles of child protection in Ukraine. Reuters. Access mode:

<https://www.reuters.com/world/europe/un-refugee-chief-russia-violating-principles-child-protection-ukraine-2023-01-27/>

<sup>60</sup> Call for a Moratorium on Intercountry Adoption in Response to the Conflict in Ukraine on July 1, 2022. Access mode: [https://bettercarenetwork.org/library/childrens-care-in-emergencies/call-for-a-moratorium-on-intercountry-adoption-in-response-to-the-conflict-in-ukraine\\_UKRAINIAN](https://bettercarenetwork.org/library/childrens-care-in-emergencies/call-for-a-moratorium-on-intercountry-adoption-in-response-to-the-conflict-in-ukraine_UKRAINIAN)

<sup>61</sup> The Government of Ukraine, 17 March 2022. How to help an Unaccompanied Children during Martial Law in Ukraine, The Center for Combating Disinformation at the National Security and Defence Council of Ukraine outlined the rules of border crossing for children under 16, 13 March 2022; and Procedure for border crossing for orphans and children without parental care, 28 February 2022

<sup>62</sup> Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. ICC. Press Release: 17 March 2023. Access mode:

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

<sup>63</sup> Tara Zahra. Lost Children: Displacement, Family, and Nation in Postwar Europe. University of Chicago.

Access mode: <https://www.journals.uchicago.edu/doi/10.1086/593155>

## 1.5. Main provisions of rehabilitation programs for returned minors

In accordance with General Assembly Resolution (76/147) on the Rights of the Child (2021), States must take measures aimed at the rehabilitation and reintegration of minors in an environment conducive to the child's health, self-respect and dignity, in accordance with international humanitarian law and international human rights law<sup>64</sup>.

Rehabilitation programs for returned children should be developed and approved at the national level, taking into account the minor's belonging to one of the victim groups.

### The goals of rehabilitation should be:

1. "normalization" of the childhood of those who became victims of the armed conflict;
2. correction of any psychological and behavioural deviations caused by violations of children's rights;
3. providing other necessary assistance, including medical and legal assistance;
4. resocialization of children.

Rehabilitation of children may be carried out on the territory of the state of citizenship and/or any other state in accordance with international agreements concluded for this purpose. The aggressor state should be excluded from the rehabilitation process of returned minors. Rehabilitation should be carried out with the participation of professionals from the child's state of citizenship, in particular to facilitate further (re) integration.

### An example of good practice

An important element of the rehabilitation of children unlawfully deported by the Nazis during World War II was the restoration of their national identity.

At the UN Relief and Rehabilitation Administration's children's center in Prien (Germany), qualified staff from the minors' country of origin were engaged for this purpose.

In 1950, in the village of Pestalozzi (Switzerland), 132 orphans were placed in 8 houses, each decorated with the national symbols of their country of origin. There, minors were taught in their native language according to the curricula of the respective state.

According to Thérèse Brosse, a UNESCO researcher, this was not just a practical strategy for placing children. "During our visits to children's communities, we really saw how much minors need their own state to feel normal from a psychological point of view and to be like "other people"<sup>65</sup>.

<sup>64</sup> Rights of the child resolution / adopted by the General Assembly. UN. General Assembly (76th sess. : 2021-2022). Access mode: <https://digitallibrary.un.org/record/3954144>

<sup>65</sup> Tara Zahra. Lost Children: Displacement, Family, and Nation in Postwar Europe. The Journal of Modern History Volume 81, Number 1. March 2009. Access mode: <https://www.journals.uchicago.edu/doi/full/10.1086/593155>

It is advisable to involve competent international organizations (both governmental and non-governmental), as well as representatives of the expert community, in the development of rehabilitation programs. The UN Secretary-General's Report A/58/546-S/2003/1053 "Children and Armed Conflict" contains a number of examples of positive practices of this cooperation. For example, on the basis of agreements between the government and UNICEF, Burundi and Afghanistan have developed programs for the disarmament, demobilization and reintegration of minors, and established relevant institutions. In the DRC and Somalia, repatriated children were handed over to local non-governmental organizations for rehabilitation and reintegration into the community. During the UN peacekeeping mission in Afghanistan, child protection advisers were appointed to advocate, integrate, collaborate, train, monitor and report on the situation of minors in the country. These specialists also trained military and civilian personnel and promoted the inclusion of psychological recovery aspects in child rehabilitation programs<sup>66</sup>.

When looking for a source of funding for rehabilitation programs, attention should be paid to the provisions of Resolution 1379 (2001), in which the Security Council encourages international and regional financial institutions and development agencies to devote part of their assistance to rehabilitation and reintegration programs jointly implemented by institutions, foundations, and States parties to the conflict that have taken effective measures to fulfil their obligations to protect children in situations of armed conflict, including demobilization and reintegration. In addition, in the Resolution on the Rights of the Child on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child (2019/2876 (RSP)), the European Parliament requests the Commission to support and ensure adequate long-term funding for rehabilitation and reintegration programs for children affected by conflict<sup>67</sup>. In the Resolution "Human rights violations in the context of the forcible deportation of Ukrainian civilians to and the forcible adoption of Ukrainian children in Russia" (2022/2825(RSP)), the European Parliament called for the immediate establishment of an EU Child Protection Package, which, among other things, includes the provision of long-term rehabilitation support<sup>68</sup>.

## 1.6. International standards for the (re)integration of children from conflict zones

Article 39 of the UN Convention on the Rights of the Child provides for the obligation of States Parties to take all appropriate measures to promote the physical and psychological recovery and social integration of the child who is a child victim of armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child<sup>69</sup>.

<sup>66</sup> Children in armed conflict: report of the Secretary-General. 2003.

Access mode: <https://digitallibrary.un.org/record/505558>

<sup>67</sup> European Parliament resolution of 26 November 2019 on children's rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child (2019/2876(RSP)).

Access mode: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019IP0066>

<sup>68</sup> European Parliament resolution of 15 September 2022 on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia (2022/2825(RSP)).

Access mode: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320_EN.pdf)

<sup>69</sup> Convention on the Rights of the Child on 20 November 1989.

Access mode: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

According to the Paris Principles and Guidelines for Children Associated with Armed Forces or Armed Groups, the reintegration of a minor is a process through which children are included in civil society and assume meaningful roles as civilians accepted by their families and communities in the context of local and national reconciliation<sup>70</sup>. Taking into account that the militarization<sup>71</sup> of Ukrainian children forcibly transferred to the occupied territories of Ukraine or unlawfully deported to the Russian Federation is an integral part of the so-called re-education process, we can use the above definition of reintegration as a basic one, adapting it to the context of the actions of the Russian Federation and Belarus aimed at russification and eradication of the Ukrainian identity of minors.

The (re)integration of a child is achieved when, through formal and non-formal education, family reunification or foster care, and reparations, the political, legal, economic and social conditions necessary for minors to survive and live in dignity are provided. Psychosocial support should be included in each stage of the (re)integration program. The organization of the educational component should take into account the opportunities lost by children, their age and level of development, experience and potential of each minor. Individual educational trajectory, development programs and curricula should be guaranteed, as well as the possibility of re-accrediting educational results obtained by a minor after forcible transfer or unlawful deportation.

The development of (re)integration programs should begin simultaneously with the planning of individual trajectory for minors. This should include a procedure for dealing with unexpected, accelerated and/or large-scale return of children. Paragraph 70 of the UN High Commissioner for Human Rights Report on the Rights of the Child and Family Reunification states that child reintegration programmes are more effective when framed within broader formal and informal child protection interventions that prioritize prevention and comprehensive response services, including adequate investment in child protection and in strengthening education and health-care systems. It is crucial that such programmes emphasize the aspects of social reintegration that support and engage parents, families and communities, and that promote psychosocial recovery, address stigma and encourage social cohesion<sup>72</sup>.

### **An example of good practice**

Finland launched a reintegration program for children who had been in the Al-Khol camp in Syria long before they were repatriated. According to the authors of the program, education is a means of integration and deradicalization.

Using pseudonyms, different phone numbers, and text encryption, Finnish teachers conducted secret virtual schools for minors abroad. The students were

<sup>70</sup> Principles and Guidelines on children associated with armed groups. February 2007.

Access mode: <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>

<sup>71</sup> Militarization of children is a policy of the Russian Federation aimed at forming the loyalty of minors to the use of force in the regulation of interstate relations, which involves in-depth military training, including training with weapons, additional lessons or extracurricular activities, participation in militaristic sports events, membership in military-patriotic organizations (Yunarmiya, Vympel, The Movement of the First, etc.).

<sup>72</sup> Reports of the UN High Commissioner for Human Rights «The Rights of the Child and Family Reunification». Access mode: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/274/38/PDF/G2227438.pdf?OpenElement>

sent voice and text messages, emojis with tasks for the day in Finnish, math, geography, ecology, history and English. At the same time, it was forbidden to use phones in the camps, but despite this circumstance, teachers managed to communicate not only with minors but also with their parents<sup>73</sup>.

Child (re)integration programs should be adequately funded, as stipulated, inter alia, in paragraph 19 of the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups<sup>74</sup>.

State specialized financial support programs may cover the costs of:

- monitoring the implementation of individual return trajectories;
- reunification of minors with their families, including measures to trace family members;
- support for rehabilitation and (re)integration programs;
- training of specialists in the field of child protection, in particular to avoid retraumatization of minors;
- implementing non-governmental projects and initiatives for the return, rehabilitation and (re)integration of children.

As for the distribution of support, priority should be given to the funding of measures for unaccompanied minors.

To ensure the proper implementation of (re)integration programs, a monitoring and response system should be established. Among other things, in accordance with Principle 39 of the UN Office for the Coordination of Humanitarian Affairs' Guiding Principles on Internal Displacement, the state should ensure access for international humanitarian and other specialized organizations<sup>75</sup>.

### 1.7. The state as a legal representative under the *parens patriae* doctrine

An important element of developing a mechanism for the return of children is the establishment/appointment of a legal representative. Only he or she has the right to decide on the return of an unaccompanied child. Since it is generally recognized that minors are an integral part of national security, the legal representative must be a citizen of the same state as the child, unless they have different citizenships but are blood relatives. The state of the child's nationality may also perform the relevant functions based on the doctrine of *parens patriae*. The main postulate of the latter is that the state provides special protection to orphans, children deprived of parental care and

<sup>73</sup> How the Finnish government held a secret school in a Syrian detention camp. CBC. December 23, 2021. Access mode: <https://www.cbc.ca/radio/thecurrent/the-current-for-nov-8-2021-1.6241033/how-the-finnish-government-held-a-secret-school-in-a-syrian-detention-camp-1.6292830>

<sup>74</sup> The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups. Access mode: [https://www.icrc.org/en/doc/assets/files/other/pariscommitments\\_en.pdf](https://www.icrc.org/en/doc/assets/files/other/pariscommitments_en.pdf)

<sup>75</sup> Guiding Principles on Internal Displacement. UNHCR. Access mode: <https://www.unhcr.org/media/guiding-principles-internal-displacement>

incapacitated persons<sup>76</sup>, as well as acts as a parent to realize the principle of the best interests of the child. Depending on the circumstances, protection may also be extended to other vulnerable categories of citizens.

In the case of *K, Re* [(1994), 17 Fam. L.R. 537, the plenary of the Family Court of Australia defined an open list of cases when the state should resort to the doctrine of *parens patriae*:

- the child is alienated from one or both parents,
- there is a real cultural or religious difference between the person representing the interests of the child that negatively affects the child,
- the conduct of either or both of the parents or some other person having significant contact with the child is alleged to be anti-social to the extent that it seriously impinges on the child's welfare,
- the person who actually has custody of the child is not a proper legal representative,
- the child is of mature age and refuses to stay with the legal representative,
- the case involves custody, and the child has no legal representative or the child's interests are not properly represented<sup>77</sup>.

In the context of the deportation and forcible transfer of Ukrainian children by the Russian Federation, Ukraine's role as *parens patriae* is key. This is due to the urgent need, as evidenced by the compliance with the existing approaches in foreign practice. Whichever of the above groups (with a reservation regarding children deported together with a parent or other guardian) minors under the effective control of the Russian Federation belong to, their legal representative is either inadequate under international and Ukrainian law or has striking cultural, social, political differences that seriously affect the well-being of minors, whether the latter is aware of it or not.

The primary task for the return of unaccompanied children who have been actually "appropriated" by the Russian Federation is to find entities that can act as the child's legal representative. For orphans, this role should be played by the competent authority of Ukraine.

On April 19, 2023, the Cabinet of Ministers of Ukraine adopted Resolution No. 339 "Certain issues of protection of persons, including children, deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine"<sup>78</sup>. According to the aforementioned legal act, the National Information Bureau will represent the interests of orphans and children deprived of parental care, in cases where their legal representatives are unknown, in order to protect their rights and interests. At the same time, it should be noted that the NIB was granted the relevant powers solely for the

<sup>76</sup> *Parens patriae*. Legal Information Institute. Access mode: [https://www.law.cornell.edu/wex/parens\\_patriae](https://www.law.cornell.edu/wex/parens_patriae)

<sup>77</sup> *K, Re* [(1994), 17 Fam. L.R. 537 (Australia Fam. Ct.) FLC 92-461.

Access mode: <https://www.justice.gc.ca/eng/rp-pr/other-autre/lrc-rje/p3.html#fn169>

<sup>78</sup> Certain issues of protection of persons, including children, deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine. Resolution of the Cabinet of Ministers of Ukraine of April 18, 2023, No. 339. Access mode: <https://zakon.rada.gov.ua/laws/show/339-2023-%D0%BF#Text>

purpose of communicating with the ICRC. Thus, it cannot appoint and delegate persons who will go to the occupied territories or to the Russian Federation and bring children back to Ukraine. Therefore, the issue of proper representation of these groups of minors for the purpose of their repatriation at the state level remains unresolved.

The functions of a legal representative of orphans and children deprived of parental care can be performed by an ombudsperson for children. This is a government official who ensures full implementation of the UN Convention on the Rights of the Child and relevant national legislation, while maintaining full independence from the government and other public authorities. The issue of child protection should also be realized through the participation of the ombudsperson for children while developing and adopting regulations that directly or indirectly affect the interests of children in the state.

As of June 2023, there is no ombudsperson for children in Ukraine. Instead, Presidential Decree No. 811/2011 of August 11, 2011 established the position of the Commissioner for Children's Rights in the Office of the President of Ukraine, whose main tasks are to:

- continuously monitor the observance of the constitutional rights of the child in Ukraine, fulfilment by Ukraine of its international obligations in this area;
- submit proposals to the President of Ukraine to stop and prevent recurrence of violations of rights and legitimate interests of the child;
- take measures aimed at protection and restoration of violated rights and legitimate interests of the child and inform the public about such measures and their results;
- take measures to establish cooperation between executive authorities and local self-government bodies on the protection of the rights and legitimate interests of children<sup>79</sup>.

This set of functions indicates that the purpose of the Commissioner's activities is to ensure that the President exercises his powers in the field of child protection, rather than to independently protect the rights, freedoms and legitimate interests of the child, which significantly narrows the overall purpose of the Commissioner and, in particular, does not provide for the possibility to represent the interests of Ukrainian minors who have been forcibly transferred or deported to the territory under the control of the Russian Federation in the process of developing and implementing the mechanism of return, rehabilitation and (re)integration.

In June 2021, the position of the Commissioner for Children's Rights in the Office of the President of Ukraine was transformed into the Advisor to the Presidential Commissioner for Children's Rights and Child Rehabilitation. This position does not provide for formal authority. It is not enshrined in the Constitution of Ukraine or legislative acts, which negatively affects transparency and efficiency of activities, as well as responsibility in case of inaction or abuse of power.

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<sup>79</sup> On the Commissioner of the President of Ukraine for Children's Rights. Decree of the President of Ukraine No. 811/2011. Access mode: <https://www.president.gov.ua/documents/8112011-13443>

### An example of good practice

In Finland, the Act on the Ombudsman for Children (1221/2004) provides for the following responsibilities of the ombudsman:

- assessing the realisation of the rights and best interests of children and monitoring the situation of young people;
- following legislation and social decision-making and assessing their impact on the well-being of children;
- improving social decision-making in matters concerning children through initiatives, guidance and advice, and promoting the best interests of children in society;
- keeping in touch with children and young people and relaying the information to decision-makers;
- developing new forms of cooperation;
- conveying information concerning children to children, adults working with children, authorities and the rest of the population<sup>80</sup>.

\* *These responsibilities reflect the existing approaches to the mandate of an ombudsman for children in EU member states.*

The harmonization of Ukrainian legislation in the field of child protection and the establishment of the position of the ombudsman for children in accordance with current European standards will facilitate the development and implementation of an appropriate state policy in the field of protection of the rights of children who have been forcibly transferred or deported to the territory under the control of the Russian Federation, as well as the development and implementation of individual return trajectory for these minors, in particular by assessing compliance with the principle of the best interests of the child and representing the interests of unaccompanied children.

### 1.8. Media coverage of the processes of return, rehabilitation and (re)integration of minors

The topic of Ukrainian children deported and forcibly transferred by the Russian Federation arouses interest in domestic and foreign media. At the same time, their role in the process of returning minors can be both favourable (in some cases, journalists identified the place of holding and helped with their return) and extremely negative (mediatization complicated the return, communication with journalists led to retraumatization of minor victims).

In accordance with existing international standards, media coverage of international crimes or other related acts against minors should not put children at risk of physical or psychological harm or expose them to retaliation or stigmatization.

<sup>80</sup> Duties and authority of the Ombudsman for Children.

Access mode: <https://lapsiasia.fi/en/duties-of-the-ombudsman-for-children>

In order to act in good faith to serve the public interest without compromising the realization of the rights of the child, media and their representatives, independent journalists and similarly employed persons should:

1. Respect the dignity and rights of every child in all circumstances.
2. When conducting interviews and reporting on children, pay special attention to ensuring the right of every child to privacy and confidentiality and to have his or her opinion heard.
3. Involve minors in decision-making that affect them, protect them from harm and punishment, including potential harm and retaliation.
4. Adhere to the principle of the best interests of each child and ensure the primacy of the latter over any other considerations, including advocacy for children's issues and the promotion of children's rights.
5. When attempting to determine the best interests of the child, pay due regard to the child's right to have his or her views taken into account in accordance with his or her age and maturity.
6. Consult with those who are most familiar with and best placed to assess the child's situation on the legal, political, social and cultural implications of any reporting.

In order to implement these standards, the state should encourage the development, adoption and implementation of media standards of publication, codes of conduct and other safeguards, as emphasized, inter alia, in the UNICEF Ethical Guidelines for Journalists<sup>81</sup> and the Paris Principles and Guidelines for Children Associated with Armed Forces or Armed Groups<sup>82</sup>.

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<sup>81</sup> Ethical Guidelines for Journalists. Prepared by the United Nations Communications Group (UNCG), Afghanistan. December 2016.

Access mode: [https://www.unicef.org/afghanistan/media/2136/file/afg-publication\\_UN%20Ethical%20Guidelines%20for%20Journalists%20-%20English.pdf%20.pdf](https://www.unicef.org/afghanistan/media/2136/file/afg-publication_UN%20Ethical%20Guidelines%20for%20Journalists%20-%20English.pdf%20.pdf)

<sup>82</sup> The Paris Principles. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups. February 2007. Access mode: <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>

## SECTION 2

### **State policy framework on return, rehabilitation and (re)integration of children who have been victims of unlawful deportation or forcible transfer**

The development and implementation of a unified legal mechanism for the return, rehabilitation and (re)integration of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine requires proper coordinated actions by the competent authorities of Ukraine, supported by the relevant state policy. In the course of its development, it should be borne in mind that the state has a positive obligation to take all necessary and possible measures to search for and return children who were unlawfully taken abroad during military conflicts (part 2 of Article 32 of the Law of Ukraine “On Protection of Childhood”<sup>83</sup>), namely: care for children and reunification with family members, including search, release from captivity, return to Ukraine, children unlawfully taken abroad (part 1 Article 30-1 of the Law of Ukraine “On Protection of Childhood”).

Upon return, children who have suffered as a result of hostilities and armed conflicts are entitled to “healthcare rehabilitation, psychological and pedagogical rehabilitation and social reintegration” (Article 30-1(6) of the Law of Ukraine “On Protection of Childhood”). In order to ensure these obligations, the state must implement specific measures.

#### **2.1. Basic principles of state policy on return, rehabilitation and (re) integration**

The state policy on return, rehabilitation and (re)integration of Ukrainian children who were unlawfully deported and forcibly transferred by the Russian Federation should be based on the following principles:

**Non-discrimination**

**Best interests  
of the child**

**Ensuring survival  
and development**

**Respect for the views  
of the child**

<sup>83</sup> Law of Ukraine «On Protection of Childhood» of April 26, 2001, No. 2402-III. Access mode: <https://zakon.rada.gov.ua/laws/show/2402-14#Text>

**The principle of non-discrimination** is enshrined in Article 2 of the UN Convention on the Rights of the Child, ratified by the Verkhovna Rada Resolution No. 789-XII of February 27, 1991<sup>84</sup>. In accordance with this principle, Ukraine must respect and ensure the rights set forth in the Convention to every child without discrimination of any kind, regardless of the child's or his or her parents' or legal guardians' race, skin colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. In this context, it is important to prevent discrimination against the so-called status children, whose return under the existing schemes is not possible due to the absence of a legal representative who can travel to the territory controlled by the Russian Federation and take the minor to Ukraine. Among other things, this requires the creation of a unified legal mechanism for return through international cooperation, the concept of which is described in Section 1.

**The principle of the best interests of the child** is enshrined in Article 3 of the Convention and states that in all actions concerning minors, whether carried out by public or private social welfare institutions, courts, administrative or legislative authorities, the best interests of the child shall be a primary consideration. When developing individual return trajectories for minors, competent authorities are required to assess whether the return plan is in the best interests of the child. For this purpose, international practice of conducting such an assessment should be adapted and responsible state institutions should be identified. More details on the assessment of the best interests of the child are provided in Section 1.

**Ensuring survival and development** is a principle enshrined in Article 6(2) of the Convention. According to this principle, the state's obligations towards children go beyond simply guaranteeing the right to life and directly relate to ensuring the maximum possible extent of economic and social rights. This principle is one of the fundamental ones in the development of approaches to the rehabilitation and (re)integration of minors and, among other things, requires the implementation of state programs of financial support for victims.

**The principle of respect for the views of the child** is set out in Article 12 of the Convention and provides that States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Taking into account the fact that the Russian Federation manipulates the "voluntary consent" of minors, in particular adolescents, to renounce Ukrainian citizenship and become Russian citizens, to be transferred to a Russian family, to reside permanently in Russia and not to return to their homeland, the competent authorities of Ukraine should

*first*, analyse the circumstances under which such "consent" was obtained, in particular, the existence of other options for behaviour, the vulnerability of the situation, emotional and physical condition, etc;

<sup>84</sup> Four principles of the Convention on the Rights of the Child. UNICEF.  
Access mode: <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>

*secondly*, to assess the compliance of decisions based on such “consent” with the principle of the best interests of the child;

*third*, to analyse the consequences of the revealed “consent” for national security without re-traumatizing the minor.

The main approaches to the correlation between the principle of the best interests of the child and the principle of respect for the views of the child are presented in Section 1.

## **2.2. Characteristics of the Bring Kids Back UA action plan**

On May 23, 2023, the Bring Kids Back UA action plan, developed by the Coordination Council for Child Protection and Safety under the President of Ukraine, was presented. The plan is aimed at the return and reintegration of Ukrainian children who have been victims of unlawful deportation or forcible transfer. The plan consists of blocks, the responsibility for the implementation of which lies with the competent authorities without any details from the authors of the initiative. It includes the following actions:

1. return of Ukrainian children deported by Russia;
2. development of family-based forms of education;
3. reintegration of children returned from the Russian Federation, organization of their socialization and educational initiatives;
4. rescue and protection of children in Ukraine;
5. recording crimes and bringing Russia to justice;
6. inter-parliamentary cooperation;
7. communication and public events and development of family education infrastructure.

The implementation of the Bring Kids Back UA Action Plan will be coordinated by the Coordination Council on Child Protection and Safety under the President of Ukraine, chaired by the Head of the Presidential Office. In addition, the action plan will develop an algorithm for assisting children returning to Ukraine and unify the provision of all necessary services.

Due to the lack of open access to the specific measures envisaged within the framework of the action plan, it seems that the authors of the action plan expect the return of children without any specific preparatory measures. As mentioned above, in cooperation with certain non-governmental organizations, the state returns Ukrainian minors, but this is a sporadic, lengthy and ineffective mechanism with regard to orphans and children deprived of parental care, which creates space for abuse and manipulation by the aggressor state. In this context, the competent authorities, in particular, the Coordination Council for Child Protection and Safety under the President of Ukraine, should pay attention to the concept of a mechanism that provides for international cooperation for the repatriation, rehabilitation and (re)integration of children through the adoption of a UN General Assembly resolution and the conclusion of a series of international treaties, as detailed in Section 1.

Regarding the algorithm for assisting a child returning to Ukraine, the public authority responsible for its development and implementation remains unclear. Thus, the news of May 31, 2023, on the website of the President of Ukraine states that such an algorithm has already been developed<sup>85</sup>. Whereas the Vice Prime Minister - Minister for Reintegration of the Temporarily Occupied Territories of Ukraine Iryna Vereshchuk noted on June 8, 2023, that based on the typical problems faced by repatriated children, all departments and services should develop a standard algorithm of actions<sup>86</sup>. Regardless of the state of readiness of the algorithm, the key issue is its content and the definition of the circle of beneficiaries: whether it is only children who are victims of unlawful deportations or forcible transfer, or also children from the occupied territories who are reunited with their families in the government-controlled territory of Ukraine or children returning from evacuation, mainly from EU countries. In addition, the absence of a single responsible public authority negatively affects the implementation of the algorithm and the evaluation of its effectiveness and creates an opportunity to justify inaction by referring to the existing functionality of the authority.

From this point of view, the creation of an institution of the ombudsperson for children accountable to the Verkhovna Rada of Ukraine in accordance with current European standards will contribute to the development and implementation of an appropriate state policy in the field of protection of the rights of children who have been forcibly transferred or deported to the territory under the control of the Russian Federation. In particular, the ombudsman for children could represent the interests of unaccompanied children at each stage of their return, rehabilitation and (re)integration.

If it is not possible to establish an institution of the ombudsman for children in a timely manner, the current legislation should be amended to clearly assign the functions of returning children to the Ministry of Reintegration. Currently, according to Art. 30-1 of the Law of Ukraine «On Protection of Childhood», the Ministry of the Social Policy is the central executive body that ensures the formation and implementation of state policy on family and children's issues, carries out measures aimed at reuniting the child with his/her family, ensures the formation and implementation of state policy in the field of protection of human and civil rights and freedoms, carries out measures to establish whereabouts of the child's family members, facilitates searches carried out by family members, public, charitable, volunteer, humanitarian organizations and foundations involved in family reunification. At the same time, the Ministry of Reintegration is actually responsible for the return of children after the start of the full-scale invasion.

Thus, the Ministry of Reintegration of the Temporarily Occupied Territories ensures the formation and implementation of state policy "in the field of protection of the rights

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<sup>85</sup> The President got acquainted with the plan Bring Kids Back UA, aimed to return children unlawfully deported by Russia and took part in the opening of the Centre for the Protection of Children's Rights. May 31, 2023. Access mode: <https://www.president.gov.ua/news/prezident-oznajomivsya-z-planom-povernennya-nezakonno-deport-83261>

<sup>86</sup> Iryna Vereshchuk: We need a unified algorithm to support people affected by Russian aggression. Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine. 2023. Access mode: <https://www.kmu.gov.ua/news/iryna-vereshchuk-potriben-iedynyi-alhorytm-dlia-pidtrymky-liudei-postrazhdalykh-vid-rosiiskoi-ahresii>

of forcibly transferred (deported) persons, in particular the protection of the rights of persons deported on ethnic grounds.” (clause 1 of the Regulation on the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine<sup>87</sup>). The Ministry is the holder of the Register of Deported or Forcibly Transferred Persons as a Result of Russian Aggression (clause 4 of the Procedure for the Creation, Maintenance, Access to Information of the Unified Register of Persons, including Children, Deported or Forcibly Transferred in Connection with the Armed Aggression of the Russian Federation against Ukraine). The actual situation requires amendments to Article 30-1 of the Law of Ukraine “On Protection of Childhood” to reflect the relevant powers.

The algorithm for assisting a child partially corresponds to the concept of an individual return trajectory described in Section 1. To develop and implement such individual trajectories, as well as to assess compliance with the principle of the best interests of the child in accordance with international standards, it is necessary to create new or authorize existing executive bodies, while involving experts in the field of child protection. To ensure their proper functioning, relevant regulations should be adopted, including those on the procedure and methodology for assessing compliance with the principle of the best interests of the child.

In the context of reintegration initiatives for minors, it should be emphasized that the development of (re)integration programs should be started simultaneously with the planning of individual return trajectories for minors. The development and approval of such trajectories should consider the circumstances that preceded the transfer of children to the territory of the aggressor state, in particular, the place of permanent residence of the minor. Furthermore, the competent authorities of Ukraine should develop criteria for involving persons in (re)integration programs. In the case of a minor’s location in the so-called DPR/LPR, as well as in the Autonomous Republic of Crimea and the city of Sevastopol, the consequences of the prolonged stay of these territories under the effective control of the Russian Federation, including the russification, militarization and indoctrination of children, should be taken into account. Thus, minors may not need reintegration, but rather integration into the Ukrainian national group. Therefore, similar to rehabilitation programs, (re)integration programs may differ depending on the minor’s affiliation with one of the victim groups.

The process of (re)integration of the child should be continuous and stable and should be carried out in a safe and familiar environment, considering the age and gender characteristics of the minor, as well as the political, social, economic and cultural context. The State of the child’s nationality should take appropriate measures to prevent retraumatization of the child, including, but not limited to, stigmatization, violation of rights and commission of crimes against the child. Active involvement of local governments and territorial communities to which children return is encouraged in the process of (re) integration. Persons involved in the implementation of (re)integration programs should preferably belong to the same national group as the minor, communicate with him/her in his/her native language, considering cultural diversity, ethnicity and religion.

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<sup>87</sup> Resolution of the Cabinet of Ministers of Ukraine “On Certain Issues of the Ministry for Reintegration of the Temporarily Occupied Territories” of June 8, 2016, No. 376. Access mode: <https://zakon.rada.gov.ua/laws/show/376-2016-%D0%BF#n10>

The state is obliged to monitor the process of (re)integration and should offer returned minors prospects for further education and employment, in particular through specialized financial support programs, as described in more detail in Section 1.

With regard to the development of family-based forms of care and related infrastructure, a thorough analysis of the achievements and failures of the National Strategy for Reforming the System of Institutional Care and Education for 2017-2026<sup>88</sup> should be carried out. At the same time, the Strategy will need to be amended to address the needs of children who are victims of unlawful deportation and forcible transfer. In particular, the assessment of the network of boarding institutions in each region should also analyse their institutional capacity to accept returned children, ensure their rehabilitation, (re) integration and further care and education. The results of this assessment and analysis should be reflected in a regional plan for reforming the institutional care system. It should be borne in mind that in the case of repatriation of children who are victims of unlawful deportation and forcible transfer, the priority is to ensure family-based placement, especially in the case of the return of a minor who is a victim of forcible transfer to a Russian family. As of June 2023, there were at least 400 children in this category<sup>89</sup>.

The Strategy should also provide for support for families in difficult life circumstances, because, as analysed in Section I, some families from the de-occupied territories with whom children, victims of unlawful deportation and forcible transfer, are reunited find themselves in a vulnerable situation. Further placement of such children in residential care institutions should be avoided. Articles 252-256 of the Family Code of Ukraine enshrine the possibility of “foster care” as temporary care, upbringing and rehabilitation of a child in the family of a foster caregiver for the period of overcoming difficult life circumstances by the child, his/her parents or other legal representatives. The implementation of this practice should be encouraged.

In the course of the implementation of the block on fixation of crimes and bringing the Russian Federation to justice, it is necessary to ensure the implementation of a victim-centred approach in investigations and trials, in particular, to guarantee the observance of the child’s procedural rights, as well as fair compensation. With regard to the latter, due to the vulnerability of the children’s situation and taking into account their age and specific needs, it is advisable to provide immediate financial assistance from Ukraine, which, de jure, is a redemption of the rights of claim to the Russian Federation by recovering funds in a future compensation mechanism.

### **2.3. New legislative initiatives for policy development and implementation**

To protect the rights of children and ensure the principle of their best interests, a law should be adopted to regulate the status of children, victims of unlawful deportation or forcible transfer or deportation, in particular:

<sup>88</sup> Resolution of the Cabinet of Ministers of Ukraine of August 9, 2017, No. 526-r «On the National Strategy for Reforming the System of Institutional Care and Education of Children for 2017-2026 and the Action Plan for the Implementation of the Stage I». Access mode: <https://zakon.rada.gov.ua/laws/show/526-2017-%D1%80#n23>

<sup>89</sup> Based on the analysis conducted by the RCHR

1. to provide for a clear mechanism for recognizing children who suffered from unlawful deportation or forcible transfer during the conflict as victims of deportation/transfer;
2. to define that the priorities in decision-making on return, rehabilitation and (re) integration of children are the child's safety and compliance with the principle of acting in the best interests of the child;
3. to provide such children with an appropriate legal status with a clear list of rights and guarantees, including, but not limited to, the right to return, rehabilitation and (re) integration, to bring perpetrators to justice, the right to fair compensation, and the right to truth;
4. to determine the catalogue of rehabilitation measures, including medical and psychological assistance to affected children, as well as determine persons responsible for developing the list of rehabilitation measures within the individual trajectory (algorithm) for each child;
5. to provide for specific short timeframes for the competent authorities to make a decision on granting such status;
6. to fix the list of documents to be submitted by a person or his/her legal representative to obtain such status;
7. to provide for cooperation with foreign states and civil society on the return of children who have suffered as a result of forcible transfer or deportation;
8. to clearly delineate the powers of the Ministry of Reintegration of Ukraine and the Ministry of Social Policy and other competent authorities in the issues of return, rehabilitation and (re)integration of children;
9. to introduce the institution of mandatory representation of child victims by a lawyer during the investigation and in court proceedings.

In order to implement the proposed concepts of a unified legal mechanism and state policy on return, rehabilitation and (re)integration of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine, **the following recommendations have been developed to the competent authorities:**

#### *To the Ministry of Foreign Affairs of Ukraine*

1. To ensure cooperation with international organizations to protect the rights and interests of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine, in particular by initiating the development and adoption of a UN General Assembly resolution on the establishment of a unified legal mechanism for the return, rehabilitation and (re)integration of minors.
2. To provide information on the situation of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine to foreign diplomatic missions of Ukraine at regular intervals and provide guidance to the diplomatic service bodies of Ukraine to disseminate such information and take the necessary actions.

#### *To the Verkhovna Rada of Ukraine*

1. To define the principles of Ukraine's domestic and foreign policy on return, rehabilitation and (re)integration of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine, in particular by developing or revising the necessary regulations and giving specific meaning to the blocks of activities within the Bring Kids Back UA initiative.
2. To adopt a law on parliamentary control over the observance of the rights and freedoms of Ukrainian children, by establishing the position of the Verkhovna Rada Commissioner for Children's Rights and vesting him/her with appropriate powers, including representation of orphans and children deprived of parental care, in cases where there is no information about their legal representatives or when such legal representatives cannot perform their functions in accordance with the legislation of Ukraine, in order to protect the rights and interests of minors.
3. Adopt amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine "On Free Legal Aid" to introduce the institution of mandatory representation of child victims by a lawyer in criminal proceedings.

#### *To the Ministry of Justice of Ukraine*

1. To develop a draft text of an international treaty on the identification and return of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine.
2. To submit proposals for a third party (intermediary and guarantor) in this area of relations with the Russian Federation for consideration by the Coordination Headquarters for the Protection of Children's Rights under Martial Law.

3. To develop and submit to the Cabinet of Ministers of Ukraine proposals to improve legislation in the area of guarantees for the protection of the rights, freedoms and interests of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine.

#### *To the National Information Bureau*

1. To analyse the gender and age structure, regions of origin, legal status of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine and to display the obtained statistical data on the platform <https://childrenofwar.gov.ua/>
2. To cooperate with the International Committee of the Red Cross on the identification of personal data and the location of children deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine on the principle of transparency and openness, while communicating the stages and results of such cooperation to civil society.
3. To provide an official explanation of the scope of the National Information Bureau's powers in accordance with paragraph 2 of the Resolution of the Cabinet of Ministers of Ukraine of April 18, 2023, No. 339 "Certain issues of protection of persons, including children, deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine", namely, powers to represent the interests of orphans and children deprived of parental care in cases where there is no information about their legal representatives or when such legal representatives cannot perform their functions.

#### *To the Mission of the President of Ukraine in the Autonomous Republic of Crimea*

1. To prepare and submit to the President of Ukraine a concept of a strategy for identification, return, rehabilitation and (re)integration of minors who were unlawfully deported to the territory of the Russian Federation after the beginning of the occupation of the Crimean peninsula.
2. To advocate for the interests of minors who were unlawfully deported to the territory of the Russian Federation after the occupation of Crimean peninsula, while developing mechanisms for the return, rehabilitation and (re)integration of minors at both the national and international levels, ensuring their inclusion in the list of beneficiaries of relevant initiatives.

# CONCLUSION

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The return of Ukrainian minors deported and forcibly transferred to the territory under the effective control of the Russian Federation is Ukraine's duty under its international obligations in the field of child protection. Such return should take place without delay, which indicates the urgency of intensifying efforts in this direction, given the availability of information about tens of thousands of identified minor victims of deportation and forcible transfer. Time constraints on the development and implementation of mechanisms for the return, rehabilitation and (re)integration of children are also due to the high risk of other rights violations against them, some of which reach the threshold of war crimes (forcible conscription), crimes against humanity (inhuman treatment, discriminatory persecution) and genocide (forcible transfer to Russian families).

In view of Russia's refusal to cooperate with Ukraine on the organized return of children, it seems advisable to involve third party, competent international organizations, expert non-governmental organizations, and the international community as a whole in the development and implementation of a unified legal mechanism for return. Resolutions of leading international organizations play an important role in putting political pressure on Russia to return the minors, although they do not yet include a specific requirement for return. Independent multilateral monitoring of the return process should be conducted to prevent the aggressor state from "hiding" some of the transferred children.

The main element of future mechanisms of return, rehabilitation and (re)integration is the development of individual trajectory for each child. An assessment of compliance with the principle of the best interests of the minor is mandatory in this process. It should be borne in mind that children are a critical component of the national security of the state, and that the right of a child to non-interference in family life is not absolute.

It is important to facilitate the reunification of the child with his or her relatives and close environment. That is why, even in cases where rehabilitation and (re)integration can only be carried out abroad, professionals from the state of the minor's citizenship should be involved. The role of the state varies depending on whether the child belongs to a particular group of children under the effective control of the Russian Federation. At the same time, orphans and children deprived of parental care require that Ukraine implements the principle of *parens patriae*. A financial support program should be developed at the national level for children who have a legal representative and for the legal representatives themselves. Unaccompanied children should also have access to it on a priority basis.

In each case, return, rehabilitation and (re)integration should not lead to re-traumatization of the child. Among other things, this concerns the regulation of media access to coverage of these sensitive processes. The state should not only encourage the development,

adoption and implementation of media standards of publication, codes of conduct and other preventive measures, but also monitor whether they are properly carried out, including by independent journalists and persons with similar employment. Adherence to relevant standards could be a mandatory requirement for accreditation.

Developing and implementing return, rehabilitation and (re)integration mechanisms require amending existing or developing new legislation at the national level. For this purpose, the competent authorities of Ukraine should cooperate with foreign states, international organizations and civil society, with the involvement of associations representing the interests of child victims and their legal representatives, as well as those directly involved in ad hoc return schemes.



**Regional Center for Human Rights  
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