

# **Towards Justice for Victims: A case of deportation and forcible transfer against the Russian authorities**

Legal analysis based on open source evidence under the ICC Statute

May 2024



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# TOWARDS JUSTICE FOR VICTIMS: A CASE OF DEPORTATION AND FORCIBLE TRANSFER AGAINST THE RUSSIAN AUTHORITIES

Legal Analysis Based on Open Source Evidence under the ICC Statute

Authors: Vitaly Beloborodov, Iryna Belova, Gleb Bogush, Sergiy Petukhov



**Funded by  
the European Union**

This publication was prepared by the Netherlands Helsinki Committee with the financial support of the European Union. Its contents are the sole responsibility of the Netherlands Helsinki Committee and the authors and do not necessarily reflect the views of the European Union.

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For questions contact: [HRD@nhc.nl](mailto:HRD@nhc.nl)



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# Abbreviations

AP I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3
art.	article
CAH	crimes against humanity
DPR	so-called Donetsk People's Republic
e.g.	<i>exempli gratia</i> (for example)
fn.	footnote
GC IV	Geneva Convention relative to the protection of civilian persons in time of war, 75 UNTS 287
i.e.	<i>id est</i> (that is)
Ibid.	<i>ibidem</i> (in the same place)
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
IICIU	Independent International Commission of Inquiry on Ukraine
IICIU CRP	Conference room paper of the Independent International Commission of Inquiry on Ukraine, August 29, 2023, A/HRC/52/CRP.4
LPR	so-called Luhansk People's Republic
MES	Ministry of Emergency Situations of the Russian Federation
MFA	Ministry of Foreign Affairs
MICT	Mechanism for International Criminal Tribunals
NGO/NGOs	non-governmental organisation / non-governmental organisations
OSCE	Organisation for Security and Co-operation in Europe
p.	page
para./paras.	paragraph/paragraphs
ROC	Russian Orthodox Church
RS	Rome Statute of the International Criminal Court, 2187 UNTS 3
UN	United Nations
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series

# Introduction

## A. Factual Background

- 1 Russia's invasion of Ukraine resulted in the displacement of a substantial part of the Ukrainian population. A particularly vulnerable group of the affected population is children. UNICEF estimated that more than half of Ukraine's 7.5 million child population was displaced after the first month of the full-scale invasion that started on February 24, 2022.<sup>1</sup> As stated in a report by the Ukrainian Parliamentary Commissioner for Human Rights, 'almost 70% of the Ukrainian children had to leave home and were displaced within the country or abroad'.<sup>2</sup>
- 2 As acknowledged by both parties to the conflict, the Russian authorities have transferred some children from territories formerly under Ukrainian control to the territory of the Russian Federation. Additionally, the Russian authorities transferred some children between various occupied areas of Ukraine. In a number of incidents verified by international fact-finding missions, transfers were made in alarming circumstances involving coercion and violations of international law.<sup>3</sup>
- 3 The reported numbers of children transferred vary between the parties. According to the National Information Bureau of Ukraine, the governmental body established in accordance with the 1949 Geneva Conventions,<sup>4</sup> 19,546 children were deported or forcibly displaced between February 24, 2022 and April 28, 2024.<sup>5</sup>
- 4 As stated in the annual report of the Russian Presidential Commissioner for Children's Rights, Ms. Maria Lvova-Belova, published in July 2023, Russia has received about 4.8 million people from Ukraine, including over 700,000 children.<sup>6</sup> This figure must be largely comprised of the refugees who arrived in Russia as a result of the mass evacuation from the Russian-occupied parts of the Donetsk and Luhansk regions that started on February 18, 2022,<sup>7</sup> roughly one week before the full-scale invasion.
- 5 A more detailed figure is provided by the Russian authorities with respect to children under institutionalised care from the Donetsk and Luhansk regions, omitting information on other occupied areas of Ukraine. As Lvova-Belova acknowledged in her report<sup>8</sup> and other statements,<sup>9</sup> from April to October 2022, Russian foster families took in 380 orphans and children without parental care from the so-called Donetsk People's Republic and the so-called Luhansk People's Republic. A bigger number, from 1,500 to 2,500 children, was given by Lvova-Belova in October 2022 as the number of children from the Donetsk and Luhansk regions who were present on the territory of Russia at various moments and either returned or were placed into Russian families, child care institutions or refugee centres.<sup>10</sup> Since

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<sup>1</sup> More than half of Ukraine's children displaced after one month of war. *UNICEF website*, March 24, 2022.

<sup>2</sup> Report on the Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2022, p. 46.

<sup>3</sup> Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation, 25 April 2023 (OSCE Moscow Mechanism Third Report); Conference room paper of the Independent International Commission of Inquiry on Ukraine, 29 August 2023, A/HRC/52/CRP.4 (IICIU CRP).

<sup>4</sup> Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War (III) and Article 136 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV).

<sup>5</sup> <https://childrenofwar.gov.ua/en/>.

<sup>6</sup> Доклад о деятельности Уполномоченного при Президенте РФ по правам ребенка за 2022 год, *Russian Children's Rights Commissioner's website*, <https://deti.gov.ru/Deyatelnost/documents/245> at p. 117.

<sup>7</sup> *Интерфакс*, В ДНР решили эвакуировать на территорию РФ женщин, детей и пожилых людей, February 18, 2022; *Интерфакс*, ЛНР вслед за ДНР объявила о массовой эвакуации в Россию, February 18, 2022.

<sup>8</sup> <https://deti.gov.ru/Deyatelnost/documents/245> Доклад о деятельности Уполномоченного при Президенте РФ по правам ребенка за 2022 год, *Russian Children's Rights Commissioner's website*, p. 118.

<sup>9</sup> *Известия*, Они боятся громких звуков, переживают за своё будущее, December 19, 2022; *The Children of Donbas: Right to Safety*, May 11, 2023, Russian audio track, at 1:03:45.

<sup>10</sup> Мария Львова-Белова и Глава Представительства УВКБ ООН в РФ Карим Атасси обсудили положение детей-сирот Донбасса в России, *Russian Children's Rights Commissioner's website*, October 24, 2022.



then, Lvova-Belova has not provided any updated figures on this category of children. In an interview published on December 18, 2023, she reiterated these figures as if they were up to date.<sup>11</sup>

6 In addition to the children under institutionalised care, in autumn 2022, about 2,500 Ukrainian children were sent by parents from various occupied areas of Ukraine to recreational summer camps in Russian-occupied Crimea and various parts of Russia, as reported by Lvova-Belova.<sup>12</sup> Some of these children got separated from their parents due to shifting frontlines and had considerable difficulties in returning home.

7 The transfer of children by the Russian authorities was accompanied by legislative changes designed to facilitate conferral of Russian citizenship onto Ukrainian children to ease the process of family placement.

8 Ukraine has repeatedly called on Russia to stop the transfers and return the children.<sup>13</sup> Various governments and international organisations imposed sanctions on Lvova-Belova,<sup>14</sup> as well as members of her staff. Russia met these calls and measures with a negative reaction, refuting the allegations as lies and misinformation.<sup>15</sup>

9 The International Criminal Court (ICC) issued warrants of arrest against Lvova-Belova and the President of the Russian Federation, Mr. Vladimir Putin, on March 17, 2023.<sup>16</sup> The Prosecutor and the judges found reasonable grounds to believe that the suspects committed war crimes of unlawful deportation or transfer under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.<sup>17</sup> The Court's decisions on the arrest warrants remain under seal. Apart from a press release<sup>18</sup> and brief statements by the President<sup>19</sup> and the Prosecutor,<sup>20</sup> the warrants were not accompanied by an explanation of their factual and legal basis.

10 Apart from a very few cases, the displaced Ukrainian children remain unreturned. As reported by the National Information Bureau of Ukraine, only 388 children from a total of 19,546 have returned, as of April 28, 2024.<sup>21</sup>

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<sup>11</sup> <https://t.me/readovkaru/5294>, December 18, 2023, in the embedded video at 9.37 ('about 2,000 children came from children's homes') and 10.19 ('380 children were placed in foster families in 19 regions across Russia').

<sup>12</sup> The Children of Donbas: Right to Safety, May 11, 2023, Russian audio track, at 1:11:56. The second issue of Lvova-Belova's Children's Rights Bulletin dated October 2023 gives a more precise number of 2365 children: <https://deti.gov.ru/Deyatelnost/documents/259>, p. 7.

<sup>13</sup> Statement of the Ministry of Foreign Affairs of Ukraine on the illegal deportation of Ukrainian children to Russia, March 21, 2022; Comment of the MFA of Ukraine on the decree of the President of the Russian Federation on simplifying the procedure for obtaining Russian citizenship for Ukrainian orphans, May 31, 2022; An address to governments and international organisations adopted by Verkhovna Rada of Ukraine on June 19, 2022; All Russian criminals must face a mandatory and principled punishment - Speech at the International Conference in The Hague on holding Russia accountable for crimes in Ukraine, *Official website of the President of Ukraine*, July 14, 2022; Statement of the Ministry of Foreign Affairs of Ukraine regarding the illegal adoption of Ukrainian children by citizens of the Russian Federation, August 23, 2022; Statement by Khrystyna Hayovyshyn, the representative of Ukraine, at the UNSC 9126th meeting, September 7, 2022; Comment of the Ministry of Foreign Affairs of Ukraine on the illegal adoption of Ukrainian children in the Russian Federation, October 27, 2022.

<sup>14</sup> IICIU CRP, para. 717, fn. 409.

<sup>15</sup> Комментарий официального представителя МИД России М.В.Захаровой об организованной на Украине информационной кампании по обвинению России в насильственном вывозе с территории Донбасса несовершеннолетних детей, *Russian MFA website*, June 25, 2022; Statement by the Delegation of the Russian Federation on the Moscow Mechanism invoked by 45 participating States, *OSCE website*, May 4, 2023; Foreign Minister Sergey Lavrov's briefing on a wide range of international issues, including humanitarian aspects in the context of developments in Ukraine, Moscow, June 30, 2023, *Russian MFA website*, June 30, 2023 ('One of the UN mechanisms – Independent International Commission of Inquiry on Ukraine – was created through abuse of procedure and consensus [...]. We [...] will work to obtain the real facts.')

<sup>16</sup> Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, *ICC website*, March 17, 2023.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova, *ICC website*, March 17, 2023.

<sup>21</sup> <https://childrenofwar.gov.ua/en/>.

## B. Aim of This Report

- 11 This report analyses publicly available information in light of international criminal law with a view to identifying factual grounds for the prosecution of international crimes that may have been committed in association with the transfer of Ukrainian children.
- 12 This report deals with individual criminal responsibility and does not concern the responsibility of States under international law. Legal issues that may arise around or in consequence of prosecution, such as jurisdiction, immunities or reparations, also fall outside the scope of this report.
- 13 The report is authored by an international team of experts mandated by the Netherlands Helsinki Committee.

## C. Summary of Findings

- 14 The report describes Russia's displacement policy that promotes or encourages the commission of the crimes of deportation and forcible transfer against Ukrainian children. The existence of such a policy, established in this report, allows charging Vladimir Putin, Maria Lvova-Belova and other potentially involved individuals with crimes against humanity alongside the charges of war crimes that have already been the subject of the ICC warrants of arrest.
- 15 Apart from Vladimir Putin and Maria Lvova-Belova, the report assesses the role of three more individuals. The report concludes that there are grounds to believe that two of them, Igor Kastyukevich and Georgiy Tambovtsev, have committed the crime of forcible transfer.
- 16 Overall, the report identifies 15 cases that demonstrate indicia of forcible displacement, which may constitute crimes of deportation or forcible transfer.
- 17 In legal terms, the report argues that the physical separation of the child from the parent or person otherwise responsible for the child, as well as the legal replacement of the child's legal guardian by appointing a new one, *per se* fulfils the forcible character element of the crimes of deportation and transfer. This allows the imputation of the crimes to individuals who relied on a newly appointed legal guardian to authorise the transfer of the child to another location.
- 18 With respect to the crime of genocide, the report finds it plausible that this crime has been committed by way of transferring children from the Ukrainian national group to the Russian national group.

## D. Methodology

- 19 As the factual basis for its conclusions, the report draws on information reported by media, non-governmental organisations (NGOs) and international fact-finding mechanisms. The team of experts also strived to complement the reported information with its own research of primary sources, such as statements by public officials. The team also collaborated with another civil society initiative, the Kidmapping project, for the purposes of factual research.
- 20 As for its legal basis, the report relies on the Rome Statute of the International Criminal Court, decisions of the Court that interpret and apply the Rome Statute, as well as other authorities and sources of law applicable before the ICC, including international customary law as interpreted and applied by international criminal tribunals.
- 21 The team of experts included lawyers trained in Russian and international law, an analyst experienced at investigation of international crimes, and native Russian speakers.

## E. Structure

- 22 The report consists of four parts. Part I describes sample cases of transfer, indicative of some notorious aspects of the Russian policy to displace Ukrainian children. Part II provides a general description of the Russian state policy. Part III sets out the legal rules and requirements under international criminal law, including a list of every kind of crime

potentially committed in association with the displacement of Ukrainian children. Part IV discusses the role and criminal responsibility of certain individuals allegedly involved in the transfers.

## I. Sample Cases of Transfer

23 What follows is a description of the two most publicised cases of child transfer from the occupied areas of Ukraine. These cases involve children who managed to leave Russia after being transferred there, which gave journalists the opportunity to interview them or their representatives about the details of what happened. Within this report, these sample cases function as introductory stories demonstrating various facets of Russia’s displacement policy.

### A. Novopetrivske Special School

24 In July 2022, Russian armed forces transferred 15 children from Novopetrivske Special School located in the occupied settlement of Novopetrivka (Russian: *Новопетровка*) in Mykolaiv Oblast to a different institution, the Socio-psychological Rehabilitation Centre in the settlement of Stepanivka (Russian: *Степановка*) in Kherson Oblast, also under Russian occupation.<sup>22</sup> According to the Ukrainian ombudsperson, ‘There were 15 children, including 13 orphans and children deprived of parental care, in [the] school.’<sup>23</sup>

25 Prior to the transfer, starting from February 2022, Russian armed forces repeatedly visited Novopetrivske Special School and tried to pressure the head of the institution into evacuating to Crimea, at times using threatening language or behaviour.<sup>24</sup> The decision to transfer the institution was made after the Russian military had learned that the head of the institution had been attempting to evacuate the children to the territory under Ukrainian control.<sup>25</sup> The head of the institution Natalya Lutsyk believes that it was her attempt to evacuate that provoked the transfer.<sup>26</sup> In an interview, she describes a continued presence of the Russian military on site: ‘They watched for whether I hid someone or sent someone away with someone. And they really patrolled, they were walking next to the cellars, as we had two cellars, they were walking around and observing constantly.’<sup>27</sup> As stated by the Independent International Commission of Inquiry on Ukraine (IICIU), Natalya Lutsyk and the children ‘repeatedly objected to the transfer,’<sup>28</sup> which is corroborated by personal accounts collected by media.<sup>29</sup>

26 The transfer was effectuated by Russian armed forces.<sup>30</sup> A Telegram post on the official channel of Rosgvardiya, a Russian internal military force, dated August 2, 2022, declares that the transfer was conducted by ‘the special

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<sup>22</sup> IICIU CRP, para. 763; Report on the Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2022, *Ukrainian Parliament Commissioner for Human Rights*, p. 37; *The Guardian*, ‘We had to hide them’: how Ukraine’s ‘kidnapped’ children led to Vladimir Putin’s arrest warrant, March 18, 2023 (dating the event to July 15); *Слідство.Інфо*, «Діти були перелякані»: хто вивіз 15 українських сиріт у Росію, July 15, 2023 (the embedded video, at the 2-minute 32-second mark, states the date was July 15); *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023 (stating it was July 15); *Настоящее время*, Дети войны. Украинских детей Россия легко признает сиротами и неохотно возвращает на родину – расследование "Системы", June 1, 2023 (claiming the transfer was in June 2022).

<sup>23</sup> Report on the Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2022, *Ukrainian Parliament Commissioner for Human Rights*, p. 37.

<sup>24</sup> IICIU CRP, para. 763. The Novopetrivka settlement was under occupation since March 24, 2022: *Слідство.Інфо*, «Діти були перелякані»: хто вивіз 15 українських сиріт у Росію, July 15, 2023. This is confirmed by a different media reporting, claiming the first time the military visited the school was on 24 March: *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023.

<sup>25</sup> IICIU CRP, para. 763.

<sup>26</sup> *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023.

<sup>27</sup> *ABC News*, Orphans stolen by Russian soldiers | ABCNL, February 3, 2023, from 5.55 to 6.08.

<sup>28</sup> IICIU CRP, para. 763.

<sup>29</sup> *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023.

<sup>30</sup> IICIU CRP, para. 763.

operations forces of Rosgvardiya' (Russian: «спецназ Росгвардии») and the Russian Armed Forces.<sup>31</sup> In the video linked in the post, at the 9-second mark, a man ostensibly belonging to Rosgvardiya personnel and standing in front of the rehabilitation centre in Stepanivka that accommodated the children for the next few months confirms this by saying: 'Together with the Ministry of Defence we evacuated an orphanage from the settlement of Novopetrivka [...].'<sup>32</sup> In an interview, the head of the rehabilitation centre in Stepanivka Volodymyr Sagaydak states that the children from Novopetrivske School arrived in military vehicles such as Tigr.<sup>33</sup>

27 Subsequently, the children of Novopetrivske School underwent a second transfer. On October 19, 2022, they were taken by bus from Stepanivka to the city of Anapa, in Krasnodar Krai, Russia.<sup>34</sup>

28 When the children were staying in Stepanivka prior to the second transfer, Russian military threatened Natalya Lutsyk and warned her against trying to escape.<sup>35</sup> Volodymyr Sagaydak is also quoted as saying that, prior to or at the time of the second transfer, he was told that in case of any resistance soldiers would come, 'pack' them – the administration of the two institutions – with the children, and take them away.<sup>36</sup>

29 When the bus came on October 19, 2022, there were two persons inside: the driver and a woman. The woman gave Natalya a phone, and she heard a harsh male voice. The man did not identify himself by name, but stated he was a 'deputy minister for youth policy, family and sports of the Kherson region.' He threatened to call the military if there was any resistance.<sup>37</sup> Journalists identified this man as Georgiy Tambovtsev, an official with the Ministry of Sports and Youth of the occupational government of Kherson region.<sup>38</sup> A publication on the social media page of the Kherson Ministry for Youth Policy and Sports, dated January 10, 2023, also identifies Georgiy Tambovtsev as a 'Deputy Minister for youth policy and sports.'<sup>39</sup> Georgiy Tambovtsev is seen on the surveillance footage provided by Volodymyr Sagaydak to the journalists with *Slidstvo.info* (Ukrainian: *Слідство.Інфо*). He visited the premises of the Centre in Stepanivka and is suspected by Volodymyr Sagaydak to have personally made the decision to send the children to Anapa.<sup>40</sup>

30 The woman on the bus was identified by *Slidstvo.info* as Evgenia Chernyshova, the rector of the Kherson State University of Agriculture and Economics (Ukrainian: *Херсонський державний аграрно-економічний університет*).<sup>41</sup> She accompanied the children for part of the way.<sup>42</sup>

## B. The Group of 31

31 The second sample case is that of 31 children commonly associated with Mariupol, transferred to Russia in May 2022. The group included 16 boys and 15 girls aged from 6 to 17.<sup>43</sup>

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<sup>31</sup> <https://t.me/RosgvardOfficial/1551>, August 2, 2022.

<sup>32</sup> <https://www.youtube.com/watch?v=U-ejPSGB1Yw>, August 2, 2022.

<sup>33</sup> *Слідство.Інфо*, «Діти були перелякані»: хто вивіз 15 українських сиріт у Росію, July 15, 2023, in the embedded video at the 4-minute 5-second mark.

<sup>34</sup> *Настоящее время*, Дети войны. Украинских детей Россия легко признает сиротами и неохотно возвращает на родину – расследование "Системы", June 1, 2023.

<sup>35</sup> *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023.

<sup>36</sup> *Настоящее время*, Дети войны. Украинских детей Россия легко признает сиротами и неохотно возвращает на родину – расследование "Системы", June 1, 2023. Essentially the same statement, in a reworded form, is made by Volodymyr Sagaydak in a video interview: *Слідство.Інфо*, «Діти були перелякані»: хто вивіз 15 українських сиріт у Росію, July 15, 2023, in the embedded video at the 11-minute 40-second mark.

<sup>37</sup> *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023.

<sup>38</sup> *Слідство.Інфо*, «Діти були перелякані»: хто вивіз 15 українських сиріт у Росію, July 15, 2023.

<sup>39</sup> [https://vk.com/minsport\\_ho?w=wall-217862738\\_21](https://vk.com/minsport_ho?w=wall-217862738_21).

<sup>40</sup> *Слідство.Інфо*, «Діти були перелякані»: хто вивіз 15 українських сиріт у Росію, July 15, 2023.

<sup>41</sup> *Ibid*.

<sup>42</sup> *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023..

<sup>43</sup> *Радіо Свобода*, «Список 31». Як Росія викрадала українських дітей і хто з окупантів до цього причетний, July 18, 2023.

- 32 This was one of the first groups of children to be publicly brought to Russia. Russia’s Presidential Commissioner for Children’s Rights Maria Lvova-Belova herself fostered a child from the group, 16-year-old Philip Golovnya (Ukrainian: *Пилип Головня*).
- 33 In her public statements, Lvova-Belova repeatedly describes the group as unaccompanied children who have been found across the basements of Mariupol.<sup>44</sup> This description may be true for some of the children of the group and has likely been chosen by Lvova-Belova to express two sentiments: contempt she may wish to show towards the Ukrainian authorities, families or relatives for abandoning the children in appalling conditions, and a sense of duty to save the children by relocating them. Lvova-Belova specifically stated that these children have been ‘abandoned by their foster parents or left by their biological parents at the time of the evacuation. It’s not that we were forcefully taking the children away from their parents and bringing them to Russia.’<sup>45</sup>
- 34 In fact, not all of the children were unaccompanied or abandoned by their parents or legal guardians,<sup>46</sup> and not all of them may have been found by Russian forces in Mariupol.
- 35 Mariupol is located in the Donetsk region of Ukraine. Since 2014, a part of the region has been governed by the so-called Donetsk People’s Republic (DPR), a pro-Russian or Russia-controlled separatist entity. When the full-scale invasion broke out in 2022, DPR was headed by Denis Pushilin. At some point, a Ukrainian group KibOrg News calling themselves ‘journalists and IT specialists’ gained access to Pushilin’s email, which revealed important details about the transfer.<sup>47</sup>
- 36 Based on Pushilin’s email leak, journalists have established that, before being sent to Russia, the children comprising the group of 31 were temporarily or permanently accommodated in at least ten different institutions across Donetsk region, located in the settlements of Shakhtarsk, Khartsyzsk, Novoazovsk and Donetsk. It is known from other sources that two of these institutions – the Donetsk Hospital<sup>48</sup> and the Novoazovsk Hospital<sup>49</sup> – were populated with children captured by Russian forces in and around Mariupol.
- 37 The list also included at least one child care institution located in the settlement of Khartsyzsk, which allows a hypothesis that some of the children in the group did not come from Mariupol at all. This is confirmed by Matvey Mezhevoy, a child from the group who talked to the other children. When asked by a journalist if all of the children were ‘from Mariupol,’ he said: ‘No, from different cities. Some were from Shakhtarsk, from Donetsk. Some were in an orphanage, some were in a hospital [...]’.<sup>50</sup> Ivan Matkovskiy, a boy who stayed at the Donetsk hospital and who did not leave to Russia with the group, is quoted as saying ‘Most of the children were from Mariupol.’<sup>51</sup>
- 38 Before being sent to Russia, all 31 children were gathered in Donetsk in an institution called the Children's Social Centre, headed by Tatiana Sorkina. From there, they were taken by bus to the city of Rostov-on-Don in the undisputed Russian territory, and then taken by plane to Moscow. The plane that carried them belonged to the Special Flight

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<sup>44</sup> *Известия*, Они боятся громких звуков, переживают за своё будущее, December 19, 2022 (*привезли из подвалов Мариуполя*); *Аргументы и факты*, «Сразу поняла — это мой сын». Детский омбудсмен взяла в семью сироту из ДНР, October 29, 2022 (*найденны [...] в подвалах*); Пресс-конференция Уполномоченного при Президенте России по правам ребенка М.А.Львовой-Беловой, April 4, 2023, at 49.28 (*собрали их по подвалам*); The Children of Donbas: Right to Safety, May 11, 2023, Russian audio track at 1.05.45 (*вывозились из подвалов*); *Первый канал*, АнтиФейк. Выпуск от 30.11.2023, November 30, 2023, in the embedded video at 14.52 (*собрали наши военные по подвалам*).

<sup>45</sup> The Children of Donbas: Right to Safety, May 11, 2023, Russian audio track, at 1.05.49.

<sup>46</sup> See the story of the Mezhevoy family below in section I(B)(1).

<sup>47</sup> Unless otherwise indicated, the details coming from Pushilin’s email leak, as well as other details of the transfer are provided according to the investigation by the RFE/RL project ‘Схеми’ and the project ‘Ти як?’: *Радіо Свобода*, «Список 31». Як Росія викрадала українських дітей і хто з окупантів до цього причетний, July 18, 2023.

<sup>48</sup> *Крым.Реалии*, Дело о геноциде России против Украины. Что дети из Мариуполя рассказали суду в Гааге? September 29, 2023 (detailing the story of Ivan Matkovskiy and Maksim Boyko who went through a Russian checkpoint outside Mariupol and were taken by social services to the Donetsk Hospital).

<sup>49</sup> See the story of the Mezhevoy family below in section I(B)(1).

<sup>50</sup> *Радіо Свобода*, «Список 31». Як Росія викрадала українських дітей і хто з окупантів до цього причетний, July 18, 2023.

<sup>51</sup> *Крым.Реалии*, Дело о геноциде России против Украины. Что дети из Мариуполя рассказали суду в Гааге? September 29, 2023.

Squad Rossiya (Russian: *Специальный лётный отряд «Россия»*), an aviation unit<sup>52</sup> of the Administrative Directorate of the President of the Russian Federation (Russian: *Управление делами Президента Российской Федерации*). They were placed in the health resort Polyany (Russian: *Поляны*) outside Moscow, part<sup>53</sup> of the Children's Medical Centre of the Administrative Directorate (Russian: *Детский медицинский центр Управления делами Президента*). The Administrative Directorate is a federal executive body<sup>54</sup> directly<sup>55</sup> subordinate to the Russian President.

39 In the second issue of the bulletin on Ukrainian children launched by the office of Lvova-Belova in the aftermath of the arrest warrants of the ICC, the transfer is described as follows:

*During the spring of 2022, the Russian military discovered street children in Mariupol who were then handed over to the city's social services. Subsequently, they were placed into a children's social centre in Donetsk as children left without parental care. In May, a group of 31 children, with the consent of their legal representative – the head of the children's social centre – was sent for health improvement to a sanatorium in the Moscow region.*<sup>56</sup>

40 Essentially, the office of Lvova-Belova expressly admits that to effectuate the transfer, the children were declared 'left without parental care' (Russian: *оставшиеся без попечения родителей*) and guardianship over them was established anew in favour of Tatiana Sorkina, the head<sup>57</sup> of an institution controlled by the DPR. This included children whose parents were alive, such as the Mezhevoy family, as well as orphans and those under institutionalised care who still had Ukrainian legal guardians. The appointment of a new legal guardian was likely needed to comply with the legislative requirement that no underage child shall cross the border without consent from a parent or legal guardian.

41 Based on his emails, Pushilin appears to have personally approved and signed the list of the children to be transferred as part of the group of 31.<sup>58</sup> The emails included the following statement by the head of the State Service for Family and Children's Rights of the DPR Svitlana Maiboroda of March 2022: 'Currently, the legislation of the "Donetsk People's Republic" does not provide for the adoption of orphans and children left without parental care in the families of foreign citizens, including citizens of the Russian Federation' – meaning that the adoption of the children from the region by Russian citizens was not yet possible.<sup>59</sup> To find a way to eliminate this legal hindrance, a working group headed by Lvova-Belova and co-chaired by Pushilin's advisor Eleonora Fedorenko, called 'Staff on the Unification of the Legislation in the Sphere of Custody and Guardianship between the Russian Federation and the DPR,' was created and held numerous meetings. Two months after one of these meetings, Pushilin personally signed a resolution on the deportation of the group of 31 Ukrainian children to Russia.<sup>60</sup> Representatives of the occupying administration compiled a dossier that listed all of the 31 children and indicated that they were either 'orphans' or 'left without parental care' despite the fact that most children had legal guardians or parents.<sup>61</sup>

42 Afterwards, Pushilin's advisor Eleonora Fedorenko suggested that, generally, if legal guardians of the child are not identified by DPR's authorities within 10 days, the child should receive the status of an orphan, so that a new Russian

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<sup>52</sup> <https://udprf.ru/content/federalnoe-gosudarstvennoe-byudzhetnoe-uchrezhdenie-specialnyy-letnyy-otryad-rossiya>, *the website of the Administrative Directorate*.

<sup>53</sup> <https://udprf.ru/podvedomstvennye-struktury/meditsinskie-uchrezhdeniya/polikliniki/fgu-poliklinika-kdp/polyany/polyany/1449>, *the website of the Administrative Directorate*.

<sup>54</sup> Presidential Decree dated January 21, 2020 'On the Structure of the Federal Executive Bodies', annex, section 1.

<sup>55</sup> Presidential Decree dated September 17, 2008 (as amended) 'On the Administrative Directorate of the President of the Russian Federation', annex, art. 1.

<sup>56</sup> Бюллетень о защите прав детей. Выпуск № 2, *Russian Children's Rights Commissioner's website*, October 2023, p. 8. For some reason, the English version of the publication, prepared by Lvova-Belova's office, is less explicit.

<sup>57</sup> See above, para. 38.

<sup>58</sup> *Kyiv Independent*, Investigative Stories from Ukraine: Russia systematically abducts children, elderly, vulnerable, July 25, 2023.

<sup>59</sup> *Радіо Свобода*, «Список 31». Як Росія викрадала українських дітей і хто з окупантів до цього причетний, July 18, 2023.

<sup>60</sup> *Радіо Свобода*, Журналісти встановили причетних до депортації українських дітей з окупованих територій до РФ, July 18, 2023.

<sup>61</sup> *Ibid.*



family can be sought for the child.<sup>62</sup> While this proposal was made to Pushilin after the transfer of the group of 31, in the assessment of the journalists, it was intended to ‘legalize the already established practice.’<sup>63</sup>

43 Further individuals connected to the transfer of the group of 31 are Oleksiy Nikonorov and Valery Onatsky. Oleksiy Nikonorov was the secretary of the DPR State Defence Committee. He sent the approved list of 31 children to the local occupation administration and asked to facilitate their removal.<sup>64</sup> He also requested that all the children be taken to the Children’s Social Centre in Donetsk before being sent to Russia.<sup>65</sup> Meanwhile, Valery Onatsky, deputy of the Mariupol City Council, was heading the department for family and children affairs in the occupation administration of the City of Mariupol, collecting information on 13 children from the list. He also managed the guardianship centre in Mariupol<sup>66</sup> from which the 13 children were taken to the Russian Federation. The request for the compilation of such information came from Maiboroda.<sup>67</sup>

44 After some time in Polyany outside Moscow, the children began to be placed into Russian families. On April 3, 2023, Lvova-Belova stated that 15 children from the group had been taken in by foster families, 6 had wished to stay at the ‘socio-rehabilitation centre’ and 4 had turned eighteen.<sup>68</sup> When referring to the ‘socio-rehabilitation centre,’ she might have meant either Polyany or the Children’s Social Centre in Donetsk, where the children could have been formally placed.

45 As of January 2024, only five children from the group of 31 had been brought back to Ukraine: Yevgeny Mezhevoy’s three children<sup>69</sup>, Bogdan Ermokhin<sup>70</sup> and Oleksandr, a boy returned on January 2, 2024.<sup>71</sup> The Mezhevoy family and Bogdan Ermokhin’s stories are detailed below.

## 1. The Mezhevoy Family

46 When the full-scale invasion broke out, Yevgeny Mezhevoy lived in Mariupol with his 11-year-old son Matvey and daughters Alexandra and Svyatoslava, aged 5 and 7.<sup>72</sup>

47 On April 7, 2022, two military men with DPR insignia came to the bomb shelter where the family was hiding and met the children at the entrance. They told the children that Chechen military units would ‘come for clearance’ (*‘придут с зачисткой’*) and recommended to leave, saying that people only had half an hour to evacuate. The inhabitants of the shelter walked to an evacuation point at a local music school, where the Russian military put them onto buses and drove them to a checkpoint. At the checkpoint, Yevgeny failed to pass the documents check because his official place of residence, as shown on his documents, pointed to a military unit in Lviv where he had previously served in the military. He was detained.

48 People from the shelter were herded onto buses, whereas a separate car arrived for Yevgeny. He sat the children on a bus and managed to pass a bag with mobile phones in it to Matvey. From the checkpoint, everybody was taken to

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<sup>62</sup> *Настоящее время*, Дети войны. Украинских детей Россия легко признает сиротами и неохотно возвращает на родину – расследование "Системы", June 1, 2023.

<sup>63</sup> Ibid. (‘узаконить сложившуюся практику’).

<sup>64</sup> *Радіо Свобода*, «Список 31». Як Росія викрадала українських дітей і хто з окупантів до цього причетний, July 18, 2023.

<sup>65</sup> *Радіо Свобода*, Журналісти встановили причетних до депортації українських дітей з окупованих територій до РФ, July 18, 2023.

<sup>66</sup> <https://t.me/lovecity0629/12445>, July 12, 2023.

<sup>67</sup> *Радіо Свобода*, Журналісти встановили причетних до депортації українських дітей з окупованих територій до РФ, July 18, 2023.

<sup>68</sup> *Первый канал*, АнтиФейк. Выпуск от 03.04.2023, April 3, 2023, in the embedded video from 21.08 to 21.39.

<sup>69</sup> See below, section I(B)(1).

<sup>70</sup> See below, section I(B)(2).

<sup>71</sup> *Радіо Свобода*, «Роздягнули догола, знімали на камеру»: життя українських дітей під контролем Росії, January 8, 2024.

<sup>72</sup> Unless otherwise indicated, the details of the Mezhevoys’ story are provided according to the investigation by the projects *‘Ти як?’* and *‘Схему’* (see above, fn. 47), including the video embedded therein, as well as the interview conducted by Russian independent media outlet *Meduza*: «Пап, у тебя есть максимум пять дней, чтобы нас забрать», November 3, 2022.

Bezymenne (Russian: *Безымянное*; Ukrainian: *Безіменне*), a settlement where Russian authorities set up a filtration camp<sup>73</sup> for refugees from Mariupol.

49 In Bezymenne, the three children, separated from their father, were taken to the local cultural centre, whereas Yevgeny had to go through questioning conducted by the Russian military. He witnessed another detainee being beaten. Upon leaving Bezymenne in a car, he was told he was suspected of ‘assisting terrorism.’

50 From there, over the next few days, Yevgeny was transferred to various detention facilities and police precincts in Novoazovsk and Donetsk. He went through several rounds of questioning and had his mugshot and fingerprints taken. One time, he heard another detainee being beaten during questioning. He was also taken to a hospital along with other detainees for an X-ray. On April 11, Yevgeny left the Donetsk detention facility (*‘Донецкий [...] изолятор временного содержания’*) for the penal colony in Olenivka (Ukrainian: *Оленівка*), a settlement formerly named Yelenovka (Russian: *Еленовка*). Upon leaving the detention facility, he was severely beaten for no apparent reason and was forced to sign a document certifying that he had no claims against the facility. In Olenivka, the newly arrived inmates were forced to run through a gauntlet of guards armed with batons, who hit everyone who was too slow.

51 At some point, Yevgeny’s children were transferred by local social services from Bezymenne to the Central Novoazovsk Hospital. After an approximately two-week stay at the hospital, the children were told by a social worker that they were going to a camp and were driven to Donetsk.

52 Yevgeny spent 45 days in the penal colony in Olenivka and was released without explanation on May 26. Upon release, the colony issued him a certificate stating the reason for his detention, which was ‘in accordance with article 233, para. 2 of the DPR Criminal Code [...] in order to prepare and conduct investigation, suppress and solve crimes.’

53 Yevgeny headed from Olenivka to Donetsk to reclaim his documents and reunite with his children. He exited the prison after the last bus to Donetsk had left, so, together with a former cellmate, he decided to walk there. At night, on the intercity road, they saw an approaching car:

*We wanted to pass by, but they opened fire on us. At first, it was single shots, then a burst-fire from an automatic rifle. We crawled back and stayed at the bus stop to spend the night. In the morning, we went ahead and got to Donetsk.*<sup>74</sup>

54 In Donetsk, after having walked almost 30 kilometres, he found out that the children had flown to Moscow that very day, May 27, at 5 a.m.

55 The children were transferred to Polyany health resort outside Moscow. By that time, their story was publicised all over social media, thanks to Matvey’s previous attempts to reach his father. At some point, a nurse approached Matvey and handed over a phone with his father speaking. This allowed them to stay in touch over the coming days.

56 On May 30, Lvova-Belova personally visited the resort. The press release on her website declared that the children were going to spend 21 days in the resort and stated that ‘Maria Lvova-Belova promised she would assist in finding their relatives.’<sup>75</sup> In an interview, Matvey said Lvova-Belova visited them ‘a couple of times, maybe 3 or 4 times [...] she said she would arrange a trip to the water park. Then, the next day, she brought gifts for the whole group.’<sup>76</sup> In a different interview, Matvey said they indeed went to a water park, visited the Moscow-City complex and had a guided tour of Moscow.<sup>77</sup>

57 In mid-June, three women from social services arrived at the health resort. In a conversation with Matvey, they announced that because Donetsk was under heavy shelling, it was impossible to bring the children back to their father.

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<sup>73</sup> *The Washington Post*, Ukraine says Russia forcibly relocated thousands from Mariupol. Here’s one dramatic account, March 30, 2022; *The Insider*, «Настоящее гетто» — советник мэра Мариуполя опубликовал видео из фильтрационных лагерей, в которых российские военные содержат украинцев, May 5, 2022.

<sup>74</sup> *Meduza*, «Пап, у тебя есть максимум пять дней, чтобы нас забрать», November 3, 2022.

<sup>75</sup> Мария Львова-Белова навестила детей-сирот из Донецкой Народной Республики в подмосковном пансионате, *Russian Children’s Rights Commissioner’s website*, May 30, 2022.

<sup>76</sup> *Радіо Свобода*, «Список 31». Як Росія викрадала українських дітей і хто з окупантів до цього причетний, July 18, 2023.

<sup>77</sup> *Meduza*, «Пап, у тебя есть максимум пять дней, чтобы нас забрать», November 3, 2022.



They stated that the children could be placed in an orphanage or a foster family, or if they had relatives in Russia, it was possible to try to contact them, but they wouldn't have the time to collect the children. Matvey called Yevgeny on the next day and warned him he only had several days to come.

58 After the conversation with Matvey, Yevgeny called Russian social services who told him that 'the boy misunderstood.' Yevgeny lacked the funds to travel to Russia, so he contacted Russian volunteers who organised the trip and covered expenses. When he was on the train from Rostov to Moscow, someone from Lvova-Belova's office called him. This person was seemingly unhappy about the activity on social media and tried to downplay the urgency of the situation, saying 'the kids got it all wrong.' Overall, it took two days for Yevgeny to get to Moscow to collect his children. The children spent 22 days in Polyany.

## 2. Bogdan Ermokhin

59 Among the group of 31 was Bogdan Ermokhin (Russian: *Богдан Ермохин*; Ukrainian: *Богдан Ермохін*), a 16-year-old orphan who lost his parents when he was six.<sup>78</sup>

60 Initially, Bogdan lived with a foster family in Mariupol.<sup>79</sup> He entered a metallurgical college and legal guardianship over him was granted to the head of the institution. When the full-scale invasion started, he was living in a dormitory on the outskirts of the city. The area was heavily shelled and, together with his friends, Bogdan decided to leave for a safer place. They were sheltered by a family of strangers in a neighbourhood on the left bank of Mariupol.

61 Eventually, he was found by the Russian military. He was taken to Donetsk and, together with other children from the group, he was taken to Polyany health resort outside Moscow. Four months later, he was taken in by the family of Iryna Rudnitskaya (Russian: *Ирина Рудницкая*), a veteran foster parent, an activist<sup>80</sup> and reportedly an old colleague of Lvova-Belova.<sup>81</sup>

62 In Russia, Bogdan was enrolled in Mozhaysk Technical School.<sup>82</sup> His sister told *BBC Ukraine* that he had a difficult time in school and felt rejected by society. '[H]e was bullied by his classmates, called "Khohol" and told to "go to Ukraine"'.<sup>83</sup>

63 In March 2023, Bogdan contacted a Ukrainian lawyer Kateryna Bobrovska and asked her to help him return. He got her contact from a friend who was also taken from Mariupol to Russia and whose return she was previously involved in.

64 During the hearing before the United States House Committee on Foreign Affairs on April 19, 2023, Kateryna Bobrovska shared a text she received from an unnamed child who was, in fact, Bogdan:

*This night I received a message from another child. When I asked why are you not asleep, this is what he wrote to me, and I will read out what he wrote. This child is now in the territory of the Russian Federation. 'It's hard for me to sleep. I saw so many deaths. And there are two deaths which keep torturing my conscience. One was the death of my best friend and the other was a little girl, who I was not able to rescue. The friend covered me with his body and he was blown apart. He was the only one who had been with me all my life. After the death of my parents the only one who stayed next to me. But the girl. When we were driving in my car to get water, I heard people shouting, I stopped, ran out,*

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<sup>78</sup> *Радіо Свобода*, «Кожна дитина почувається покинутою». Ексклюзивне інтерв'ю повернутого з Росії Богдана Ермохіна, December 7, 2023.

<sup>79</sup> Unless otherwise indicated, the details of Bogdan Ermokhin's transfer, his life prior to the invasion and his return are provided according to the reporting by Victoria Prysedska for *BBC Ukraine*: Оточення, підвал і смерть на руках. Як 18-літній Богдан Ермохін зумів повернутись в Україну, November 21, 2023.

<sup>80</sup> *Радіо Свобода*, Росія твердить, що схопила підлітка з Маріуполя під час спроби повернутися в Україну. Що відомо про дитину? April 11, 2023.

<sup>81</sup> *Новая газета*, Выйти из списка. Привезенный из Украины сирота, переговоры о возвращении которого домой продолжаются, получил повестку из российского военкомата, 9 November 2023 ('давня соратниця').

<sup>82</sup> *Радіо Свобода*, «Кожна дитина почувається покинутою». Ексклюзивне інтерв'ю повернутого з Росії Богдана Ермохіна, December 7, 2023.

<sup>83</sup> *BBC Ukraine*, Оточення, підвал і смерть на руках. Як 18-літній Богдан Ермохін зумів повернутись в Україну, November 21, 2023.

*I saw a body of a woman and there was a girl with a hole in her chest. She was about maybe 10 years old. She was dying and crying ‘help’. I took her in my arms, was trying to calm her down. Because there was nothing we could do for her. This is that moment when I am trying to smile to calm her down and I was telling her everything will be alright, but my soul was being torn apart.’<sup>84</sup>*

65 Bogdan made his first attempt to escape in March 2023. He rushed to the Russian border with Belarus without any document certifying that a legal guardian consented to him crossing the border. When Kateryna Bobrovska learned about it, she prepared the necessary documents and went to the border with the intention of meeting him. They were detained almost simultaneously at the western and eastern ends of Belarus.<sup>85</sup>

66 Lvova-Belova described the efforts to stop his escape as follows:

*We caught [him] at the border with Belarus. We have exact data on him being guided by several agents, including the data on phone calls. It was like ‘now you are getting in the white car, a driver is waiting for you.’ They sent him money. So it was a multi-stage, systematic effort. And just at the last second, we managed to stop him at the border with the help of law enforcement agencies.’<sup>86</sup>*

67 ‘[A]s the former adoptive mother of the young man in Ukraine told the *BBC*, after Bogdan’s unsuccessful attempt to escape from Russia, someone deleted their entire chat history on all social networks.’<sup>87</sup>

68 On April 4, 2023, a Russian state-controlled television channel *NTV* broadcast a piece on Bogdan Ermokhin, featuring voice and text messages he allegedly received from Kateryna Bobrovska. In these messages, shown on screen, Bogdan is asked to record a message stating he wants to return to Ukraine. This is presented as an attempt to ‘force’ him to return. The narrator goes: ‘When the teenager clearly and convincingly explained that it is here in Russia that he had found a new life, free from shelling and bombs, and in no way did he want to go back, unequivocal threats were made.’ Without showing any proof in support of this statement, the camera switches to a reporter interviewing Bogdan:

*The reporter: How did they put pressure on you?*

*Bogdan: Mainly [they mentioned] my sisters and family.*

*The reporter: That is to say, they started to make threats concerning your relatives.*

*Bogdan: Yes. [...] Knowing what they used to do there, they could kill a woman or a child without flinching. Given they’ve already killed by the hundreds of thousands.’<sup>88</sup>*

69 Earlier that day, at a press conference, Lvova-Belova followed the same narrative:

*‘[H]e received threats regarding his sister. [...] And such offers to record videos are being received by not only Bogdan, but many teenagers who came to us from the Luhansk People’s Republic and Donetsk People’s Republic. I think, it is very unfair to play with children’s feelings [in this way]. It is very unfair to threaten their close ones, like in Bogdan’s case, his older sister. She’s an adult and she is in the territory of Ukraine.’<sup>89</sup>*

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<sup>84</sup> Exposing Putin's Crimes: Evidence of Russian War Crimes and Other Atrocities in Ukraine, April 19, 2023, at the 36-minute 40-second mark.

<sup>85</sup> *Новая газета*, Выйти из списка. Привезенный из Украины сирота, переговоры о возвращении которого домой продолжаются, получил повестку из российского военкомата, November 9, 2023.

<sup>86</sup> Пресс-конференция Уполномоченного при Президенте России по правам ребенка М.А.Львовой-Беловой, April 4, 2023, at 50.39.

<sup>87</sup> *BBC Ukraine*, Оточення, підвал і смерть на руках. Як 18-літній Богдан Єрмохін зумів повернутись в Україну, November 21, 2023.

<sup>88</sup> *НТВ*, ЧП. Выпуск 4 апреля 2023 года, in the embedded video at 7.52; *НТВ*, Атакуют звонками и угрожают: сирота из Мариуполя рассказал о преследовании со стороны Украины, April 4, 2023, in the embedded video.

<sup>89</sup> Пресс-конференция Уполномоченного при Президенте России по правам ребенка М.А.Львовой-Беловой, April 4, 2023, at 51.04.

- 70 In the *NTV* video, the narrator goes on to say: ‘According to political scientists, the machinations of the followers of the Kiev regime – intrusive calls, manipulations without making allowances for the fact they are talking to children – all this is done in an attempt to fabricate evidence of Russian war crimes for the International Criminal Court.’ A man presented on-screen as a ‘political scientist’ says ‘They are trying to [show] that Russia [...] abducts children. We know that this is complete nonsense and fiction. Because Russia provides family and home to the children whose parents were killed by the hand of Kiev fighters. Russia saves the children of the liberated territories [...]’.<sup>90</sup>
- 71 At the press conference, Lvova-Belova also stated that Bogdan was a ‘very enthusiastic boy, he helped our military, he’s all pro-Russian and he aspires to victory [in the war]. He helped us a lot as a volunteer. He was one of the curators of our first ‘Poslezavtra’ camp, he went there in the capacity of a senior camp youth leader and worked there with the kids from the new regions.’<sup>91</sup> In an interview, she further stated that she and Bogdan were ‘close.’<sup>92</sup> Lvova-Belova may have wanted this image of integration and loyalty to discourage the Ukrainian authorities from trying to get their children back and bolster her claims that Bogdan was being manipulated.
- 72 In summer 2023, Bogdan made a second attempt to escape but failed. Kateryna Bobrovska is reported as saying that, after an attempt to escape, Bogdan’s foster family prohibited him from attending classes.<sup>93</sup> When she called the school’s administration to ask about it, they told her they were afraid he could escape.<sup>94</sup>
- 73 On November 9, 2023, Kateryna Bobrovska posted a video in which Bogdan addresses the President of Ukraine Volodymyr Zelensky and asks for help to return.<sup>95</sup>
- 74 On November 10, 2023, Lvova-Belova stated in a Telegram post that Bogdan met with her office on August 28, 2023, where he ‘clearly articulated that he did not plan to move to Ukraine until he turned eighteen, which he confirmed in writing. This written statement has been provided to Ukraine.’<sup>96</sup> Journalist Shahida Tulaganova who interviewed Lvova-Belova for her movie ‘Ukraine’s Stolen Children’ is quoted as saying Lvova-Belova showed her this written statement in person and called it an ‘irrefutable evidence’ of Bogdan’s lack of any desire to return.<sup>97</sup> Kateryna Bobrovska reportedly claimed that Bogdan contacted her on the day he wrote this statement and said to her he did it ‘under pressure, after intimidation including threats to send him to a psychiatric hospital.’<sup>98</sup>
- 75 In the same post of November 10, 2023, Lvova-Belova admitted that ‘Bogdan’s opinion on his future place of residence has changed’ and announced that Russia and Ukraine had agreed upon his return.<sup>99</sup>
- 76 With the help of UNICEF, human rights organisations and the mediation by the state of Qatar, Bogdan returned to Ukraine on November 19, 2023, his eighteenth birthday. In an interview after his return, Bogdan confirmed he wanted to return all along:

*Journalist: And what does a Ukrainian child, who is there, feel?*

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<sup>90</sup> *НТВ*, ЧП. Выпуск 4 апреля 2023 года, in the embedded video at 12.33; *НТВ*, Атакуют звонками и угрожают: сирота из Мариуполя рассказал о преследовании со стороны Украины, April 4, 2023, in the embedded video.

<sup>91</sup> Пресс-конференция Уполномоченного при Президенте России по правам ребенка М.А.Львовой-Беловой, April 4, 2023, at 50.08

<sup>92</sup> *Радіо Свобода*, Фактчек: дзвонимо Львовій-Беловій і питаємо про українських дітей у Росії та ордер МКС, November 8, 2023.

<sup>93</sup> *Новая газета*, Выйти из списка. Привезенный из Украины сирота, переговоры о возвращении которого домой продолжаются, получил повестку из российского военкомата, November 9, 2023.

<sup>94</sup> *Ibid.*

<sup>95</sup> <https://www.facebook.com/100002640153316/videos/671040471822981/>, November 9, 2023.

<sup>96</sup> <https://t.me/malvovabelova/2433>, November 10, 2023.

<sup>97</sup> *Новая газета*, Выйти из списка. Привезенный из Украины сирота, переговоры о возвращении которого домой продолжаются, получил повестку из российского военкомата, November 9, 2023.

<sup>98</sup> *Укрінформ*, Росія перешкоджає поверненню в Україну підлітка з Мариуполя - на нього чинять тиск, 7 November 2023; *BBC Ukraine*, Богдана Ермохіна обіцяють повернути додому. Що відомо про українського підлітка, який в Росії отримав повістку, November 10, 2023.

<sup>99</sup> <https://t.me/malvovabelova/2433>, November 10, 2023.

*Bogdan: The child feels abandoned. Every child feels abandoned. And we don't even know about it until the child is returned, we don't do anything. [...] Only after my appeal to Zelensky, only after my appeal to the office of [Ukraine's Commissioner for Human Rights] Lubinets did everyone really understand that I wanted to go home. Even though I had stated that earlier. We just keep quiet and wait until the kids hate us. And we should not do this.*<sup>100</sup>

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When asked if he was actually close to Lvova-Belova, Bogdan said 'there was no such thing,' adding that Lvova-Belova was 'very angry' about his escape attempts and his desire to return.<sup>101</sup>



<sup>100</sup> Радіо Свобода, «Кожна дитина почувається покинутою». Ексклюзивне інтерв'ю повернутого з Росії Богдана Єрмохіна, December 7, 2023.

<sup>101</sup> Ibid.

## II. Russian State Policy

78 This section provides a general description of the Russian state policy to displace Ukrainian children. It does not aim to provide a complete description of the Russian activities related to population displacement.

### A. Categories of Targeted Children

79 Ukrainian children subjected to an apparent displacement policy can be divided into three categories depending on the circumstances of their transfer.

80 First, there are children who were separated from their parents or guardians due to fortunes of war or deliberate actions by Russian authorities, such as filtration procedures. The sample case of the Mezhevoys, detailed above, falls into this category.

81 The Mezhevoys and the case of three boys from Mariupol – Ivan Matkovskiy, Maksim Boyko and an unnamed child<sup>102</sup> – demonstrate a pattern in the actions of the Russian forces when establishing control over a new territory. At first, children are contacted by military patrols or military personnel specifically assigned to clear out bomb shelters or other locations, who direct them or personally accompany them to a nearby checkpoint. The passage may lie through intermediary points, such as gathering points intended to collect the population for evacuation. At the checkpoint, information about the children is relayed to social services. Social services either control the flow of children or at least possess the information on where the children are before being sent to Russia. The children are temporarily accommodated in hospitals or child care institutions, regardless of the wishes of their parents or legal guardians, contact with whom may be lost at this point. The children are then transferred to Russia or other occupied areas for placement in institutions or foster families.

82 Second, there are orphans and other children who had been living under institutionalised care and were transferred together with others from their institutions. The sample case of Novopetrivske Specialised School, detailed above, falls into this category.

83 The Novopetrivske School in Mykolaiv region, as well as the cases of Nikita Stetsenko<sup>103</sup> and 16-year-old Artyom<sup>104</sup> from a boarding school in Kupyansk, demonstrate that the Russian military may have been specifically ordered to visit educational and child care institutions to ‘evacuate’ the children. This can be deduced from the fact that the Russian military arrived at the institutions with enough transport capacity to move the children to another location. The transfers were made regardless of the wishes of the children, their parents or legal guardians.

84 Third, there are children from occupied territories who were sent by their parents to recreation camps in Crimea and Russia in autumn 2022, but were not returned home at the end of the specified vacation period. This is a large group of children that, according to the data published by Lvova-Belova, may amount to 2,365 persons.<sup>105</sup> Some of the parents sent their children to vacation camps voluntarily, while others faced pressure, such as threats to remove the children from the family and send them to an orphanage.<sup>106</sup> While staying at the camps, some of the children reportedly

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<sup>102</sup> *Крым.Реалии*, Дело о геноциде России против Украины. Что дети из Мариуполя рассказали суду в Гааге? September 29, 2023.

<sup>103</sup> *Vice News*, Stealing Ukraine's Children: Inside Russia's Camps, at 0:53.

<sup>104</sup> *Спектр. Пресс*, Изолятор и психушка. Истории трех депортированных россиянами украинских подростков, April 28, 2023.

<sup>105</sup> Children's Rights Bulletin. Issue #2, *Russian Children's Rights Commissioner's website*, October 2023, p. 7 (detailing the number of children remaining in the camps by time, according to Lvova-Belova's office).

<sup>106</sup> *Спектр. Пресс*, Изолятор и психушка. Истории трех депортированных россиянами украинских подростков, April 28, 2023; also the report by the Yale School of Public Health's Humanitarian Research Lab: Russia's Systematic Program for the Re-Education & Adoption of Ukraine's Children, February 14, 2023, p. 13–14.

faced physical and psychological abuse on the basis of their Ukrainian identity.<sup>107</sup> Almost all of the children have reunited with their families, after a prolonged stay in Russia-controlled territory. In an interview published on December 18, 2023, Lvova-Belova stated that only one child remained, who decided, together with his parents, to continue his education in Crimea.<sup>108</sup>

85 There are three other notable groups of children that fall outside the scope of this report: those transferred from occupied Crimea to mainland Russia as a result of the ‘Trains of Hope’ initiative launched in 2014,<sup>109</sup> those who arrived to Russia from the Donetsk and Luhansk regions as part of the mass evacuation that started within a week prior to the full-scale invasion,<sup>110</sup> and those from occupied territories who, during the full-scale invasion, were reportedly subjected to a policy of transfer after a medical check-up (Russian: *диспансеризация*).<sup>111</sup>

86 The children who arrived as part of the mass evacuation mainly came with their families, but the evacuation also included children from boarding schools and other child care institutions. The children evacuated as part of that process may comprise a large portion of the 700,000 or more children who arrived to Russia as reported by Russian sources.<sup>112</sup> According to Lvova-Belova, the number of children from institutions who arrived in February 2022 was ‘about 2 thousand.’<sup>113</sup> Children from institutions in the Donetsk region were all transferred to Russian institutions or foster families,<sup>114</sup> while children from institutions in the Luhansk region were first ‘returned to their institutions in their entirety,’ before some of them were placed with Russian families.<sup>115</sup> Overall, the children thus evacuated may also account for the largest portion of the 380 family placements consistently reported by Lvova-Belova.<sup>116</sup> The OSCE Moscow Mechanism Third Report concluded that this initial evacuation may satisfy the grounds for population transfer set forth by international humanitarian law.<sup>117</sup> However, a failure to return these children to Ukraine or to the occupied regions upon cessation of hostilities there will fulfil the requisite element of unlawfulness (see below, section III(B)(3)) and, if it is established that the transfers were forcible, they may well constitute the crimes of unlawful deportation. That said, open source information provides relatively little evidence these initial transfers were forcible.

## B. Setting up the Policy

87 On March 9, 2022, two weeks after the beginning of the invasion, the Russian Presidential Commissioner for Children’s Rights, Maria Lvova-Belova had an official, publicised meeting with the Russian President, Vladimir Putin. The official, yet partial, record of the meeting published on the President’s website contains the following exchange:

*M.Lvova-Belova: There’s an issue, Vladimir Vladimirovich, I’d like to discuss it with you. We have received 1,090 orphans from various child care institutions. What do you think – our Russian citizens, they are of course very kind-hearted and have already formed up a queue to accommodate the children...*

*V.Putin: Very good.*

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<sup>107</sup> See below, section IV(E).

<sup>108</sup> <https://t.me/readovkaru/5294>, December 18, 2023, in the embedded video at 8.47.

<sup>109</sup> See OSCE Moscow Mechanism Third Report, p. 16, 40–41.

<sup>110</sup> *Ibid.*, p. 14–15.

<sup>111</sup> *Радіо Свобода*, «Вилікувати» українськість: як і навіщо РФ вивозить дітей із Донбасу до Росії, May 26, 2023.

<sup>112</sup> See above, footnote 6.

<sup>113</sup> Children’s Rights Bulletin. Issue #2, *Russian Children’s Rights Commissioner’s website*, October 2023, p. 3. Also the source cited in footnote 11 above.

<sup>114</sup> Children’s Rights Bulletin. Issue #2, *Russian Children’s Rights Commissioner’s website*, October 2023, p. 3.

<sup>115</sup> *Ibid.*

<sup>116</sup> See above, footnotes 8, 9, and 11.

<sup>117</sup> OSCE Moscow Mechanism Third Report, p. 38 (‘The Mission is of the view that these initial evacuations may be examples of evacuations in line with the requirements of material reasons’).



*M.Lvova-Belova: If I may, I'd like to continue this work. We have already created a register of those who have the documents. And some – perhaps for a temporary stay – some with Russian citizenship could already be taken in.*

*V.Putin: Why only Russian citizenship? Any citizenship.*

*M.Lvova-Belova: There are, well, bureaucratic hurdles that need to be eliminated, then.*

*V.Putin: You tell what they are and we'll eliminate them. These are extraordinary circumstances, and I believe, we need to think not of bureaucratic hurdles, but of the interests of the children.*

*M.Lvova-Belova: Of course.*

*V.Putin: Draw up the proposals, we will introduce changes to the legislation. We'll make a submission to the State Duma, I'm sure the MPs will support you.*

*M.Lvova-Belova: Thank you very much.<sup>118</sup>*

88 According to her annual report for the year 2022, published in July 2023, Lvova-Belova has participated in at least one meeting of the Russian Security Council's interagency commission on migration. Among the issues discussed at the meeting were 'the issues of accommodation and welfare of the people who were forced to urgently leave the territories of Ukraine, DPR and LPR and arrived to Russia, as well as the work on the legislative amendments in the sphere of migration.'<sup>119</sup> The date, the results and other participants of the meeting are not specified.

89 The legislative changes that may have resulted from these particular meetings and events are detailed in the next section.

## C. Legislative Changes on Citizenship and Family Placement

90 In the wake of the full-scale invasion that started on February 24, 2022, the Russian Federation introduced legislative changes aimed specifically at Ukrainian children. These changes facilitated admission into Russian citizenship and placement in Russian families.

91 On May 30, 2022, Vladimir Putin enacted Presidential Decree No. 330, which granted the right to obtain Russian citizenship via a simplified procedure to a new category of applicants. The simplified procedure had been set forth by article 14(8) of the 2002 Federal Law 'On Citizenship of the Russian Federation.' Read together with article 13(1), article 14(8) waived the usual requirements of residence, having 'legal means of subsistence,' and proficiency in the Russian language. By virtue of section 1 of the Decree of May 30, 2022, this simplified procedure was made available to 'orphaned children and children left without parental care, as well as persons without legal capacity, who are nationals of the Donetsk People's Republic, the Luhansk People's Republic or Ukraine.' This practically removed all eligibility requirements for the transferred Ukrainian children, because the only requirement left under the simplified procedure was a formal declaration that the person seeking citizenship undertakes to abide by the Russian law.

92 The right to apply for citizenship on behalf of children was granted by the aforementioned Decree to guardians or custodians, as well as 'the head[s] of institution[s] for orphaned children and children left without parental care, located in the territory of the Donetsk People's Republic, the Luhansk People's Republic, Zaporizhzhia Oblast and Kherson Oblast.' The four geographic names here refer to the four areas of Ukraine, then under partial occupation, that were subsequently annexed to Russia in September 2022.

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<sup>118</sup> Встреча с Уполномоченным по правам ребёнка Марией Львово-Беловой, *official website of the President of Russia*, March 9, 2022.

<sup>119</sup> Доклад о деятельности Уполномоченного при Президенте РФ по правам ребенка за 2022 год, *Russian Children's Rights Commissioner's website*, at p. 31.

93 These legislative changes could be an attempt by the Russian authorities to circumvent the limitations imposed by international law. Pursuant to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, adopted in Minsk in 1993, applicable between Russia and Ukraine, if a Russian parent sought to establish guardianship or custody (Russian: опека и попечительство) over a Ukrainian child, the process would have been governed by Ukrainian law.<sup>120</sup> If a Russian parent sought an adoption (Russian: усыновление), the process would have been governed by Russian law, but it would have necessarily required a permission from the legal representative of the child and the competent Ukrainian bodies.<sup>121</sup> Given the war, compliance with these requirements could have been practically impossible. It could be argued, in legal terms, that imposing the Russian citizenship on the incoming children allowed the Russian authorities to treat them as Russian and not Ukrainian children for the purposes of the convention.

## D. Involvement of Regional Authorities

94 Russia is a federal state. At the beginning of the full-scale invasion of Ukraine on February 24, 2022, Russia consisted of 85 federal constituent units,<sup>122</sup> officially called ‘federal subjects’ (Russian: субъекты федерации) but colloquially referred to as ‘regions.’

95 The regions are headed by the officials who preside over the executive branches of the regional governments.<sup>123</sup> These officials’ titles vary from one region to the next, but the one that is used most often is ‘Governor.’ Collectively, they are also usually referred to as ‘governors,’ but in all cases, either collectively or individually, they can be called heads of the federal subjects.

96 The Constitution vests the federal subjects with some small degree of autonomy in legislative and executive spheres.<sup>124</sup> However, the political reality is that almost all regions are fully controlled by Vladimir Putin’s administration. The balance of political power between the regional elites and the ruling clique is skewed to the point of being destroyed.<sup>125</sup>

### 1. Arrivals and Placement of Children

97 The regional authorities’ participation in accommodating parts of the Ukrainian population started before the full-scale invasion, on February 18, 2022,<sup>126</sup> when the governments of the so-called Donetsk People’s Republic and the so-called Luhansk People’s Republic, then unrecognised self-proclaimed entities in eastern Ukraine, began to evacuate civilians *en masse* to the territory of the Russian Federation. The first federal subject to accommodate the incoming people was the Rostov region.<sup>127</sup> The evacuation started with 225 orphans from the Boarding School No. 1 in Donetsk.<sup>128</sup> According to Russian state media, this early campaign involved interregional sessions of the ruling United

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<sup>120</sup> Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, 1993 (*Конвенция о правовой помощи и правовых отношениях по гражданским, семейным и уголовным делам*), art. 33.

<sup>121</sup> *Ibid.*, art. 37.

<sup>122</sup> Constitution of the Russian Federation, 1993 (as amended), article 65. The figure 85 includes Crimea, which was annexed from Ukraine in 2014, and Sevastopol, a city in Crimea whose status is elevated to that of a federal subject, exactly like Moscow and Saint Petersburg. As such, this figure is not reflective of the internationally recognised borders between Russia and Ukraine. It does not include the four Ukrainian regions annexed in September 2022.

<sup>123</sup> Federal Law of December 21, 2021 No. 414-FZ, ‘On the General Principles of Organisation of Authorities in the Federal Subjects of the Russian Federation’ (*Федеральный закон от 21.12.2021 № 414-ФЗ «Об общих принципах организации публичной власти в субъектах Российской Федерации»*), art. 20(1).

<sup>124</sup> Constitution of the Russian Federation, 1993, articles 71–73.

<sup>125</sup> These two sentences are based on the background knowledge of the experts behind this report.

<sup>126</sup> *Интерфакс*, *Власти самопровозглашенной ДНР начали эвакуацию жителей из посёлка Александровка*, February 17, 2022; *Интерфакс*, *В ДНР решили эвакуировать на территорию РФ женщин, детей и пожилых людей*, February 18, 2022; *Интерфакс*, *ЛНР вслед за ДНР объявила о массовой эвакуации в Россию*, February 18, 2022.

<sup>127</sup> *Интерфакс*, *В ДНР решили эвакуировать на территорию РФ женщин, детей и пожилых людей*, February 18, 2022.

<sup>128</sup> *Интерфакс*, *Эвакуацию из ДНР начали с детей-сирот из школы-интерната в Донецке*, February 18, 2022.



Russia party, with some regional governors in attendance and some form of cooperation between at least 74 Russian regions.<sup>129</sup>

98 In a number of statements over the subsequent period, Lvova-Belova acknowledged that 380 children from the Donetsk and Luhansk regions were placed in Russian foster families across 19 Russian regions.<sup>130</sup> When making such statements, Lvova-Belova frequently underlined that this placement was carried out by the governors under their ‘personal responsibility.’<sup>131</sup>

99 A Russian independent media outlet IStories reported that the official Russian register of children available for adoption or other forms of family placement grew by 2,450 children in 2022, as compared to the average number for the preceding six years. On the register, children are necessarily assigned to a particular region, and there were 21 regions whose numbers saw a dramatic increase in 2022. ‘Most of these [excess] children were in Rostov Oblast (573), Moscow (460), and Nizhny Novgorod Oblast (388).’<sup>132</sup>

100 A survey of social media and other sources shows that at least 39 regions accommodated children for the purposes of placement into a foster family, a child care institution, or a stay at a vacation camp:

- 1) Nizhniy Novgorod;<sup>133</sup>
- 2) Astrakhan;<sup>134</sup>
- 3) Voronezh;<sup>135</sup>
- 4) Kursk;<sup>136</sup>
- 5) Moscow Oblast;<sup>137</sup>
- 6) Murmansk;<sup>138</sup>
- 7) Omsk;<sup>139</sup>
- 8) Penza;<sup>140</sup>
- 9) Rostov;<sup>141</sup>
- 10) Ryazan;<sup>142</sup>
- 11) Samara;<sup>143</sup>
- 12) Chelyabinsk;<sup>144</sup>
- 13) Kamchatka;<sup>145</sup>
- 14) Amur;<sup>146</sup>
- 15) Kirov;<sup>147</sup>

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<sup>129</sup> *Интерфакс*, Границу России пересекли более 96 тысяч жителей ДНР и ЛНР, February 23, 2022.

<sup>130</sup> See sources cited in footnotes 8, 9, and 11 above. The figure ‘19 regions’ was also mentioned by Lvova-Belova during her second meeting with Putin (Встреча с Уполномоченным по правам ребёнка Марией Львово-Беловой, *official website of the President of Russia*, February 16, 2023).

<sup>131</sup> *Известия*, Они боятся громких звуков, переживают за своё будущее, December 19, 2022, in the embedded video at 2:37.

<sup>132</sup> *IStories*, To Kidnap and Russify, May 31, 2023.

<sup>133</sup> Мария Львова-Белова привезла в Нижегородскую область 24 ребенка-сироты из ДНР для устройства в приемные семьи, *Russian Children’s Rights Commissioner’s website*, September 22, 2022.

<sup>134</sup> *РИА Новости*, В Астраханскую область прибыли сироты из Донбасса, September 22, 2022.

<sup>135</sup> [https://t.me/gusev\\_36/227](https://t.me/gusev_36/227), March 11, 2022.

<sup>136</sup> [https://t.me/gubernator\\_46/439](https://t.me/gubernator_46/439), May 5, 2022.

<sup>137</sup> *Lenta.ru*, Андрей Воробьев и Мария Львова-Белова встретили детей-сирот из ДНР, October 7, 2022.

<sup>138</sup> *Хибины.ru*, 11 детей-сирот из Донецка обрели в Мурманской области родителей, September 25, 2022.

<sup>139</sup> *Вечерний Омск*, Омские семьи приняли на воспитание детей-сирот из ДНР, September 20, 2022.

<sup>140</sup> При содействии Марии Львова-Беловой из ДНР в Россию приехали дети-сироты для устройства в российские семьи, *official website of the President of Russia*, September 16, 2022.

<sup>141</sup> *Российская газета*, Сироты из Донецка рассказали, как их приняли в Ростовской области, February 19, 2022.

<sup>142</sup> [https://vk.com/wall202883289\\_3593](https://vk.com/wall202883289_3593), September 25, 2022; <https://t.me/romankopin/10>, March 15, 2022.

<sup>143</sup> <https://www.youtube.com/watch?v=DadCD29IDGw>, August 5, 2022.

<sup>144</sup> <https://chelyabinsk.bezformata.com/listnews/otdihayut-eshe-40-detey-iz-lnr/111256117/>.

<sup>145</sup> *АуФ-Камчатка*, Приемные семьи Камчатки могут принять детей-сирот с Донбасса, March 30, 2022.

<sup>146</sup> *ТЕЛЕПОРТ.РФ*, Отдых у моря организовала Амурская область детям Амвросиевского района, June 2, 2023.

<sup>147</sup> <https://t.me/aleksandrsokolov43/2151>, June 15, 2023.

- 16) Vologda;<sup>148</sup>
- 17) Leningradskaya Oblast;<sup>149</sup>
- 18) Kaluga;<sup>150</sup>
- 19) Bryansk;<sup>151</sup>
- 20) Belgorod;<sup>152</sup>
- 21) Lipetsk;<sup>153</sup>
- 22) Volgograd;<sup>154</sup>
- 23) Crimea;<sup>155</sup>
- 24) Tatarstan;<sup>156</sup>
- 25) Bashkortostan;<sup>157</sup>
- 26) Komi;<sup>158</sup>
- 27) Stavropol;<sup>159</sup>
- 28) Novosibirsk;<sup>160</sup>
- 29) Tambov;<sup>161</sup>
- 30) Orenburg;<sup>162</sup>
- 31) Saratov;<sup>163</sup>
- 32) Altai;<sup>164</sup>
- 33) St. Petersburg;<sup>165</sup>
- 34) Kemerovskaya Oblast;<sup>166</sup>
- 35) Sverdlovskaya Oblast;<sup>167</sup>
- 36) Sahalinskaya Oblast;<sup>168</sup>
- 37) Khabarovski Krai;<sup>169</sup>
- 38) Vladimir;<sup>170</sup>

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<sup>148</sup> <https://socium.gov35.ru/vedomstvennaya-informatsiya/novosti/5/88215/>, June 14, 2023.

<sup>149</sup> [https://t.me/drozdenko\\_au\\_lo/731](https://t.me/drozdenko_au_lo/731), July 15, 2022.

<sup>150</sup> [https://t.me/Shapsha\\_VV/6746](https://t.me/Shapsha_VV/6746), July 22, 2022; [https://t.me/Shapsha\\_VV/8499](https://t.me/Shapsha_VV/8499), April 22, 2023.

<sup>151</sup> Дети из Брянки отдохнут в оздоровительном лагере «Огонёк», June 1, 2023; ТАСС, Более 300 детей из ЛНР отдохнули в здравницах Брянской области за лето, September 26, 2023.

<sup>152</sup> <https://t.me/vvgladkov/4269>, December 22, 2023.

<sup>153</sup> [https://t.me/igor\\_artamonov48/1259](https://t.me/igor_artamonov48/1259), August 30, 2023.

<sup>154</sup> Луганский информационный центр, Более 100 детей из Станично-Луганского района отправились на отдых в Волгоградскую область, August 8, 2023.

<sup>155</sup> <https://t.me/Aksenov82/1192>, July 18, 2022; <https://t.me/malvovabelova/1061>, February 6, 2023; Поморье, При поддержке нашего региона 300 детей из Мелитополя отправились на отдых в Крым, July 19, 2023.

<sup>156</sup> <https://dzen.ru/a/Y9JdowraYEt7KkGm>, January 26, 2023.

<sup>157</sup> Башинформ, Отдыхавших в Башкирии детей из ЛНР проводили домой, June 28, 2022; <https://ok.ru/group70000000179381/topic/156334045977525>, August 7, 2023.

<sup>158</sup> Комиинформ, Дети из города Ровеньки отдыхают в принадлежащем Коми санатории "Черноморская зорька", August 3, 2022.

<sup>159</sup> Единороссы отправили детей из Антрацита в детский оздоровительный лагерь «Бештау» Ставропольского края, *United Russia website*, August 1, 2023; <https://t.me/romankopin/945>, September 4, 2022.

<sup>160</sup> VN.ru, Пятьдесят детей из Беловодского района ЛНР отдохнут в Новосибирске, July 1, 2022.

<sup>161</sup> К 1 сентября Тамбовская область отправила пять тонн гуманитарной помощи в Новоайдарский район ЛНР, *United Russia website*, August 24, 2023.

<sup>162</sup> <https://dzen.ru/a/ZMX-4nW9lgGiuiZi>, July 30, 2023.

<sup>163</sup> ТАСС, В Саратовской области отдохнут 150 детей из подшефного Сватовского района ЛНР, July 12, 2022.

<sup>164</sup> ГТРК ЛНР, Дети Славяносербского района выехали на отдых в Алтай, July 3, 2023.

<sup>165</sup> 78, Дети из Мариуполя приедут отдыхать в Петербург May 31, 2023; 78, Около сотни школьников из Мариуполя приехали в Петербург на осенние каникулы October 28, 2023.

<sup>166</sup> РИА Новости, Дети из Горловки отдыхают в Шерегеше по приглашению Сергея Цивилева August 16, 2023.

<sup>167</sup> ГТРК «Югория», В Югру из Макеевки отдохнуть и восстановить здоровье прилетели 200 детей, July 17, 2023.

<sup>168</sup> ТАСС, Детям из ДНР организовали отдых на Сахалине, September 15, 2022.

<sup>169</sup> Хабаровская редакция «Комсомольская правда», Хабаровский край организовал отдых на побережье детям из Дебальцево, July 23, 2022.

<sup>170</sup> ГТРК «Владимир», Дети из Докучаевска и Донецка поделились своими впечатлениями об отдыхе в лагере Владимирской области, August 29, 2023.

## 2. Coordination between Federal and Regional Bodies

101 Pursuant to Russian law, the government agencies overseeing adoption and foster care, called ‘bodies for guardianship and custody’ (Russian: *органы опеки и попечительства*), are all created as part of the regional governments, and not the federal government.<sup>172</sup> This confers a great degree of operational control on the governors and regional authorities over family placement and institutionalised care.

102 In the absence of a specialised federal agency, there would need to be a coordinating centre for regional authorities when it comes to countrywide projects. This coordinating centre would collect the information on the number of children incoming from Ukraine and the number of vacant places in institutions or foster families across Russian regions, and initiate the transfers and placements. Available information suggests that at least two entities may have played this coordinating role: the Presidential Commissioner for Children’s Rights and the federal Ministry of Education.

103 Numerous sources, including public statements by Lvova-Belova, confirm that Lvova-Belova or her office initiated the placement of Ukrainian children by contacting the governors:

- 1) The official website of the President of the Russian Federation states that ‘the Commissioner has made an agreement with the heads of the regions about their personal patronage over [foster] families and providing necessary support to them.’<sup>173</sup>
- 2) In her comment to a TV show on Channel One, dated September 26, 2022, which she also published on her Telegram channel, Lvova-Belova stated: ‘I have personally talked it through with the governors, they understand the full extent of the responsibility falling upon them.’<sup>174</sup>
- 3) In an interview to a Kremlin-controlled newspaper, Lvova-Belova stated the following: ‘Placing children in families is my professional duty. Currently, we are dealing with orphans from the Donbas and other liberated territories [...]. We are making phone calls to the governors and saying, “let’s support [them], let’s help find families, this is a difficult category of children.”’<sup>175</sup>
- 4) During her publicised meeting with Vladimir Putin on February 16, 2023, Lvova-Belova stated she had ‘personally called the governors and in 19 regions the governors were picking good families for the children. [...] They administer all this, [the governors] have these processes under their patronage and they provide all the necessary assistance.’<sup>176</sup>
- 5) A Russian tabloid quotes a local commissioner for children’s rights appointed in one of the regions as saying that Lvova-Belova ‘has personally contacted the governors and, in a commanding tone, claimed it was the President’s order, the President’s assignment [to receive the children].’<sup>177</sup>

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<sup>171</sup> <https://gcheb.cap.ru/news/2023/07/28/v-nashej-respublike-otdihayut-na-kanikulah-rebyata>, July 28, 2023.

<sup>172</sup> Civil Code of the Russian Federation, art. 34(1); Family Code of the Russian Federation, art. 121(2).

<sup>173</sup> При содействии Марии Львовой-Беловой из ДНР в Россию приехали дети-сироты для устройства в российские семьи, *official website of the President of Russia*, September 16, 2022 (‘Детей принимают семьи из Астраханской, Воронежской, Курской, Московской, Мурманской, Нижегородской, Омской, Пензенской, Ростовской, Рязанской, Самарской, Челябинской областей и Москвы. Уполномоченный договорилась с главами регионов об их личном патронате над этими семьями и оказании им необходимой поддержки.’).

<sup>174</sup> <https://t.me/malvobelova/606>, September 28, 2022, in the embedded video at 2.12; *Первый канал*, АнтиФейк. Выпуск от 26.09.2022, 26 September 2022, in the embedded video at 27.53.

<sup>175</sup> *Аргументы и факты*, «Сразу поняла — это мой сын». Детский омбудсмен взяла в семью сироту из ДНР, 29 October 2022 (‘Мы же звоним губернаторам и говорим — давайте поддержим, поможем подобрать семьи’).

<sup>176</sup> Встреча с Уполномоченным по правам ребёнка Марией Львовой-Беловой, *official website of the President of Russia*, February 16, 2023 (‘Я звонила лично губернаторам, в 19 регионах губернаторы подбирали детям хорошие семьи. [...] Они под личным патронатом, они [губернаторы] всё это ведут, курируют, всю необходимую помощь оказывают.’)

<sup>177</sup> *Блокнот*, Уполномоченный по правам ребёнка Мария Львова-Белова может уйти в отставку: то ли адюльтер, то ли – проблемы из-за ордера Гаагского МУС, December 22, 2023 (‘Она подставила Путина. Все губернаторы были против забирать детей из ДНР и ЛНР в приемные семьи. Ей сто раз говорили, у детей нет статуса, то и оформить это грамотно не получится, Но она сама связывалась с губернаторами и приказном тоне говорила ,что это приказ и наказ президента....А потом начались

Out of the 39 cases of accommodation of the incoming children identified above, at least 8 were closely preceded or followed by, or coincided with, a contact between Lvova-Belova and the regional authorities, as confirmed by official sources:

- 1) On September 22, 2022, Lvova-Belova delivered 24 orphaned children from DPR to Nizhny Novgorod for family placement and met the governor Gleb Nikitin.<sup>178</sup> On June 23, 2023 Nizhny Novgorod also welcomed children from Khartysyzsk district for a stay at a recreation camp.<sup>179</sup>
- 2) On April 23, 2022, Lvova-Belova and the governor of the Moscow region Andrey Vorobyov handed the first group of Ukrainian children over to 10 foster families of the region.<sup>180</sup> On April 25, Vorobyev publicly expressed his gratitude to Lvova-Belova for her help in delivering 27 children from DPR to the region and expressed his hope to receive the 'benefits and payments for these children on time.'<sup>181</sup> In early October 2022, Vorobyev and Lvova-Belova met another group of orphaned children from DPR.<sup>182</sup> On July 31, 2023, 98 children from DPR arrived to a recreation camp called 'Young Patriot,' located in Moscow region.<sup>183</sup>
- 3) On September 14, 2022, Alexandra Evdokimova, the local commissioner for children's rights in Ryazan region, met with Lvova-Belova.<sup>184</sup> On September 25, 2022, Evdokimova received six orphaned children from DPR.<sup>185</sup>
- 4) On July 10, 2023, the governor of Kirov region Alexander Sokolov met with Lvova-Belova to discuss topics related to adoption.<sup>186</sup> On June 15, 2023, Sokolov announced an agreement with the head of Zaporizhzhia and stated that recreation camps in the Kirov region were receiving children from the annexed territory.<sup>187</sup>
- 5) On April 1, 2022, the governor of Leningradskaya Oblast Alexander Drozdenko met with Lvova-Belova to discuss assistance to families that have children with disabilities.<sup>188</sup> On July 15, 2022, the region welcomed children from DPR for medical procedures and rehabilitation, and some for recreation camps.<sup>189</sup> On December 1, 2023, the region welcomed 90 school children from DPR to one of its recreation camps called Mayak.<sup>190</sup>
- 6) On June 1, 2022, the governor of Kaluga Vladislav Shapsha met with Irina Ageyeva, the local commissioner for children's rights.<sup>191</sup> On July 22, it was reported that Lvova-Belova personally took 19 orphans from Donbas to Kaluga region for placement in foster families.<sup>192</sup> In the video published that day, she is seen together with Vladislav Shapsha.<sup>193</sup> On April 22, 2023, Kaluga region also received children from LNR for potential medical

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проблемы. Именно с приемных семей. Там «верующие» в кавычках семьи взяли детей, якобы на время. А потом некоторые совсем запретили им общение с родственниками из Украины. Отсюда и началась эта волна'). This media outlet is not independent and presents other matters in a manifest pro-Kremlin light. As such, it is far less credible than most other media cited in this report.

<sup>178</sup> Мария Львова-Белова привезла в Нижегородскую область 24 ребенка-сироты из ДНР для устройства в приемные семьи, *Russian Children's Rights Commissioner's website*, September 22, 2022 (on the second and fourth photos in the publication, Lvova-Belova is seen with the governor Gleb Nikitin).

<sup>179</sup> *Харцызск сегодня*, Нижегородцы организовали отдых для детей из Харцызска, June 23, 2023.

<sup>180</sup> Первые дети-сироты из Донбасса устроены в российские семьи под временную опеку, *Russian Children's Rights Commissioner's website*, April 23, 2022 ('Мария Львова-Белова и Губернатор Московской области Андрей Воробьев 23 апреля передали сирот из ДНР под временную опеку в десять семей [...] Подмосковья'). Also <https://t.me/malvovabelova/111>, April 23, 2022 ('Передали детей в десять приемных семей Подмосковья').

<sup>181</sup> [https://t.me/vorobiev\\_live/3374](https://t.me/vorobiev_live/3374), April 25, 2022, in the embedded video.

<sup>182</sup> Мария Львова-Белова: 234 ребенка-сироты из Донбасса привезены в Россию за последнюю неделю для устройства в российские семьи, *Russian Children's Rights Commissioner's website*, October 7, 2022. *Lenta.ru*, Андрей Воробьев и Мария Львова-Белова встретили детей-сирот из ДНР, October 7, 2022. On the photos in these publications, Lvova-Belova and Vorobyev are seen on an airfield together with the children.

<sup>183</sup> [https://vk.com/wall-218869285\\_2465](https://vk.com/wall-218869285_2465), July 31, 2023.

<sup>184</sup> [https://vk.com/wall202883289\\_3538](https://vk.com/wall202883289_3538), September 14, 2022.

<sup>185</sup> [https://vk.com/wall202883289\\_3593](https://vk.com/wall202883289_3593), September 25, 2022.

<sup>186</sup> <https://t.me/aleksandsokolov43/2299>, July 10, 2023.

<sup>187</sup> <https://t.me/aleksandsokolov43/2151>, June 15, 2023.

<sup>188</sup> [https://t.me/drozdenko\\_au\\_lo/147](https://t.me/drozdenko_au_lo/147), April 1, 2022.

<sup>189</sup> [https://t.me/drozdenko\\_au\\_lo/731](https://t.me/drozdenko_au_lo/731), July 15, 2022.

<sup>190</sup> *ЛенТВ24*, Более 90 школьников из Енакиево приехали в Ленобласть на отдых, December 1, 2023.

<sup>191</sup> [https://t.me/Shapsha\\_VV/6363](https://t.me/Shapsha_VV/6363), June 1, 2022.

<sup>192</sup> *Первый канал*, Еще 19 детей-сирот из Донбасса вновь обрели дом и любящих родителей, June 22, 2022.

<sup>193</sup> *Ibid.*

assistance.<sup>194</sup> On May 31, 2023, it was reported its recreation camps would receive 400 children from Pervomaysk district.<sup>195</sup>

7) On January 11, 2024, the governor of Belgorod Vyacheslav Gladkov visited a Moscow children's hospital together with Lvova-Belova.<sup>196</sup> On December 22, 2023, three children were 'returned' from Ukraine to the Belgorod region.<sup>197</sup>

8) On February 6, 2023, Lvova-Belova reached an agreement with the governor of Crimea Sergei Aksenov that one of the 'Poslesavtra' camps, dedicated to teenagers from regions affected by war, would take place there.<sup>198</sup> On July 19, 2023, it was reported that 300 children from Melitopol had arrived in recreational camps in Crimea.<sup>199</sup>

105 None of these 8 cases of contact between Lvova-Belova and regional authorities correlate with the 15 incidents of forcible displacement identified<sup>200</sup> in this report. However, these cases tend to prove the general pattern of coordination and demonstrate Lvova-Belova's key role in the transfer and placement of children.

106 In six cases, official statements describe Lvova-Belova as having personally placed or accompanied children to a particular region.<sup>201</sup>

107 On some occasions, Lvova-Belova visited the children in foster families or child care institutions in a particular region after the children had been placed there.<sup>202</sup>

108 A different body that could have played the coordinating role, at least in the early stages of the invasion, is the federal Ministry of education. Journalists with the independent Russian television station *TV Rain* obtained a leaked correspondence between the federal Ministry of Education and regional bodies for guardianship and custody. The correspondence was partially shown in an edited form in a video released by *TV Rain* on February 26, 2023.<sup>203</sup> It contains a message dated August 9, 2022, sent by an official of the Ministry to regional bodies, that mentions a 'Protocol of the Security Council' (Russian: *Протокол Совета Безопасности*) in accordance with which it was 'ordered' (Russian: *поручено*) to transfer children of a certain category from the refugee centres in Rostov and Kursk regions to other regions of Russia before September 1.<sup>204</sup> The word 'protocol' here likely refers to notes or minutes of a particular meeting or the adopted decision, rather than a set of rules or guidelines. The message also asks the addressees to assess how many children the institutions within their purview are capable of accommodating. The message also says, 'The order does not directly concern us, and therefore, a decision will most probably be made at the Government level.' It also contains a line that says, 'That said, we have prepared a message addressed to all the governors stipulating a near term.' The next message in the correspondence, as shown by *TV Rain*, is from a regional

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<sup>194</sup> [https://t.me/Shapsha\\_VV/8499](https://t.me/Shapsha_VV/8499), April 22, 2023.

<sup>195</sup> *Знамя.Калуга*, 400 детей из подшефного Первомайска летом отдохнут в Калужской области, May 31, 2023.

<sup>196</sup> <https://t.me/vvgladkov/4638>, January 11, 2024.

<sup>197</sup> <https://t.me/vvgladkov/4269>, December 22, 2023.

<sup>198</sup> <https://t.me/malvovabelova/1061>, February 6, 2023.

<sup>199</sup> *Поморье*, При поддержке нашего региона 300 детей из Мелитополя отправились на отдых в Крым, July 19, 2023.

<sup>200</sup> See below, para. 199.

<sup>201</sup> Мария Львова-Белова навестила детей-сирот из Донецкой Народной Республики в подмосковном пансионате, *Russian Children's Rights Commissioner's website*, May 30, 2022 (Moscow Region); Первые дети-сироты из Донбасса устроены в российские семьи под временную опеку, *Russian Children's Rights Commissioner's website*, April 23, 2022 (Moscow region); Мария Львова-Белова передала 24 ребенка-сироты из ЛНР приемным семьям Новосибирской области, *Russian Children's Rights Commissioner's website*, October 13, 2022 (Novosibirsk region); Мария Львова-Белова привезла в Нижегородскую область 24 ребенка-сироты из ДНР для устройства в приемные семьи, *Russian Children's Rights Commissioner's website*, September 22, 2022 (Nizhny Novgorod); *Lenta.ru*, Андрей Воробьев и Мария Львова-Белова встретили детей-сирот из ДНР, October 7, 2022 (Moscow region); В ближайшее время приемные семьи 6 регионов России возьмут под опеку 108 детей из ДНР, *Russian Children's Rights Commissioner's website*, July 15, 2022 (Rostov region); *Первый канал*, Еще 19 детей-сирот из Донбасса вновь обрели дом и любящих родителей, July 22, 2022 (Kaluga Region).

<sup>202</sup> [https://t.me/gusev\\_36/227](https://t.me/gusev_36/227), March 11, 2022; Дети-сироты окружены заботой и любовью – Мария Львова-Белова о детях, прибывших из ДНР, *Russian Children's Rights Commissioner's website*, April 24, 2022 (Moscow region).

<sup>203</sup> *TV Rain*, Как Россия украла тысячи детей из Украины и отдала их на «перевоспитание» (UKR, ENG SUBS), February 26, 2023, at 13.27.

<sup>204</sup> *Ibid.*, at 13.31.

body asking the sender of the first message if there will be quotas for regions, and the response goes, ‘For now, we are asking for suggestions, afterwards – probably yes.’ The correspondence also demonstrates the involvement of the Russian Security Council in addition to that of the Ministry of Education.

109 There is at least one instance in which an official of the federal Ministry of Education came into contact with transferred children together with Lvova-Belova and regional officials.<sup>205</sup>

## E. Involvement of State and non-State organisations

110 In addition to the involvement of the President, the Presidential Commissioner, the Governors, the social services and the military, the campaign to displace children is also characterised by the participation of other Russian bodies and organisations.

### 1. Investigative Committee of the Russian Federation

111 The Investigative Committee of the Russian Federation is a federal body in charge of investigating criminal cases. Its involvement in the displacement of Ukrainian children consists in various forms of interaction with the children, as well as its inaction with respect to the alleged crimes of deportation and transfer.

112 As for the interaction with Ukrainian children, a review of social media related to the Committee revealed 14 events of such interaction falling into four categories.

113 First, a post from May 4, 2022 specifically states that the Russian Investigative Committee has participated in the evacuation of people including children aged from 1.5 months to 17 years. The evacuation was conducted on the orders of the Committee’s chairman, Alexander Bastrykin, in cooperation with the Russian Ministry of Defence with assistance of the commissioners for children’s rights of DPR and LNR.<sup>206</sup>

114 Second, there were at least four occasions on which the Committee’s officials visited children who had arrived to Russia from the Donetsk and Luhansk regions.<sup>207</sup>

115 Third, the Committee announced that adolescents from DPR and LNR were going to continue their education in the cadet schools of the Investigative Committee.<sup>208</sup> On May 18, 2023, Sergey Petrov, the head of department of educational work of the Russian Investigative Committee met the acting head of LPR Leonid Pasechnik to discuss the issues of ‘patriotic education and training’ of children living on the territory of the Republic and studying in the specialised cadet classes of the Russian Investigative Committee.<sup>209</sup> Later, a statement was made on the Committee’s social media that any orphans from LNR, DPR, Zaporizhzhya and Kherson regions are eligible to apply for admission to education institutions of the Russian Investigative Committee.<sup>210</sup> Alexander Bastrykin himself stated that the Committee’s cadet schools have admitted ‘a lot’ of children:

*Well, the Investigative Committee – and I’m proud of my colleagues who are doing it – we have taken a lot of children from Donbas to improve their health [in Russia], a lot of injured children. We have taken a lot of orphans, children of Donbas. We are tracking their fate in Russia. We have admitted a lot of*

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<sup>205</sup> Мария Львова-Белова подписала протокол о намерениях с уполномоченными по правам ребенка Луганской и Донецкой народных республик, *Russian Children’s Rights Commissioner’s website*, March 10, 2022.

<sup>206</sup> <https://t.me/bastrykin/353>, May 4, 2022.

<sup>207</sup> <https://www.youtube.com/watch?v=rxvkebX-Tfl>; Сотрудники следственного управления СК России по Курской области навестили детей-сирот, прибывших из ЛНР и ДНР, *website of the Investigative Committee*, February 22, 2022; <https://t.me/bastrykin/353>; <https://www.youtube.com/watch?v=SdP9ug1Qael>.

<sup>208</sup> <https://www.youtube.com/watch?v=1tA8ZmHYLnQ>.

<sup>209</sup> [https://t.me/sledcom\\_press/5417](https://t.me/sledcom_press/5417), February 18, 2023.

<sup>210</sup> [https://t.me/sledcom\\_press/7074](https://t.me/sledcom_press/7074), June 4, 2023 (on the embedded video Sergey Petrov states: ‘We have four cadet schools in Moscow, Saint Petersburg, Sevastopol and Volgograd, where a big percentage, 40 percent of children, to be exact, are orphaned kids. The kids from [child care] institutions [in occupied areas] will also be able to study at our schools, if they so wish’).



*kids, a lot of orphans to the educational institutions of the Investigative Committee, to our academies, our cadet schools. We are providing all the necessary aid to the children of Donbas, all we can.*<sup>211</sup>

- 116 Fourth, other instances of interaction include meetings in the occupied regions, humanitarian aid, promoting and honouring those who participate in education<sup>212</sup>, as well as other supporting activities.<sup>213</sup>
- 117 None of these events of interaction is specifically linked to any incident of forcible displacement identified<sup>214</sup> in this report. However, they demonstrate the participation of the Investigative Committee in the implementation of the general displacement policy.
- 118 As for its inaction, the Investigative Committee of the Russian Federation is charged with investigation and prosecution of crimes, including the crimes of deportation and forcible transfer allegedly committed by agents of the Russian state. However, there are three factors pointing to the lack of impartiality of the chairman of the Committee, Alexander Bastrykin, which clearly interferes with the fulfilment of this task.
- 119 First, Alexander Bastrykin publicly adheres to the justifications of the war in Ukraine proposed by the Russian leadership. At a panel discussion at the Saint Petersburg Legal Forum on May 11, 2023, he repeated the talking points about the need to prevent an attack on Russia,<sup>215</sup> the reign of Nazism in Ukraine<sup>216</sup> and genocide of ‘the peoples of the Donbas.’<sup>217</sup>
- 120 Second, he demonstrated bias in reacting to the ICC warrants. When speaking on Russia’s involvement in proceedings before international courts, he stated:

*The ECtHR, which we finally left – I am familiar with this organisation first-hand, I’ve been there many times back in my days, I talked to people there. The majority of the decisions it used to render with respect to our decisions, our courts, were actually causing a big surprise, even in those times. This organisation is utterly politicized. Essentially, it is now defending the genocide in Donbas by the Ukrainian militarists. And accuses us of grave crimes. The same goes for the International Criminal Court. The one that rendered, well, just a crazy decision against the leadership of our country and the Commissioner for Children’s Rights. Exploiting the topic of children. As if we are illegally moving the children of Donbas from Ukraine. But why are we moving them? We are trying to save them. And then care about them, help them adapt in Russia.*<sup>218</sup>

- 121 On March 20, 2023, three days after the ICC issued the warrants of arrest against President Vladimir Putin and Maria Lvova-Belova, the Investigative Committee announced the institution of criminal proceedings against the Prosecutor of the Court and the judges of the Pre-Trial Chamber II, stating that the prosecution launched by the Court was

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<sup>211</sup> The Children of Donbas: Right to Safety, May 11, 2023, Russian audio track, at 48.23.

<sup>212</sup> [https://vk.com/wall-130483571\\_1687](https://vk.com/wall-130483571_1687), April 1, 2022 (as seen on the photos attached to the publication, Alexander Bastrykin honored the heads of child care institutions from occupied territories).

<sup>213</sup> <https://www.youtube.com/watch?v=AmRkxDVca0A>; Председатель Следственного комитета России провел оперативное совещание в режиме видео-конференц-связи, *website of the Investigative Committee*, March 22, 2022; [https://www.youtube.com/watch?v=o1ib1i\\_fmZU](https://www.youtube.com/watch?v=o1ib1i_fmZU); [https://www.youtube.com/watch?v=dA\\_npSBaxNk](https://www.youtube.com/watch?v=dA_npSBaxNk); <https://youtube.com/watch?v=AmRkxDVca0A>; <https://t.me/bastrykin/168>, March 22, 2022; [https://t.me/sledcom\\_press/885](https://t.me/sledcom_press/885), March 22, 2022.

<sup>214</sup> See below, para. 199.

<sup>215</sup> The Children of Donbas: Right to Safety, May 11, 2023, Russian audio track, at 44.37 (‘Our investigation has shown – and, today, we can prove it with written documents – that the Ukrainian leadership assumed they would launch a special operation in the territory of Donbas in March 2022. With a view to reach the Russian border.’).

<sup>216</sup> *Ibid.*, Russian audio track, at 45.21 (‘One of the goals that was stated in the Presidential decree was [denazification] of Ukraine. And what it means is the destruction of fascism. Not just elimination of the followers of this ideology by the methods pertaining to the special operation. But the destruction of ideology.’).

<sup>217</sup> *Ibid.*, Russian audio track, at 46.49 (‘Essentially, what happens today is genocide of the peoples of the Donbas and of the children.’) and 51.20 (‘Applying the norms of international law in a positive fashion, we legally characterize the deeds of Ukrainian Nazis and fascists as crimes of international character, international crimes. And, I repeat, as genocide of civilian population.’).

<sup>218</sup> *Ibid.*, Russian audio track, at 47.02.

'knowingly unlawful, because there [was] no grounds for criminal liability.'<sup>219</sup> The press release<sup>220</sup> also contained a paragraph resembling legal argumentation based on head of state immunities. Later, the ICC Prosecutor Karim Khan,<sup>221</sup> judges Tomoko Akane,<sup>222</sup> Rosario Salvatore Aitala,<sup>223</sup> Sergio Gerardo Ugalde Godinez,<sup>224</sup> as well as the President Piotr Hofmański, the First Vice-President Luz del Carmen Ibáñez Carranza and judge Bertram Schmitt<sup>225</sup> were put on the wanted list.

122 Third, the lack of impartiality is seen in the lack of any investigation or prosecution launched based on the reports of the alleged crimes, including the information formally submitted to the Committee.

123 Thus, when commenting on the reports of abuse in recreation camps during her interview to Vice News, Lvova-Belova stated she personally filed submissions on that issue to the Committee:

*Reporter: There are some Ukrainian children who are now back in Ukraine, who say that during their time in some of these camps, they experienced psychological abuse. They say that they were forced to sing Russian songs and that they – if they expressed pro-Ukrainian sentiments – they were punished for that. Is that true?*

*Lvova-Belova: Well, this is the difference between us and Ukraine. We don't use children for politics. Sadly, they do. As the Commissioner, I am unable to ignore these calls. Obviously, we are looking into this situation, even though I see the absurdity of it all. But even these false, fake accusations have forced my reaction and I have, actually, relayed these submissions to all investigative authorities.*

*Reporter: So you are saying that these kids who experienced the camp for themselves are lying about their experiences?*

*Lvova-Belova: What would you do if you came to the territory where they demand it from you? Given that your family, for instance, is living in special, you know, places for evacuated people in Ukraine. And how can you not confirm the information they are waiting for?<sup>226</sup>*

124 However, judging by the lack of information on the Committee's website and social media, which have been managed actively under the leadership of Bastrykin, the submissions on abuse have not resulted in any prosecutions.

## 2. Russian Orthodox Church

125 The Russian Orthodox Church (ROC) is also involved with the transfer and integration of Ukrainian children.

126 There are indications that the ROC was working together with the Russian Ministry of Emergency Situations (MES) already in 2017.<sup>227</sup> While this fact is not out of the ordinary, it does indicate a history of collaboration between these entities, which continued during the full-scale invasion. Information came to light through an Anonymous hack<sup>228</sup> that the ROC's Department for Charity and Social Services has received multiple emails from MES about various transfers of people from occupied regions. In addition to each email, MES would send daily information about resettlement of

<sup>219</sup> [https://t.me/sledcom\\_press/5885](https://t.me/sledcom_press/5885), March 20, 2023.

<sup>220</sup> Ibid.

<sup>221</sup> [https://t.me/tass\\_agency/192668](https://t.me/tass_agency/192668), March 19, 2023.

<sup>222</sup> [https://t.me/tass\\_agency/202687](https://t.me/tass_agency/202687), July 27, 2023.

<sup>223</sup> [https://t.me/rian\\_ru/206575](https://t.me/rian_ru/206575), June 22, 2023.

<sup>224</sup> [https://t.me/tass\\_agency/217809](https://t.me/tass_agency/217809), November 7, 2023.

<sup>225</sup> [https://t.me/mediazona\\_exclusive/356](https://t.me/mediazona_exclusive/356), September 25, 2023.

<sup>226</sup> Vice News, Exclusive: We Interviewed the Russian Woman Accused of 'Stealing' 20,000 Children, May 1, 2023, in the embedded video at 8.42.

<sup>227</sup> *Информационный навигатор*, Геноцид детства: РПЦ принимает участие в похищении украинских детей – интервью с религиоведом, June 8, 2023.

<sup>228</sup> *Слідство.Інфо*, Депортуї ближнього свого: як Російська Православна Церква разом із силовиками примусово переселяють українців до Росії, April 24, 2022.



Ukrainians from DPR and LNR to the ROC, including schedules for buses and trains.<sup>229</sup> They would also send a map of occupied territories in Ukraine and any updates of the progress of the military operation.<sup>230</sup> The ROC Department is headed by Bishop Panteleimon (Shatov) and his subordinate Polina Yufereva, who is the coordinator of the ROC emergency services.<sup>231</sup>

- 127 The ROC also owns the Orthodox Education Centre School named after St. Sergius,<sup>232</sup> which received children transferred directly from Donbas. The children were transferred with the help and coordination of a veterans' organisation 'Pamyat Vitazyam' (Russian: *Память витязям*).<sup>233</sup> There was also at least one more occasion of transfer to the school since the beginning of the full-scale invasion.<sup>234</sup>
- 128 On multiple occasions, the ROC has been seen visiting refugee centres and institutions hosting orphans from LNR and DPR. The regions of Voronezh, Kaluga, Oryol, Ryazan, Republic of North Ossetia and Rostov have received a visit from a church associate.<sup>235</sup> One example is February 26, 2022, when the Metropolitan Mercuriy of Rostov visited 500 children from the Donetsk region accommodated in the sanatorium 'Romashka' in the Rostov region in Russia.<sup>236</sup> He delivered humanitarian aid and held discussions with the children, during which the children have 'shown interest in receiving the sacrament of Baptism which was agreed upon by the administration of the sanatorium.'<sup>237</sup> The sacrament was administered on March 1, 2022, when 33 children were baptised.<sup>238</sup>
- 129 When interviewed, some of the children who have returned to Ukraine mentioned their interactions with Russian priests, saying the priests attempted to convince them they were being 'evacuated' and 'saved.'<sup>239</sup>
- 130 The orthodox orphanage under the name of 'Pokrov' has been identified as one of the orphanages sponsored and supported by the ROC.<sup>240</sup> Since 2014, the orphanage has received both refugees and children from LNR and DPR.<sup>241</sup> In fact, the orphanage describes one of its main responsibilities as 'rehabilitation of the children from Donbas.'<sup>242</sup> It has been visited by Maria Lvova-Belova<sup>243</sup> and Yana Lantratova,<sup>244</sup> a member of State Duma.
- 131 Additionally, ROC participates in providing general assistance to refugees, such as gifts for children in the occupied regions.<sup>245</sup> Other instances of aid and involvement of the ROC include the Marfo-Mariinsky Monastery in the Belgorod

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<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> 'Boarding school named after St. Sergius' was created in October 2000 with the blessing of His Holiness Patriarch Alexy II of Moscow and All Rus' under the auspices of the Holy Trinity Sergius Lavra of the Stavropegic Monastery of the Russian Orthodox Church, for orphans and children left without parental care, for the purposes of Orthodox upbringing and education of children' (<https://hh.ru/employer/2392345>). Ibid.

<sup>233</sup> [https://vk.com/video-213181913\\_456309450](https://vk.com/video-213181913_456309450).

<sup>234</sup> [https://vk.com/wall15538490\\_154](https://vk.com/wall15538490_154), August 29, 2022; [https://vk.com/vitali260570?w=wall15538490\\_381%2Fall](https://vk.com/vitali260570?w=wall15538490_381%2Fall), August 31, 2023.

<sup>235</sup> [https://vk.com/wall-92217071\\_5231](https://vk.com/wall-92217071_5231), February 25, 2023; [https://vk.com/wall-82903085\\_339465](https://vk.com/wall-82903085_339465), October 10, 2022; [https://vk.com/wall-215589363\\_401](https://vk.com/wall-215589363_401), November 6, 2023; [https://vk.com/wall-62067498\\_1106](https://vk.com/wall-62067498_1106), November 12, 2023; [https://vk.com/video-64968695\\_456249159](https://vk.com/video-64968695_456249159); [https://vk.com/club22684354?w=wall-22684354\\_1746](https://vk.com/club22684354?w=wall-22684354_1746), December 31, 2022.

<sup>236</sup> *Православие.Ру*, Глава Донской митрополии встретился с детьми, эвакуированными с территории Донбасса, February 26, 2022.

<sup>237</sup> Ibid.

<sup>238</sup> [https://vk.com/video-150365763\\_456239392](https://vk.com/video-150365763_456239392).

<sup>239</sup> *Информационный навигатор*, Геноцид детства: РПЦ принимает участие в похищении украинских детей – интервью с религиоведом, June 8, 2023.

<sup>240</sup> [www.detipokrov.ru](http://www.detipokrov.ru).

<sup>241</sup> [https://vk.com/pomogimame36rus?w=wall-131751549\\_3036](https://vk.com/pomogimame36rus?w=wall-131751549_3036), May 3, 2022.

<sup>242</sup> <https://vk.com/pomogimame36rus?w=club131751549>.

<sup>243</sup> *РИА «Воронеж»*, Детский омбудсмен призвала воронежцев усыновлять сирот из Донбасса, March 11, 2022.

<sup>244</sup> *РИА «Воронеж»*, Депутат Госдумы Яна Ланtratова посетила эвакуированных из Донбасса в Воронежской области, March 6, 2022.

<sup>245</sup> <http://eparhia-kaluga.ru/news/eparhialnye-novosti/20676-rukovoditel-otdela-po-tserkovnoj-blagotvoritelnosti-kaluzhskoj-eparkhii-prinyal-uchastie-v-seksii-patriarshaya-gumanitarnaya-missiya-v-dnr-lnr-khersonskoj-i-zaporozhskoj-oblastyakh-napraavlениya-lichnost-obshchestvo-i-tserkov-v-sotsialnom-sluzhenii-v-ramk.html>.

diocese that was used as a filtration centre for more than 1,000 refugees coming through.<sup>246</sup> Some relocated families from Mariupol are residing in an orphanage in the Kostroma diocese.<sup>247</sup> Another instance is the evacuation of children from DPR on November 20-23, 2022 who were sent to the Orthodox Education Centre named after St. Sergius.<sup>248</sup>

132 The ROC's visits to various orphanages, including sponsorship of one of them specifically dedicated to assisting children from Donbas and their overall distribution of aid, further strengthens the church's involvement in the spread of specific influence on the children transferred from the occupied territories. The additional association with the Russian Emergency Services and Elena Milskaya's connection to the sanatorium 'Romashka' indicates a collaboration between the three entities towards a common goal.

### 3. Elena Milskaya's Fund

133 Elena Milskaya, as the Head of the National Fund for helping Children, was first seen with her husband Alexander Kurenkov, the head of the MES, during his visit to a refugee camp called Romashka to which children from orphanages of occupied regions have been transferred since 2014. In one of her posts on Russian social media site VK, she posted a photograph in which children from the Donetsk school No. 1 could be identified.<sup>249</sup> In October 2022, Milskaya and her fund could be seen collaborating with the MES in assisting the transfer of children from Kherson region, through Crimea, to Krasnodar region.<sup>250</sup> Additionally, she has assisted numerous transfers related to overall refugees<sup>251</sup> and their children, including children with disabilities and elderly people.<sup>252</sup> In December 2022, Milskaya announced the creation of 12 regional centres 'for military sports education and patriotic training of youth' in Russia and the occupied territories.<sup>253</sup> The centres were aimed at providing 120 hours of military training to children between the ages of 14 and 18.

## F. Children in Propaganda

134 Interviews and videos of children transferred from Ukraine to the Russian-controlled territories have been widespread on Russian television and social media. This report features the most salient examples, allowing some general conclusions.

135 The use of displaced children on state-controlled television and social media may serve both internal and external goals of the displacement campaign. On the one hand, it may discourage Ukrainian authorities from getting the children back. On the other hand, it can be used to justify the war, 'the war in Ukraine is revenge for the children of the Donbas' being one of the justifications appearing<sup>254</sup> on Russia-controlled social media.

### 1. Lvova-Belova's Statements

136 In her public statements, Lvova-Belova tries to underline that the transferred children side with Russia in their views on the war and the role Russia plays.

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<sup>246</sup> *Информационный навигатор*, Геноцид детства: РПЦ принимает участие в похищении украинских детей – интервью с религиоведом, June 8, 2023.

<sup>247</sup> *Православие.Ru*, В гуманитарных центрах Ростовской-на-Дону епархии беженцы получают одежду. Информационная сводка о помощи беженцам (от 13 февраля 2024 года), February 14, 2024.

<sup>248</sup> [https://vk.com/wall-158288807\\_15385](https://vk.com/wall-158288807_15385), November 20, 2022.

<sup>249</sup> *Проект*, Рассказ о президентском адъютанте, его набожной жене, их тайном заработке и похищенных украинских детях, August 21, 2023.

<sup>250</sup> [https://vk.com/e\\_milskaya?w=wall-213333442\\_107](https://vk.com/e_milskaya?w=wall-213333442_107), October 14, 2022.

<sup>251</sup> <https://t.me/findchild/2986>, October 11, 2022.

<sup>252</sup> <https://t.me/findchild/3177>, October 20, 2022.

<sup>253</sup> [https://vk.com/wall-212867885\\_362](https://vk.com/wall-212867885_362), December 19, 2022.

<sup>254</sup> *Детектор медиа*, 'Revenge for the Children of the Donbas'. How Russia Justifies Deportation and Other War Crimes in Ukraine, January 10, 2023.

137 This is exemplified by Bogdan Ermokhin’s case where Lvova-Belova, using the pretext of his escape attempt and the need to convince the audience that he had been manipulated, publicly stated that Bogdan was ‘all pro-Russian and aspires to victory.’<sup>255</sup>

138 This rhetoric is accompanied by the claim that Ukrainian children have themselves been brainwashed for eight years prior to the full-scale invasion:

*‘[A] child from Mariupol now lives in our family and I am seeing what we are fighting against, I am seeing that there’s been a powerful propaganda during those eight years, I am seeing that we will actually have to create new educational programs, informational programs, we will have to re-educate the children. Because the propaganda that was carried out in Ukraine, it will not simply fade away.’<sup>256</sup>*

139 When speaking about her fostered son Philipp, she said she witnessed a transformation:

*Let me give you a simple example. We’ve brought a group of children from Mariupol, 30 kids whom we’ve found in the basements, whose foster parents abandoned them and evacuated without them. Essentially, they’ve left them in a sort of difficult situation. And when we brought them to the Moscow region to let them recover a bit, there was this whole story with them talking bad about our President, saying nasty things, singing the Ukrainian anthem, ‘Slava Ukraini’ and all that. But some time has passed, these kids have been placed into foster families of the Moscow region. One of the boys was placed into my family. And right before my eyes, the integration started to occur. [...] Not one of the kids wanted to return. They said ‘we feel very good here.’ You see, there is some negativity in the beginning, but then it transforms into a love for Russia.’<sup>257</sup>*

140 Within Lvova-Belova’s rhetoric, these cases of transformation can be seen as a winning blow in the battle for hearts and minds of Ukrainian children, something that ultimately justifies the displacement campaign.

## 2. Denis Kostev

141 At the start of the full-scale invasion, 16-year-old Denis Kostev (Russian: *Денис Костев*) was one of the pupils at the Socio-psychological Rehabilitation Centre in Stepanivka, outside Kherson, an institution run by Volodymyr Sagaydak.<sup>258</sup> Denis’s mother died when he was six and his father was denied parental rights.

142 About five months after the invasion, Volodymyr Sagaydak decided to hide the children from the invaders by giving them to their relatives or employees of the institution. He had 52 children under his care. As Volodymyr states in Shahida Tulaganova’s documentary, he entrusted Denis to the boy’s adult brother,<sup>259</sup> but Russian soldiers found them. The circumstances of their capture are given by Shahida Tulaganova in a podcast, where she states that a girl who attended the same school and lived in the same dormitory as Denis told her that the children did not want to leave, but were all forcibly taken to Russia when soldiers arrived at the dormitory.<sup>260</sup> This might have been the dormitory of the Vocational School No. 2 (Russian: *ПТУ № 2* where Denis was enrolled according to Russian state media.<sup>261</sup>

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<sup>255</sup> See above, para. 71.

<sup>256</sup> The Children of Donbas: Right to Safety, May 11, 2023, Russian audio track, at 1.07.09.

<sup>257</sup> Пресс-брифинг по работе ситуационного центра по наблюдению за референдумами в ДНР, ЛНР, Запорожской и Херсонской областях, September 27, 2022, URL: [https://vk.com/video-93005764\\_456242007](https://vk.com/video-93005764_456242007), at 10.47 and 12.00.

<sup>258</sup> Unless another source of information is indicated, the information on Denis Kostev is taken from Ukraine’s Stolen Children, a documentary by Shahida Tulaganova, also known as Shahida Yakub, released in 2023.

<sup>259</sup> Ukraine’s Stolen Children, 7 minutes into the film.

<sup>260</sup> *BBC Russia*, Подкаст «Что это было? Как украинские мамы возвращают вывезенных в Россию детей», November 13, 2023, at 09.22.

<sup>261</sup> *Russian RT*, «Это было тяжёлое время»: эвакуированные дети-сироты о жизни в Херсоне, February 24, 2023, in the embedded video at 04.17.

143 Volodymyr describes Denis as smart, eloquent, and capable of finding ways to talk to any person and adapting to any situation.<sup>262</sup>

144 In a TikTok video on May 14, 2022, prior to being displaced by the Russian soldiers, Denis expressed a balanced opinion on Russia and Ukraine:

*I am Ukrainian [...]. I love Ukraine. And I also love Russia. But I hate Putin and all the ruling clique who have actually started this war. People living in Ukraine are actually suffering a lot at the hands of the Russians. I live in Kherson, occupied by the Russian forces, and it's really scary. They kill, they rape, they steal people, and Putin doesn't care about it. This is why I'm telling you straightaway, I am for Ukraine. Those who are for Russia, by all means, Russia is your home country, you can live in it, die for it, but Ukraine will never be [Russian].*<sup>263</sup>

145 In a video published by *Russian RT* on February 24, 2023, months after being displaced, Denis is seen wrapped in a Russian flag. He says, 'I am a member of Dvizhenie Pervykh, it's a volunteer movement and I really like it. You help both the old and the young. And I also plan to join the ranks of Yunarmiya.'<sup>264</sup> Denis is referring here to patriotic youth movements created by the Russian government in the recent years.

146 In the same video, when asked 'What do you plan to do in the future when you grow up?' he responds: 'I'd like to serve in the military, I'm ready to serve the Russian Federation [...]. I have seen the attitude of Russians towards Ukrainians, I saw the attitude of Ukrainians towards Russians, and there's a huge difference. I mean, some accept you warmly and very sympathetically – Russians are generally very kind-hearted – while Ukrainians, well, they are ready to tear you apart.' When asked about the situation in Kherson at the time of his transfer, he says, 'Well, it was a hard time, there was a constant shelling from the Ukrainian side [...]. But thank god, the Russian authorities helped, they dragged us out.'<sup>265</sup>

147 In a video published by a local pro-Russian media, Denis appears in a military style t-shirt and a cap emblazoned with a letter 'V.' Looking slightly off-camera and clearly reading from a script, Denis comments on a recent visit of Vladimir Putin to Kherson:

*The visit of Vladimir Vladimirovich Putin is an event of greatest importance for all of us. His visit to the Kherson region shows that these lands are ours and no one will ever take them away from us. Everyone is sure that the goals of the special military operation will remain unchanged and will be fully accomplished, which gives us confidence and hope that victory will be ours.*<sup>266</sup>

148 In another video that looks like it was shot for a TV news report, he is in the bright red uniform of Yunarmia with a Russian flag in the backdrop, speaking about a local event at which he represented Yunarmia.<sup>267</sup>

149 Eventually, Denis managed to leave Russia with the help of the Ukrainian NGO Save Ukraine. In an interview after his rescue, when asked specifically about the RT video, he called it propaganda:

*Journalist: Russian state television came to visit you and interview you. Tell me that story.*

*Denis (smiling): I would say it is propaganda. It's filming videos for propaganda. They told me to say it, I said it [...]. I was shocked, I didn't expect them to come. [...]*

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<sup>262</sup> Ukraine's Stolen Children, 6 minutes into the film.

<sup>263</sup> <https://www.tiktok.com/@kostevdenis0/video/7097344306276568325>, May 14, 2022.

<sup>264</sup> *Russian RT*, «Это было тяжёлое время»: эвакуированные дети-сироты о жизни в Херсоне, February 24, 2023.

<sup>265</sup> *Ibid.*

<sup>266</sup> [https://t.me/kherson\\_news\\_info/58081](https://t.me/kherson_news_info/58081), April 19, 2023.

<sup>267</sup> *Лента новостей Херсона*, Генчешек: продолжаем говорить о важности патриотического воспитания и развитии молодежного движения, URL: [https://vk.com/video-213126902\\_456267246](https://vk.com/video-213126902_456267246).

*Journalist: One of the things that you said was that you wanted to fight for the Russians.*

*Denis: It wasn't right. [...] I had to maintain the appearance.*<sup>268</sup>

150 Denis told the journalists that Russian Intelligence threatened his life if he tried to escape.<sup>269</sup>

### 3. Luzhniki Rally on February 22, 2023

151 One of the highlights of the propaganda campaign around Ukrainian children was the rally at Luzhniki Stadium in Moscow on February 22, 2023.

152 Luzhniki is the largest stadium in Russia, capable of accommodating 80,000<sup>270</sup> spectators. It holds a special place in the political history of modern Russia. Even though Vladimir Putin has run for president many times, he has never participated in televised debates and rarely held pre-election rallies. However, he has used large public gatherings to create the image of popular support. Many of these gatherings were held at Luzhniki.

153 This time, the event included a scene with Ukrainian children.<sup>271</sup> Halfway through the event, the hosts introduced the audience to Yuri Gagarin, a Russian military man who had fought in Mariupol. Using his *nom de guerre* 'Angel' as a lead-in to his story, they recounted that he had saved 367 children during the 'liberation' of Mariupol and showed a short clip of him helping a group of children and adults cross the street in a devastated city. The camera cut back to the arena, showing a group of children on the stage and then switched to the hosts standing beside them. A host addressed the man: 'Yuri Leonidovich, these are the kids that you saved! Do you remember Anna Naumenko? She's here and she has something important to say!' While the host is speaking, a little girl from the group covers her ears from loud noises.

154 A teenage girl came forward from the group and tried to address the military man who was standing nearby. Failing to look him in the eyes for more than a second, she stammered before producing a single word. The host tried to encourage her, saying: 'Anny, sweetheart, don't be shy, speak! We are here with you.' The girl looked at the military man and said: 'Thank you, Mr. Yuri, for saving me, my sister and hundreds, thousands of children from Mariupol.' She faltered again and turned to the hosts saying, 'I forgot [the text] a little,' before noticing she was still holding the microphone close. She then covered her face in embarrassment with her hand.

155 The host who was speaking approached the girl and pushed her towards the man, saying 'Anny, don't be shy, you can come and hug [him]! Everyone, lets hug! Look, this is the one who saved you!' Anna leant on the man slightly but quickly withdrew, while other children, smiling, rushed towards him. Another host invited Yuri to speak. Yuri, speaking into a microphone and surrounded by the children, said:

*These children are the children of Donbas, the children of Mariupol. These are our children. And we, the Russian army, are obliged to protect this people and these children.*

156 Yuri Gagarin did indeed fight in Mariupol<sup>272</sup> and Anna Naumenko did indeed live there with her mother Olga and her younger sister Karolina, who was seen on stage covering her ears.<sup>273</sup> According to an independent Russian media outlet *IStories*, their mother died from shrapnel wounds in April 2022, when she ran out for cigarettes from the basement where they were hiding.<sup>274</sup>

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<sup>268</sup> *Scripps News*, Ukrainian Orphan, Victim of 'Brainwashing,' Escapes Russia, February 11, 2024, in the embedded video at 03.20.

<sup>269</sup> *Ibid.*, in the embedded video at 05.43.

<sup>270</sup> <https://www.luzhniki.ru/about/complex/>.

<sup>271</sup> Митинг-концерт «Слава защитникам Отечества» в Лужниках: прямая трансляция, starting at 0.56.37.

<sup>272</sup> *Агентство*, Что не так с выступлением на митинге в Лужниках российского военного, который «спас 367 детей», February 23, 2023.

<sup>273</sup> *IStories*, Ukrainian Children Were Brought on the Stage during the Pro-war Concert in Moscow. *IStories Found Who They Are*, February 24, 2023.

<sup>274</sup> *Ibid.*

## G. Return Process

157 While the Russian authorities claim they are actively assisting children in reuniting with their families, the number of children returned is very low, the modalities of the return process are too restrictive, and there are grounds to believe that prohibitive criteria have been used in selecting the children to be returned.

158 It appears that the official responsible for the return process is Maria Lvova-Belova. According to a press release on Lvova-Belova's website, the issues of 'transferring children from combat zones and finding their relatives' are 'directly within the purview of the Commissioner' and 'all measures undergo strict due diligence with respect to the norms of international law and Russian legislation.'<sup>275</sup> It was Lvova-Belova who led<sup>276</sup> the Russian delegation in Doha, Qatar, on April 24, 2024, at an event described by Lvova-Belova as the first in-person negotiations with the Ukrainian party on the issues of family reunification.<sup>277</sup>

159 On December 22, 2023, almost 22 months after the full-scale invasion, Lvova-Belova claimed that she and her institution had assisted in returning 48 children from 35 families to their relatives in Ukraine or other countries, this excluding the children sent to recreation camps in autumn 2022.<sup>278</sup> Judging by the examples provided in her bulletin,<sup>279</sup> this figure includes children who simply resided in Russia-controlled territories and have not been forcibly displaced.

### 1. Restrictive Modalities

160 The Russian authorities have organised the return process in such a way that, in each case, it must be initiated by the relatives of the child. This has been acknowledged by Russian representatives of the highest level, all claiming that that children will be handed over to their parents or legal guardians if they show up. Thus, on September 23, 2023, the Russian Foreign Minister Sergey Lavrov stated the following:

*We have repeatedly seen information disseminated about what is actually happening to children. [...] I will definitely ask our Mission to send the materials to you that we have repeatedly distributed, including to the UN, explaining that the list of all children without parents is publicly available (unlike the Bucha case). There is a list of children who are alive that includes contacts of those willing to help these children to reunite with their parents or close relatives in the event they make themselves known. This is something I have repeatedly explained. [...] Unlike Bucha (where no one mentions any names), we made the last names of children who are alive (thank God) public a long time ago. We are waiting for any of their relatives to show up and confirm that they are related, and then they can immediately take their child. The majority of these kids are those who lived in orphanages, sent there by parents for various reasons. When the special military operation began, we took them to safety – but we neither hid the names of the kids who were taken away nor their location. We have always invited and continue*

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<sup>275</sup> Международный Комитет Красного Креста и аппарат детского омбудсмена договорились о взаимодействии по ряду направлений, *Russian Children's Rights Commissioner's website*, November 25, 2022 ('На рабочем совещании представителей Международного Комитета Красного Креста (МККК) и Уполномоченного при Президенте РФ по правам ребенка обсуждались вопросы, связанные с перемещением детей из зон боевых действий и поиском их родных. [...] Руководитель аппарата детского омбудсмена Алексей Газарян рассказал, что в России обозначенные вопросы находятся в непосредственном ведении Уполномоченного, а все действия проходят повышенную степень юридической проверки на соответствие нормам международного права и законодательству РФ').

<sup>276</sup> Qatar Hosts a Delegation from Russia as Part of its Reunification Efforts of Separated Families, *the official website of the MFA of Qatar*, April 24, 2024.

<sup>277</sup> <https://t.me/malvovabelova/3235>, April 24, 2024. Dmytro Lubinets, who led the Ukrainian delegation, denied that any direct negotiations between the parties took place: [https://t.me/dmytro\\_lubinets/5532](https://t.me/dmytro_lubinets/5532), April 25, 2024.

<sup>278</sup> <https://t.me/malvovabelova/2663>, December 22, 2023.

<sup>279</sup> Children's Rights Bulletin. Issue #2, *Russian Children's Rights Commissioner's website*, October 2023, p. 5–6.



*to invite parents, if they show up, to come and retrieve their children. You could travel there and talk with these children yourself to get a better understanding.*<sup>280</sup>

161 Analogous statements were made by President Putin,<sup>281</sup> the UN Permanent Representative Vassily Nebenzia,<sup>282</sup> and Russia's ambassador to the United States Anatoly Antonov.<sup>283</sup>

162 It is unclear how the Russian authorities distributed the 'list' of the children referred to by Lavrov and Antonov, and whether the list is complete. Some list may have been provided to the UN Secretary-General's Special Representative for Children and Armed Conflict, Virginia Gamba, during her visit to the Russian Federation in May 2023. But, judging by the information publicly disseminated by Russian officials such as Lvova-Belova, it could have been limited to children from institutions in DPR and LPR, as well as the children sent to vacation camps in autumn 2022, thereby omitting the children of the first category described above in section II(A), as well as children from Kherson, Zaporizhzhia and other areas of Ukraine.

163 The fact that the return process must be initiated by the relatives is further acknowledged by Lvova-Belova's office, whose bulletin on Ukrainian children sets out the three possible modalities of reunification:

*There are several ways of reunification:*

- *families resolve the issue on their own or with the help of volunteer organisations, and no administrative assistance is required;*
- *families or volunteer organisations apply to the Russian Presidential Commissioner for Children's Rights;*
- *families apply to the official structures of Ukraine, which pass information to Russia, to the Office of the Russian Presidential Commissioner for Children's Rights.*

*The Commissioner's Office promptly assists all legal representatives of children. Such work has been done since the beginning of the SMO and is of an individual nature.*<sup>284</sup>

164 It follows that the Russian authorities do not conduct the return process on their own initiative. The Russian authorities have likely never launched any process or mechanism intended to return all of the displaced children to their relatives or their original location once the hostilities in the areas in question have ceased. It is likely that there is no general registry of such children. The return process maintained by the Russian Federation is carried out on an *ad hoc* basis. Relatives who embark on the process reportedly face various obstacles, such as 'repeatedly moving children from one place to another or using the Russian form of names for Ukrainian children (e.g., Russian "Дмитрий" instead of Ukrainian "Дмитро") in official communication.'<sup>285</sup> This raises doubts as to Russia's ability to comply with its obligations under international humanitarian law, including the obligation to return the transferred population,<sup>286</sup> which underpins the liability for displacement crimes.

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<sup>280</sup> Foreign Minister Sergey Lavrov's remarks and answers to media questions during a news conference following the High-Level Week of the 78th session of the UN General Assembly, New York, September 23, 2023, *Russian MFA website*, September 23, 2023.

<sup>281</sup> See below, para. 277.

<sup>282</sup> Arria formula "Children & armed conflict: Ukrainian crisis. Evacuating children from conflict zone", April 6, 2023, at 21.14; Remarks by Permanent Representative Vassily Nebenzia at "Arria-formula" meeting of UNSC members on combating forced separation and illegal exploitation of children, *website of the Russian mission to the UN*, November 10, 2023 ('At the same time, we have repeatedly emphasized that if we receive requests from relatives of these children, they will be immediately handed over to them.').

<sup>283</sup> *Newsweek*, Russia Vows to Return All Children 'Rescued' from Ukraine Upon Request, September 27, 2023.

<sup>284</sup> Children's Rights Bulletin. Issue #2, *Russian Children's Rights Commissioner's website*, October 2023, p. 4.

<sup>285</sup> OSCE Moscow Mechanism Third Report, p. 21. Also, Communication Pursuant to Article 15 of the Rome Statute of the International Criminal Court. Responsibility of Russian Federation Officials for Unreasonable Delay in Repatriation of Ukrainian Children, *Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention*, October 7, 2023, paras. 15–16

<sup>286</sup> See below, section III(B)(3).

## 2. Prohibitive Criteria

- 165 On one occasion, when speaking about the group of 31 children associated with Mariupol, Lvova-Belova mentioned that Iryna Vereshchuk, the Ukrainian Minister for Reintegration of the Occupied Territories, asked her to bring the children back to Ukraine.<sup>287</sup> Lvova-Belova stated outright that she did not understand the basis for such a request, even though she admitted that, according to Vereshchuk, some of the children have foster families who had left Ukrainian territory but wanted to reunite with the children. Lvova-Belova further stated that as the Presidential Commissioner for Children’s Rights she is obliged to take into account the interests of the child. In doing so, she asked the children whether they want to return, but reported that none of them did.
- 166 This statement shows that Lvova-Belova took the request to return the children as her responsibility. It further shows that, in dealing with such a request, Lvova-Belova introduced two additional criteria governing the return process. The first is her discretionary judgment on whether the return would correspond to her vision of ‘the interests of the child.’ The second is whether the children themselves give an express consent to being returned when communicating with the Russian authorities.
- 167 Further, a diplomat briefed on the situation of the four children who were brought back with the mediation of Qatar in October 2023 stated to *The New York Times* ‘that the Russian families with whom the children had been placed consented to their return.’<sup>288</sup> This is the third and arguably the most prohibitive criterion that may govern the return process.
- 168 These selection criteria may reduce the number of children susceptible to the return process and unduly prolong the stay of the children at a new location.

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<sup>287</sup> Пресс-брифинг по работе ситуационного центра по наблюдению за референдумами в ДНР, ЛНР, Запорожской и Херсонской областях, September 27, 2022, URL: [https://vk.com/video-93005764\\_456242007](https://vk.com/video-93005764_456242007), at 11.31.

<sup>288</sup> *The New York Times*, Four Ukrainian Children Abducted to Russia Return Home After Qatar Intervention, October 16, 2023.



### III. Legal Norms and Requirements

169 This section sets forth the rules on responsibility for international crimes potentially committed in association with the displacement of Ukrainian children. It does not contain a legal assessment of any particular individual's contribution, which is a matter dealt with in section IV. It does, however, contain legal characterisations of some of the established facts.

#### A. The List of Possible Legal Characterisations

170 The situation surrounding Ukrainian children may involve one or more of the following crimes:

- 1) The war crime of unlawful deportation, as a grave breach of the Geneva Conventions, under art. 8(2)(a)(vii) of the Rome Statute (RS);
- 2) The war crime of unlawful transfer, as a grave breach of the Geneva Conventions, under art. 8(2)(a)(vii) RS;
- 3) The war crime of deportation, as 'other serious violation' of the laws and customs of war, under art. 8(2)(b)(viii) RS;
- 4) The war crime of forcible transfer, as 'other serious violation' of the laws and customs of war, under art. 8(2)(b)(viii) RS;
- 5) The crime against humanity of deportation under art. 7(1)(d) RS;
- 6) The crime against humanity of forcible transfer under art. 7(1)(d) RS;
- 7) The crime of unjustifiable delay in the repatriation of prisoners of war or civilians, set forth as a grave breach under art. 85(4)(b) of Additional Protocol I to the Geneva Conventions.
- 8) The crime against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under art. 7(1)(e) RS;
- 9) The war crime of unlawful confinement, as a grave breach of the Geneva Conventions, under art. 8(2)(a)(vii) RS;
- 10) The crime of genocide under art. 6(e) RS.

171 This list is a preliminary legal characterisation based on some of the information processed by the authors of this report. Its purpose is to encompass as many kinds of crimes as possible so as to direct further factual and legal research and not to express any conclusions regarding criminal responsibility. Before going into specifics about the crimes on the list, two important aspects should be highlighted.

172 First, it has to be mentioned that, based on the publicly available information, the arrest warrants issued by the ICC in March 2023 exclusively concern war crimes under articles 8(2)(a)(vii) and 8(2)(b)(viii) RS,<sup>289</sup> which occupy positions 1 to 4 on the list. This does not prevent the ICC or national authorities from prosecuting any individual for any other crime on the list. In choosing the scope of the arrest warrants, the Office of the Prosecutor of the ICC could have been constrained by evidentiary concerns. It could also have been a strategic choice by the Office to narrow down the scrutiny applied by the judges in order to achieve a deterrent effect with respect to any ongoing transfers as fast as possible. It should not be regarded as an expression of unwillingness or lack of prospects in prosecuting other crimes against Ukrainian children or other crimes committed in the course of the Russian invasion in general.

173 Second, many of the crimes on the list have similarly sounding titles, address substantially similar conduct and consist of overlapping elements. This is an unfortunate hereditary feature of international criminal law, which developed sporadically since the end of the 19<sup>th</sup> century. Hence, when first introduced into law, the prohibitions now recognised – war crimes, crimes against humanity and the crime of genocide – were separate from each other and were not intended to be brought together in a single comprehensive instrument such as the Rome Statute. Further, due to the need to strengthen the legitimacy of the ICC, the drafters of the Rome Statute were very constrained in setting out the

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<sup>289</sup> See above, fn. 16.

prohibitions and had little opportunity to harmonise them.<sup>290</sup> Nevertheless, all applicable characterisations under the Rome Statute are formally distinct crimes consisting of different sets of elements.

174 For the purposes of this report, the term ‘elements of crime’ shall be understood as the factual circumstances the prosecution would necessarily need to prove to obtain conviction for the crime charged. The elements of a given crime are essentially the legal definition of that crime.

175 Elements of crimes are especially important when distinguishing between crimes against humanity (CAH) under art. 7 RS and war crimes under art. 8 RS. In practice, crimes of both categories may result from one and the same conduct, but some of their legal elements, especially the so-called contextual elements, are drastically different. The contextual element of all CAH is that the conduct of the offender is a part of a widespread or systematic attack against a civilian population in furtherance of a state or organisational policy.<sup>291</sup> In contrast, the contextual element of war crimes is the existence of an armed conflict, as well as a nexus between the conflict and the conduct of the offender.<sup>292</sup> Save for the contextual elements, the elements comprising a given crime against humanity and a given war crime could theoretically be identical. Nevertheless, even in that case a person could be convicted of both kinds of crimes on the basis of the same conduct.<sup>293</sup> This is due to the general principle of law that one and the same conduct may constitute multiple crimes, provided that the legal definition of each crime contains at least one element not contained by the others.<sup>294</sup> This includes contextual elements.<sup>295</sup>

176 That said, the pairs of mutually corresponding CAH and war crimes under discussion in this report all contain some distinguishing elements other than the contextual element. For example, the CAH of forcible transfer under art. 7(1)(d) RS requires that the transferred persons were lawfully present in the area from which they were transferred.<sup>296</sup> There is no analogous requirement for the corresponding war crimes of unlawful transfer under articles 8(2)(a)(vii) and 8(2)(b)(viii) RS.

177 There is also a distinction between two types of war crimes on the list: ‘grave breaches’ under art. 8(2)(a) RS and ‘other serious violations’ under art. 8(2)(b) RS. This distinction is dictated by the history of international law and has little or no bearing on the overall prospects of securing a conviction for the alleged crimes associated with the transfers of Ukrainian children.

178 Finally, turning to the discussion of the crimes on the list, the crimes can be divided into three groups: displacement crimes, including all kinds of deportations and transfers; confinement crimes, including the crime of unjustified delay in the repatriation of civilians; and genocide. This report focuses on the displacement crimes and the crime of genocide. However, the team regards the confinement crimes as also worthy of consideration for any potential discussion of criminal liability for the displacement of Ukrainian children.

## B. Displacement Crimes

179 Displacement crimes are the crimes of deportation and transfer numbered 1 to 6 on the list above. They share some key common elements, namely, (1) movement to another location, (2) forcible character of the movement and (3)

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<sup>290</sup> Foreword by Philippe Kirsch, QC in *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary*, ed. by Knut Dörmann, 2003, p. xiii (‘Because of the general agreement that the definitions of crimes in the ICC Statute were to reflect existing customary international law, and not to create new law, states relied heavily on accepted historical precedents in crafting the definitions [...]. This approach ensured the widespread acceptability of the definitions, but resulted in an assortment of provisions drawn from different sources and different eras.’).

<sup>291</sup> Rome Statute, art. 7(2)(a). See below, section III(B)(4).

<sup>292</sup> Elements of Crimes, art. 8, second-last element of each crime.

<sup>293</sup> ICC, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74, March 7, 2014, ICC-01/04-01/07-3436-tENG, para. 1695.

<sup>294</sup> See *Carl-Friedrich Stuckenberg, Cumulative Charges and Cumulative Convictions*, in *The Law and Practice of the International Criminal Court*, ed. by Carsten Stahn, 2015, 840–858, p. 846–847.

<sup>295</sup> ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to article 74, March 21, 2016, ICC-01/05-01/08-3343, para. 750; ICTY, *Prosecutor v. Goran Jelisčić*, Appeals Chamber Judgment, July 5, 2001, para. 82.

<sup>296</sup> Rome Statute, art. 7(2)(d); Elements of Crimes, art. 7(1)(d), element 2.

unlawfulness. They also contain some distinguishing elements, notably, (4) state or organisational policy, which is the contextual element of crimes against humanity. This section deals with each of these elements.

180 There are some other elements to the displacement crimes, such as the existence of an international armed conflict or civilian status of the victims, which can be said to have been fulfilled on the facts of the situation with a high degree of certainty and, as such, do not merit discussion in this report.

181 The legal analysis below is partially based on legal authorities dealing exclusively with deportations and transfers as crimes against humanity, rather than war crimes, or vice versa. The legal holdings from such authorities are applicable to deportations and transfers of either category, ‘because deportation as a crime against humanity developed out of deportation as a war crime [...]’.<sup>297</sup> As stated by the International Criminal Tribunal for the Former Yugoslavia, apart from the contextual elements, ‘[t]he content of the underlying offence [of deportation] does not differ whether perpetrated as a war crime or as a crime against humanity.’<sup>298</sup>

## 1. Movement to Another Location

182 The first element of the displacement crimes is movement of one or more persons to another location.

183 While ‘deportation’ specifically refers to a displacement across an international boundary, ‘forcible transfer’ refers to a displacement within the territory of a State. This distinction, stemming from the wording of the Geneva Convention IV,<sup>299</sup> is recognised in the jurisprudence of the ICC<sup>300</sup> and prior jurisprudence of the international criminal tribunals.<sup>301</sup> In this report and elsewhere, ‘transfer’ can also be used as a general term encompassing both kinds of displacement.

184 The law does not provide for any set distance that must be traversed. It is clear though that ordering a person at gunpoint to take a step, or moving inmates between cells in a prison, hardly constitutes the kind of displacement addressed by the criminal prohibitions in question. In the *Prljić et al.* case, an ICTY trial chamber stated the following: ‘Given that the prohibition on forcible removals seeks to protect the right of individuals to live in their communities and in their homes and not be deprived of their property, the Chamber holds that there is a [requisite movement] when the location to which the victims are sent is so remote that they are no longer able to effectively enjoy these rights.’<sup>302</sup> On appeal in the same case, the Appeals Chamber rejected the argument<sup>303</sup> of the defence that the settlement to which the victims were sent was just 500 to 1,000 metres away from the original location.<sup>304</sup> In the *Yekatom and Ngaïssona* case, the ICC characterised the movement to a different neighbourhood within the same settlement as forcible transfer.<sup>305</sup> In the Ukrainian context, these findings are relevant in cases where the legal guardians managed to collect the children from an intermediate location nearby, before the children could be sent further away by Russian

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<sup>297</sup> ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgment, March 22, 2006, para. 289 (referring to ‘Bassiouni, M. Cherif., *Crimes Against Humanity in International Criminal Law*, (The Hague/London/Boston: Kluwer Law International, 1999), pp. 60, 70-71.’).

<sup>298</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, March 15, 2002, para. 473.

<sup>299</sup> Articles 49, 147 GC IV.

<sup>300</sup> ICC, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, September 6, 2018, ICC-RoC46(3)-01/18-37, para. 55; ICC, *The Prosecutor v. Ruto et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, January 23, 2012, ICC-01/09-01/11-373, para. 268.

<sup>301</sup> ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgment, March 22, 2006, paras. 278, 289–300; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgment, June 10, 2010, paras. 890-895.

<sup>302</sup> ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Judgment, May 29, 2013, para. 49.

<sup>303</sup> Final Praljak’s Appeal Brief, para. 218.

<sup>304</sup> ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Appeals Chamber Judgment, November 29, 2017, para. 492 (‘contrary to Praljak’s claim, the *actus reus* of forcible displacement does not require that the population be removed to a “location sufficiently remote from its original location”’).

<sup>305</sup> ICC, *The Prosecutor v. Yekatom and Ngaïssona*, Corrected version of ‘Decision on the confirmation of charges [...]’, ICC-01/14-01/18-403-Corr-Red, June 28, 2021, paras. 109–110 (‘As a result, the Muslim population of Bossangoa fled the attacked neighbourhoods to seek shelter at a school named *École de la Liberté*’).

authorities, such as in the case of Ivan Matkovskiy and Maksim Boyko,<sup>306</sup> as well as in cases where the transfer occurred within the same settlement, such as the transfer of the Kherson Regional Children's Home.<sup>307</sup>

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A survey of open sources reveals at least 20 incidents of transfer related to the three categories of children defined above in section II(A):

- 1) In February 2022, 52 orphans were moved from Mariupol to hospitals in Donetsk and later could have been transferred to Moscow for further treatment;<sup>308</sup>
- 2) Three boys from Mariupol were moved to a hospital in Donetsk city in March 2022;<sup>309</sup>
- 3) After the death of his mother, a ten-year-old boy was moved from Mariupol to Donetsk city hospital and later returned to his relatives.<sup>310</sup> Additionally, a 12 year old girl in a similar situation was moved from Mariupol to Donetsk city hospital on April 23, 2022;<sup>311</sup>
- 4) The Mezhevoys' case;<sup>312</sup>
- 5) Other children from the group of 31 associated with Mariupol;<sup>313</sup>
- 6) An 11-year-old boy was separated from his mother after being captured at a steel and iron plant and taken to a hospital in Donetsk city in March 2022;<sup>314</sup>
- 7) The case of Novopetrivske Special School;<sup>315</sup>
- 8) 19 children were transferred from Mariupol sanatorium named after Krupskaya to a checkpoint in Manhush and to Donetsk Tuberculous Hospital on March 18, 2022;<sup>316</sup>
- 9) A 17-year-old boy was transferred from the occupied Kherson region to Luchystiy camp in the Crimean Peninsula. The mother of the boy was coerced by the Russian military into consenting to this vacation on March 18, 2022. The boy was forced to wear Russian military uniform and assigned the responsibility of evacuating other children from the camp in the event the Armed Forces of Ukraine entered its territory;<sup>317</sup>
- 10) Around 80 to 85 children from Oleshky Care Home in Kherson region were displaced in three waves in October and November 2022;<sup>318</sup>
- 11) In April 2022, the children from the Kherson Care Home for Infants and Toddlers were transferred from the building of Golgotha Church, where they took shelter, back to the premises of their institution located in the same city; on October 21, 2022, more than 50 of them were transferred to Crimea.<sup>319</sup>
- 12) 24 orphans under the age of 16 were brought to the Novosibirsk region of the Russian Federation from the occupied Luhansk region, for the purpose of transferring them to eight Russian foster families, on October 13, 2022;<sup>320</sup>

<sup>306</sup> *Крым.Реалии*, Дело о геноциде России против Украины. Что дети из Мариуполя рассказали суду в Гааге? 29 September 2023; *Kyiv Independent*, Stolen generation. Russia systematically abducts children from Ukraine, gives them to Russian families, July 21, 2023.

<sup>307</sup> See below, section IV(D).

<sup>308</sup> Элеонора Федоренко: в ДНР 325 детей ранены, 52 остались сиротами, April 1, 2022.

<sup>309</sup> *Крым.Реалии*, Дело о геноциде России против Украины. Что дети из Мариуполя рассказали суду в Гааге? September 29, 2023; *Kyiv Independent*, Stolen generation. Russia systematically abducts children from Ukraine, gives them to Russian families, July 21, 2023.

<sup>310</sup> Эвакуированные в ДНР из Мариуполя дети Кира Обединская и Илья Матвиенко воссоединились с родственником, April 23, 2022.

<sup>311</sup> *Российская Газета*, Татьяна Москалькова помогла эвакуированным из Мариуполя детям добраться до родственников на Западной Украине, April 25, 2022.

<sup>312</sup> See above, section I(B)(1).

<sup>313</sup> See above, section I(B).

<sup>314</sup> *Настоящее время*, "Нас с мамой взяли в плен и повезли неизвестно куда". История 12-летнего Саши Радчука из Мариуполя, разлученного с матерью и сестрой, April 18, 2023.

<sup>315</sup> See above, section I(A).

<sup>316</sup> *BBC Russia*, «Я привез малых здоровых и живых»: как шесть детей выжили в Мариуполе, застряли в ДНР и оказались в Европе, July 18, 2022.

<sup>317</sup> Communication Pursuant to Article 15 of the Rome Statute of the International Criminal Court. Responsibility of Russian Federation Officials for Unreasonable Delay in Repatriation of Ukrainian Children, *Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention*, October 7, 2023, para. 17.4.

<sup>318</sup> ИЦИУ CRP, para. 765; *Херсонка.ру*, 14 скорых эвакуировали воспитанников Алешкинского детского дома-интерната, November 14, 2022; *IStories*, «Они думают, что мы ихние», April 26, 2024.

<sup>319</sup> [https://t.me/kastyukevich\\_live/2480](https://t.me/kastyukevich_live/2480), October 21, 2022.

<sup>320</sup> *РИА Новости*, Вырастим и выучим: новосибирские семьи приняли детей из ЛНР, October 13, 2022.

- 13) 39 students of the Donetsk Boarding School No. 1 'Teremok', who were previously in the territory of the Rostov region, arrived to the city of Kirov in the Russian Federation on October 1, 2022;<sup>321</sup>
- 14) 13 children transferred from a boarding school in Kupyansk to Perevalsk Boarding School, on September 8, 2022;<sup>322</sup>
- 15) 114 children were transferred from Mariupol to a sanatorium 'Rusalochka' on March 16, 2022;<sup>323</sup>
- 16) A child originally from a village near Kherson<sup>324</sup> was forced by the Russian forces to first go to Kherson and then was transferred to a summer camp in Crimea;<sup>325</sup>
- 17) A 17-year-old boy was transferred on a school bus from Kherson region and later transferred to a sanatorium called 'Druzhba' in Yevpatoria, Crimea;<sup>326</sup>
- 18) An eight-year-old boy who lived with his parents in occupied Melitopol, Zaporizhzhya was removed from his family by occupational authorities due to the 'antisocial lifestyle' of his biological relatives and placed in a boarding school on April 5, 2023.<sup>327</sup>
- 19) Sergey Kravchuk was transferred by Russian military from the settlement of Beryslav, Kherson region, to the Pskov region, Russia, in Summer 2022;<sup>328</sup>
- 20) Denis Kostev and other children taken by Russian military from a dormitory in Kherson.<sup>329</sup>

## 2. Forcible Character

186 The second element of the displacement crimes is the forcible character of the movement.

187 With respect to CAH, this element is clearly expressed in the definition provided by art. 7(2)(d) RS (emphasis added):

*"Deportation or forcible transfer of population" means **forced** displacement of the persons concerned by **expulsion or other coercive acts** from the area in which they are lawfully present, without grounds permitted under international law [...]*

188 With respect to war crimes, the requirement of a forcible character stems from the fact that the Geneva Conventions only prohibit non-voluntary deportations or transfers.<sup>330</sup> It is reflected in the wording of art. 49 GC IV which deals with '[i]ndividual or mass forcible transfers, as well as deportations.'

189 The law does not specify what kind of coercive acts must be committed to satisfy the forcible character element. As the ICC held in the case of *Ruto et al.*, deportation is an 'open-ended crime,' meaning it can be committed through various means and forms of coercion.<sup>331</sup>

<sup>321</sup> *Свойкировский.рф*, В Киров прибыли 39 детей из Донецкой школы-интерната, October 2, 2022.

<sup>322</sup> *Russian RT*, Детский омбудсмен ЛНР рассказала о судьбе эвакуированных из Купянска детей, April 18, 2023.

<sup>323</sup> *Украина.ру*, Валерий Онацкий: В Мариуполе они делали детей врагами собственных родителей, August 18, 2023.

<sup>324</sup> *TCH*, Смогут помочь осудить оккупантов: истории похищенных РФ украинских детей, November 26, 2023.

<sup>325</sup> *Washington Post*, Russia held these Ukrainian teens captive. Their testimonies could be used against Putin, November 25, 2023.

<sup>326</sup> Denys Berezhny: A Ukrainian Boy's Forced Journey from Kherson to Crimea, *Save Ukraine*, January 24, 2024.

<sup>327</sup> Communication Pursuant to Article 15 of the Rome Statute of the International Criminal Court. Responsibility of Russian Federation Officials for Unreasonable Delay in Repatriation of Ukrainian Children, *Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention*, October 7, 2023, para. 16.3.

<sup>328</sup> *Радио Свобода*, Путешествие украинского мальчика в российский рай и обратно, December 23, 2023. Also, *TV Rain*, Расследование: как усыновляют украденных из Украины детей. Эксклюзив Дождя, April 27, 2024, at 34.46.

<sup>329</sup> See above, para. 142.

<sup>330</sup> The Geneva Conventions of 12 August 1949. Commentary. Volume IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War, ed. by Jean S. Pictet, 1958, p. 279. Also, ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, March 15, 2002, para. 475 ('Deportation is illegal only where it is forced.').

<sup>331</sup> ICC, *The Prosecutor v. Ruto et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, January 23, 2012, ICC-01/09-01/11-373, para. 244.

190 The element came to be understood broadly, in light of the jurisprudence of international tribunals on sexual violence.<sup>332</sup> This broad understanding is expressed in footnote 12 of the Elements of Crimes, which states that the requisite forcible character

*[...] is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.*

191 Under this understanding, victims may openly consent to or even request the transfer, without depriving the transfer of its forcible character.<sup>333</sup>

192 The law does not provide for a definite threshold of coerciveness that must be reached by the environment or the actions against the victims. A most prominent scholarly authority was willing to admit that, in at least some cases, this complex issue could be reduced to a comparison between the perceived levels of danger in the hypothetical scenarios of leaving and staying in the area: ‘The deportation is “forced” if the use or threat of physical force created a reasonable belief that failure to relocate would put the person in more danger.’<sup>334</sup>

193 Jurisprudence of the ICTY paints a more abstract picture. Judgments of the Tribunal consistently define the forcible character through the lack of ‘genuine choice’ on the part of the victims.<sup>335</sup> Whether there was a ‘genuine choice’ should be determined ‘in the light of the surrounding circumstances’<sup>336</sup> and ‘within the context of the particular case.’<sup>337</sup> This wording indicates that, to the largest extent, establishing the lack or the existence of a ‘genuine choice’ is a task relegated to the judges deciding a particular case.

194 The language employed in the *Popović et al.* trial judgment can be helpful in drawing up a workable standard. The Tribunal implied that the factors mentioned in footnote 12 of the Elements of Crimes must play a decisive role in the victim’s decision-making process:

*[I]n the case of deportation, not only must the victims end up across a border but it must be the act of the accused which determines that destination. Thus, whatever the form of forced displacement as discussed below, be it by physical force, coercion or creation of coercive conditions, it must be as a result of the force—the act of the accused—that the persons are displaced across a border. In other words, for the crime of deportation it is not sufficient to prove force on the part of the accused and the ultimate location of the victims across a border. The Prosecution must also establish the link between the two elements. To do otherwise is to leave a constituent element of the crime related not to the acts of the accused but to chance or, in many cases, to a choice made by a victim.*<sup>338</sup>

195 This passage from the *Popović et al.* judgment is particularly valuable because its language is sufficiently broad to cover situations involving an express consent by the victim and lacking any physical force. By contrasting ‘a choice made by a victim’ with a choice resulting from ‘the act of the accused,’ the Tribunal implied that what matters is the relationship

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<sup>332</sup> Ambos Rome Statute Commentary, 4th ed., p. 189.

<sup>333</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgment, June 10, 2010, para. 896; ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, Appeals Judgment, September 17, 2003, para. 229.

<sup>334</sup> M. Cherif Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application*, 2011, p. 393 (the author derived this overly general proposition from the *Krstić* Trial Judgment which, apart from some observations unrelated to the levels of danger, contains the following finding of fact coached in absolute terms, at para. 530: ‘The evacuation took place [...] when VRS troops were actively threatening and injuring the Bosnian Muslim civilians of Srebrenica. [...] The Trial Chamber has already found that, despite the attempts by the VRS to make it look like a voluntary movement, the Bosnian Muslims of Srebrenica were not exercising a genuine choice to go, but reacted reflexively to a certainty that their survival depended on their flight.’).

<sup>335</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgment, June 10, 2010, para. 896 (‘The forced character of the displacement is determined by the transferred persons’ absence of genuine choice in their displacement.’); ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, Appeals Judgment, September 17, 2003, para. 229 (‘[I]t is the absence of genuine choice that makes displacement unlawful.’).

<sup>336</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgment, June 10, 2010, para. 896; ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgment, March 22, 2006, para. 279.

<sup>337</sup> ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgment, March 22, 2006, para. 282.

<sup>338</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgment, June 10, 2010, para. 893.



between the external coercive factors introduced, or utilised, by the perpetrators and the internal, independent motivation of the victim.

196 A special case that has not been dealt with by international criminal tribunals is transfers specifically targeting children. Normally, children exercise their rights through their parents or legal guardians. Due to their age, they may not be able to express an informed consent or exercise a genuine choice. This shall affect the application of the forcible character element. First, coercion against the legal representative or a person who is primarily responsible for the care of the children shall be equated to coercion against the children. This is especially relevant in cases where it is the children who are being transferred, and not their legal representative or the person otherwise responsible for them. Second, physical removal or legal replacement of the representative, such as by appointing a new head of the child care institution, shall also be viewed as constituting the forcible character element.

197 An exception to the forcible character element is coercion resulting from lawful military attacks. Lawful military attacks can be accompanied by a measure of incidental damage to civilian population or civilian property, which may induce the population to leave the area. If it is the only factor motivating the people to leave, their movement cannot be regarded as forced for the purposes of criminal liability for the crimes of deportation or forcible transfer. Whether an attack is lawful is determined according to international humanitarian law.

198 Numerous factual circumstances, such military presence on site at the time of the transfer, resistance from the legal guardians including the administration of the child care institution, state procedures, including appointment of a new head of the institution or a new legal guardian, adoption, border control or a prohibition to leave the country, can be regarded as indicia of the forcible character.

199 A survey of open sources reveals that, out of the 20 incidents of movement to another location identified above at para. 185, 15 demonstrate indicia of the requisite forcible character:

- 1) Three boys from Mariupol were moved to a hospital in Donetsk city in March 2022;<sup>339</sup>
- 2) After the death of his mother, a 10-year-old boy was moved from Mariupol to Donetsk city hospital<sup>340</sup> and later returned to his relatives.<sup>341</sup> Additionally, a 12-year-old girl in a similar situation was moved from Mariupol to Donetsk city hospital on April 23, 2022;<sup>342</sup>
- 3) The Mezhevoys' case;<sup>343</sup>
- 4) Other children from the group of 31 associated with Mariupol;<sup>344</sup>
- 5) An 11-year-old boy was separated from his mother after being captured at a steel and iron plant and taken to a hospital in Donetsk city in March 2022;<sup>345</sup>

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<sup>339</sup> *Крым.Реалии*, Дело о геноциде России против Украины. Что дети из Мариуполя рассказали суду в Гааге? September 29, 2023 (The boys were detained at the Manhush checkpoint and forcibly transferred to the Donetsk hospital, where they declined the offer to leave to a Russian 'summer camp' and stayed until they were collected by a legal representative); *Kyiv Independent*, Stolen generation. Russia systematically abducts children from Ukraine, gives them to Russian families, July 21, 2023.

<sup>340</sup> *Факти.Здоровье*, История спасения 10-летнего Ильи из Мариуполя. Он потерял маму, был ранен и попал в "ДНР", June 16, 2022 (On the day when the mother passed away, the invaders came and forcibly took Ilya to the territory of the DPR. He was taken on a stretcher to a hospital in Donetsk. There, doctors wanted to amputate Ilya's leg, which had been torn by a shell. But, fortunately, it was saved. While the boy was waiting for his grandmother to pick him up, he was offered to leave with a group of children to Moscow, but he refused).

<sup>341</sup> Эвакуированные в ДНР из Мариуполя дети Кира Обединская и Илья Матвиенко воссоединились с родственником, April 23, 2022.

<sup>342</sup> *Российская Газета*, Татьяна Москалькова помогла эвакуированным из Мариуполя детям добраться до родственников на Западной Украине, April 25, 2022 (children received injuries and have been "saved" by the invading forces and transferred to Donetsk city hospital from Mariupol).

<sup>343</sup> See above, section I(B)(1).

<sup>344</sup> See above, para. 40 ('[T]o effectuate the transfer, the children were declared 'left without parental care' [...] and guardianship over them was established anew in favour of Tatiana Sorkina, the head of an institution controlled by the DPR [...]. The appointment of a new legal guardian was likely needed to comply with the legislative requirement that no underage child shall cross the border without consent from a parent or legal guardian').

<sup>345</sup> *Настоящее время*, "Нас с мамой взяли в плен и повезли неизвестно куда". История 12-летнего Саши Радчука из Мариуполя, разлученного с матерью и сестрой, April 18, 2023 ('I saw some hangars. It was cold there. My mother and I were searched there. Then my mother was interrogated for two hours. I sat and waited for my mother. Then my mother was brought to me. The Novoazovsk



- 6) The case of Novopetrivske Special School;<sup>346</sup>
- 7) 19 children were transferred from Mariupol sanatorium named after Krupskaya to a checkpoint in Manhush and to Donetsk Tuberculous Hospital on March 18, 2022;<sup>347</sup>
- 8) A 17-year-old boy was transferred from the occupied Kherson region to Luchystiy camp in Crimean Peninsula. The mother of the boy was coerced by the Russian military into consenting to this vacation on March 18, 2022. The boy was forced to wear Russian military uniform and assigned the responsibility of evacuating other children from the camp in the event the Armed Forces of Ukraine entered its territory;<sup>348</sup>
- 9) In April 2022, the children from the Kherson Care Home for Infants and Toddlers were transferred from the building of Golgotha Church, where they took shelter, back to the premises of their institution located in the same city; on October 21, 2022, more than 50 of them were transferred to Crimea.<sup>349</sup>
- 10) 13 children transferred from a boarding school in Kupyansk to Perevalsk Boarding School on September 8, 2022;<sup>350</sup>
- 11) An eight-year-old boy who lived with his parents in occupied Melitopol, Zaporizhzhya was removed from his family by occupational authorities due to the ‘antisocial lifestyle’ of his biological relatives and placed in a boarding school on April 5, 2023;<sup>351</sup>
- 12) A child originally from a village near Kherson<sup>352</sup> was forced by the Russian forces to first go to Kherson and then was transferred to a summer camp in Crimea;<sup>353</sup>

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children's service arrived and said that. They took me away from my mother. And they took me away and didn't even let me say goodbye to my mother. And for a whole year now I don't know where my mother is. I haven't seen her, I haven't heard from her," says Sasha. 'I was afraid because they told me: if my grandmother doesn't come, they will send me to a boarding school.' The mother of the boy is considered to be a prisoner and the little sister is also missing from this moment on').

<sup>346</sup> *НикВесту*, Журналисты идентифицировали коллаборантов, которые вывезли в Россию 15 сирот из интерната Николаевской области, July 18, 2023; *BBC Russia*, «Зачем они сделали это с нами?» История 15 депортированных из Украины в Россию детей, July 29, 2023 ('A sharp male voice said: "You have 10 minutes to get ready. If there is a resistance, the military will come and the conversation will go differently."').

<sup>347</sup> *BBC Russia*, «Я привез малых здоровых и живых»: как шесть детей выжили в Мариуполе, застряли в ДНР и оказались в Европе, July 18, 2022 ('I immediately said: "We don't need to go to Donetsk. We'll have a one-way ticket if you send us there. Let us through to Berdyansk [towards Zaporizhzhia]", I say, "make sure we leave." "No," they say, "it's not in our power, whatever they will order us, we will have to do".' '[A] bus arrived with an adviser to the head of the unrecognized DPR on children's rights, Eleonora Fedorenko, an employee of the RT television channel, Yulia Martovalyeva, and two cameramen - as Timofey understood, they were filming a story about rescuing children - and took them to Donetsk.').

<sup>348</sup> Communication Pursuant to Article 15 of the Rome Statute of the International Criminal Court. Responsibility of Russian Federation Officials for Unreasonable Delay in Repatriation of Ukrainian Children, *Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention*, October 7, 2023, para. 17.4 ('According to Vlad's account, he was made to wear a military uniform and assigned the responsibility of evacuating other children from the camp in the event that the Armed Forces of Ukraine entered its territory. Vlad believed this was because his father is a Ukrainian military serviceman, a conclusion he reached after a "preventive conversation" in the camp due to intercepted correspondence with his sister about his father. During this "conversation," he was prohibited from expressing pro-Ukrainian views.').

<sup>349</sup> See below, section IV(D).

<sup>350</sup> *Vice News*, Stealing Ukraine's Children: Inside Russia's Camps, June 28, 2023 ('Mykola Syzenov was here on September 8th, when at 1.35pm around a dozen armed Russian soldiers turned up and started herding the children onto buses. [...] Russian soldiers took Nikita and 12 other children from Kupyansk to a boarding school deep in Russian-controlled territory.'). *24Kanal*, За 5 тысяч километров: как украинские женщины смогли самостоятельно забрать похищенных Россией детей, April 12, 2023 ('One of the children used the head teacher's phone to call his mother [...] The mother tried to get into the city to pick up her son. However, at that time there was heavy shelling – no one was allowed into the city. The Russians, literally the next day, loaded the children onto trucks and took them to a boarding school in Perevalsk, in the temporarily occupied Luhansk region.'). Also *Russian RT*, Детский омбудсмен ЛНР рассказала о судьбе эвакуированных из Купянска детей, April 18, 2023.

<sup>351</sup> Communication Pursuant to Article 15 of the Rome Statute of the International Criminal Court. Responsibility of Russian Federation Officials for Unreasonable Delay in Repatriation of Ukrainian Children, *Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention*, October 7, 2023, para. 16.3.

<sup>352</sup> *TCH*, Смогут помочь осудить оккупантов: истории похищенных РФ украинских детей, November 26, 2023.

<sup>353</sup> *Washington Post*, Russia held these Ukrainian teens captive. Their testimonies could be used against Putin, November 25, 2023. Also Communication Pursuant to Article 15 of the Rome Statute of the International Criminal Court. Responsibility of Russian Federation Officials for Unreasonable Delay in Repatriation of Ukrainian Children, *Regional Center for Human Rights and the Lemkin Institute for Genocide Prevention*, October 7, 2023, para. 17.1 ('The local occupation guardianship authorities pressured the boy's Ukrainian adoptive parents to modify documents affirming their legal representative status under Russian law. Subsequently, the

- 13) A 17-year-old boy was transferred on a school bus from Kherson region and later transferred to a sanatorium called 'Druzhba' in Yevpatoria, Crimea.<sup>354</sup>
- 14) Sergey Kravchuk was transferred by Russian military from the settlement of Beryslav, Kherson region, to the Pskov region, Russia, in Summer 2022;<sup>355</sup>
- 15) Denis Kostev and other children taken by Russian military from a dormitory in Kherson.<sup>356</sup>

### 3. Unlawfulness

200 The element of unlawfulness consists in a violation of one or more legal requirements governing transfer of population, set forth by international law. In the Ukrainian context, the part of international law that is most relevant is international humanitarian law.

201 For the CAH, this element is clearly expressed in the text of art. 7(2)(d) RS, as quoted above at para. 187 ('without grounds permitted under international law'). For the grave breaches under art. 8(2)(a)(vii) RS, it is manifestly expressed in the name of the crime: 'Unlawful deportation or transfer [...].' For the crimes under art. 8(2)(b)(viii) RS, this element is reflected in footnote 44 of the Elements of Crimes, which states that the term 'transfer' shall be understood in light of international humanitarian law. For all crimes, unlawfulness is also implied in paragraph 6 of the general introduction to the Elements of Crimes.

202 The legal regime governing transfers of population in occupied territories is relatively straightforward. As a general principle, article 49 GC IV prohibits any '[i]ndividual or mass forcible transfers [...] regardless of their motive.'

203 Article 49 goes on to establish a number of exceptions where forcible transfers would still be lawful, provided certain requirements are met. What constitutes the element of unlawfulness is a violation of any of these requirements. In particular, the following requirements must be met:

- 1) Transfers may be undertaken only 'if the security of the population or imperative military reasons so demand;'
- 2) 'Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased';
- 3) 'Such evacuations may not involve the displacement [...] outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement;'
- 4) 'The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided [...], that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated;'
- 5) 'The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.'

204 The requirements most likely to be violated in the Ukrainian context are numbers 2 and 3. Especially remarkable is the third requirement, because the criterion of material impossibility is understood as physical impossibility.<sup>357</sup> It can be

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authorities threatened to strip them of parental rights because of their refusal to enroll Rostyslav in a Russian curriculum school and obtain a Russian passport for him.')

<sup>354</sup> Denys Berezhny: A Ukrainian Boy's Forced Journey from Kherson to Crimea, *Save Ukraine*, January 24, 2024 ('When the Russians came to his home, he refused to leave. [...] Denys' parents, who cannot hear or speak, were in shock because they could not argue with the armed Russians. Then, the boy was forcibly taken away [...]. The former Ukrainian Berkut servant Valery Astakhov, who escaped in 2014, was responsible for security in this camp. From the first days, he tried to break all the Ukrainian children to force them to be on Russia's side [...]. If the children were seen with symbols of Ukraine on some stuff or clothes, they were generally burned to scare off others. In the camp's medical center, the most disobedient children were locked up in an isolation ward.').

<sup>355</sup> *Радио Свобода*, Путешествие украинского мальчика в российский рай и обратно, December 23, 2023 ('Пришли двое дядек в военной форме, сказали мне, пошли с нами, перерыли всю комнату, искали свидетельство о рождении. Вышли, сели в машину и поехали. А мамы и Маши дома не было. Ехали без остановок, дядьки рулили по очереди, останавливались только поесть и в туалет, заехали в Крым и дальше ехали двое суток до самого Пскова. Там меня отвели в больницу, в приемный покой. И все. И больше я их не видел.').

<sup>356</sup> See above, para. 142 ('[T]he children did not want to leave, but were all forcibly taken to Russia when soldiers arrived at the dormitory').

<sup>357</sup> The Geneva Conventions of 12 August 1949. Commentary. Volume IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War, ed. by Jean S. Pictet, 1958, p. 280.

understood as the absence of physical space to accommodate the evacuees within the occupied areas or lack of routes to deliver nutrition and other humanitarian goods. This requirement is almost certainly violated when the children are transferred from Ukraine to the undisputed territory of Russia.

205 Importantly, some of the legal requirements apply after the transferred persons were moved to a new location. Accordingly, a transfer may comply with all the requirements up until the movement has been completed, but degenerate into a violation of international law afterwards. The element of unlawfulness can be fulfilled by such a subsequent violation, which is confirmed by the jurisprudence of the ICTY. In the *Popović* case, the Tribunal established unlawfulness based on, *inter alia*, the violation of the requirement to transfer the population back to their homes as soon as the hostilities in the area in question have ended (emphasis added, footnotes omitted):

901. [...] Article 49(2) of Geneva Convention IV requires that individuals who have been evacuated be transferred back to their homes as soon as hostilities in the area in question have ceased.

[...].

924. [...] Lastly, the temporary requirement—that the persons evacuated be transferred back to their homes as soon as the hostilities cease—has not been met.

925. **For the foregoing reasons**, [...] the Trial Chamber finds that the organised transportation of the Bosnian Muslim women, children and the elderly out of Potočari constitutes forcible transfer.<sup>358</sup>

206 In the Ukrainian context, it also means that an unduly prolonged accommodation of the children at recreation camps or in foster families in Russia may by itself fulfil the unlawfulness element. It may constitute the crime of unlawful deportation, even if the initial transfer was valid.

207 Additionally, art. 45 GC IV as well as article 78 of the first Additional Protocol to the Geneva Conventions (AP I) set forth a number of other requirements applicable specifically to transfers of population to a third country. The cases of this sort that took place during the war between Russia and Ukraine largely fall into two categories: transfers made as part of the return process, which must have been voluntary, and temporary transfers to Belarus undertaken by Russian and Belarusian authorities.<sup>359</sup>

208 At the same time, there is an uncertainty regarding the range of the requirements the violation of which fulfils the element of unlawfulness. Numerous sources setting out the prohibition of forcible displacements, including the Rome Statute, do not contain an exhaustive list of such requirements, instead referring to violations of international law. International law, for its part, along with the said requirements of article 49 GC IV, imposes a wide range of obligations upon states, including the following:

- 1) the obligation to entrust, as far as possible, the education of the children orphaned or separated from their families as a result of the war ‘to persons of a similar cultural tradition’ (art. 24 GC IV);
- 2) the obligation to ‘facilitate the reception of such children in a neutral country’ (art. 24 GC IV);
- 3) the obligation not to interfere with the contact between family members who find themselves on the opposite sides of the frontlines (art. 25 GC IV);
- 4) the obligation to facilitate family reunification (art. 74 AP I, art. 26 GC IV);
- 5) the obligation to allow the system of identification in force within the occupied state ‘to continue and to facilitate its working’;<sup>360</sup>

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<sup>358</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgment, June 10, 2010, paras. 901, 924–925.

<sup>359</sup> On the transfers to Belarus, which have not been the focus of this report, see the report produced by the Yale School of Public Health’s Humanitarian Research Lab: Belarus’ Collaboration with Russia in the Systematic Deportation of Ukraine’s Children, December 12, 2023. Whether Belarus can be regarded as a ‘foreign country’ for the purposes of art. 78 AP I is an open question that may depend on the role of Belarus in the current conflict. For the meaning of the term ‘foreign country’, see below, para. 211.

<sup>360</sup> The Geneva Conventions of 12 August 1949. Commentary. Volume IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War, ed. by Jean S. Pictet, 1958, p. 287 (commentary to art. 50, para. 2).

- 6) the obligation of the occupying power not to change the personal status of the children (art. 50 GC IV), including their family status and their nationality;<sup>361</sup>
- 7) the obligation ‘to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference’ (the UN Convention on the Rights of the Child, art. 8(1));
- 8) the obligation to direct the education of the child to the ‘development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own,’ as well as the ‘preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin’ (the UN Convention on the Rights of the Child, art. 29(1)).

209 Violation of these requirements, unlike those of article 49 GC IV, does not fulfil the element of unlawfulness. There are at least three reasons for that. First, these requirements do not concern deportation and movement of population as such. Second, the criminal prohibition of deportation and forcible transfer is part of the ‘grave breaches’ regime of international humanitarian law which deals with the most fundamental legal requirements. The ICRC Commentary to the Geneva Conventions expressly states that the grave breach of ‘unlawful deportation or transfer,’ set forth by art. 147 GC IV (and reproduced in the Rome Statute), ‘refers to breaches of the provisions of Articles 45 and 49.’<sup>362</sup> Third, by virtue of the general principles of law, criminal prohibitions shall be interpreted restrictively.

210 Further, some sources mistakenly interpret the requirements of art. 78 AP I as governing the movement of children within the occupied territories and from the occupied territory to the territory of the occupying state. This misconception appears to be shared by the members of the Independent International Commission of Inquiry on Ukraine created by the UN Human Rights Council.<sup>363</sup> Notably, article 78 lays down the following requirements:

- 1) A written consent to evacuation of children by their parents, legal guardians, or, if those persons cannot be found, the persons who by law or custom are primarily responsible for the care of the children;
- 2) A complete prohibition of evacuations ‘except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require.’

211 The confusion regarding the scope of article 78 may result from the complex syntactic structure of its first sentence and the use of ambivalent expression ‘foreign country’ rather than ‘third’ or ‘neutral’ country. In fact, art. 78 AP I exclusively concerns the evacuation of children by one of the warring states to a third, neutral country, which is evident from its drafting history. It was enacted to modify the rules of art. 24 GC IV that obliged the state to evacuate children to a neutral country.<sup>364</sup>

212 It follows that the absence of a written consent from the parents, legal guardians or persons otherwise responsible for the children does not, in itself, fulfil the element of unlawfulness.

213 However, when it comes to young children who, due to their age, are not able to give informed consent regarding their place of stay, the lack of consent on the part of those persons may tend to prove the forcible character element – regardless of the type of transfer. What would undoubtedly fulfil the forcible character element is transportation of children despite the expressed disagreement of those persons, their protest or attempts to prevent the transfer.

214 Another aspect that may give rise to misunderstanding is the temporariness requirement under art. 49 GC IV, i.e. the requirement to transfer the population ‘back to their homes as soon as hostilities in the area in question have ceased.’ In this respect, the ICC Prosecutor Karim Khan alleged that the family placement and accompanying legislative changes ‘demonstrate an intention to permanently remove [Ukrainian] children from their own country.’<sup>365</sup> In

<sup>361</sup> *Ibid.*, p. 288.

<sup>362</sup> *Ibid.*, p. 599.

<sup>363</sup> IICIU CRP, paras. 728, 731, 762, 767–768.

<sup>364</sup> *Michael Bothe, Karl Josef Partsch, Waldemar A. Solf, New Rules for Victims of Armed Conflicts : Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, 2<sup>nd</sup> ed., reprint revised by Michael Bothe, 2013, p. 540.

<sup>365</sup> Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova, *ICC website*, March 17, 2023.

response, Russian officials denied the permanent nature of the transfer, relying on the distinction in Russian law between ‘guardianship and custody’ (Russian: *опека и попечительство*), on the one hand, and ‘adoption’ (Russian: *усыновление*), on the other. The Permanent Representative of the Russian Federation to the UN, Vassily Nebenzia, stated the following:

*The truth is [...] that there was no mass forced adoption, it does not exist. The fact that orphans and children who were left without custody of their parents, or from institutions located within the administrative borders of the DPR and LPR when their independence was recognized by the Russian Federation, were transferred to [...] temporary preliminary guardianship, or temporary custody of Russian citizens. This is not adoption. This option was chosen in order to return the children to parents when they are found. [...] Russia has not put up any obstacles to maintaining [...] communication between children and their parents, and their relatives, [...] and is striving to reunite them.*<sup>366</sup>

215 Compared to other forms of family placement under Russian law, adoption entails a more permanent and profound change to the legal status of the child and a closer association with adoptive parents. ‘It is carried out based on a judicial decision and it may entail the change of the name, surname and the date and place of birth of the child. It is guided by the principle of secrecy, due to which there is not, and there cannot be, any database of adopted children.’<sup>367</sup> As such, adoption greatly decreases the likelihood that the child will ever be found by the biological relatives or previous legal guardians. As such, it could also be indicative of an intent to permanently displace Ukrainian children.

216 However, it is true that no ‘mass forced adoption’ campaign has been documented by international fact-finding missions and civil society initiatives. So far, only two cases of adoption of children from the occupied areas have been established by media: the two children taken by Sergey Mironov and Inna Varlamova in 2022<sup>368</sup> and the case reported by *TV Rain* on April 27, 2024.<sup>369</sup> In both cases, the adopted children were separated from their siblings. While the first case involved a high-ranking member of the State Duma, the head of a pro-Kremlin political party, the second case, ostensibly, did not. This indicates a lack of institutional barriers preventing Russian families from adopting the incoming Ukrainian children. Along with the restrictions on the return process described above in section II(G), it can be seen as evidence of an intention to keep the children on the territory of the Russian Federation.

217 That said, it needs to be stressed that a long-term character of the displacement, as well as intentions of the perpetrators for a long-term, or permanent, retention or settlement of the victims in a new location, as well as conferral of a new personal status, are not required to fulfil the element of unlawfulness or to commit the crimes in question.<sup>370</sup> These factual circumstances are not among the elements of the crimes and do not necessarily have to be proven to reach conviction. They do tend to prove the element of unlawfulness in the form of a violation of the temporariness requirement. They tend to prove both an objective violation of this requirement and the existence of an intent to violate it. However, the temporariness requirement is not the only requirement a violation of which fulfils the element of unlawfulness.

#### 4. State or Organisational Policy

218 The element of state or organisational policy pertains to crimes against humanity, a distinct category of crimes that, together with war crimes, genocide and the crime of aggression comprise the so-called core international crimes.

219 This element is provided for by article 7 of the Rome Statute as part of the complex definition of crimes against humanity. The first paragraph of the article states that the crimes against humanity are ‘committed as part of a

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<sup>366</sup> Arria formula “Children & armed conflict: Ukrainian crisis. Evacuating children from conflict zone”, April 6, 2023, at 21.17–22.26.

<sup>367</sup> OSCE Moscow Mechanism Third Report, p. 18.

<sup>368</sup> *IStories*, «Та женщина их выбрала и повезет в Москву», November 23, 2023; *TCH*, Детей из Херсона похитил известный российский политик: неизвестные до сих пор детали и уникальные кадры военного преступления РФ, April 28, 2024.

<sup>369</sup> *TV Rain*, Расследование: как усыновляют украденных из Украины детей. Эксклюзив Дождя, April 27, 2024.

<sup>370</sup> ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgment, March 22, 2006, paras. 304–307; MICT, *Prosecutor v. Vojislav Šešelj*, MICT-16-99-A, Appeal Judgment, April 11, 2018, para. 150, fn. 538.

widespread or systematic attack directed against any civilian population, with knowledge of the attack.’ Then, the second paragraph clarifies that “‘Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack.’

220 The ‘attack’ in question does not need to be a military attack.<sup>371</sup> It is simply understood as a course of conduct involving the multiple commission of the underlying crimes. It may involve the commission of one and the same kind of crimes against humanity, such as deportation, or different kinds, such as deportation and deprivation of liberty.

221 According to the jurisprudence of the ICC, the element of policy can be established based on a wide range of circumstances:

*The existence of a policy may be inferred from a number of factors, including: (i) the fact that the attack was planned or directed; (ii) the existence of a recurrent pattern of violence, for example, repeated actions occurring according to a same sequence; (iii) the use of public or private resources to further the policy; (iv) the involvement of the State or organisational forces in the commission of crimes; (v) statements, instructions, or documentation attributable to the State or the organisation condoning or encouraging the commission of crimes; (vi) an underlying motivation; and (vii) the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation.*<sup>372</sup>

222 The displacement campaign against Ukrainian children clearly involves a number of such factors:

- 1) The existence of a pattern in the actions of the Russian authorities, that allows the classification of the targeted children into three categories described in section II(A) of this report, constitutes the ‘recurrent pattern of violence’ and ‘repeated actions [...] according to a same sequence;’
- 2) The use of Elena Milskaya’s Fund, as well as the involvement of the Russian Orthodox Church and the Investigative Committee of the Russian Federation, as described in section II(E), constitutes ‘the use of public or private resources to further the policy;’
- 3) The coordination between the federal and the regional authorities, which involves the exchange of information about vacant places in child care institutions and Russian families ready to take in the children, as described in section II(D), constitutes the ‘preparations [...] orchestrated and coordinated by that State;’
- 4) The legislative changes described in section II(C) and the scheme employed by DPR to legally recognise the children as orphans, described in section I(B), also constitute the ‘preparations [...] orchestrated and coordinated by that State.’

223 While the crimes in question must be committed ‘pursuant to or in furtherance of’ the policy, the policy itself may not be aimed at the commission of the crimes. The exact relationship between the policy and the crimes is described in the ICC Elements of Crimes which stipulate that the policy element ‘requires that the State or organisation actively promote or encourage such an attack’ and that ‘a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organisational action.’<sup>373</sup>

224 The promotion or encouragement of the crimes can be seen in the public rhetoric employed by Maria Lvova-Belova and Vladimir Putin. With respect to the ‘movement’ element and the ‘unlawfulness’ element of the crimes in question, they actively promote or themselves participate in transferring children to the territory of the Russian Federation, which violates the provision of art. 49 GC IV prohibiting displacement ‘outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement.’<sup>374</sup> Where unlawfulness is constituted by the lack of the requisite grounds for the transfer, such as ‘military reasons’ or the need to ensure ‘security of the

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<sup>371</sup> ICC Elements of Crimes, Introduction to art. 7, para. 3.

<sup>372</sup> ICC, *The Prosecutor v. Bosco Ntaganda*, Judgment, July 8, 2019, ICC-01/04-02/06-2359, para. 674.

<sup>373</sup> ICC Elements of Crimes, Introduction to art. 7, para. 3, fn. 6.

<sup>374</sup> See above, para. 203.



population,<sup>375</sup> the encouragement or promotion is seen in the toleration or the lack of reaction to such incidents and the general defensive rhetoric regarding the entire campaign of displacement. With respect to the forcible character element, Lvova-Belova and Putin either expressly admit that the legal representatives of the children are changed at some point during the transfer,<sup>376</sup> or emphasise that the transfers were consented to by the legal representatives of the children,<sup>377</sup> which in some cases is not true or only concerns the newly-appointed representatives.

225 The authors of this report conclude that the policy element has been satisfied. The policy consists in the actions by Lvova-Belova, Putin and other officials to organise, assist, effectuate and publicly advocate the transfers of children from the occupied Ukrainian territories, as well as various actions to improve the well-being of the children staying on those territories. While some of the officials involved may have been motivated by personal factors, such as career growth, the overall aim of the policy is to provide, or to maintain the appearance of, justification for the ongoing war in Ukraine.

## C. Genocide

226 The definition of the crime of genocide is set forth by article II of the 1948 Genocide Convention,<sup>378</sup> which reads as follows:

*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

*(a) Killing members of the group;*

*(b) Causing serious bodily or mental harm to members of the group;*

*(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*

*(d) Imposing measures intended to prevent births within the group;*

*(e) Forcibly transferring children of the group to another group.*

227 This definition was copied into article 6 of the Rome Statute of the ICC and implemented as part of the national criminal legislation of both Ukraine<sup>379</sup> and Russia.<sup>380</sup>

228 The definition can be divided into a number of elements. The objective elements include (1) the nature of the victim group, described towards the end of the opening paragraph, and (2) the underlying material acts that must be committed by the perpetrator, described in paragraphs (a) to (e). The mental elements include (3) the general mental states with respect to the circumstances constituting the objective elements and (4) the specific genocidal intent. The ICC Elements of Crimes also provide for an additional element, (5) the contextual element of genocide.

229 The team behind this report is of the view that the facts of the situation in Ukraine clearly satisfy the first three elements of the definition of the crime of genocide. However, what makes the crime of genocide particularly challenging to establish is the genocidal intent and the contextual element. The limited resources of the team and a particularly stringent character of the elements in question made it impossible to reach a conclusive finding in respect of the last two elements. The team regards the allegations of genocide as plausible and calls for further investigations. The nature

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<sup>375</sup> See below, section IV(D) concerning the first transfer of the Kherson Regional Children's Home.

<sup>376</sup> See above, para. 40.

<sup>377</sup> See below, para. 277.

<sup>378</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted by UNGA Resolution 260(III) A of 9 December 1948), 78 UNTS 277.

<sup>379</sup> Article 442 of the Criminal Code of Ukraine.

<sup>380</sup> Article 357 of the Criminal Code of the Russian Federation.



and scale of the transfers of children, their systematic character, involvement of state officials, the intent to re-educate the children and corresponding propaganda make genocide allegations a viable legal avenue to pursue.

230 What follows is the legal analysis of each of the requisite elements and a preliminary assessment of available factual information.

## 1. The Victim Group

231 Genocide is a crime committed against a particular ‘national, ethnical, racial or religious group.’ In the situation of Ukraine, the broad consensus is that the targeted group of the alleged genocide is the national group of Ukrainians. Given the ethnic and cultural diversity of Ukraine's population, particularly within the regions under the Russian occupation, it is evident that belonging to the Ukrainian nation, irrespective of one's ethnicity, is the key characteristic of the victims of the alleged genocide.

232 Although international case law and scholarship provide numerous definitions of the term ‘national group,’ the most relevant definition confines it to the citizens of a given State.<sup>381</sup> At the same time, a nation could be more than a collection of people having the same citizenship.<sup>382</sup> It is of relevance that the Ukrainian legal scholars who authored the Verkhovna Rada declaration of April 14, 2022, which recognised the transfer of children as genocide committed against ‘the Ukrainian nation as a distinct national group,’<sup>383</sup> have referred to the Ukrainian word *народ* (‘people’), used in the declaration as well as the Constitution of Ukraine, as the constitutional term for the nation.<sup>384</sup>

## 2. ‘Forcibly Transferring Children’

233 ‘Forcibly transferring children of the group to another group,’ as set forth by paragraph (e) of the definition, is one of the five types of the underlying acts of genocide.

234 The definition requires the commission of ‘any of the [...] acts’ enumerated in paragraphs (a) through (e), which would ordinarily mean that the transfer of children might qualify as genocide even if it is not accompanied by other enumerated acts, such as killing. However, this understanding can be put into question in view of some interpretations given to the element of specific intent, particularly the requirement of ‘physical or biological destruction,’ as detailed below, as well as the contextual element.

235 The term ‘children’ shall be understood as referring to persons under eighteen years of age, in line with article 1 of the UN Convention on the Rights of the Child.<sup>385</sup> This understanding is expressed in the ICC Elements of Crimes.

236 The transfer of children must be forcible. The ICC Elements of Crimes adopt the same understanding of the requisite forcible character as that applicable to the displacement crimes, described above in section III(B)(2). Footnote 5 of the Elements, dealing with the crime of genocide, contains identical provision:

*The term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.*

237 That said, not every forcible displacement constitutes the transfer of children under paragraph (e). The words ‘to another group’ indicate that, in addition to separating children from their group of origin, a certain connection must be formed between the children and the receiving group.<sup>386</sup> However, it is not required that the children become

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<sup>381</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgement, September 2, 1998, paras. 512–513.

<sup>382</sup> Denys Azarov, Dmytro Koval, Gaiane Nuridzhanian, Volodymyr Venher, Understanding Russia's Actions in Ukraine as the Crime of Genocide, *Journal of International Criminal Justice*, Volume 21, Issue 2, May 2023, p. 238, footnote 27 and accompanying text.

<sup>383</sup> Declaration of the Verkhovna Rada of Ukraine On the Genocide Committed by the Russian Federation in Ukraine.

<sup>384</sup> Denys Azarov, Dmytro Koval, Gaiane Nuridzhanian, Volodymyr Venher, Understanding Russia's Actions in Ukraine as the Crime of Genocide, *Journal of International Criminal Justice*, Volume 21, Issue 2, May 2023, p. 239.

<sup>385</sup> Convention on the Rights of the Child (adopted by UNGA Resolution 44/25 of November 20, 1989), 1577 UNTS 3.

<sup>386</sup> Christian Tams, Lars Berster and Björn Schiffbauer, *The Genocide Convention. Article-by-Article Commentary*, 2<sup>nd</sup> ed., 2024, p. 142.

completely integrated into the receiving group, for example, by way of adoption, as that would be too restrictive.<sup>387</sup> 'It would be absurd to allow a perpetrator to defeat a charge of genocide by keeping children in an orphanage, away from their group of origin but also not integrated into another group.'<sup>388</sup>

238 All the incidents of forcible transfer identified in this report<sup>389</sup> are linked to the Russian state policy and thus involve a degree of control exerted by 'another group,' which is the Russian national group. Therefore, the element of forcibly transferring children has been fulfilled.

239 The transfer of children was initially envisaged under the rubric of cultural genocide that did not make it into the final definition of genocide in the Convention. The rationale for its inclusion was that the 'separation of children from their parents results in forcing upon the former at an impressionable and receptive age a culture and mentality different from their parents.'<sup>390</sup> When transferred to another group, children cannot grow up as part of their group of origin or become estranged from their cultural identity. The group's language, traditions, and culture become or remain alien to the children.<sup>391</sup> Based on this rationale, it can be argued that the word 'transferring' may not only refer to a physical relocation of the children, but also to a change in the environment, particularly social and educational environment, when coupled with separation from their parents or guardians. It would follow that some children who always remained in the occupied territories but were subjected to re-education therein could qualify as the victims of genocide under paragraph (e). However, this legal proposition is untested. Despite multiple attempts to bring the case under the transfer of children clause, no international tribunal or national court has rendered a conviction based on this provision. In any case, this report does not aim to identify any such incidents, focusing instead on the incidents of physical transfer.

### 3. General Mental Elements

240 'Genocide is a crime with a double mental element, i.e., a general intent as to the underlying acts and an ulterior intent [...] of the destruction of the group.'<sup>392</sup>

241 The underlying act of the forcible transfer of children must be intentional.<sup>393</sup> It means that the perpetrator, at a minimum, must be aware that the children are being transferred, they are being transferred 'to another group' and they are being transferred 'forcibly.'

242 As regards victims' age, the ICC Elements of Crimes provide for a lesser element of negligence: 'The perpetrator knew or should have known, that the person or persons were under the age of 18 years.'

### 4. Specific Intent

243 According to the definition, genocide requires an 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.' This requirement of specific intent is arguably the most complex part of the definition of genocide. It is the specific intent to destroy that distinguishes genocide from other crimes committed on discriminatory grounds, notably the crime against humanity of persecution.

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<sup>387</sup> Claus Kreß, The Crime of Genocide under International Law, *International Criminal Law Review*, 6 (2006) 461, p. 484.

<sup>388</sup> Kurt Mundorff, Other Peoples' Children: Textual and Contextual Interpretation of the Genocide Convention, Article 2(e), *Harvard International Law Journal*, 50(1) (2009) 61, p. 91.

<sup>389</sup> See above, para. 199.

<sup>390</sup> Draft Convention on the Crime of Genocide, E/447, p. 27.

<sup>391</sup> The UN Genocide Convention. A Commentary, ed. by Paola Gaeta, OUP, 2009, p. 103.

<sup>392</sup> Kai Ambos, What Does 'Intent to Destroy' in Genocide Mean?, *International Review of the Red Cross*, 91 (2009), 833. Also ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Trial Judgement, December 12, 2012, para. 744 ('Thus, the crime of genocide requires not only proof of the perpetrator's intent to commit the underlying act, but also proof of the specific intent to destroy the protected group, in whole or in part.').

<sup>393</sup> Commentary on Article 17 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind, *Yearbook of the International Law Commission, 1996, Vol. II, Part Two*, p. 44, para. 5 ('The prohibited acts enumerated in subparagraphs (a) to (e) are by their very nature conscious, intentional or volitional acts which an individual could not usually commit without [...] a general awareness of the probable consequences of such an act with respect to the immediate victim or victims [...]').

- 244 The intent to destroy goes beyond the objective elements of the crime. It is necessary that the perpetrator intends to bring about the destruction of the targeted group, but it is not necessary that such destruction actually occurs.
- 245 The word ‘destroy’ is traditionally understood as referring exclusively to physical or biological destruction.<sup>394</sup> However, this understanding should be limited to racial and ethnic genocide. The concepts of race and ethnicity relate to physical and biological traits to a much greater degree than those of nation and religion, as national and religious identities can be eliminated through eradication of certain practices and ideas shared by people. But this position does not find a clear expression in international jurisprudence. In *Blagojevic*, the ICTY Trial Chamber recognised that the destruction can be achieved through separation of people, noting that ‘the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself particularly when it involves the separation of its members.’<sup>395</sup> However, it did not see the ‘destruction’ as an immediate or automatic effect of the separation. Moreover, this holding was not reiterated in subsequent jurisprudence. Therefore, the validity of the genocide claim in the Ukrainian situation depends on the acceptance of the legal proposition on non-physical and non-biological destruction, unless it could be shown on the facts that the transfers of Ukrainian children were accompanied by measures, or were themselves, capable of causing physical or biological destruction of the Ukrainian national group.
- 246 The existence of the intent to destroy in a given case can be inferred from context. The ICTY Appeals Chamber stated:
- As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.*<sup>396</sup>
- 247 This context may include the existence of a plan or policy and a perpetrator’s display of intent through public speeches and meetings with others.<sup>397</sup>
- 248 However, international case law has developed a particularly stringent standard for proving genocidal intent. In the *Tolimir* case, an ICTY trial chamber stated that ‘it is permissible to infer the existence of genocidal intent based on “all of the evidence taken together,” as long as this inference is “the only reasonable [one] available on the evidence”’ (citations omitted).<sup>398</sup> Notably, the only reasonable inference standard was adopted by the International Court of Justice,<sup>399</sup> which indicates that this standard may not simply flow from the necessity to prove the guilt of the accused beyond reasonable doubt but is a separate legal requirement necessitating the review of the broader factual context.
- 249 The large number of victims among the civilian population, damage to cultural heritage and persecution of bearers of Ukrainian identity, combined with dehumanising propaganda against Ukraine and Ukrainians,<sup>400</sup> make the existence of genocidal intent plausible at least on the part of Russia’s leadership. However, the limited information reviewed by the authors of this report does not suggest that it is the only reasonable inference that the acts of transferring children from the Ukrainian national group to the Russian national group were committed with the requisite genocidal intent.

## 5. Contextual Element

- 250 The ICC Elements of Crimes provide for an additional element, absent from the Convention, which can be termed the contextual element of the crime of genocide:

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<sup>394</sup> ICTY, *Prosecutor v. Krstić*, IT-93-33-T, Trial Judgment, August 2, 2001, para. 580.

<sup>395</sup> ICTY, *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, IT-02-60-T, Trial Judgment, January 17, 2005, para. 666.

<sup>396</sup> ICTY, *Prosecutor v. Goran Jelisić*, IT-95-10-A, Appeals Chamber Judgment, July 5, 2001, para. 47.

<sup>397</sup> ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Trial Judgement, December 12, 2012, para. 745.

<sup>398</sup> *Ibid.*, para. 745.

<sup>399</sup> ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015, p. 3, paras. 146–148.

<sup>400</sup> *Clara Apt*, Russia’s Eliminationist Rhetoric Against Ukraine: A Collection, *Just Security*, June 6, 2022 (as updated).

*The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.*

251 The purpose of the purported contextual element is to eliminate the likelihood of frivolous, politically loaded cases before the Court. This danger can be illustrated by the false allegations of genocide raised by Russia's leadership against Ukraine that were the subject of Ukraine's case before the International Court of Justice.<sup>401</sup>

252 According to art. 9 of the Rome Statute, Elements of Crimes shall assist the Court in applying the substantive provisions of the Statute, which makes the requirement on contextual element applicable before the Court. The existence of the contextual element was recognised by the majority of the pre-trial chamber in the *Al-Bashir* case, the only ICC case involving charges of genocide. The chamber interpreted the element as follows:

*In the view of the Majority, according to this contextual element, the crime of genocide is only completed when the relevant conduct presents a concrete threat to the existence of the targeted group, or a part thereof. In other words, the protection offered by the penal norm defining the crime of genocide – as an ultima ratio mechanism to preserve the highest values of the international community – is only triggered when the threat against the existence of the targeted group, or part thereof, becomes concrete and real, as opposed to just being latent or hypothetical.*<sup>402</sup>

253 The contextual element affects the understanding of the requisite genocidal intent. 'This intent must be realistic and must thus be understood to require more than a vain hope. It follows that it must, for all practical purposes, have an overall genocidal campaign as an objective point of reference.'<sup>403</sup>

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<sup>401</sup> Iryna Marchuk, Aloka Wanigasuriya, Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in Its Pursuit of Justice at the ICJ, *Journal of Genocide Research*, 25:3-4 (2023). See also: Iryna Marchuk, Aloka Wanigasuriya, The Curious Fate of the False Claim of Genocide: On the ICJ's Preliminary Objections Judgment in Ukraine v. Russia and Beyond, *VerfBlog*, February 24, 2024.

<sup>402</sup> ICC, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on the Prosecution's Application for a Warrant of Arrest, ICC-02/05-01/09-3, March 4, 2009, para. 124.

<sup>403</sup> Claus Kreß, The Crime of Genocide under International Law, *International Criminal Law Review*, 6 (2006) 461, p. 472.

## IV. Individual Criminal Responsibility

254 This section of the report discusses criminal liability of particular individuals involved in the alleged crimes against Ukrainian children.

### A. Maria Lvova-Belova

255 Maria Lvova-Belova was appointed to the position of the Presidential Commissioner for Children’s Rights on October 27, 2021.<sup>404</sup> Before that, she served as a senator for Penza region in the upper chamber of the Russian national legislature.<sup>405</sup>

256 Lvova-Belova played a very prominent role in setting up and carrying out the state policy of the Russian Federation to transfer Ukrainian children from the occupied areas.

257 Lvova-Belova was personally involved in at least ten cases of the transfer of children.

258 First, she has been involved in the transfer of the group of 31, described above in section I(B). The exact modus of her involvement is not clear, but can be inferred from a number of sources:

- 1) In a post on her Telegram channel, she publicly stated that the first time she visited some children of the group was in the hospital in Donetsk, where she ‘made a promise to help take the kids to Russia for rehabilitation;’<sup>406</sup>
- 2) In the same post, when describing who delivered the children from Donbas to Moscow region, she refers to ‘us,’ possibly implying herself and members of her staff: ‘Colleagues from the Investigative Committee of Russia helped us deliver thirty-one children from Donbass there;’<sup>407</sup>
- 3) At one point in the video embedded in the same post, she says: ‘And we suggested bringing them to Moscow region;’<sup>408</sup>
- 4) The press release on her website expressly stated that it was she who took the children from Donbas: ‘The Commissioner for Children’s Rights under the President of the Russian Federation, Maria Lvova-Belova, with the assistance of the Investigative Committee of Russia, took 31 children left without parental care from Mariupol and Donetsk for rehabilitation, treatment and rest in a boarding house near Moscow.’<sup>409</sup>

259 Lvova-Belova’s continuing contacts with the DPR authorities suggest that she should have known that the head of the Donetsk Children’s Social Centre, Tatiana Sorkina, was used<sup>410</sup> as a newly-appointed legal guardian of the children to consent to their transfer to Russia. However, the sources processed by the authors of this report, including public statements by Lvova-Belova, do not allow a definite conclusion in this respect. The transfer of the group of 31 can be imputed to Lvova-Belova as a crime of deportation only if it can be established that, at the time of the transfer, she was aware of the circumstances constituting the forcible character element. According to the legal interpretation

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<sup>404</sup> Decree of the President of the Russian Federation of October 27, 2021 No. 606 ‘On the Commissioner for Children’s Rights under the President of the Russian Federation’ (*Указ Президента Российской Федерации от 27.10.2021 г. № 606 «Об Уполномоченном при Президенте Российской Федерации по правам ребенка»*).

<sup>405</sup> For Lvova-Belova’s background, see profile stories by independent Russian media: *Вёрстка*, «Это ли не патриотическое чувство, когда чужих детей не бывает и все наши?» Мария Львова-Белова, March 15, 2023; *Новая Газета Европа*, Со дна поднялась мать: Путь детского омбудсмена Марии Львова-Беловой — от певичей в церковном хоре до фигурантки дела в Международном уголовном суде, April 4, 2023.

<sup>406</sup> <https://t.me/malvovabelova/183>, May 30, 2022.

<sup>407</sup> *Ibid.*

<sup>408</sup> *Ibid.*, in the embedded video at 1.16 (‘И мы предложили привезти их сейчас в Московскую область’).

<sup>409</sup> Мария Львова-Белова навестила детей-сирот из Донецкой Народной Республики в подмосковном пансионате, *Russian Children’s Rights Commissioner’s website*, May 30, 2022 (‘Уполномоченный при Президенте РФ по правам ребенка Мария Львова-Белова при содействии Следственного Комитета России вывезла 31 ребенка, оставшегося без попечения родителей, из Мариуполя и Донецка на реабилитацию, лечение и отдых в подмосковный пансионат.’).

<sup>410</sup> See above, para. 40.

advanced in this report, one such circumstance is appointment of a new legal guardian, at least where the previous guardian is alive but separated from the child.<sup>411</sup>

260 However, her subsequent reaction to Yevgeny Mezhevoy's story, detailed above in section I(B)(1), is instrumental in establishing her responsibility for the broad spectrum of the alleged displacement crimes that occurred thereafter. On the *AntiFake* show aired by Channel One on April 3, 2023, Lvova-Belova said she was aware of the filtration procedure Yevgeny went through, referring to a correspondence with someone.<sup>412</sup> Immediately a screenshot was shown of a Telegram chat with someone writing that the 'father was evacuated with the kids and was undergoing filtration for a long time.'<sup>413</sup> The date and the other messages on the screenshot clearly established that this message had been sent and received before Yevgeny collected his children on June 19, 2022. This shows that, since before June 19, 2022, Lvova-Belova was aware that, generally, the children could be transferred to Russia as a result of their separation with the parents or legal guardians. Knowing this, Lvova-Belova could have introduced a procedure that would have isolated the forcibly separated children from the general flow of children and kept them in place on the occupied territories. In all the sources processed by the authors of this report, nothing indicates that such a procedure was ever instituted. Some of the incidents of forcible displacement established in this report<sup>414</sup> occurred after June 19, 2022, including the cases of Novopetrivske Special School and the Kherson Care Home for Infants and Toddlers.

261 Second, she was personally involved in at least eight cases of transfer to the Russian regions, all of which involved her contact with the governors, as shown above at para. 104.

262 Third, Lvova-Belova physically attended a meeting with the occupational administration of the Kherson region which took place in the town of Henichesk in early November 2022, where she learned about the situation with Oleshky Care Home (Ukrainian: *Олешківський дитячий будинок-інтернат*; Russian: *Алешкинский дом-интернат*).<sup>415</sup> She personally arranged for specialised transport vehicles, suitable for carrying children with disabilities, to arrive from Crimea.<sup>416</sup> This was one of her working visits to the occupied territories, of which she made at least nine.

263 Lvova-Belova contributed to the commission of the 'movement to another location' element of the alleged displacement crimes in that she made agreements with the governors to accommodate the children and launched the Poslezavtra camps.

264 Her awareness of the forcible character of the transfers, or that the circumstances constituting the forcible character would occur in the ordinary course of events, can be established based on her reaction to the Mezhevoys' case and the fact that she or members of her staff were likely following closely the media coverage of their activities:

- 1) It follows from her interview to the Swiss newspaper *Die Weltwoche*, dated April 26, 2023, that she was aware of the contents of the report by Yale School of Public Health Humanitarian Research Lab dated February 14, 2023;<sup>417</sup>

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<sup>411</sup> See above, para. 196.

<sup>412</sup> *Первый канал*, АнтиФейк. Выпуск от 03.04.2023, April 3, 2023, in the embedded video at 27.50.

<sup>413</sup> *Ibid.*, at 27.52.

<sup>414</sup> See above, para. 199.

<sup>415</sup> <https://t.me/malvovabelova/756>, November 11, 2022.

<sup>416</sup> <https://t.me/malvovabelova/762>, November 12, 2022.

<sup>417</sup> *Die Weltwoche*, «Die Vorwürfe sind absurd, jenseits jeder Wirklichkeit», April 26, 2023 ('Weltwoche: Ein «Humanitarian Research Lab» der Yale University hat einen Bericht zu dem Thema vorgelegt. Dort heisst es, Sie würden die Kinder den Eltern regelrecht wegnehmen. Lwowa-Belova: Dieser Bericht wurde vom Aussenministerium der USA in Auftrag gegeben. Konkrete Daten, konkrete Namen sind dort nicht zu finden. Man verweist stattdessen auf angebliche Satellitenaufnahmen. Das ist doch höchst unprofessionell. Wie wollen Sie von solchen Aufnahmen auf Entführungen schliessen? Wenn wir darum bitten, die Namen der Familien zu erfahren, deren Kinder angeblich entführt worden sind, kommt nichts. Gebt uns die Namen, damit wir, falls es je zu solchen Fällen gekommen sein sollte, helfen können.').



- 2) It follows from her comments on the *AntiFake* show that she was aware of the Ukrainian media coverage of the return of some children from the vacation camps,<sup>418</sup> as well as the coverage of the Mezhevoy case.<sup>419</sup>

265 Her knowledge with respect to the circumstances constituting the unlawfulness element is established based on the following facts:

- 1) She personally called the governors to ask them to accommodate the children.<sup>420</sup> She also knew about the locations of the vacation camps, some of which were in Krasnodar Krai in mainland Russia. On some occasions, Lvova-Belova personally accompanied Ukrainian children to Russian institutions and foster families, and visited some of them afterwards, which she was quick to publicise on her website,<sup>421</sup> social media and in interviews.<sup>422</sup> This proves her knowledge with respect to the fact that the children were moved from the occupied areas to the undisputed territory of the Russian Federation, which, presuming there was no ‘material reasons [that made it] impossible to avoid such displacement,’ is a circumstance constituting the unlawfulness element of the crimes of deportation and transfer.
- 2) In dealing with the request by Iryna Vereshchuk to return the group of 31 associated with Mariupol, mentioned above in section II(G), Lvova-Belova openly disregarded the obligation to return the displaced persons to their original location. A violation of this obligation constitutes the requisite element of unlawfulness.
- 3) Lvova-Belova was aware of the restrictions on the return process due to her leading role in it, as well as the prohibitive selection criteria that could have been applied, as described above in section II(G). Thus, she could have known that, in the ordinary course of events, not all of the Ukrainian children would return to their original location.

266 Lvova-Belova was able to frustrate the commission of the alleged crimes. Her mandate established by the President<sup>423</sup> and her involvement at the stages before the effectuation of the transfers gave her sufficient control to halt a transfer once it was known the child was being displaced forcibly. She would have been able to institute a procedure to filter out the forcibly displaced children and keep them in place at the original location or on the occupied territories. As a part of this procedure, she could have received the information about the circumstances constituting the forcible character of the transfer from the military or social services who first came into contact with the children. As a part of this procedure, the Russian authorities could also have communicated the names and other identifying information about the children to the Ukrainian authorities before the transfer happened, so as to establish contact with their legal guardians and learn about their circumstances, but the Russian authorities did not do so, instead preferring to provide information on an *ad hoc* basis after the transfers had taken place.

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<sup>418</sup> *Первый канал, АнтиФейк*. Выпуск от 03.04.2023, April 3, 2023, in the embedded video from 14.47 onwards (‘И вот, то есть последняя группа, например, одиннадцать детей, которых привезли туда вот за линию фронта. И ходили журналисты, спрашивали, кто может дать интервью, у детей – это дети рассказали по телефону, когда звонили друзьям, оставшимся в лагерях. И когда они рассказывали, что там было так круто, мы, там, танцевали, мы ездили на экскурсии, они говорят, нет, там, типа, нам не надо, кто может, там, другое что-нибудь рассказать. [...] и тут мальчик один, да, который две недели провёл в лагере, ещё в октябре месяце его сестра забрала, то есть который просто ехал в составе делегации, возвращался не из лагеря. Он сказал, да, били палками, да, там, значит, выводили из зала, если кричали “слава Украине,” вот. Но на самом деле, мы не можем оставить это без внимания, всё равно проверяем этот факт, всё равно написали обращение в Следственный Комитет [...]. А самое главное, что на него просто смотришь, он даже психологически, то есть он не смотрит в камеру, он отводит глаза, значит, одежду постоянно дёргает, то есть видно, что он нервничает [...]. И дети рассказывают, говорят, мы рассказываем, они говорят: “Нет, это не подходит. Кто может рассказать, кто может рассказать плохое?”’).

<sup>419</sup> *Ibid.*, in the embedded video at 26.57 and onwards.

<sup>420</sup> See above, para. 103.

<sup>421</sup> Ребята из Мариуполя увидели Москву на обзорной экскурсии, *Russian Children’s Rights Commissioner’s website*, June 14, 2022 (stating Lvova-Belova took a group of 31 children from Mariupol to the Moscow region)

<sup>422</sup> Е.г. *Известия*, Они боятся громких звуков, переживают за своё будущее, 19 декабря 2022, in the embedded video at the 6-minute mark (stating she has visited foster families in Kaluga, Novosibirsk and Moscow regions).

<sup>423</sup> See below, section IV(B).



## B. Vladimir Putin

267 Vladimir Putin launched the full-scale invasion of Ukraine on February 24, 2022, during his fourth term as the President of the Russian Federation. His fifth term in office starts on May 7, 2024.

268 Putin has personally contributed to the creation of the Russian displacement policy with respect to Ukrainian children. During his first publicised meeting with Lvova-Belova after the beginning of the full-scale invasion, he supported Lvova-Belova's suggestion to continue her work on accepting Ukrainian children into Russia and greenlit the necessary legislative changes.<sup>424</sup> This meeting took place on March 9, 2022, shortly after the first child care institutions were transferred from the occupied territories to the territory of the Russian Federation<sup>425</sup> as part of the mass evacuation, and shortly before the first batch of children were placed<sup>426</sup> into Russian foster families.

269 During their second meeting after the beginning of the invasion, Putin reaffirmed his support. He specifically inquired if the governors or other authorities were helping:

*M. Lvova-Belova: Our people are wonderful, Vladimir Vladimirovich. We have been placing the children of, as they say, the difficult category to place. These are large family groups consisting of five or six children. One family in Moscow region has accepted a family of nine children. Can you imagine, nine children? It's not only that they found parents, they also met each other for the first time on the plane, because they had been in different institutions. When you see all this happening... We've been dealing with a regional distribution. I personally called the governors and in 19 regions the governors were picking good families for the children.*

*V. Putin: Are they helping you?*

*M. Lvova-Belova: Yes. They manage all this, [the governors] have these processes under their patronage, they supervise and provide all the necessary assistance.<sup>427</sup>*

270 During this second conversation, Lvova-Belova thanked Putin, implying that it was his decision that made all the family placements possible:

*V. Putin: You yourself have adopted a child from Mariupol, haven't you?*

*M. Lvova-Belova: Yes, Vladimir Vladimirovich, thanks to you.*

*[...]*

*My favourite part [of the job] – thanks to you, thank you very much – is placing children in families. Vladimir Vladimirovich, [this is] the most joyful thing that happened during this entire time. Because, when we met last March, you said 'No delay.' We are accepting everyone who wants to, everyone who yearns, [all] the children who want.<sup>428</sup>*

271 Putin's role is further highlighted by the fact that, in her public comments and interviews, Lvova-Belova constantly described her work on Ukrainian children as an assignment from the President.

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<sup>424</sup> See above, para. 87.

<sup>425</sup> As stated by Lvova-Belova during their meeting, '1,090 orphans from various child care institutions' had arrived to Russia.

<sup>426</sup> Первые дети-сироты из Донбасса устроены в российские семьи под временную опеку, *Russian Children's Rights Commissioner's website*, April 23, 2022.

<sup>427</sup> Встреча с Уполномоченным по правам ребёнка Марией Львово-Беловой, *official website of the President of Russia*, February 16, 2023.

<sup>428</sup> Ibid.

272 Putin also expressed support during his press conference on September 16, 2022. When asked about his thoughts on sanctions introduced by the United States of America against Lvova-Belova, Putin said people should ‘make a low bow to her’:

*...As regards our ombudsperson for children’s rights, as we know, she was engaged – and is engaged to this day, god bless her, and I hope she will continue – with removing our children from combat zones: from Syria, Iraq. The children who remained their due to various circumstances, not of their own free will, of course. This is a noble mission, she is risking her life and limb. Naturally, it’s normal that she is removing children from combat zones or dangerous areas in Donbas. What’s wrong about it? We need to say thank you to her for this and make a low bow to her. To sanction her for this? This is the first time I’m hearing about it. It’s outrageous.*<sup>429</sup>

273 In the Russian political system of Putin’s era, dominated by informal governance and use of informal signalling behind the façade of formal institutions,<sup>430</sup> this remark by Putin about Lvova-Belova must have been read by all political actors, including the heads of the newly-annexed regions and the military commanders who supplied the children as well as the regional governors who accommodated them, as a strong and clear signal of support. This signal was intended to reinforce the existing state policy with respect to Ukrainian children.

274 Putin’s signals of this sort are all the more important as there is no subordination between the governors and Lvova-Belova. The list of Lvova-Belova’s powers, set forth by the law on the commissioners for children’s rights, does not include issuing any decisions binding on the governors.<sup>431</sup> It was Vladimir Putin’s decision and public stance that cemented the cooperation between Lvova-Belova and the governors.

275 While the need to cooperate with Lvova-Belova and to comply with her requests have also likely been signalled to the governors by other channels, such as by the Presidential Administration’s officials responsible for communication with and controlling the governors, the public statements by Putin reinforced the existing policy in their own right.

276 Putin’s public statements of September 16, 2022 and February 16, 2023, quoted above, were made after the first media reports, the first official reaction by Ukraine,<sup>432</sup> and the first statements by NGOs and international organisations<sup>433</sup> raising concerns of deportation and forcible transfer of children. This tends to prove that Putin had reason to know about or consciously disregarded the information on international crimes allegedly committed by his subordinates that he, as the head of the Russian state and the supreme commander of the Russian armed forces, was in a position to repress or prevent.

277 Putin continued to disregard the calls by international community, when at the meeting with the heads of delegations from African states on June 17, 2023, in response to a proposal that the ‘children must return to where they came from, to their homes,’ he stood by existing practices of transferring children and the existing policy of return upon request. He invoked safety concerns and framed the issue as if it was limited to the transfer of child care institutions (that is, the second category of targeted children described in section II(A) of this report):

*Children are a sacred cause. We were moving them from the conflict area, saving their lives and their health – that’s what happened. No one intended to separate any children from their families. We were*

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<sup>429</sup> Пресс-конференция по итогам визита в Узбекистан, *official website of the President of Russia*, September 16, 2022.

<sup>430</sup> Alena V. Ledeneva, *Russia’s Practical Norms and Informal Governance: The Origins of Endemic Corruption*, *Social Research: An International Quarterly*, 80 (2014), 1135–1162, at. 1142–1143, 1154–1157.

<sup>431</sup> Federal Law of December 27, 2018 No. 501-FZ ‘On the Commissioners for Children’s Rights in the Russian Federation’ (Федеральный закон от 27.12.2018 N 501-ФЗ (ред. от 10.07.2023) «Об уполномоченных по правам ребенка в Российской Федерации»), art. 6.

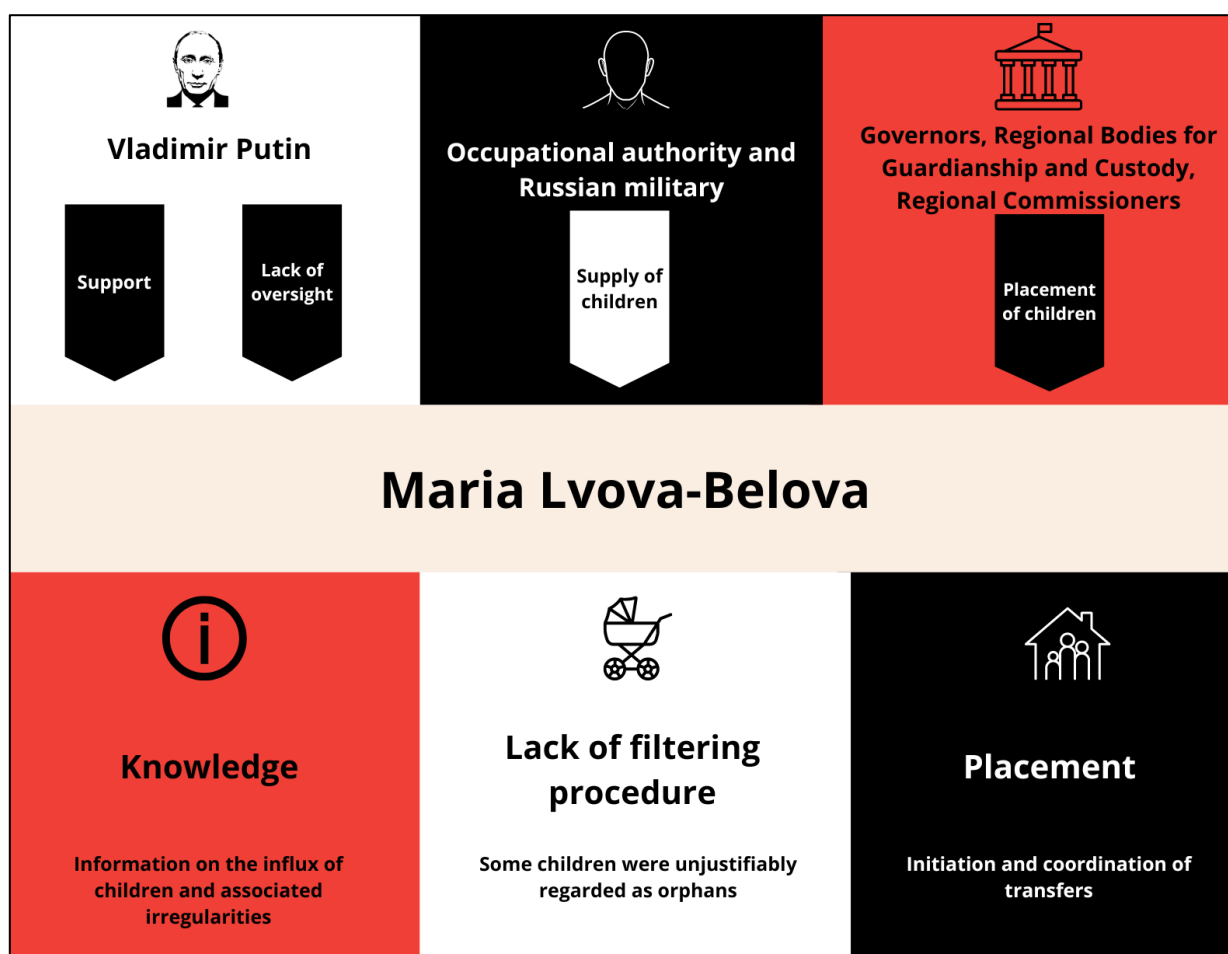
<sup>432</sup> See above, fn. 13.

<sup>433</sup> An Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent, *New Lines Institute, Raoul Wallenberg Centre*, May 2022; *UN News*, UN’s Bachelet concerned over Ukraine orphans ‘deported’ to Russia for adoption, 15 June 2022; Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022), *OSCE Moscow Mechanism’s mission of experts*, p. 27, 95.

*moving whole orphanages, which was absolutely legal, because the heads of these institutions were their legal representatives. We were never against reunification of children with their families, provided, of course, that their relatives show up. There have never been any obstacles to that, there are no obstacles, and obviously, there never will be. I want to reassure you about that.*<sup>434</sup>

278 Putin again dismissed the call by African states on July 29, 2023:

*You must know this story about children’s kidnappings that was actually blown out of proportion. Our explanation is simple: there were no kidnappings; there were attempts and specific actions to rescue the children that were evacuated from the area of hostilities. Were we supposed to keep children’s homes under artillery fire? Of course, we evacuated the children.*<sup>435</sup>



<sup>434</sup> Встреча с главами делегаций африканских государств, *official website of the President of Russia*, June 17, 2023.

<sup>435</sup> Answers to journalists’ questions, *official website of the President of Russia (English version)*, July 29, 2023.

## C. Georgiy Tambovtsev

- 279 Georgiy Tambovtsev was involved in the transfer of the Novopetrivske group from Stepanivka as described above in section I(A). During a phone call, he threatened to call the military in order to make the children and the administration of the Novopetrivske School get on a bus.<sup>436</sup>
- 280 The fact that the perpetrator threatens the victims to force them into a bus is regarded in international jurisprudence as a factual circumstance establishing intent required to commit the crime of deportation or transfer.<sup>437</sup> Furthermore, the fact that he spoke to Natalya Lutsyk, who was the legal guardian of the children from the Novopetrivske School, shows that Tambovtsev was aware of the circumstances constituting the unlawfulness of the transfer, namely, that she opposed the transfer and did not give her consent. This episode with the phone call constitutes a contribution to the fulfilment of the objective elements and establishes the entire *mens rea*, on the part of Tambovtsev, required to commit the crime as a perpetrator under art. 25(3)(a) RS.

## D. Igor Kastyukevich

- 281 Igor Kastyukevich is a member of the ruling United Russia party and a member of the Russian State Duma who was involved in the forcible transfer of the Kherson Regional Children's Home (Russian: *Херсонский областной дом ребёнка*), also referred to as Care Home for Infants and Toddlers (Russian: *Дом малютки*).<sup>438</sup>
- 282 Since the institution lacked any basement to hide from shelling, on the first day of the invasion the administration of the institution carried the children to a shelter across the street. On the next day, February 25, 2022, they were visited by Pavlo Smolyakov, the senior presbyter<sup>439</sup> for the Kherson region with the All-Ukrainian Union of Churches of Evangelical Christian-Baptists. He reportedly described what he saw as 'not for the faint of heart. Because there is a lot of people, because the room is dark and damp. The floors are wet, there are mattresses on them, and children, from babies to four-year-olds, are crawling on them [...].' That day,<sup>440</sup> the care home moved to the basement of the Golgotha Church located in the same city, pastored by Pavlo Smolyakov.
- 283 In April, the Russians started to look for the children, visiting the empty premises of the care home and asking about them. At the end of April, a group of military men visited the church. They did not give their names, but the masked man leading the group, in a conversation with pastor Smolyakov, identified himself by his *nom de guerre* Navigator (Russian: *Навигатор*). He demanded that the children were brought back to the premises of the institution. In what is described by the journalists with *Hromadske* as a transfer 'de facto at gunpoint,' the children were brought back shortly after April 20.
- 284 Earlier, on March 17, 2022, a pro-Russian media Crimea 24 released a video about humanitarian aid delivered to the residents of occupied Kherson.<sup>441</sup> A masked man in a military uniform, with a nametag on his chest that says 'Navigator,' is seen handing out the aid to the locals. At the 4-minute 33-second mark, he is speaking to the reporter, and the name strip on the screen identifies him as 'Igor Kastyukevich, member of the State Duma of the Russian

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<sup>436</sup> See above, para. 29.

<sup>437</sup> ICTY, *Prosecutor v. Ratko Mladić*, IT-09-92-T, Trial Judgment, November 22, 2017, para. 3166, incident I(vi).

<sup>438</sup> Unless a different source of information is indicated, the details of the transfer and the involvement of Kastyukevich are provided according to an investigation by *Hromadske*: Киднеперы: как российские депутаты и ФСБшники похищали херсонских сирот, July 3, 2023.

<sup>439</sup> <https://t.me/baptystsUA/69>, March 2, 2022.

<sup>440</sup> A different source claims the relocation happened on the first day of the full-scale invasion: <https://t.me/baptystsUA/66>, March 2, 2022.

<sup>441</sup> *Крым 24*. Слезы радости. Как встречали братскую помощь жители освобождённого Херсона? March 17, 2022.

Federation.’ On the same day, Kastyukevich reposted that video on his Telegram channel.<sup>442</sup> A similar video was released on March 20, 2022 by a different pro-Russian media Crimeainform, also identifying Kastyukevich.<sup>443</sup>

285 On October 21, 2022, the Russian military, ambulance vehicles, media personnel and volunteers came to the premises of the care home. All of the children who were staying at the institution were taken from Kherson to Crimea.

286 The same day, October 21, 2022, the deputy head of the annexed Kherson region Kirill Stremousov announced on his Telegram channel that the Kherson Care Home had been ‘fully evacuated’ from Kherson to Simferopol, Crimea, thanking the head of the annexed Crimea for assistance.<sup>444</sup>

287 The same day, Kastyukevich himself posted on Telegram:

*A great weight off my mind :) We saved them twice!*

*The United Russia humanitarian mission has been looking after the children from the Kherson Care Home for Infants and Toddlers since March. I first saw them in the basement of the Golgotha Church. They were waiting to be moved, and none of the employees could say anything intelligible, where they were taking them and for what purpose.*

*Then, a number of decisions followed and efforts were made to ensure that no actions could be taken with respect to the children. And we started helping the care home. Then we were joined by the kind-hearted residents of the Kherson region, farmers who supplied the kids with fresh fruit, milk and meat.*

*Now that the evacuation was announced, it was extremely important to move them to where it was safe. Thanks to Anna Kuznetsova [@Anna\\_Jurjevna](https://t.me/Anna_Jurjevna), Andrey Turchak [@turchak\\_andrey](https://t.me/turchak_andrey), the head of Crimea Sergei Aksenov [@Aksenov82](https://t.me/Aksenov82) and everyone who participated in this important matter. More than 50 children, 11 of whom with limited mobility, are already making themselves at home at a new place.*

*We have saved them [...].<sup>445</sup>*

288 On June 30, 2023, the Security Service of Ukraine formally notified Igor Kastyukevich, Tatiana Zavalskaya and another person of a suspicion of their having committed a crime under Ukrainian law in relation to the transfer of the Kherson care home.<sup>446</sup>

289 Several social media statements made by Russian officials in 2023, reviewed by IICIU, pointed to the continuous presence of the children from the Kherson Care Home for Infants and Toddlers in Crimea for months after their displacement.<sup>447</sup> ‘As of November 2023, a Ukrainian authority informed the Commission that except for isolated cases, the majority of children had not yet returned to a territory under Ukrainian Government control.’<sup>448</sup> The Commission concluded that the transfer violated the temporariness requirement ‘and hence amounted to the war crime of unlawful transfer.’<sup>449</sup>

290 The first transfer that occurred in April 2022, when the children were brought from Golgotha Church back to the premises of the care home, and the second transfer that took place on October 21, 2022, when the children were moved

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<sup>442</sup> [https://t.me/kastyukevich\\_live/987](https://t.me/kastyukevich_live/987), March 17, 2022.

<sup>443</sup> <https://t.me/crimeainform/36024>, March 20, 2022 (the man wearing the Navigator name tag is identified at the 40-second mark as ‘Igor Kastyukevich, member of the State Duma’).

<sup>444</sup> [https://t.me/Stremousov\\_Kirill/567](https://t.me/Stremousov_Kirill/567), October 21, 2022, and the video embedded therein.

<sup>445</sup> [https://t.me/kastyukevich\\_live/2480](https://t.me/kastyukevich_live/2480), October 21, 2022.

<sup>446</sup> Повідомлення про підозру та повістки про виклик Кастюкевича І.Ю., Завальської Т.В., Ільмієва В.В. на 05.07.2023, 10.07.2023, 14.06.2023 (українською та переклад російською) у кримінальному провадженні № 4202200000000383, *website of the Office of the Prosecutor General of Ukraine*, June 30, 2023.

<sup>447</sup> Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66-auv-EN, 2024, para. 96.

<sup>448</sup> *Ibid.*, para. 96.

<sup>449</sup> *Ibid.*, para. 97.

to Crimea, may actually constitute separate crimes. Due to the circumstances of the transfer and the degree of Kastyukevich's personal involvement, the crime that is more likely to result in a conviction of Kastyukevich is the first transfer. The first transfer appears to satisfy the three key elements of the displacement crimes.

291 First, the transfer from the church to the premises of the care home constituted movement to another location. As stated above at para. 184, the law does not provide for an exact distance that must be traversed, but jurisprudence of the ICC regards the transfer to a different neighbourhood in the same settlement as sufficient in length, while the ICTY has regarded as such the movement to a place about 500 to 1,000 metres away. Golgotha Church, which is located at 7 Polkovnyka Kedrovskoho Street,<sup>450</sup> is in Suvorovskiy district of the Kherson city, while the premises of the care home, located at 149A Illiushi Kulyka Street,<sup>451</sup> are in Dnirovskiy district. According to the Measure tool on the Google Earth service, they are about 3,960 metres apart.

292 Second, the forcible character of the transfer is established based on the following facts:

- 1) Kastyukevich personally demanded the children to be returned in a coercive environment, which was constituted by the presence of the military and the ongoing occupation of Kherson.<sup>452</sup>
- 2) It can be assumed that the choice of the victims and the persons responsible for them, who might have been persuaded by Pavlo Smolyakov, was to relocate to the church, rather than to stay at the premises of the care home, and this choice was executed before the arrival of Kastyukevich and the military. Their subsequent transfer back to the premises violates that choice.

293 Third, the transfer was unlawful, because the relocation of the children from the church building which had a basement, to a building that had no basement suitable for accommodating them, could not have improved the safety of the children. Thus, the perpetrators could not have relied on the grounds of security. Moreover, the real motive behind the transfer was likely to establish control over the movement of the children, for whatever reason, which is not in line with art. 49 GC IV. This motive is seen from the following facts:

- 1) In the video published on his Telegram channel on June 3, 2022,<sup>453</sup> Kastyukevich is seen interviewing a woman whose face is blurred and who resembles the newly-appointed head of the institution Tatiana Zavalskaya.<sup>454</sup> She reveals that some of the children were given away and Kastyukevich is seemingly angry about it. In the same post, he writes: 'We will make sure that, during the special military operation, no manipulations are carried out with the minors in social institutions. They don't take the child from a normal family. Only if there is a threat to life and health. To give away the kids from the home for infants and toddlers to their miserable parents now, when they are not even 3 years old, is a crime.'
- 2) The official Telegram channel of the United Russia party published a post that reads: 'In the beginning of the [Special military operation], the volunteers of the party took patronage over the pupils of the social institution. This happened after there was an attempt to move the children towards Poland.'<sup>455</sup>
- 3) On October 21, 2022, Kastyukevich mentioned in his post that the children 'were waiting to be moved,' and 'a number of decisions followed and efforts were made to ensure that no actions could be taken with respect to the children,'<sup>456</sup> which indicates that he viewed any unauthorised movement of the children as undesirable and wanted to exert control over it.

294 It is likely that Kastyukevich saw the care home as a publicity generating resource which he could use to maintain the appearance of a public figure, create the air of good governance, and conform to the federal agenda on Ukrainian children, which would fuel his further career growth. That would explain his desire to prevent the children from leaving

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<sup>450</sup> <https://www.vsch.org/church/golgotha-ukraine-kherson>.

<sup>451</sup> [https://www.audit-it.ru/contragent/1229500007285\\_gbu-khersonskiy-oblastnoy-dom-rebenka](https://www.audit-it.ru/contragent/1229500007285_gbu-khersonskiy-oblastnoy-dom-rebenka).

<sup>452</sup> *Hromadske*, Киднеперы: как российские депутаты и ФСБшники похищали херсонских сирот, July 3, 2023.

<sup>453</sup> [https://t.me/kastyukevich\\_live/1509](https://t.me/kastyukevich_live/1509), June 3, 2022.

<sup>454</sup> Tatiana Zavalskaya's identity and appearance was revealed in the *Hromadske* investigation, see above, fn. 437.

<sup>455</sup> [https://t.me/er\\_molnia/5470](https://t.me/er_molnia/5470), October 21, 2022.

<sup>456</sup> See above, para. 287.

voluntarily. It is noteworthy that in December 2022, Kastyukevich was made the head of the United Russia branch in the Kherson region.<sup>457</sup>

## E. Valery Astakhov

295 Valery Astakhov is a former member of Berkut, a special police unit known for its participation in quelling the Maidan protests.<sup>458</sup> Astakhov originally served in the Ministry of Internal Affairs of Ukraine. After the annexation of Crimea he acquired the Russian citizenship and transferred to serve in the Ministry of Internal Affairs of the Russian Federation in Yevpatoria. He reportedly carries the rank of a police major.<sup>459</sup>

296 Astakhov was identified as the individual who used violence against children from Ukraine in a Russian summer camp in Yevpatoria. He was identified as watching children in 'Druzhba' and 'Luchisty' camps.<sup>460</sup>

297 In 'Druzhba', where Astakhov was in charge of security, he first brought the children into a basement upon their arrival and showed them a metallic rod, saying that whoever misbehaved or demonstrated a pro-Ukrainian position would either be beaten with this rod or locked in the basement.<sup>461</sup> Astakhov has made use of his threat and on one occasion beat 16-year old Vitaly with an iron rod. Vitaly said that Astakhov 'imagined himself to be a king there. He said: "You are from Ukraine, who needs you? We'll take you to a boarding school, you'll sit there and understand everything." One girl was hit on the back, and there was just a stripe of bruise there.'<sup>462</sup>

298 Other testimonies of a similar character have been given by other children, including cases of refraining from providing enough insulin, temporary isolation in the basement and racial slurs.<sup>463</sup>

The limited information reviewed by the authors of this report does not suggest that Astakhov was involved in the transfers of children and his role is likely limited to dealing with children who have already found themselves under Russian control. Further, while Astakhov's actions might have been motivated by hatred towards Ukrainian children or a desire to punish them for insubordination, the information reviewed does not tend to prove the intent to confine the children to a particular area, which precludes charging confinement crimes.

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<sup>457</sup> «Единая Россия» создала региональное отделение в Херсонской области, *United Russia website*, December 8, 2022.

<sup>458</sup> *The Insider*, The Insider удалось установить человека, причастного к насилию над вывезенными украинскими детьми. Это бывший сотрудник «Беркута», March 26, 2023.

<sup>459</sup> <https://myrotvorets.center/criminal/astakhov-valerij-vasilevich/>.

<sup>460</sup> *Крым.Реалии*, «Он может быть куратором от ФСБ». Кто мучил украинских детей в Крыму, March 29, 2023.

<sup>461</sup> *Ibid*.

<sup>462</sup> *The Insider*, «Били железной палкой, держали в подвале». Украинские дети рассказали, как их удерживали в российских лагерях, March 23, 2023.

<sup>463</sup> Denys Berezhny: A Ukrainian Boy's Forced Journey from Kherson to Crimea, *Save Ukraine*, January 24, 2024; *The Insider*, «Били железной палкой, держали в подвале». Украинские дети рассказали, как их удерживали в российских лагерях, March 23, 2023; *Громадське радіо*, Бывший «беркутовец» Валерий Астахов причастен к издевательствам с украинских детей, которых вывезли в Крым, March 27, 2023.





Netherlands Helsinki Committee  
Het Nutshuis  
Riviervismarkt 4  
2513 AM The Hague  
The Netherlands  
Email us | [office@nhc.nl](mailto:office@nhc.nl)  
Visit our website | [www.nhc.nl](http://www.nhc.nl)

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