

# **THE FORCIBLE TRANSFER OF CHILDREN FROM UKRAINE TO RUSSIA: A GENOCIDE**

**SUBMISSION TO THE OFFICE  
OF THE PROSECUTOR OF THE  
INTERNATIONAL CRIMINAL COURT**

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*Kacper Zajac, Yevgeniy Zakharov*

**Author**  
*Mykola Komarovskiy*

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# LIST OF ABBREVIATIONS

**DB** — database

**GUVM MIA** — Main Department for Migration of the Ministry of Internal Affairs

**ERDR** — Unified Register of Pre-trial Investigations

**MM** — mass media

**ICC** — the International Criminal Court

**MoD** — Ministry of Defense of the Russian Federation

**ICJ** — the International Court of Justice

**ICTY** — the International Criminal Tribunal for the former Yugoslavia

**ICTR** — the International Criminal Tribunal for Rwanda

**OVA** — Regional Military Administration

**LHC** — limited health capabilities

**RS ICC** — Rome Statute of the International Criminal Court

**RF** — Russian Federation

**SKR** — the Investigative Committee of the Russian Federation

**So-called LPR** — the self-proclaimed Luhansk People's Republic

**So-called DPR** — the self-proclaimed Donetsk People's Republic

**KHPG** — the Kharkiv Human Rights Protection Group

**SLC** — Strategic Litigation Centre

**URSR** — Ukrainian Soviet Socialist Republic

**USRR** — Ukrainian Socialist Soviet Republic

**OSINT** — Open source intelligence

# I. ABSTRACT

1. On March 2, 2022, ICC Prosecutor Karim A. A. Khan announced the opening of an investigation into the Situation in Ukraine from November 21, 2013, onwards, thereby encompassing within its scope any past and present allegations of war crimes, crimes against humanity and genocide committed on any part of the territory of Ukraine by any person.
2. On March 13, 2023, it became known that the ICC intended to open two investigations of war crimes cases related to the Russian invasion of Ukraine. The two cases relate to the abduction of Ukrainian children and teenagers and their deportation to Russia, as well as the deliberate targeting of civilian infrastructure by the Russian military.
3. On March 17, 2023, the ICC Pre-Trial Chamber II issued arrest warrants against two individuals within the context of the situation in Ukraine: Mr. Vladimir Vladimirovich Putin and Ms. Maria Alekseevna Lvova-Belova. These warrants were based on the presumed responsibility of these individuals for the war crime of illegal deportation of the population (children) and illegal transfer of the population (children) from the occupied areas of Ukraine to the Russian Federation.
4. The ICC Prosecutor preliminarily qualified the case of the forced deportation of Ukrainian children under RS Art. 8(2)(a)(vii): “Unlawful deportation or transfer or unlawful confinement” and Art. 8(2)(b)(viii): “The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.”
5. However, the KHPG believes that the totality of the circumstances may well indicate that the actions of the RF in Ukraine, consisting of the forced deportation of Ukrainian children to the RF, can and should be qualified as genocide under RS Art. 6(e).
6. The justification of this KHPG’s opinion is divided into 16 chapters.
7. Chapter 2, Introduction, provides brief information about KHPG activity and expresses gratitude to the international partners which supported our efforts to substantiate the commission by RF of the crime of genocide in Ukraine.
8. Chapter 3, Methodology, describes how the information used in this Communication was collected and researched.
9. Chapter 4, International Regulation, provides a list of international legal norms that address the forced deportation of children and liability for such actions.
10. Chapter 5, General information about the crime of genocide in the form of the forcibly transferring children of the group to another group, focuses on the historical context of child deportation. Information from this chapter is used in other parts of the justification.
11. Chapter 6, Features of the elements of crime enshrined in the Rome Statute, contains information on the *corpus delicti* of the crime of genocide under RS Art.6(e), as provided for in the ICC’s Elements of Crimes guide.
12. Chapter 7, The protected group, focuses on the substantiation of the protected group which is a victim of the crime of genocide. Arguments are presented to prove that in the context of the Russian-Ukrainian war, it is the Ukrainian national group.
13. Chapter 8, Objective (material) elements of crime, presents factual information, which, in total, evidences the signs of the crime of genocide. This chapter includes two parts: the information from open sources and the information received by the KHPG directly from the witnesses of the events, the Ukrainian authorities, child-care facilities, etc.

14. Chapter 9, Subjective (mental) elements of crime, proves the existence of the so-called particular intent (*dolus specialis*) on the part of the Russians, aiming to destroy the Ukrainian national group as such. The chapter is also divided into two subparts, as it is necessary to consider the jurisprudence of relevant international tribunals.
15. Chapter 10, Contextual Element, describes both general information about this element and presents the author arguments in favor of its presence in the actions of the Russians in the context of the war in Ukraine.
16. In Chapter 11, Comments on children who have been returned, the author explain that deported children who later have been returned to Ukraine or returned to their parents are not victims of genocidal acts in the context of proving the crime of genocide.
17. Chapter 12, Individual criminal responsibility, provides brief information on the individuals most likely to have been involved in the deportation of Ukrainian children.
18. Chapters 13, 14, and 15 are devoted to the general procedural aspects of applying to the ICC. They cover the issues of complementarity and the failure of the Ukrainian state authorities to investigate or prosecute the crime of genocide. They also include the relevant justification that the investigation of genocide in Ukraine will serve the interests of justice.
19. Chapter 16, Conclusions, states the need to reclassify the already initiated ICC investigation of the forced deportation of Ukrainian children. This investigation was initiated concerning alleged war crimes (under RS Art. 8(2)(a)(vii) and 8(2)(b)(viii)), but we believe that it has to cover the alleged crime of genocide (RS Art. 6(e)).

## II. INTRODUCTION

20. KHPG presents information about the criminal acts committed by the RF during the full-scale war in Ukraine for the purpose of reclassifying the already initiated ICC investigation of the forced deportation of Ukrainian children from RS Art. 8 (“War Crimes”) to RS Art. 6(e) (“Genocide”).
21. KHPG was legally registered in 1992 but had been operating as a human rights group of the Kharkiv Memorial Society since 1989. KHPG investigates specific cases of human rights violation, considering up to three thousand written appeals per year, informs the Ukrainian state and society about human rights, and analyzes the observance of human rights and fundamental freedoms in Ukraine. KHPG activities aim to improve the human rights situation in Ukraine. It works in such areas as the right to life, freedom from torture and ill-treatment, freedom from arbitrary detention, freedom of speech and information, the right to privacy, and rights of vulnerable groups of people: prisoners, people living with HIV, drug addicts, asylum seekers, and others. In 2003, the KHPG created a Strategic Cases Centre (SLC), which yearly handles in national courts and before the ECtHR up to 200 significant cases. The SLC lawyers filed 635 applications to the ECHR and won 185 cases under Articles 2, 3, 5, 6, 8, 13, and other ECHR articles. Eighty-five cases have passed the communication stage and are awaiting consideration on the merits, while the remaining cases are pending communication from the ECtHR. More than half of them concern crimes committed during the military conflict in eastern Ukraine. After the beginning of the full-scale invasion of the RF on February 24, 2022, KHPG started targeted collection and analysis of information on war crimes, aiming at their further documentation in its database. It also focused on the legal support of the victims of war crimes at the national and international levels.
22. The KHPG employee Mykola Komarovskiy prepared this Communication.
23. KHPG expresses sincere gratitude to the USA nonprofit Panorama Global, who supported our efforts in preparing this Communication.

### **III. METHODOLOGY**

#### **A. AUTHOR NOTE ON METHODOLOGY**

24. It is worth noting some features of working with sources of information used in preparing the Communication that emerged because the criminal acts were (are) committed in the territories that were (are) under the effective control (occupation) of the RF. The latter, in turn, causes several specific difficulties that should be emphasized.
25. First, the vast majority of information sources were from the Russian side. However, as will be noted below, despite the obviousness of the illegal actions, Russian officials and the media did not try to conceal the commission of the crime of forced deportation of Ukrainian children. Secondly, interviewing witnesses of deportation events is almost impossible, as the vast majority of them are located in an area not controlled by the Ukrainian government.

#### **B. SOURCES OF INFORMATION**

26. The sources of information included:
  - 1) Pre-verified publications on the websites of the RF authorities covering the topic of forced deportation of Ukrainian children;
  - 2) Research, including OSINT research, conducted by several organizations on the whereabouts of Ukrainian children in the RF and the occupied parts of Ukraine, the process of their deportation, and the conditions of their detention;
  - 3) Pre-verified messages in the media, social networks, and streaming services reporting the cases of forced deportation of Ukrainian children. This paragraph refers to media and other sources without reference to a specific country of origin;
  - 4) Replies to information requests sent following the Law of Ukraine “On Access to Public Information” to regional military administrations and educational institutions;
  - 5) Testimonies of the victims and witnesses of the events of forced deportation of Ukrainian children, which KHPG received;
  - 6) Decisions and other procedural documents of international tribunals and the ICC, where the subject of consideration was the commission of genocide;
  - 7) Scientific publications of scholars whose research focused on specific aspects of the crime of genocide.

#### **C. INFORMATION RETRIEVAL FROM THE OPEN SOURCES**

27. As was noted, the vast majority of information that formed the basis of this Communication was collected by KHPG by analysis of data from open sources.

##### *Categories of information from open sources*

28. Information collection included analysis of the media, including national and international media, websites of Russian government authorities, websites of quasi-governmental bodies of the so-called LPR and DPR, social media (Facebook, Instagram, Twitter, Vkontakte),



streaming services and video hostings (Youtube, TikTok), channels and groups in messengers (Viber, Telegram).

29. The work procedure with open sources aligned with international OSINT standards, such as the OSINT Guidelines prepared by the EU DisinfoLab, CheckFirst, Center for Information Resilience, DFR Lab, Open Facto, OSINTCurious, and Logically.<sup>1</sup>
30. The author were familiarized with the Berkeley Protocol.<sup>2</sup>
31. The process of documenting the enforced disappearances from open sources includes:
  - Information search;
  - Collection of information;
  - Verification of information;
  - Including information in the Communication.

### ***Information search***

32. Author of Communication were encouraged to use secure browsers such as Tor and VPN services in their work. Since the work was carried out from the territory of Ukraine, the use of VPN services was also a prerequisite for visiting the official websites of the Russian authorities and Russian media. Access to these resources is limited in Ukraine.
33. The author had to create separate work accounts to retrieve information from social media, messengers, video hostings, and other sources that required registration for full-fledged work.
34. The author had to be especially careful when working with Russian sources of information and sources created by the so-called LPR/DPR.
35. The author of the Communication had to perform all the above elements of the documentation process in order in the established sequence. No element was allowed to be skipped.
36. There was two kinds of search in the work of author: general and specific.
37. The special search implied collecting information about events that can have signs of forced deportation that occurred in a particular settlement (region). The general search was not aimed at collecting information about a specific episode but rather at creating the overall picture. It is worth noting that a general search was used in most cases.
38. The author compiled a preliminary list of information sources that could contain data on the events they needed. Such sources can be specific media outlets, channels, hosting sites, etc. However, the author had to constantly look for new data sources to expand the range of their work and replace the already exhausted sources.
39. To find them, author apply intelligent search methods using customizable Google services.

### ***Collection of information***

40. The information collection involves its preliminary storage in the form of a data set. The data set included a link to the source or sources where information about the forced deportation was found; screenshots of all records in the source(s) of information; media files (photos and videos retrieved from the source of information), and notes of the author.

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<sup>1</sup> Open Source Intelligence Tools And Resources Handbook 2020.  
[https://i-intelligence.eu/uploads/public-documents/OSINT\\_Handbook\\_2020.pdf](https://i-intelligence.eu/uploads/public-documents/OSINT_Handbook_2020.pdf)

<sup>2</sup> Berkeley Protocol on Digital Open Source Investigations.  
[https://www.ohchr.org/sites/default/files/2022-04/OHCHR\\_BerkeleyProtocol.pdf](https://www.ohchr.org/sites/default/files/2022-04/OHCHR_BerkeleyProtocol.pdf)

41. To work with information containing personal data, the person working on the Communication had to create a separate folder with working files and ensure its confidentiality. The work computer could be accessed only by password, and the additional use of encryption keys was recommended. The access to work folder could also be blocked by password.
42. For each case, a Communication' author had to create a separate sub-folder in the work folder containing files with information concerning this case. The author could also group the folders in a certain way.
43. Data collection is directly related to the verification stage, where the retrieved information is clarified and checked.

#### ***Verification of information***

44. The verification is done by searching for additional (alternative) information about the episode in the open sources.
45. The verification of the collected information is intended to avoid the input of fake reports into the Communication. It includes a search for additional sources of data that could confirm information about particularly significant (egregious) events or information about events that raised reasonable doubts. If the information could not be verified, it was used with the utmost care and separated from information from verified sources by a special marking.
46. To properly verify information, retrieving at least two sources containing identical or similar information is necessary. By default, however, it was assumed that official sources, such as state registers, do not require additional verification.

#### ***Information accumulation/archiving of sources***

47. The collected information was accumulated by entering it into a separate file, accessible to the author of this Communication. In the relevant file, separate comments and notations were made regarding the saved source if necessary.
48. If the source of processed information was in the RF (websites of official Russian authorities, mass media, etc.), the person working on the Communication was additionally required to create an archive of the relevant source using special services. This will be described in more detail in section "e" of this Chapter.

### **D. INTERVIEWS WITH VICTIMS AND WITNESSES OF FORCED DEPORTATION**

49. When collecting information about forced deportation, KHPG also used questioning of the local population. Experts interviewed witnesses and victims of crimes.
50. The interviews were conducted by qualified experts (journalists, lawyers) having experience working with victims of war crimes. All experts who worked with victims passed through methodological training on the psychological and technical aspects of interviewing.
51. The interviews were conducted following the KHPG Policy of interviewing witnesses/victims by journalists, documenters, lawyers, attorneys, and others cooperating with KHPG. This Policy was developed considering international standards, particularly ICC Eurojust

guidelines,<sup>3</sup> Mendez principles, and best practices of a trauma-conscious approach to interviewing.

52. The basic principle of interviewing is to avoid harm to the victim or witness. Any deviation from this principle, even for legitimate purposes, we consider unacceptable.

### ***Informed consent***

53. Before an interview, each respondent signed the informed consent form specially designed for further submission to the ICC, taking into account the ICC Eurojust Guidelines. Informed consent includes an agreement to:
- telling what the person experienced or witnessed;
  - transfer of information, documentation, or other items;
  - video and audio recording of the interview;
  - photographing and documenting bodily injuries;
  - publication of an interview.
54. Informed consent implied agreement to transfer information, documentation, or physical items to the Office of the ICC Prosecutor for use in criminal investigations and/or trials. KHPG has used the new template since December 2022.
55. When obtaining informed consent, the KHPG representatives use the standard form (template) of such consent previously developed by the organization. If it is impossible to use the template (for example, being in the field, having only online communication with the victim or witness, etc.), other ways of obtaining informed consent can be considered. For example, it can be an audio recording of the person's consent after reading the text of the consent form to them.
56. Informed consent implies that the person was provided with complete information about how and for what purposes their data would be used and the risks and consequences of such information transfer. The representatives of KHPG are responsible for providing and explaining this information to the interviewees and determining whether this person can fully understand what is being explained before giving free consent.
57. The person being interviewed has the right to withdraw or change their informed consent at any time. Each interviewee was provided with a memo outlining the procedure and specific instructions on withdrawing consent.
58. The interviewees have the right to decide freely whether they want to consent to collecting information. The KHPG representatives create an environment where a person does not feel any coercion or pressure and has an opportunity to express their free will.

### ***Preparation and conduct of the interview***

59. The KHPG representatives take all possible measures to ensure that a person is interviewed only once. At the pre-contact stage of initial acquaintance and communication with the victim or witness, they try to find out whether the person had been interviewed before and by whom and establish, if possible, the amount of information obtained.
60. If it was established that the interview had already been conducted in full, the KHPG representatives refused to repeat it. Otherwise, they start preparing and planning the survey.

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<sup>3</sup> Documenting International Crimes and Human Rights Violations for Criminal Accountability Purposes: Guidelines for Civil Society Organisations.  
<https://www.eurojust.europa.eu/publication/documenting-international-crimes-and-human-rights-violations>

61. Preparation for the interview includes assessing objective and subjective factors that can affect both its participants and the technical, resource, or other possibility of interviewing due to external circumstances. The representatives have to find out as much information as possible about the interviewee's cultural, ethnic, ethical, age, and other characteristics to create the most comfortable setting for communication.
62. The place, time, duration of the interview, and the number of people to be interviewed must be clearly defined in advance.
63. The KHPG representatives are generally encouraged to conduct short interviews if it is established that the person has not been interviewed before, passing the collected information to the competent state authorities. A short interview should last no longer than 15–20 minutes.
64. At the initial stage of the interview, a representative performs several important tasks. They meet with the interviewee, introduce themselves, and explain the purpose and goals of the interview. If this had not been done before, the representative must also explain the interview's main aspects and offer to sign an informed consent form.
65. During the meeting, the representatives always try to create a comfortable atmosphere for the interview. They answer all questions the interviewee might ask, especially concerning possible risks, the use of the information collected, and the procedure for withdrawing consent. Very important that the interviewee clearly understands the process and feels in control of their participation.
66. In addition, the KHPG representative considers the interviewee's unique needs and circumstances. A representative should inform about possible methods of interview recording, such as audio, video, or written recordings, and ensure the interviewee's consent with the chosen method.
67. During the entire interview, the representatives always provide for the safety and comfort of the interviewee. They carefully follow signs that might indicate trauma or discomfort and respond accordingly. If a situation develops that violate the interviewee's safety, KHPG representatives take measures to eliminate it or wait until the situation change for the better.
68. Although it is essential to obtain chronologically consistent, detailed, and clear information during the interview, the representatives have no right to pressure the interviewee for additional information. During the direct interview, the representatives must remember to minimize the possibility of retraumatizing the victim or witness.
69. Before starting the direct interview, the KHPG representatives must give the victim or witness the space to tell their story. After the interviewee has finished telling their story, KHPG representatives can move on to clarifying questions, which, however, should not be too specific and detached from the story.
70. During interviewing, all three types of questions are allowed: closed, open and focused.

### ***Completing the interview and analyzing the results***

71. At the final stage of the interview, the victim or witness of enforced disappearance is again given the time and space to speak openly, and to provide additional information, if any.
72. KHPG representatives check with the interviewee the conversation records before completion to correct any mistakes or misunderstandings. The interviewees are then asked if any information needs to be added or clarified.
73. Then the KHPG representatives inform about the completion of the interview, explain how to contact the representatives of KHPG in the future, and provide their contact data.

74. The interview results are technically processed using special software. Each interview is transcribed, while some are translated and published. During the processing, special attention is paid to the confidentiality of the respondents. People who did not receive permission to access the interview cannot participate in this work.
75. The materials of the interview (text notes, audio, and video recordings) are saved in confidential storage on the KHPG representative's personal computer.
76. The prerequisite is to store a copy of the interview on local devices (computers, external hard drives), not just in the cloud environment.

### **E. THE PRESERVATION AND ARCHIVING OF ONLINE SOURCES**

77. Since, as noted above, the author of this Communication had to access sources of information on the Internet, including websites of Russian authorities and media, there was a need to preserve the collected data, as there is a high risk of their deletion. The author faced some cases of such deletion while working on the submission. Therefore, web page archiving services were used to preserve the relevant materials and ensure unimpeded access to such data in case of their deletion, particularly <http://web.archive.org/> and <https://archive.ph/>.

## IV. INTERNATIONAL REGULATIONS

78. The crime of genocide was first enshrined at the international legal level in the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force on January 12, 1951; in total, five types of acts constituting the crime of genocide were described:<sup>4</sup>
- 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.
79. This Communication is submitted according to the Rome Statute of the ICC provisions. RS Art. 6(e) states that for the purpose of this Statute, “genocide” means any acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including by “forcibly transferring children of the group to another group”.<sup>5</sup>
80. The Fourth Geneva Convention (IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949) also addresses the issue of children. Art. 50 states that “The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.” Art. 24 provides that “The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power”.<sup>6</sup>

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<sup>4</sup> Convention on the Prevention and Punishment of the Crime of Genocide.  
[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

<sup>5</sup> Rome Statute of the International Criminal Court.  
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

<sup>6</sup> IV Geneva Convention relative to the Protection of Civilian Persons in Time of War.  
[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33\\_GC-IV-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf)

## V. GENERAL INFORMATION ABOUT THE CRIME OF GENOCIDE IN THE FORM OF THE FORCIBLY TRANSFERRING CHILDREN OF THE GROUP TO ANOTHER GROUP

81. The unique characteristics of the crime of genocide in the form of the forcible transfer of children from one group to another should be noted.
82. Firstly, historically, genocide in the form of the forcible transfer of children has been severely understudied. Even though in the past, an actual forced displacement of children of a certain group has taken place, no such act has been legally qualified as a crime of genocide. Examples include removing Aboriginal children from their indigenous communities in Australia or removing Greenlandic children from their homes to Denmark.<sup>7</sup>
83. Secondly, it is important to emphasize the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide that its drafters intended when adopting. We consider it necessary to quote a comment made by the representative of the Venezuelan delegation, Perez Perozo, during the discussion of the draft Convention. He made the following statement:<sup>8</sup>

The convention should not restrict the concept of genocide to the physical destruction of the human groups whom it was intended to protect. The definition given in article II did not specifically lay down that the destruction of a group had to be physical destruction; it might be argued that the first four sub-paragraphs of article II referred only to concrete acts of physical destruction, but it should be borne in mind that the Committee had included a fifth point covering the “forced transfer of children to another human group” ; thus the Committee implicitly recognized that a group could be destroyed although the individual members of it continued to live normally without having suffered physical harm. Sub-paragraph 5 of article II had been adopted because the forced transfer of children to a group where they would be given an education different from that of their own group, and would have new customs, a new religion and probably a new language, was in practice tantamount to the destruction of their group, whose future depended on that generation of children. Such transfer might be made from a group with a low standard of civilization and living in conditions both unhealthy and primitive, to a highly civilized group as members of which the children would suffer no physical harm, and would indeed enjoy an existence which was materially much better; in such a case there would be no question of mass murder, mutilation, torture or malnutrition; yet if the intent of the transfer were the destruction of the group, a crime of genocide would undoubtedly have been committed. The Venezuelan delegation was aware that the human conscience was particularly shocked by those acts of genocide which constituted mass murder and those covered by sub-paragraph 3 of article II;

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<sup>7</sup> Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine’s Prospects in Its Pursuit of Justice at the ICJ. Iryna Marchuk & Aloka Wanigasuriya.  
<https://www.tandfonline.com/doi/full/10.1080/14623528.2022.2143528>

<sup>8</sup> Eighty third meeting, held at Palais de Chaillot, Paris, on Monday, 25 October 1948 : [6th Committee, General Assembly, 3rd session].  
<https://digitallibrary.un.org/record/604635?ln=ru>

yet less spectacular crimes should not be overlooked and the concept of genocide should extend to the inclusion of acts less terrible in themselves but resulting in “great losses to humanity in the form of cultural and other contributions”, for which it was indebted to the destroyed human group.

84. Thirdly, as a general conclusion, the actions of the RF in Ukraine could potentially lead to the first precedent in the world when such actions are qualified as genocide.



## **VI. FEATURES OF THE ELEMENTS OF CRIME ENSHRINED IN THE ROME STATUTE**

85. According to the description of the elements of the crime of genocide, published by ICC,<sup>9</sup> RS Art. 6(e) implies that the following requirements are to be met:
1. The perpetrator forcibly transferred one or more persons. \*In this case, 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;
  2. Such person or persons belonged to a particular national, ethnical, racial or religious group;
  3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such;
  4. The transfer was from that group to another group;
  5. The person or persons were under the age of 18 years;
  6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years;
  7. 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.
86. Throughout this Communication, we will consider the offense’s relevant elements as outlined in ICC’s Elements of Crimes. The last, seventh element, also called the “contextual element,” will be the subject of a separate Chapter.

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<sup>9</sup> ICC’s Elements of Crimes. <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

# VII. THE PROTECTED GROUP

## A. GENERAL PROVISIONS

87. According to the RS Art. 6, genocide is defined as one of several acts “committed with intent to destroy in whole or in part a national, ethnic, racial or religious group as such”. It is worth noting that neither the Rome Statute nor the Elements of the Crime guide provide an exhaustive interpretation of what constitutes each of these four types of protected groups.
88. Defining the composition of protected groups is worth referring to the practice of the relevant international tribunals. In the Akayesu case (ICTR),<sup>10</sup> a national group is defined as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties. The nationality is determined based on the actual ties between the person and the State concerned. This approach is called “objective” because it defines a protected national group on the basis of external factors such as citizenship.
89. In the ICTY<sup>11</sup> practice, a different approach to define a protected group has been developed, based on a combination of subjective and objective criteria<sup>12</sup> because “an attempt to define a national, ethnic or racial group today using objective and scientifically irrefutable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorization.”
90. The ICTR, in its jurisprudence following the Akayesu case, also focused on a broad approach. In the Semanza case,<sup>13</sup> the ICTR stated: “...the determination of whether a group comes within the sphere of protection created by Article 2 of the Statute ought to be assessed on a case-by-case basis by reference to the objective particulars of a given social or historical context and by the subjective perceptions of the perpetrators” (para. 317). Similarly, in the Kajelijeli case,<sup>14</sup> the ICTR stated that: “membership of a group is, in essence, a subjective rather than an objective concept [where] the victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction” (para. 811). Other decisions dealt not only with the perception of the group by the perpetrator but also with stigmatization as a subjective criterion. Thus, in the Brdjanin case,<sup>15</sup> the ICTY stated: “In accordance with the jurisprudence of the Tribunal, the relevant protected group may be identified by means of the subjective criterion of the stigmatization of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious

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<sup>10</sup> ICTR, *The Prosecutor vs Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 512. <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS15217R0000619817.PDF>

<sup>11</sup> ICTY, *The Prosecutor v. Goran Jelusic*, Case No. IT-95-10-T, Judgement, 14 December 1999, para. 70. <https://www.icty.org/x/cases/jelusic/tjug/en/>

<sup>12</sup> ICTY, *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 667. [https://www.icty.org/x/cases/blagojevic\\_jokic/tjug/en/bla-050117e.pdf](https://www.icty.org/x/cases/blagojevic_jokic/tjug/en/bla-050117e.pdf)

<sup>13</sup> ICTR, *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement, 15 May 2003. <https://www.refworld.org/cases,ICTR,48abd5a30.html>

<sup>14</sup> ICTR, *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement, 1 December 2003. <https://www.refworld.org/cases,ICTR,404466007.html>

<sup>15</sup> ICTY, *Prosecutor v. Radoslav Brdjanin*, Case No. IT-99-36-T, Judgement, 1 September 2004. <https://www.refworld.org/cases,ICTY,4146fd744.html>

characteristics” (para. 683). In the Bagilishema case,<sup>16</sup> the ICTR noted that it is the stigmatization of a group as a distinct national, ethnic, or racial unit by the community, which makes it the national, ethnic, or racial target group in the eyes of the alleged perpetrators. In such cases, the perpetrator identifies, names, and stigmatizes members of another group, distinguishing them.

91. As a subjective criterion, the ICTR and the ICTY also highlighted the self-identification of group members and their identification by others. This was reflected in the 1999 ICTR decision in the Kayishema and Ruzindana case,<sup>17</sup> which proposed the following definition of an ethnic group: “An ethnic group is one whose members share a common language and culture; or, a group which distinguishes itself, as such (self-identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)”.
92. The history of adopting the 1948 Convention on the Prevention and Punishment of the Crime of Genocide shows that its drafters intended to protect from genocide “stable and persistent groups”. The ICTR Trial Chamber, in its Judgment on the Akayesu case,<sup>18</sup> noted that a protected group must be stable and permanent: “Accordingly, the Chamber finds that, in any case, at the time of the alleged events, the Tutsi did indeed constitute a stable and permanent group and were identified as such by all” (para. 702).
93. An essential point in the definition of the group was formulated in the ICC decision in the Bashir case<sup>19</sup> (2009): “targeted group must have particular positive characteristics (national, ethnic, racial or religious), and not a lack thereof”.
94. Thus, it seems appropriate to base the definition of a protected group on a combination of objective and subjective characteristics, as well as such criteria as stability and permanence of the group.
95. It should also be noted that in the text of RS Art. 6 RS, the wording “as such” is of critical importance, as it indicates that the crime of genocide requires the intent to destroy a group of people who have a specific group identity, *i.e.*, “the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial, or religious group”.<sup>20</sup>

## B. JUSTIFICATION OF THE PROTECTED GROUP IN UKRAINE

96. In this Communication, KHPG argues that the crime of genocide in Ukraine, committed by the forced deportation of Ukrainian children to Russia, is aimed at the total or partial destruction of the Ukrainian national group. To justify this position, we turn to the previous practice of the international tribunals but do not consider it necessary to focus exclusive-

<sup>16</sup> ICTR, *The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgment, 7 June 2001. <https://www.refworld.org/cases,ICTR,48abd5170.html>

<sup>17</sup> ICTR, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgment, 21 May 1999, para. 98. <https://www.refworld.org/cases,ICTR,48abd5760.html>

<sup>18</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (TC), 2 September 1998. <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS15217R0000619817.PDF>

<sup>19</sup> *Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09-3 04, March 2009, para. 135. <https://www.icc-cpi.int/court-record/icc-02/05-01/09-3>

<sup>20</sup> ICTR, *The Prosecutor vs Alfred Musema*, Case No. ICTR-96-13-A, Judgment, 27 January 2000, para. 165. <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-13/MS15217R0000532581.PDF>

ly on the objective criteria determining the national group: common citizenship of group members and their mutual rights and obligations under the Ukrainian statehood. Defining the Ukrainian national group as the target of the crime of genocide requires a more profound comprehension of this issue.

97. The USRR was created in 1919; subsequently, the Ukrainian state formally existed as part of the Soviet Union from 1922 to 1991. The independence of the modern Ukrainian state was proclaimed on August 24, 1991, by the relevant Act of the URSR Verkhovna Rada, which was confirmed by a national referendum on December 1, 1991. This Act defined the indivisible and inviolable territory of the Ukrainian state where only the Constitution and laws of Ukraine are in force. This Act was preceded by another historic document of the URSR Verkhovna Rada: the Declaration of State Sovereignty of 1990, which defined the fundamental principles of self-determination of the Ukrainian people, democracy, exercise of state power, establishment of Ukrainian citizenship, economic independence, etc. Ukraine is defined as a “national sovereign state” that develops within its existing borders based on the exercise by the Ukrainian nation of its inalienable right to self-determination. The “people of Ukraine” consists of citizens of the Republic of all nationalities and is the country’s sole source of state power. Every citizen of the Republic is guaranteed the right to retain citizenship. The protection and preservation of the national statehood of the Ukrainian people was proclaimed a primary task of the Ukrainian state. Equality of all before the law was guaranteed. Nation (ethnic Ukrainians) — Ukrainian people (citizens of Ukraine of all nationalities) — National statehood.
98. The Basic Law of Ukraine, its Constitution,<sup>21</sup> which was adopted in 1996, reproduces these principles and supplements them with other crucial provisions. The Preamble to the Constitution of Ukraine starts with the following words: “The Verkhovna Rada of Ukraine, on behalf of the Ukrainian people — citizens of Ukraine of all nationalities, expressing the sovereign will of the people, based on the centuries-old history of Ukrainian state-building and on the right to self-determination realized by the Ukrainian nation, all the Ukrainian people...”. These words affirm the principle of a national state formed by the Ukrainian people, citizens of Ukraine of different nationalities, while the Ukrainian nation constitutes the core of the people of Ukraine. Thus, the definition of the Ukrainian people includes the ethnic (“all nationalities”, “Ukrainian nation”) and political (“citizens of Ukraine”) criteria. At the same time, Art. 11 of the Constitution states that “The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions, and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine”.
99. Thus, the modern state of Ukraine is inhabited by the Ukrainian people, citizens of Ukraine of different nationalities, the core of which constitute Ukrainians by ethnic origin.
100. In February 2019, the Preamble to the Constitution of Ukraine was also complemented by the confirmation of the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine.
101. At the same time, the statements of the top political leadership of the RF question the very existence of Ukraine as a state and Ukrainians as citizens of an independent and sovereign state, which was created after the Declaration of Independence in 1991.

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<sup>21</sup> The Constitution of Ukraine.  
<https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text>

102. The statement by Vladislav Surkov, an aide to the RF President Vladimir Putin from 2014 to 2020, is quite striking. In a text interview on February 26, 2020, answering a question about the future of Ukraine, he stated: *“Ukraine does not exist, there is a Ukrainian outlook: a particular mental disorder, in other words, which has been raised to an extraordinary level by a fascination with ethnography, a bloodthirsty form of local studies. Instead of a State there is confusion: they eat borshch, praise Stepan Bandera and play their pandore [bandura], but there is no nation. There may be a brochure entitled ‘Independent Ukraine’: there is no such country. The only remaining question: does Ukraine exist or has it not yet come into existence? ... Even when Ukraine formed part of Russia relations were never simple. Ukraine always meant trouble for the Tsarist or Soviet bureaucracy: Hetman Polubotok [1660–1724] let down the Tsars; West Ukraine went over to Hitler. In historical terms the use of force towards fraternal Ukraine is the only method that has proved effective. I doubt that any new approach will be invented”*.<sup>22</sup>
103. On July 12, 2021, less than a year before the start of the full-scale invasion of Ukraine, Vladimir Putin published an article named On the Historical Unity of Russians and Ukrainians. Below are some quotes from this article by the Russian leader: *“During the recent Direct Line, when I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians were one people — a single whole. These words were not driven by some short-term considerations or prompted by the current political context. It is what I have said on numerous occasions and what I firmly believe. I therefore feel it necessary to explain my position in detail and share my assessments of today’s situation. [...] modern Ukraine is entirely the product of the Soviet era. We know and remember well that it was shaped — for a significant part — on the lands of historical Russia. To make sure of that, it is enough to look at the boundaries of the lands reunited with the Russian state in the 17th century and the territory of the Ukrainian SSR when it left the Soviet Union. [...] The anti-Russia project has been rejected by millions of Ukrainians. The people of Crimea and residents of Sevastopol made their historic choice. And people in the southeast peacefully tried to defend their stance. Yet, all of them, including children, were labeled as separatists and terrorists. [...] All the subterfuges associated with the anti-Russia project are clear to us. And we will never allow our historical territories and people close to us living there to be used against Russia. And to those who will undertake such an attempt, I would like to say that this way they will destroy their own country. [...] Together we have always been and will be many times stronger and more successful. For we are one people”*.<sup>23</sup> From the above parts of this text, you can see that in this article, the Russian President questions the very existence of Ukraine as an independent and autonomous entity or, in other words, of Ukraine and its citizens (Ukrainians) as a national group. Engaging in historical sophistry, the Russian leader specially emphasizes that Ukraine is a “brainchild of the Soviet Union”. This article may well be considered a kind of “declaration” that attempts to explain and justify the attack on Ukraine, as well as the commission of the crimes, including genocidal acts, against the people of Ukraine.
104. At 6:00 a.m. Moscow time on February 24, 2022, on the Russian president’s website, a video message was published announcing the launch of the so-called “special military operation” against Ukraine. In this message, Vladimir Putin also used a false interpretation

<sup>22</sup> Surkov: I am interested in acting against the actual situation.  
<https://actualcomment.ru/surkov-mne-interesno-deystvovat-protiv-realnosti-2002260855.html>

<sup>23</sup> Vladimir Putin’s article ‘On the historical unity of Russians and Ukrainians’.  
<http://kremlin.ru/events/president/news/66181>

of historical events to explain the need for the Russian invasion. As its goal, he cited “the protection of people in Donbas, demilitarization, and denazification of Ukraine, and the punishment of all those who have committed crimes against the Russian Federation”.<sup>24</sup>

105. The last thing worth noting is the creation by Russian propaganda of the image of Ukrainians as “Nazis (fascists),” “Banderites,” and “nationalists”. These words were used to describe citizens of Ukraine who identify themselves with the independent state of Ukraine, which has its borders, territory, legal system, governing bodies, and social way of life. An example of such political and ideological propagandistic content is the article “What Russia should do with Ukraine”, published by the state media outlet RIA Novosti on April 3, 2022, which stated the following: ***“Denazification is necessary when a significant part of the people — most likely its majority — is covered and drawn by the Nazi regime into its politics. That is when the hypothesis “the people are good — the authority is bad” does not work. Recognition of this fact is the basis of the policy of denazification, of all its activities, and the fact itself constitutes its subject. ... The Banderite top brass must be liquidated because its re-education is impossible. The social “swamp”, which actively and passively supported it through action and inaction, must endure the hardships of war and internalize the experience as a historical lesson and atonement for its guilt”.***<sup>25</sup> The above example shows how the narrative about “Nazis” and “Banderites” in Ukraine is used. In the first part of this quote, you can notice that it is about the involvement of the majority of Ukrainians in the policy of “Nazism”.
106. Thus, summarizing all of the above, we can safely conclude that the RF’s actions aim to eliminate the Ukrainian national group. Firstly, the Ukrainian national group can be defined as “a community of people who have Ukrainian citizenship, share common rights and obligations, and, as a result, have a close legal relationship with the state of Ukraine” (objective criterion). Secondly, as we do not want to limit ourselves to the objective criterion, it is possible to indicate that the national group of Ukrainians also has such features as European (Eurocentric) or Western identity, the desire to belong (as a national entity, country) to the Western world. This contradicts any idea of unification (integration) with Russia to construct the Union State or other forms of close cooperation (subjective criterion). Thirdly, over the thirty years of independent Ukraine’s existence, it is possible to claim the stability and resilience of the respective group. A significant part of this national group was born in a sovereign and independent Ukraine and has no ties to Ukraine’s Soviet past.

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<sup>24</sup> Address by the President of the Russian Federation. <http://kremlin.ru/events/president/news/67843>

<sup>25</sup> What Russia should do with Ukraine. <https://ria.ru/20220403/ukraina-1781469605.html>

## VIII. OBJECTIVE (MATERIAL) ELEMENT OF CRIME

107. Under RS Art. 6(e), for the crime of genocide to be committed, the perpetrator must “forcibly transfer” one or more persons. As explained in the Elements of Crimes,<sup>26</sup> 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. Accordingly, as recognized by the ICTY in the case of Vidoje Blagojević and Dragan Jokić,<sup>27</sup> the concept of forcible transfer can also cover circumstances in which the transferee had no “genuine choice of whether to remain in or leave” due to a range of factors such as the awareness of violence which is being committed against the members of a given group. Furthermore, as clarified in the case of Milorad Krnojelac,<sup>28</sup> the key question is whether the transferee was in the “position to exercise genuine choice”; “the essential element is that the transfer be involuntary in nature, where the relevant persons had no real choice.” Finally, it should be noted that, as a matter of evidentiary confirmation of forcible transfers, the jurisprudence of the *ad hoc* Tribunals suggests that a wide range of action must be recognized, including:

- A non-provisional nature of the arrangements associated with the transfer;<sup>29</sup>
- A large scale of the operation;<sup>30</sup>
- A public announcement of the transfer;<sup>31</sup>
- A creation of infrastructure necessary for the transfer;<sup>32</sup>
- A use of public agencies to conduct or facilitate the transfer.<sup>33</sup>

As will be demonstrated below, due to their age and vulnerable position, the Ukrainian children transferred to the RF had no choice but to submit to the procedure and, as such, their transfer must be deemed ‘forcible’ for the purposes of the RS. At the same time, the operation of such transfer has been conducted openly and publicly by the Russian authorities, amid a number of steps which could serve as evidence of the commission of the forcible transfer as described in the RS and the jurisprudence of international Tribunals.

### A. INFORMATION FROM OPEN SOURCES

108. It should be noted that the evacuation of residents of the occupied territories of Ukraine (the so-called LPR and DPR) began several days before the full-scale invasion of Russia. Thus, on February 18, 2022, the leaders of the terrorist groups Denis Pushilin and Leonid Pasichnyk announced the departure of the population of the pseudo-republics to Russia. Denis Pushilin announced that women, children, and older people would be evacuated first.<sup>34</sup>

<sup>26</sup> ICC’s Elements of Crimes. <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

<sup>27</sup> Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Judgement (TC), 17 January 2005, para. 617.

<sup>28</sup> Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement (TC), 15 March 2002, paras. 233, 475.

<sup>29</sup> Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-T, Judgement (TC), 31 March 2003, n. 1362.

<sup>30</sup> Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgment (TC), 31 July 2003, paras. 706, 711.

<sup>31</sup> Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004, para. 570.

<sup>32</sup> Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Judgement (TC), 17 January 2005, para. 216.

<sup>33</sup> Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004, para. 580.

<sup>34</sup> DPR and LPR announce evacuation of population to Russia. Ukraine denies the offensive. <https://www.bbc.com/ukrainian/news-60429343>

109. On February 22, 2022, a Russian media outlet reported that 159 orphans from Luhansk are now living in the Priboy Hotel in Azov. As will be noted further, orphans from Donetsk were also brought to the region. About 500 children from the so-called DPR were settled in the temporary accommodation center ‘Romashka’ in Neklinovsky district.<sup>35</sup> Another publication specified that the first group of 250 children from several orphanages and one boarding school with their accompanying persons entered the center on Saturday at about 10 a.m. (this is probably February 19, 2022 — note), and another group arrived in the afternoon.<sup>36</sup> As of March 2, 2022, according to Mikhail Mizintsev, the head of RF National Defense Control Center, Russia evacuated more than 140,000 people from the occupied areas of Ukraine. It was announced that about 40 thousand of these people were children.
110. On March 9, 2022, the Kremlin hosted a meeting between the President of Russia and the Presidential Commissioner for Children’s Rights, Maria Lvova-Belova. The meeting began with a discussion of the current situation related to the displacement of a large number of children and families with children from the so-called DPR and LPR to the RF. Maria Lvova-Belova emphasized that all regional commissioners immediately joined this work: **“I asked the Ministry of Emergency Situations to include them in the appropriate regional ad hoc committees. They are actively involved in the acceptance of evacuees, monitor situations, and work on individual cases”**. The Ombudsperson reported that more than a thousand orphans and children left without parental care had arrived in Russia from various boarding schools in Donbas. The Ombudsperson stressed that it is very important for every child to grow up and be brought up in a family, and many Russian citizens are now ready to accept these children. However, according to the Ombudsperson, the current legislation allows only minors with Russian citizenship to be permanently placed in families. In response, Vladimir Putin proposed to formulate proposals for amending the necessary legislative acts to eliminate obstacles and place all children in families: **“These are extraordinary circumstances, and now we need to think not about bureaucratic delays but about the interests of children. Prepare proposals, and we will amend the legislation. I am sure the MPs will support you”**.<sup>37</sup> It should be noted that this was the first official meeting where the issue of Ukrainian children was discussed at the highest political level.
111. The next day, on March 10, 2022, Children Ombudsperson Lvova-Belova signed a protocol of intent with the commissioners of the so-called LPR and DPR. This protocol addressed issues in the human rights sphere, including protecting the rights of orphans and children left without parental care. The report on this event stated that 67 temporary accommodation centers in the Voronezh region host 3,219 people, including 1,557 children. As of the beginning of March, 237 orphans and children left without parental care arrived in the Voronezh region. All children are enrolled in the regional educational institutions under preschool, general, and vocational education programs.<sup>38</sup>

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<sup>35</sup> How Rostov region received orphans from LPR and DPR.

<https://yamal-media.ru/narrative/my-edem-na-ekskursiju-kak-evakuirujut-detej-sirot-iz-luganska-i-donetska>

<sup>36</sup> Orphans from Donetsk told how they were received in the Rostov region.

<https://rg.ru/2022/02/19/reg-ufo/sirot-iz-donecka-rasskazali-kak-ih-priniali-v-rostovskoj-oblasti.html>

<sup>37</sup> A meeting between the President of Russia and the Children’s Ombudsperson took place in the Kremlin: All key initiatives of the Ombudsperson were supported.

<http://deti.gov.ru/articles/news/v-kremle-sostoyalas-vstrecha-prezidenta-rossii-i-detskogo-ombudsmena-vse-kly-ucheveye-iniciativy-upolnomochennogo-nashli-podderzhku>

<sup>38</sup> Maria Lvova-Belova signed a protocol of intentions with the commissioners for children’s rights of the Luhansk and Donetsk People’s Republics.

<http://deti.gov.ru/articles/news/mariya-l-vova-belova-podpisala-protokol-o-namereniyah-s-upolnomochennymi-po-pravam-rebenka-luganskoj-i-doneckoj-narodnyh-respublik>



112. A few days later, on January 17, 2022, in the Russian city of Kazan, Maria Lvova-Belova announced that approximately fifteen hundred orphaned children had already been evacuated to Russia from Donbas. She said: ***“Several institutions were evacuated to the territory of Russia. I traveled to the Voronezh region and looked there. The President instructed that, if possible, these children should be placed in Russian families for temporary placement or under guardianship in foster families. And now this issue is being worked out. What is important now is to create for these children an opportunity to receive home warmth, comfort, and care. And I want to tell you that an incredible number of people wish to do so”***.<sup>39</sup>
113. On March 18, the Russian Ombudsperson for Children’s Rights held a press conference at the TASS press center dedicated to helping children from Donbas who were taken to Russia. She pointed out that as of the evening of March 16, according to the RF Ministry of Defense, since the beginning of the so-called “special military operation,” more than 271,000 people have been evacuated from the territories of the so-called LPR and DPR, as well as from dangerous areas of Ukraine, including 58,422 children. According to children’s ombudsperson institutions, among them are 1,672 orphans and children left without care, and 383 children with disabilities and LHC (limited health capabilities). The Ombudsperson drew attention to several points that must be considered when organizing children’s education. First of all, it is the continuity of education. She noted that some parents believe they will soon return home, and then their children will continue studying. ***“Still, I think it is essential that children do not interrupt this process.”*** At the end of her speech, Lvova-Belova focused on implementing the Russian President’s order concerning the family placement for orphans and children without parental care who came from Donbas. Speaking about the legislative barriers to family placement of children, the Ombudsperson mentioned the lack of Russian citizenship. However, according to her, this issue is currently being worked on, and there are already several options for solving the problem: ***“I think that the vital work we are doing will give children a chance to get into a family and receive the care and love they need so much”***.<sup>40</sup> The emphasis on the fact that children should continue their education in educational institutions as soon as possible is quite interesting. Undoubtedly, starting education according to Russian standards is an important tool for integrating children into Russian society.
114. In March 2022, 19 children were left alone, without parents, in the Krupskaya Sanatorium in Mariupol (Regional Children’s Sanatorium for Osteotubercular Ailments). On March 18, 2022, a volunteer, Oleksandr Yaroshenko, the head of the Mariupol Football Federation, came to pick up the children. He tried to drive 17 children to Zaporizhzhia. His friends took two of them. The children were transported in an ambulance. On the same day, March 18, the car with the children was stopped at the first checkpoint in the town of Mangush (20 kilometers west of Mariupol) by the so-called DPR fighters. The children were sent to a temporary accommodation center in Mangush. The next day, a bus arrived with Eleonora Fedorenko, the children’s rights adviser to the head of the unrecognized DPR, as well as an employee of the Russia Today TV channel and two camera operators who were prob-

<sup>39</sup> About one and a half thousand orphans have been evacuated from Donbas to Russia. [https://www.1tv.ru/news/2022-03-17/423853-s\\_donbassa\\_v\\_rossiyu\\_evakuirovany\\_okolo\\_polutora\\_tysyach\\_detey\\_sirot](https://www.1tv.ru/news/2022-03-17/423853-s_donbassa_v_rossiyu_evakuirovany_okolo_polutora_tysyach_detey_sirot)

<sup>40</sup> The work we are doing will give children a chance to find a family — Maria Lvova-Belova on helping children in Donbas. <http://deti.gov.ru/articles/news/rabota-kotoruyu-my-vedem-dast-shans-detyam-popast-v-sem-yu-mariya-lvova-belova-o-pomoshi-detyam-donbassa>

ably filming a story about the rescue of the children. Children were taken to Donetsk and accommodated at a local clinical tuberculosis hospital.<sup>41</sup>

115. On 22 March 2022, Mikhail Mizintsev announced that since the beginning of the “special military operation” 366,182 people had been evacuated from Ukraine and the Occupied Territories, of whom 77,062 were children.<sup>42</sup>
116. On April 6, 2022, Ombudsperson Maria Lvova-Belova visited Luhansk and took part in a working meeting with the head of the so-called LPR, Leonid Pasichnyk. The meeting was devoted to placing orphans and children without parental care in Russian families. Maria Lvova-Belova talked about how Russia works with such children and the existing obstacles to their adoption. **“For children with no family, there is nothing better than loving, kind hands. We understand that among the children from the LPR who are now on our territory, many children are from difficult-to-place groups. These are children from large families and children with disabilities.** It is very important they also receive the opportunity to find a family shortly,” the Ombudsperson said. According to her, the Russian side is ready to facilitate the process in every possible way. **“We have lists of children, and we realize this is a careful and delicate job. Some of them have relatives to whom they want to return; others have no such relatives and dream of joining a new family. That is why we need to find families for these children who will surround them with care and attention,”** added Lvova-Belova.<sup>43</sup>
117. On the same day, a meeting was held with the head of the so-called DPR, Denis Pushilin, to discuss the same issues. At this meeting, the Ombudsperson stated that, according to available data, in Russia there are 531 children orphans and children left without parental care from the DPR. Speaking about the mechanisms of family placement, she noted that there are currently several options. **“The highest priority is adoption. But we realize that it will require a more extended time. At the same time, now we need temporary guardianship for those children who may find relatives in the future or for those children who may not have such an opportunity in the republic’s territory,”** the ombudsperson said.<sup>44</sup>
118. On April 23, 2022, with the assistance of the Ombudsperson for Children’s Rights Maria Lvova-Belova, twenty-seven orphans from the DPR were placed in Russian families under temporary care. The children were transferred to ten families from Bogorodsk, Domodedovo, Volokolamsk, Serpukhov, Taldom, Chekhov, and other urban districts of the Moscow region. The article clarifies that after starting a “special military operation,” most of these children and their legal representatives were evacuated to Russia. They were placed in children’s institutions in the Rostov region: in the Romashka camp (18 children) and the Sputnik children’s center (two children), in boarding schools in Nizhny Novgorod and Kursk. Three more children from the Donetsk Republic Specialized Children’s House were brought to the Moscow region the day before.<sup>45</sup>

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<sup>41</sup> “I brought the kids back healthy and alive”. How six children survived in Mariupol, got stuck in the ‘DPR’ and ended up in Europe. <https://www.bbc.com/ukrainian/features-62164267>

<sup>42</sup> 19,400 people evacuated to Russia in past 24 hours from Ukraine, the LPR and DPR. <https://tass.ru/armiya-i-opk/14150857>

<sup>43</sup> Maria Lvova-Belova will head the ad hoc committee for harmonizing the legislation of the LNR and the Russian Federation concerning the family placement of orphans. <http://deti.gov.ru/articles/news/mariya-l-vovalova-vozglavit-shtab-po-garmonizacii-zakonodatelstva-lnr-i-rf-v-voprosah-semejnego-ustrojstva-detej-sirot>

<sup>44</sup> Maria Lvova-Belova discussed family placement of orphans with the head of the DNR Denis Pushilin. <http://deti.gov.ru/articles/news/mariya-l-vovalova-obsudila-semejnoe-ustrojstvo-detej-sirot-s-glavoj-dnr-denisom-pushiliny>

<sup>45</sup> The first orphaned children from the Donbas were placed in Russian families under temporary guardianship. <http://deti.gov.ru/articles/news/pervye-deti-sirotiy-iz-donbassa-ustroeny-v-rossijskie-sem-i-pod-vremennuyu-opeku>

119. On 27 April 2022, the site of the RF Presidential Commissioner for Children’s Rights announced that the first meetings had taken place to harmonize legislation concerning the adoption of orphans in Russia, the LPR and the DPR.<sup>46</sup> The contents of the announcement make it clear that the discussion concerned the development of means for adopting Ukrainian children and to continue efforts for their forced transfer from the Occupied Territories.
120. On January 16, an article was published on the Ombudsperson website, covering answers to the questions concerning family placement of orphaned children from the DNR and LNR in Russian families. The article mainly discusses general issues, but we consider it necessary to present the following quote: *“The Donetsk and Luhansk People’s Republics are separate States with their own legislation and authorities. At the moment, diplomatic relations with Ukraine are difficult, and the mechanism for transferring children — citizens of the Luhansk and Donetsk People’s Republics to family forms of upbringing has not yet been regulated within the framework of international agreements. Thus, this category of children cannot be transferred to family forms of upbringing without agreement with the guardianship bodies and the authorities of the Republics”*.<sup>47</sup>
121. In a post of May 18, 2022, it was reported that more than 540 orphans and children left without parental care evacuated from the DPR and LPR temporarily reside in the Rostov region’s Romashka sports and recreation complex. Among them are 273 children from Donbas orphanages who now study at Novo-Lakedemonovo secondary school.<sup>48</sup>
122. At the end of May, the Ombudsperson for Children’s Rights visited Ukrainian orphans from the Donetsk region. As indicated in the article, these 31 children were taken from Mariupol and Donetsk with the assistance of the SKR. The children were placed in the Polyany children’s sanatorium.<sup>49</sup>
123. On 30 May 2022, the Russian President’s edict of that date (No. 330) was published on the official internet portal for legal information.<sup>50</sup> “[O]rphans and children left without parental care, disabled persons, who are citizens of the Donetsk People’s Republic, the Lugansk People’s Republic or Ukraine” said the Edict, “may acquire Russian citizenship by a simplified procedure according to part 8 of Article 14 of the Federal Law of 31 May 2002 (Law No. 62-FZ “Concerning citizenship of the Russian Federation”).” By signing this law President Putin officially confirmed at the highest political level the policy of the forced transfer of Ukrainian children to Russia. As noted in the previous paragraphs, one of the main obstacles to transferring Ukrainian children to Russian families was the lack of Russian citizenship. With the adoption of this Decree, this obstacle was formally removed.

<sup>46</sup> First meetings to harmonize legislation in Russia, the LPR and the DPR concerning the adoption of orphans. <http://deti.gov.ru/articles/news/sostoyalis-pervye-zasedaniya-shtabov-po-sinhronizacii-zakonodatel-stva-rossii-lnr-i-dnr-v-voprosah-semejnego-ustrojstva-detej-sirot>

<sup>47</sup> Answers to questions concerning family placement of orphans from the DNR and LNR in Russian families. <http://deti.gov.ru/articles/news/otvety-po-voprosam-semejnego-ustrojstva-detej-sirot-iz-dnr-i-lnr-v-rossijskie-sem-i>

<sup>48</sup> Maria Lvova-Belova donated laptops to a school where orphans from Donbas are studying. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-peredala-noutbuki-v-shkolu-gde-obuchayutsya-deti-sirot-iz-donbassa>

<sup>49</sup> Maria Lvova-Belova visited orphans from the Donetsk People’s Republic in a boarding house near Moscow. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-navestila-detej-sirot-iz-doneckoj-narodnoj-respubliki-v-podmoskovnom-pansionate>

<sup>50</sup> Edict of the President of the Russian Federation, 30 May 2022, No. 330. <http://publication.pravo.gov.ru/Document/View/0001202205300008?index=0&rangeSize=1;> <http://actual.pravo.gov.ru/text.html#pnun=0001202205300008>

124. On May 31, Petro Andriushchenko, an advisor to the mayor of Mariupol, reported on his Telegram channel that in the Romashka sports and recreation complex in the village of Zolota Kosa, Rostov region, Russians were holding 540 orphans from Donetsk.<sup>51</sup>
125. On June 6, the Commissioner for Children's Rights participated in one TV show. The conversation started with the issue of Ukrainian children. Answering a question about what would happen to children temporarily staying in sanatoriums (it was about children from the Polyany sanatorium (see para. 122), Lvova-Belova indicated that a separate "trajectory" is being worked out for each child. She further noted that some children have expressed a desire to stay in the Russian Federation and study, others asked to find a family for them, while some expressed a desire to return to relatives in Donbas.<sup>52</sup>
126. A notable event took place on 5 July 2022. That day the Moscow Region administration held a ceremony during which it awarded orphans and abandoned children from the DPR documents confirming they were now citizens of Russia. Fourteen children received citizenship from the hands of the regional governor, Andrei Vorobyov. These were part of the group (see para. 118) who had been entrusted on 23 April 2022 to the care of adoptive families in the Moscow Region. Altogether they numbered 27, and the other children received these documents when they returned from holiday. The children were adopted by ten families that had already had experience of bringing up orphans.<sup>53</sup>
127. On 8 July 2022, the Ombudsperson Lvova-Belova announced during a live broadcast on one of the federal TV channels that she had become a foster mother of a teenager from Donbas. ***"Today, my family and I are participating in the celebrations in the heart of this holiday, in Murom. Today, another foster son joined our family. We became foster parents of a teenager from Donbas, so today will be a special holiday for us,"*** the Ombudsperson said live on Rossiya-24 TV channel. Later, at a meeting with families in Murom, Lvova-Belova said that the boy had been evacuated from Mariupol. ***"Last night the family grew by one child. The family was enlarged by one more teenager from Donbas, from the basements of Mariupol. And so we decided not to leave him at home but to take him with us along with eldest daughter,"*** the Ombudsperson said.<sup>54</sup> A little later, the Russian media outlet Readovka reported the adoption in more detail. The article says that Maria Lvova-Belova, who already has five own children and four foster children, adopted a teenager from Mariupol. She told Readovka that her ***"heart just sank"*** when she met 16-year-old Pylyp. The young man was born in Mariupol. According to Maria, before meeting Pylyp, she had no plans to add to her family, but meeting him changed everything. ***"When we brought them to the Moscow region for a short break, there was one teenager in the group, a dark-haired one. He sat to the side and didn't want to approach. In general, he did not make contact. But somehow, at once, you know, it happens that my heart just sank. I thought, well, it's just like my child. I approached him and started talking to him. He slowly began to open up to me and answer my questions. And after that, we began to maintain a relationship,"*** the Ombudsperson said. Maria noted that she came to the

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<sup>51</sup> 267 orphans from Mariupol and Volnovakha are being held in the Romashka sport&fitness centre. <https://t.me/andriyshTime/1174>

<sup>52</sup> Million for the title of Heroine Mother, Circle of Goodness Foundation and Big Break | Maria Lvova-Belova. [https://youtu.be/UqmZGibO\\_gQ?t=814](https://youtu.be/UqmZGibO_gQ?t=814)

<sup>53</sup> Children from DPR have begun to receive Russian citizenship under simplified procedures. <http://deti.gov.ru/articles/news/deti-iz-dnr-nachali-poluchat-grazhdanstvo-rossii-v-uproshennom-poryadke>

<sup>54</sup> Children's Ombudsperson Lvova-Belova took custody of a boy from Donbas. <https://ria.ru/20220708/rebenok-1801163972.html>

boarding house several times afterward but admitted to herself that she would have liked Pylyp to become part of her family only when she was told that a new family was found for teenager. According to Maria, she was upset when she found out. However, Pylyp refused the offer. *“After some time, I was told he refused and did not want to join a new family. Well, I thought, there was another chance. And then we went to the shopping center to buy clothes for a few teenagers from the group, including Philip. And as we walked around the mall, I realized that I really wanted him to be ours. We discussed it with my husband: He was supportive, and so were the children. They said that despite the schedule and the fact that we are a big family, we would manage. At least, I hope so. And everything will be fine,”* said Lvova-Belova.<sup>55</sup>

128. On July 14, 2022, the Russian Presidential Commissioner for Children’s Rights met with the head of the so-called DPR, Denis Pushilin, during a working visit to Donbas. One of their discussion topics was the family placement of orphans and children left without parental care who had been evacuated to Russia from the Donbas social institutions. Discussing this topic with Denis Pushilin, Maria Lvova-Belova suggested creating a unified republican data bank of orphans and children left without parental care, similar to the way it works in Russia: *“This will simplify the procedure for finding foster parents for children.”* The leader of the so-called DPR supported this idea.<sup>56</sup> As of the date of this Communication, this data bank allows to select the following region of origin of children-orphan: “Donetsk People’s Republic (DPR)”; “Luhansk People’s Republic (LPR)”; “Zaporizhzhia region” and “Kherson region”.<sup>57</sup>
129. On a return trip from Donbas, Maria Lvova-Belova took another group of orphans to Russia for further family placement: thirteen of them were taken directly from orphanages in Donetsk, Shakhtarsk, and Makiivka with the assistance of the Russian SCR and the Russian Defense Ministry, while 19 others were evacuated earlier and joined her group in Rostov-on-Don. The article also notes that shortly, foster families from six regions of Russia will take care of 108 children from the so-called DPR. Commenting on the process of selecting foster families for children and arranging guardianship, Maria Lvova-Belova compared this work with the fine work of jewelers.<sup>58</sup>
130. On July 22, 2022, Maria Lvova-Belova paid a working visit to the Kaluga region. Together with the Governor Vladislav Shapsha, she met with foster families who had taken in orphans from Donbas. The Ombudsperson brought nine children to Kaluga. There, not only their foster parents but also their siblings, who had been “evacuated” to Russia a little earlier and were already placed in families, have waited for them. These children arrived with Lvova-Belova from Donbas on July 14.<sup>59</sup>
131. On August 4 and 5, 2022, the Ombudsperson for Children’s Rights visited the LPR and met with the head of the self-proclaimed republic. Her visit began with a meeting of the

<sup>55</sup> ‘My heart just sank’: Maria Lvova-Belova, a mother of many children, adopted a 16-year-old from Mariupol. <https://readovka.news/news/104603>

<sup>56</sup> Maria Lvova-Belova agreed with the head of the DNR to develop cooperation. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-dogovorilas-s-glavoj-dnr-o-razvitii-sotrudnichestva>

<sup>57</sup> Federal data bank on orphans and children left without parental care. <https://www.usynovite.ru/db/>

<sup>58</sup> Shortly, foster families from six regions of Russia will take 108 children from the DNR into care. <http://deti.gov.ru/articles/news/v-blizhajshee-vremya-priemnye-sem-i-6-regionov-rossii-voz-mut-pod-opeku-108-detej-iz-dnr>

<sup>59</sup> Maria Lvova-Belova visited the Kaluga region and met with foster families who have taken custody of children from the DNR. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-posetila-kaluzhskuyu-oblast-i-vstretilas-s-priemnymi-sem-yami-vzyavshimi-pod-opeku-detej-iz-dnr>

ad hoc committee for synchronizing Russian and LPR legislation on guardianship and custody, co-chaired by Maria Lvova-Belova on the Russian side. The meeting was attended by representatives of the relevant agencies and legislative and executive authorities of both sides, including via video conferencing. The meeting participants discussed legal issues to advance the right of orphans to a family and to regulate the process of transferring children from the LPR to the care of Russian citizens. Maria Lvova-Belova reported that 160 children from the DPR have been placed under the care of Russian families; 133 of these children have already received Russian citizenship.<sup>60</sup>

132. On August 5 and 6, the Ombudsperson visited the so-called DPR. At a meeting with the leader of the self-proclaimed republic, Denis Pushilin, it was agreed to continue work on placing children from social institutions in Russian foster families. It was noted that documents for another 100 orphans and children left without parental care should be ready by September. Russian regions are actively working to find foster parents for them.<sup>61</sup>
133. On August 23, 2022, the Russian Department for Family and Childhood website published information that more than 1,000 children from the “liberated” Mariupol had already found new families in Tyumen, Irkutsk, Kemerovo, and the Altai Territory. More than 300 more children are being temporarily held in specialized institutions in the Krasnodar Territory and are “eagerly” waiting to meet their new families. The text goes on to emphasize that those who wish to adopt children from Ukraine will be entitled to special cash payments.<sup>62</sup> The original content of this publication can only be seen using special web archiving services. If you follow the link to the publication, the page displays a message that the site has been “hacked” and the published information about Ukrainian children was “unauthorized”.<sup>63</sup> In our opinion, the information on the site regarding children was initially accurate, and the addition of the text about the “hacking” of the site was made to conceal their criminal actions.
134. In the article dated August 25, 2022, the Ombudsperson reported that evacuated to Kursk and Rostov regions groups of children from the DPR institutions for orphans and children without parental care would soon be disbanded, and approximately 600 children from temporary accommodation facilities would be placed in children’s social institutions in other Russian regions.<sup>64</sup>
135. On September 16, 2022, Maria Lvova-Belova “brought” 125 orphans from the DPR to be placed in Russian families. One hundred of these children arrived in Moscow to go further to their foster parents. Seventy-seven children arrived by plane from Rostov-on-Don, and another 23 arrived by train from Kursk. They were between 3.5 and 17 years old. Ten of the children who arrived in the Russian capital have already been placed in foster families: foster parents from Moscow and the Moscow region came to pick them up. The rest of the children will be placed in foster care shortly. For example, some children will leave the capital for the Omsk and Samara regions on the same day. And next week, the Ombud-

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<sup>60</sup> Let’s give them a chance — Maria Lvova-Belova on orphans in the LNR.

<http://deti.gov.ru/articles/news/davajte-dadim-im-shans-mariya-l-voval-belova-o-detyah-sirotah-v-lnr>

<sup>61</sup> Teenagers of Donbas need rehabilitation — Maria Lvova-Belova on a working trip to the DNR.

<http://deti.gov.ru/articles/news/podrostkam-donbassa-nuzhna-reabilitaciya-mariya-l-voval-belova-o-rabochej-poezdke-v-dnr>

<sup>62</sup> Babies from Mariupol are looking for new families. <https://archive.ph/q03Uw>

<sup>63</sup> Information on the cyberattack. <https://uvsd.ru/news/important/340-informacija-o-kiberatake.html>

<sup>64</sup> Maria Lvova-Belova: Donbass children must be helped to adapt to the new reality.

<http://deti.gov.ru/articles/news/mariya-l-voval-belova-detyam-donbassa-nado-pomogat-adaptirovat-sya-k-novoj-realnosti>

sperson will personally take several children to Murmansk and Nizhny Novgorod. It was also emphasized that all the children brought had already received Russian citizenship. In the end, Lvova-Belova said that “another group of orphans is being prepared for arrival. It includes 104 children from the Luhansk People’s Republic”.<sup>65</sup>

136. On September 22, 2022, the Ombudsperson “brought” 24 orphans from the DPR to the Nizhny Novgorod region for placement in foster families. The children met their foster parents at the Nizhny Novgorod railway station. The children were placed in groups of two to five siblings in nine families in the region. Their age ranges from 6 to 17 years old, but most are teenagers; some have disabilities. It is also emphasized that all the children have already received Russian citizenship.<sup>66</sup>
137. One report from a Russian TV channel showed a story about the receiving of 11 children from the so-called DP” by the Murmansk region.<sup>67</sup>
138. In August, Russians began taking children from the occupied Kharkiv, Zaporizhzhia, and Kherson regions “for rehabilitation”. It should be noted that although most of the parents gave their voluntary consent, we cannot rule out the psychological pressure experienced by adults in the occupied territories. With the beginning of the Ukrainian counteroffensive, these areas were liberated, and the children were “stuck” in Russian children’s camps. More than two hundred schoolchildren were brought to Gelendzhik from Kharkiv region alone.<sup>68</sup> As of mid-October, only 37 of them had been returned. The algorithm for returning them was explained by the head of the Kharkiv Regional Military Administration, Oleh Syniehubov: **“Even if we establish the children’s location in the Russian Federation, we must pick them up personally. That is, someone, some authorized person, has to go there. And then, essentially, this person has to pick them up and return them to Ukraine, but this process is very complex, quite lengthy, and dangerous”**<sup>69</sup>. A similar story happened in occupied Enerhodar. Parents who sent their children to the Krasnodar Territory of Russia received a message that the schoolchildren were “delayed on vacation in Russia for an indefinite period” and would go to school there.<sup>70</sup>
139. On October 7, 2022, the website of the Russian Ombudsman for Children’s Rights published another report that 234 orphans had been taken from Donbass to Russia over the past week for further placement in Russian families. **“Today the third plane in the last few days landed at the airfield. In total, we brought 234 children. Some of them went to children’s institutions. These are children who were in temporary accommodation centers in Rostov and Kursk regions. It is important that these children can receive a full range of educational, medical, and social services to build their future lives,”** the Ombudsperson said. Andrey Vorobyov, Governor of the Moscow region, further said: **“We are trying to help everyone who receives**

<sup>65</sup> Maria Lvova-Belova brought 125 orphans from the DNR for adoption in Russian families.

<http://deti.gov.ru/articles/news/mariya-l-vova-belova-privezla-125-detej-sirot-iz-dnr-dlya-ustrojstva-v-rossijskie-sem-i>

<sup>66</sup> Maria Lvova-Belova brought 24 orphaned children from the DNR to Nizhny Novgorod region for placement in foster families.

<http://deti.gov.ru/articles/news/mariya-l-vova-belova-privezla-v-nizhegorodskuyu-oblast-24-rebenka-sirot-iz-dnr-dlya-ustrojstva-v-priemnye-sem-i>

<sup>67</sup> The Murmansk region received 11 children from the DNR. <https://www.youtube.com/watch?v=bcaaoK29Kqs>

<sup>68</sup> More than two hundred children from the Kharkiv region were taken by Russians to Gelendzhik.

<https://khpg.org/1608811200>

<sup>69</sup> Thirty seven children taken by the occupiers from Kharkiv region have been returned to Ukraine”.

<https://khpg.org/1608811254>

<sup>70</sup> Dmytro Orlov, the mayor of Enerhodar. Telegram post of October 23, 2022, 10:35a.m.

<https://t.me/orlovdmytroEn/1184>

*children as much as possible. We have more than 800 children living in the Moscow region; 30 of them are already in families, and about 50 more have arrived now. We will do everything with Maria Alekseevna to ensure they also have their own home and family.*” Further, the text indicated that 76 children from the LPR were already preparing to go to foster parents in four regions: Volgograd, Leningrad, Novosibirsk, and Tyumen regions.<sup>71</sup>

140. The October 13, 2022, publication mentions the transfer of 24 orphans from the LPR to foster families in the Novosibirsk region. The text says further that 104 children from the LPR who were left without parental care will be placed in foster care. Four regions will take them in: Volgograd, Leningrad, Novosibirsk and Tyumen regions.<sup>72</sup>
141. Amazing stories of particular families have been published. The Associated Press, for instance, reported how Timofei, a young lad from Mariupol, had to look after his younger brothers and sisters in order to survive. They tried to escape the fighting and leave the city but he and his siblings were held up at a Russian roadblock. They were not allowed through but were sent to a hospital in the DPR. Officials then told Timofei that a court would deprive their mother and her husband of control over the children; his brothers and sisters would then be sent to a children’s home and after that to new families in Russia. Only thanks to the extraordinary efforts of others, in particular volunteers, were the children able to join their mother in France.<sup>73</sup> The Russian media outlet Meduza told another story. Before the invasion Yevgeny worked as a mechanic. After Russia invaded Yevgeny and his children hid from the shelling in the basements of Mariupol. The Russian soldiers “evacuated” them and other city inhabitants. Yevgeny was held in the Yelenivka penal colony and underwent filtration procedures; his children were taken to a rest home in the Moscow Region and narrowly avoided being sent to an adoptive family. In mid-July 2022 Yevgeny’s son Matvei rang him and said: “Papa, you have five days to get us out of here. Otherwise, we’ll be adopted.” Social workers offered Matvei a choice: either be adopted or go to a children’s home.<sup>74</sup>
142. On October 21, as part of the “evacuation”, the occupiers took 46 children from the Kherson Regional Children’s House to the occupied Simferopol.<sup>75</sup> On October 23, 12 children aged 8 to 18 with disabilities of groups I, II, and III were taken from the Oleshky orphanage in Kherson region to the clinical psychiatric hospital No. 5 (Strogonivka village, Simferopol district, Crimea).<sup>76</sup>
143. The words of the Ombudsperson during her speech at the final meeting of the Community forum, organized by the Public Chamber of the Russian Federation, are worthy of note. According to Maria Lvova-Belova, the Ombudsman’s Office has received many applications from Russian families willing to take in children from Donbas, including family groups of

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<sup>71</sup> Maria Lvova-Belova: Over the past week, two hundred thirty-four orphans from Donbas have been brought to Russia to be placed with Russian families.

<http://deti.gov.ru/articles/news/mariya-l-vova-belova-234-rebenka-siroty-iz-donbassa-privezeny-v-rossiyu-za-posled-nyuyu-nedelyu-dlya-ustrojstva-v-rossijskie-sem-i>

<sup>72</sup> Maria Lvova-Belova handed over 24 orphaned children from the LNR to foster families in the Novosibirsk region. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-peredala-24-rebenka-siroty-iz-lnr-priemnym-sem-yam-novosibirskoj-oblasti>

<sup>73</sup> How Moscow grabs Ukrainian kids and makes them Russian», Associated Press, 17 March 2023 (updated from October 2022). <https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6>

<sup>74</sup> ‘Dad, you’ve got five days at most to get us out of here’. Meduza tells the story of a father from Mariupol who was held in the notorious Yelenivka penal colony but did not let the Russians adopt his children. <https://meduza.io/feature/2022/11/03/pap-u-tebya-est-maksimum-pyat-dney-chtoby-nas-zabrat>

<sup>75</sup> Russian invaders continue to abduct children in Kherson region. <https://t.me/khersonskaODA/1350>

<sup>76</sup> Occupants took 12 children with disabilities from Kherson region to Crimea. <https://www.unian.ua/war/okupanti-vivezli-z-hersonshchini-do-krimu-12-ditey-z-invalidnistyu-12021222.html>



several siblings. ***“Now we have about 350 children in foster families. The children have been in institutions for a long time. Isn’t this unity, isn’t this a patriotic feeling when there are no other people’s children, but all of them are ours?”***, she said. The Ombudsperson concluded that the children of Donbas began to feel like their own in Russia, and this is a joint credit to the state and society.<sup>77</sup>

144. In November, the Ombudsperson visited the Russian-occupied part of the Zaporizhzhia region. In Melitopol, Maria Lvova-Belova met with the heads of regional authorities, including the education, health, labor, and social policy ministries. The meeting touched upon the topic of children’s integration into the Russian educational space. ***“We understand there are issues with children’s education and training within the Ukrainian education system. We need to reorganize it into the Russian system so that children can understand the new opportunities that the Russian Federation offers them”***, the Ombudsperson said.<sup>78</sup>
145. In one of its reports, Amnesty International also raises the issue of the forced transfer of Ukrainian children. It describes how children who tried, without parents or other guardians, to reach Ukrainian-controlled territory were stopped at Russian roadblocks and handed over to the Russian-controlled authorities in Donetsk. The example is quoted of an 11-year-old boy, separated from his mother, during filtration. “They led my mother off to another tent,” he told Amnesty. “She was interrogated ... They said they’d take me away from my Mum ... I was in a state of shock ... They didn’t say where they were taking her... I haven’t heard from her since”.<sup>79</sup>
146. The US Institute for the Study of War (ISW) has also touched on this subject. In its 16 November 2022 report it noted that Russian sources and official spokesmen and women have openly promoted the forced adoption of Ukrainian children by Russian families. On 9 November 2022, well-known pro-Russian “military bloggers” began to post a multi-part documentary series about several Ukrainian children from Donbas adopted by Russian families. It was asserted that in 2022 alone Russian officials had evacuated more than 150,000 children from the Donbas.<sup>80</sup>
147. We would like to dwell more on the multi-part documentary series mentioned in the previous paragraph.
148. The first episode tells the story of the Bohachev family, who have accepted three children from Donbas: Daria, Stas, and Anastasia. The children are siblings born in the village of Viktorivka, Volnovakha district. The foster mother, Halyna, says that initially, they were expecting one child, a girl, but later, they received a phone call and were told that there would be three children in total.<sup>81</sup>
149. The second story tells about the Romanov family. Liliana Romanova, a former police officer, is raising the children alone. The family has two boys from Ukraine: Oleksandr from Makiivka (Donetsk region) and Svyatoslav from the village of Tavria (Kherson region). Liliana

<sup>77</sup> Maria Lvova-Belova: The children of Donbas are beginning to feel like they belong. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-deti-donbassa-nachinayut-chuvstvovat-sebya-svoimi>

<sup>78</sup> Maria Lvova-Belova: We will solve the problems of neglected children in the Zaporizhzhia region. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-budem-reshat-problemy-beznadzornyh-detej-v-zaporozhskoj-oblasti>

<sup>79</sup> Ukraine: Russia’s unlawful transfer of civilians a war crime and likely a crime against humanity — new report. <https://www.amnesty.org/en/latest/news/2022/11/ukraine-russias-unlawful-transfer-of-civilians-a-war-crime-and-likely-a-crime-against-humanity-new-report/>

<sup>80</sup> RUSSIAN OFFENSIVE CAMPAIGN ASSESSMENT, NOVEMBER 16. <https://www.understandingwar.org/background/russian-offensive-campaign-assessment-november-16>

<sup>81</sup> Childhood. The Return — Episode 1. <https://t.me/voenkototenok/41990>

- says she first met Oleksandr at a children's camp in Odintsovo. Talking about her meeting with Svyatoslav, the woman says he did not want to go to family. In the end, the text inset tells that Liliana engages all her children in mandatory "military and political education".<sup>82</sup>
150. The third episode tells the story of three families at once. The first family, the Ryzhykovs, accepted four children who previously lived in Donetsk. The text inset indicates that all parents have taken special courses on taking in children who have come from the war zone. The second family, the Zaitsevs, took care of (adopted) a boy, Serhiy, from the town of Nikolske, near Mariupol. The boy says that his new parents visited him in the orphanage. The last family, the Yerkulovs, are raising a girl, Alina. She also has a sister, Angelina, who lives separately. The girls lived in Donetsk.<sup>83</sup>
151. The penultimate part tells the story of two families. The first one, the Belousov-Slosinovs, has a ten-year-old boy named Danylo. The boy met his new foster parents on April 23, 2022. He used to live in Donetsk, and in 2020, his mother was killed by shelling. After that, he was in boarding schools. The second family, the Shemyakins, immediately took care of nine children. They lived in the village of Naberezhne, Donetsk region.<sup>84</sup>
152. The last episode tells the story of the Yevsiukov family. The family includes a girl, Iryna, and her younger brothers. In 2014, the children left Donetsk and later lived in Snizhne (Donetsk region). In 2017, the children were left without parents. In the story, they interview the grandmother, who is in Mariupol.<sup>85</sup>
153. The Institute for the Development of the Internet created these propaganda videos.<sup>86</sup> Watching these episodes, questions immediately arise as to whether they actually tried to find the relatives of these children (of all the episodes, only the last one showed a relative of the adopted children) and why the issue of transferring these children to Ukraine in a safe way was not initiated. In addition, it can be concluded that although Russian officials try to emphasize "guardianship and care" rather than "adoption," these materials clearly show that children are transferred to the actual indefinite upbringing of new parents, which is not much different from adoption. The legal difference between the latter concepts will be discussed in one of the following sections.
154. According to information obtained by Pavel Lysnyansky, director of the Institute for Strategic Studies and Security (Ukraine), the Russians have been changing the names and surnames of deported Ukrainian children in order to complicate any subsequent attempt to find them. Their new "parents" may change the name and surname of the child and give him or her their patronymic. "Take, for example, a child called Sasha," he writes. "He was given to a new 'family'. The new 'father' said to Sasha: 'I dreamt about having a son called Denis. You will be Denis.' What was the child to do?"<sup>87</sup>
155. On December 23, 2022, one of the Russian publications told about the Tokushev family living in the Tyumen region. The family is raising 11 children, three of whom were recently brought from the so-called LPR. As Stanislav (foster father) points out: "***They offered us***

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<sup>82</sup> Childhood. The Return — Episode 2. <https://youtu.be/LemozQ-wykY>, <https://t.me/voenkorKotenok/42271>

<sup>83</sup> Childhood. The Return — Episode 3. <https://youtu.be/VV-bgnH--6I>, <https://t.me/voenkorKotenok/42532>

<sup>84</sup> Childhood. The Return — Episode 4. [https://www.youtube.com/watch?v=q8\\_G\\_W7ceTU](https://www.youtube.com/watch?v=q8_G_W7ceTU), <https://t.me/voenkorKotenok/42776>

<sup>85</sup> Childhood. The Return — Episode 5. <https://www.youtube.com/watch?v=rcPIVvffH6Y&t=1s>, <https://t.me/voenkorKotenok/42929>

<sup>86</sup> The Institute for the Development of the Internet. <https://ири.рф>

<sup>87</sup> Russians change the names and surnames of deported children, complicating the search for them, say rights activists. <https://zmina.info/news/rosiyany-zminyuyut-imena-ta-prizvyshha-deportovanyh-ditej-shho-uskladnyuye-yih-nij-poshuk-pravozahysnyky/>

*the kids. At first, it was just like that, casually: ‘Look at them’. We were like: “Yeah, okay”. “Think about whether you want to take them or not.” My wife and I are thinking: “Well, a month to think about it”. An hour later, they write: “Well, have you thought about it? Are you taking them?” We were shocked*”.<sup>88</sup> It is important to emphasize the speed with which children were placed in families. It is not difficult to see that Ukrainian children are treated in a particular way, using an accelerated procedure for their transfer.

156. At the end of December 2022, Molnar — OSINT Agency published its investigation into the forced deportation of Ukrainian children. According to the established data, one of the structures responsible for the forced displacement is the mission (initiative) “Into the Hands of Children”. The Children’s Ombudsman Maria Lvova-Belova heads this mission. The scheme of interaction between this initiative and the militants of the so-called LPR and DPR is as follows: first, the LPR-DPR military finds children. These can be children orphaned due to Russia’s aggressive war against Ukraine or children whose parents were deprived of parental rights by the occupation authorities. After that, the militants transfer the children to the headquarters of the “Into the Hands of Children” initiative, which deals with the deportation and further fate of the children. In practice, the researchers note, the scheme is somewhat more complicated and requires the participation of several intermediate partner organizations, including the Russian Red Cross, the Gulfstream Charitable Foundation, and others.<sup>89</sup>
157. On February 7, 2023, the Ombudsperson visited the so-called LPR and DPR again. During a working meeting with the leader of the LPR, the issue of including information about orphans in the LPR in the federal database of children left without parental care was raised, which would increase the chances of children being placed in foster care. According to the Commissioner, more than 450 children are in LPR institutions, while only 37 families are listed in the database of guardians and trustees. **“We understand that there is a need to attract families from other regions, so now we will assess who we can help in the form of family placement in the first place”**, the Ombudsperson said. The words about attracting families from other regions are noteworthy. This means continuing to transfer Ukrainian children to families from the RF.<sup>90</sup> The Ombudsperson’s working visit to the DPR was devoted to developing new approaches to child protection, family support, and the reorganization of orphanages. She also announced the launch of the “Every Child of Donbas in a Family” project. Although the text avoids direct references to adoption, it states that those children whose blood relatives cannot be found will be placed in “substitute families”.<sup>91</sup>
158. On February 14, 2023, the Yale School of Public Health published a large-scale study on transferring Ukrainian children to Russia. It was found that the Russian Federation has a system of 43 children’s camps where Ukrainian children are held. In 32 of them, children undergo re-education in special classes, including studying the Russian version of history, culture, and society. In some cases, children also receive military training. These actions likely aim to integrate Ukrainian children into Russian society.<sup>92</sup>

<sup>88</sup> Eleven Tokushevs children. How do multi-children Tyumen residents who took in orphans from the LNR live — the story. <https://72.ru/text/gorod/2022/12/23/71881781/>

<sup>89</sup> Ukrainian children stolen by Russia: how many have been taken, who is behind it, whereabouts of children. [https://www.molnar.global/en-blog/ukrainian-children-stolen-by-russia?utm\\_source=%C2%A0twitter&utm\\_medium=native&utm\\_campaign=dity\\_eng](https://www.molnar.global/en-blog/ukrainian-children-stolen-by-russia?utm_source=%C2%A0twitter&utm_medium=native&utm_campaign=dity_eng)

<sup>90</sup> Maria Lvova-Belova: We are building in the LNR a legal and regulatory framework for dealing with children. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-v-lnr-vystraivaem-normativno-pravovuyu-bazu-v-sfere-detstva>

<sup>91</sup> Maria Lvova-Belova: The project “Every child of Donbas has a family” was launched in the DNR. <http://deti.gov.ru/articles/news/mariya-l-vova-belova-v-dnr-zapushen-proekt-kazhdyj-rebenok-donbassa-v-sem-e>

<sup>92</sup> RUSSIA’S SYSTEMATIC PROGRAM FOR THE RE-EDUCATION & ADOPTION OF UKRAINE’S CHILDREN. <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data>

159. On February 16, Lvova-Belova met with Russian President Vladimir Putin. Some issues discussed included the custody of orphans from Donbas and children’s social infrastructure in the new regions. *“The tragedy that is taking place in Donbas, of course, affects our very young citizens, children. Unfortunately, it is true. For eight years, during this overt aggression in Donbas against our people, children have indeed suffered. And the Ombudsperson’s Office has been actively dealing with this [issue]. Now this work continues”*, the President said. The Ombudsperson went on to say that orphans from the Donbas republics were taken under the care of families from 19 regions of Russia. This became possible due to the removal of legal barriers with the support of the head of state.<sup>93</sup>
160. A news item from March 29, 2023, reported the Ombudsperson’s visit to the so-called DPR. During the visit, the issue of connecting the pseudo-republic to the federal data bank of orphans and children without parental care was again discussed. Lvova-Belova noted that the DPR would be the first region to be connected to the data bank.<sup>94</sup> In para. 128, we pointed out that there is already an opportunity to choose the occupied territories of Ukraine as children’s places of origin in this data bank. Thus, it is only a matter of time before all the mechanisms are in place and Ukrainian children appear in this database.
161. The children who were returned to Ukraine from the Russian Federation tell about the conditions of their stay. For example, Russians reportedly wanted to send a girl named Anastasia from Kherson to an orphanage behind the Ural mountains. They promised the girl life in a dormitory, a Russian passport, and then a home in the aggressor state. The girl was not allowed to leave Crimea for about four months, and she was separated from her mother and home all this time.<sup>95</sup> According to 16-year-old Vitaliy, during his stay in the camp in Crimea, everything around was covered with the word “Russia”, there was a statue of the Russian president in the corridor with the inscription “Putin is the Tsar”, and every morning began with the Russian anthem. Those who refused to sing were deprived of their phones and portion of meal. They also couldn’t take a shower for four days. The children who expressed a pro-Ukrainian position were beaten with an iron stick. The children were also told about the crimes of Ukrainians.<sup>96</sup> 16-year-old Nina was forced to wear a Russian uniform and undergo military training: shooting, throwing grenades, and overcoming an obstacle course. This was a mandatory element of staying in a rehabilitation center in Crimea.<sup>97</sup> Yevhenia, a 15-year-old girl from Kherson, also ended up in a camp in Crimea. Although she initially expected to stay in the camp for two weeks, later, the Russian authorities refused to return the child to her mother. As it turns out, the organizers of the camp wore clothes with the letter “Z” and called Ukrainian children “Nazis” and “Khokhly”. They forced the girl and her classmates to sing the Russian national anthem every morning and attend a Russian school. Those who refused were threatened to be put in a pre-trial

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<sup>93</sup> Maria Lvova-Belova at a meeting with the President of Russia: It is important that we do not act according to templates.

<http://deti.gov.ru/articles/news/mariya-l-vova-belova-na-vstreche-s-prezidentom-rossii-vazhno-chtoby-my-ne-dejstvovali-po-shablonam>

<sup>94</sup> Maria Lvova-Belova: An advanced rehabilitation center will appear in the Donetsk People’s Republic.

<http://deti.gov.ru/articles/news/mariya-l-vova-belova-v-doneckoj-narodnoj-respublike-poyavitsya-peredovoj-reabilitacionnyj-centr>

<sup>95</sup> The Russians wanted to send Nastia from Kherson to an orphanage behind the Ural mountains.

<https://saveukraineua.org/tpost/mzhznoa4d1-nastyu-z-hersona-rosyani-hotli-udpraviti>

<sup>96</sup> Vitaliy saw bruises on some of his peers’ bodies.

<https://saveukraineua.org/tpost/ypprsappb1-u-deyakh-odnoltkv-vtali-bachiv-sints-na>

<sup>97</sup> They forced me to wear Russian uniforms and undergo military training.

<https://saveukraineua.org/tpost/8epc344661-zmusili-nositi-rosisku-formu-proiti-vonn>

detention center and sent to an orphanage at the end of the school year.<sup>98</sup> Although these children were returned to Ukraine, we want to draw attention to the conditions in these camps. They constitute an extremely important element of children's stay in the RF.

162. On May 1, 2023, the Ombudsperson Maria Lvova-Belova gave an interview to Vice News. Responding to one of the first questions the host asked about the need to evacuate children to a third country, as required by the Geneva Convention, the Ombudsperson immediately replied that the territory of the so-called DPR and LPR is not Ukraine and that the RF has officially recognized their independence. Answering another question about whether there is a goal to encourage children in the camps (temporary detention facilities) to stay in Russia in the future, Lvova-Belova did not hesitate to state that these children are already in Russia, as they are from the regions that have recognized themselves as Russia. Finally, the host asked about granting Ukrainian children Russian citizenship. The Ombudsman said that she did not consider granting citizenship to be the destruction of children's identity and tried to shift the responsibility to Ukraine, where, in her opinion, everything associated with Russia is being destroyed.<sup>99</sup>
163. In a follow-up story by Vice News on the deportation on June 28, 2023, journalists managed to visit one of the camps where Ukrainian children are being held. When journalists talked to the children about their identification, as well as asked a boy from Mariupol about his attitude towards Ukraine and Russia, the children refused to answer the journalist's questions due to apparent pressure from the institution's administration. The story also tells about a boy, Artem, who was returned from Russia. The boy says that he was forced to learn the Russian anthem. In the photo, the boy's mother shows, he is sitting in a Russian military uniform. Commenting on the photo, Artem says that he underwent military training, during which he was explained how to wear an army uniform and bulletproof vest.<sup>100</sup>
164. On August 6, 2023, the Russian media Verstka published an investigation into how children from the occupied territories of Ukraine are trained in the SKR institutions. It states that after the beginning of the full-scale invasion of Ukraine, the SKR, headed by Alexander Bastykin, took the "patronage" of children brought to Russia from the occupied territories of Ukraine. SKR investigators began to visit social institutions where Ukrainian orphans and children left without parental care were temporarily placed, bringing humanitarian aid and giving gifts. The head of the Investigative Committee immediately instructed the departmental cadet corps to prepare to receive schoolchildren from the so-called DPR and LPR. By September 2022, more than 40 children from Donbas, including those with orphan status, had put on cadet uniforms.<sup>101</sup> According to the SKR magazine, from February 2022 to March 2023, the department's employees took 323 children from Donetsk, Luhansk, Kherson, and Zaporizhzhia regions, including 181 orphans. Seventy-eight children were enrolled in educational institutions of the Russian Federation, including SKR cadet corps and academies; among them — 28 orphans.<sup>102</sup> The publication also points to the actual ideo-

<sup>98</sup> The Russians were not going to give the children away.  
<https://saveukraineua.org/tpost/k9p7sk4ec1-rosyani-ne-zbiralisya-vddavati-dtei>

<sup>99</sup> The Russian Woman Accused of 'Stealing' Ukrainian Children | Exclusive Interview.  
<https://www.youtube.com/watch?v=Ei4xLdv2gYE>

<sup>100</sup> Stealing Ukraine's Children: Inside Russia's Camps.  
<https://www.youtube.com/watch?v=RNAAC1kX5kE>

<sup>101</sup> The Investigative Committee is always there for you.  
<https://verstka.media/podrostki-iz-donbassa-v-kadetskikh-kokrpusah-rossii>

<sup>102</sup> CHILDREN OF DONBASS: THE RIGHT TO PROTECTION.  
<https://pressa.sledcom.ru/ZHurnal/Magazine-3-2023/item/1809039/>

logical re-education of children during their studies. Children are taught to love Russia and are also turned against Ukraine, the country where they were born and lived for a long time.

**B. INFORMATION RECEIVED  
BY THE KHARKIV HUMAN RIGHTS PROTECTION GROUP  
DIRECTLY FROM VICTIMS, WITNESSES,  
AND STATE AUTHORITIES OF UKRAINE**

*Witness (victim) No. 1*

165. On February 24, 2022, the RF launched a military intervention in Ukraine, which led to the outbreak of direct armed conflict.
166. At the time of the large-scale invasion, Mr. D., his wife Mrs. Y., and their son P. lived at the Kupyansk-Vuzlovyyi settlement, Kupyansk district of the Kharkiv region.
167. Kupyansk-Vuzlovyyi was occupied on February 27, 2022. There was no possibility to leave for the territory controlled by Ukraine during the occupation.
168. On the day before the counter-offensive of the Ukrainian armed forces, on or about September 06, 2022, Mr. D. wife and son were in the Kupiansk-Vuzlovyyi, at the home of Mrs. Y. mother.
169. Mr. D. himself was in the city of Kupyansk.
170. During the night, a UAF counteroffensive began, and the family members found themselves on opposite sides of the fighting as the city of Kupyansk was de-occupied and Ukrainian authorities were restored. However, the Kupyansk-Vuzlovyyi settlement was left under the control of the Russian military. Mr. D. lost both any contact with his son and wife and the possibility of getting to them.
171. On September 23, 2022, Mr. D. was forced to evacuate to Kharkiv, as Kupyansk was constantly shelling.
172. While in Kharkiv, on September 25, 2022, Mr. D. saw a story on the Russian TV channel NTV, which featured his son P. From his son's story on TV, he learned that P., Mrs. Y., and her brother were trying to evacuate to safety as part of a convoy of local civilians. On the way, the convoy was fired upon by the Russian military. Mrs. Y. was killed on the spot, and P. sustained shrapnel wounds. He tried to return to the Kupyansk-Vuzlovyyi with the survivors, but he was captured on the way by the Russian military and taken to the Central Children's Clinical Hospital in Luhansk.
173. Mr. D. tried to contact his son, the hospital where he was being held, and the Luhansk city administration. However, all attempts were unsuccessful.
174. A week later, Mr. D. managed to contact volunteers in Luhansk and found out more information about his son through them.
175. Mr. D. was not allowed to speak directly with his son.
176. He had no opportunity to cross the border of Ukraine and come to Luhansk in person, as he was liable for military service.
177. Approximately ten days later, Mr. D. received information from the Luhansk volunteers that if no relatives came to see his son shortly, the procedure for his transfer to an orphanage with further transfer to Russia would begin.
178. To prevent P. deportation, Mr. D. asked his son's grandmother, Mrs. K. (his late wife's mother), to go to P. in Luhansk, entering Russia through one of the European countries. Mr. D.

also gave her a notarized statement authorizing P. to cross the state border accompanied by Mrs. K.

179. When Mrs. K. arrived in Luhansk, she was allowed to visit P. Still, she was preliminary warned that the local occupation authorities did not recognize Ukrainian notarized documents and that taking P. only to Russia was possible.
180. Also, Mrs. K. and P. were proposed to start the procedure for obtaining Russian citizenship, offering them an apartment and a pension in Russia immediately.
181. After Mrs. K. refused, she and her grandson were offered to go to the city of Yeysk, Krasnodar Territory, to undergo further treatment and rehabilitation of P. at the Yeysk boarding house, to which she agreed.
182. While P. was undergoing rehabilitation in Yeysk, representatives of the administration of the Krasnodar Territory and the city of Krasnodar repeatedly visited them with strong recommendations to obtain Russian citizenship, as well as offered various material benefits. Mrs. K. refused all such offers and was told that otherwise, she would be unable to leave Russia with P. According to the local administration, the only way for P. to leave Russia was either the personal presence of Mr. D. in Yeysk or obtaining permission from him verified exclusively by a Russian notary.
183. During his stay in Luhansk and Yeysk, P. was interviewed several times by reporters from Russian TV channels. Each time, these reporters stated in their programs that the convoy in which he was injured was fired upon by the Ukrainian military.
184. After a month of staying in the city of Yeysk, Mrs. K. and P. packed up and traveled through the territory of Russia to the border with Latvia in the hope that they could solve the problem of their departure on the spot. Eventually, they were not asked for any additional documents when crossing the Russian border.
185. P. is currently in the Czech Republic with his grandmother, undergoing rehabilitation and attending a Czech school.

#### ***Information received from the Mariupol local authorities***

186. On June 05, 2023, KHPG prepared and sent a request to the Mariupol City Council. The request contained three questions about the possibility of obtaining information concerning: 1. Data on orphanages in the city of Mariupol. In particular, those who could not be evacuated and whose children got into the occupation by the RF; 2. Data on the illegal deportation of children from the city (children left without parental care, orphans, etc.); 3. Witnesses to the deportation of Ukrainian children from the city of Mariupol.
187. On June 13, 2023, a response was received from the Executive Committee of the Mariupol City Council. It stated that among the family-based forms of care, the deportation of five children from a family-type orphanage was recorded. The Russian military found them in a bomb shelter of a multi-story building without a legal representative and took them to the territory of the RF. Thus, the Russian military restricted children's right to evacuate to the territory controlled by the Ukrainian authorities.
188. The city council is also aware of information about the deportation of a group of orphans and children deprived of parental care who lived in a dormitory of a vocational education institution. The teenagers, deprived of the right to choose, were taken to the temporarily occupied territory and then to the RF.
189. There were also cases during active hostilities in Mariupol when the Russian military took guardians with children under their care to the temporarily occupied territories and the

Russian Federation, limiting the possibility of their evacuation to the territory controlled by the Ukrainian authorities.

*Information obtained from the Kherson region local authorities*

190. On June 15, 2023, KHPG prepared and sent a request to the Kherson Regional (Military) State Administration. The request asked about the possibility of obtaining information about orphanages (boarding schools) in the city of Kherson and the region whose inhabitants were deported to Russia.
191. On July 07, 2023, the KHPG received a response from the Kherson Regional (Military) State Administration.
192. The response stated that Oleshky Orphanage, the municipal institution of the Kherson Regional Council, is subordinated to the Department of Social Development of the Regional State Administration. This orphanage is located on the temporarily occupied territory of the Kherson region. In October 2022, the occupation authorities changed the management and some orphanage employees. According to the updated information from the head of the orphanage, the last recorded number of children in the institution was 101. From these, 12 children were taken away by their parents, four died, and one is undergoing treatment. At the time of the response, it was known that 84 children were forcibly evacuated under the pretext of rehabilitation and recreation to the temporarily occupied territory of the Autonomous Republic of Crimea.
193. According to the available information, the parents of four children took them from the RF territory and are currently abroad. One child deprived of parental care was returned to the city of Kherson.
194. In addition, under the Department of Health of the Regional State Administration is the children's residential health care institution, the Kherson Regional Children's Home, a municipal non-profit enterprise of the Kherson Regional Council. This institution was created for the medical and social protection of orphans, children deprived of parental care, children temporarily placed due to difficult family living conditions or illness, and children with disabilities.
195. According to the administration of the said institution, on September 02, 2022, the occupation forces took two children of the institution abroad (to Krasnogorsk city, Moscow region). One was deprived of parental care, while another was temporarily placed. This information was obtained from an employee who worked in the institution at the time of the incident.
196. On October 21, 2022, representatives of the occupation authorities forcibly deported 46 children of the institution to a territory not controlled by Ukraine (the city of Simferopol). Among them:
  - 18 children deprived of parental care;
  - 19 children without status;
  - 9 children who were temporarily placed in the institution.
197. According to unspecified information from a medical worker who accompanied the children during the removal that day, 11 children (with COVID-19 coronavirus infection) were sent to the Simferopol Infectious Diseases Hospital, 17 children from the institution's infant group were sent to the Simferopol Children's House, and the younger and older groups were sent to the Opushki sanatorium in the Simferopol district.
198. It is noted that the occupation authorities also took all the children's personal files and their clinical records.



***Information obtained from local authorities,  
law enforcement agencies,  
and childcare facilities in the Kharkiv region***

199. On June 15, 2023, KHPG prepared and sent a request to the Kharkiv Regional Military Administration.
200. On June 22, 2023, a response was received to the above request.
201. It stated that according to the operational information of the Municipal Institution “Kupyansk Special School” of the Kharkiv Regional Council No. 04-15/9 of February 13, 2023, 13 students of this school have been taken from the territory of the Kharkiv region to the Russian Federation. At the time of the response, nine children had been returned to their parents, while the rest had not been returned.
202. According to Vasyl Sorokin, the head of the Vilkhuvata village in the Kharkiv region, in September 2022, 18 students (orphans and children deprived of parental care) of the municipal institution Vilkhuvata Lyceum of the Vilkhuvata Village Council were forcibly deported to the RF. The children’s whereabouts are unknown. To date, four children have been returned to Ukraine.
203. The director of the municipal institution Vilkhuvata Lyceum of the Vilkhuvata Village Council provided information that a group of children from a local rehabilitation facility (Regional Center for Social and Psychological Rehabilitation of Children “Nadiya”, Vilkhuvata village) after the beginning of the occupation of the territory of Ukraine was taken under the care of the head of a family-type orphanage. In September 2022, this group of children was transferred to the Russian Federation, and their fate is unknown at the time of reporting.
204. The military administration also sent an additional request to the Main Department of the National Police in the Kharkiv region.

***Response of the National Police of Ukraine of June 29, 2023  
(request was sent by the Kharkiv Military Administration)***

205. The response states that until March 30, 2023, the NPU Investigation Department investigators conducted a pre-trial investigation within criminal proceeding registered in the ERDR under No. 12022221320000141 of October 18, 2022. This proceeding was open under CCU Art. 438, Pt. 1 on the fact of the transfer of students of the Municipal Institution “Kupyansk Special School” by the Russian military to the temporarily occupied part of the Luhansk region on September 08, 2022. On March 30, 2023, the prosecutor’s decision in the said criminal proceedings determined the Main Investigation Department of the Security Service of Ukraine as the pre-trial investigation body.
206. Also, the NPU Investigation Department investigators are currently conducting a pre-trial investigation within a criminal proceeding registered in the ERDR under No. 22022220000002615 of August 11, 2022. This proceeding was open under CCU Art. 111-1, Pt. 4 and CCU Art. 332, Pt. 2 on suspicion of a Kupyansk resident who carried out economic activities in cooperation with the aggressor state by carrying out passenger transportation. In the summer of 2022, this person organized the illegal transportation of people across the state border of Ukraine, namely the removal of children from the temporarily occupied territory of the Kupyansk district of the Kharkiv region to the Medvezhonok children’s sanatorium in the RF.

***Response received from the Municipal Institution  
“Kupyansk Special School”***

207. After receiving information from the Kharkiv Regional Military Administration and the National Police, on June 29, 2023, the KHPG made an additional request to the Kupyansk Special School to obtain more detailed information on the cases of deportation.
208. The response from the Kupyansk Special School of July 05, 2023, states that 11 students have been returned to their parents. Two children have not been returned because the mother does not wish to go pick up the kids.

***Information obtained from the Luhansk region local authorities***

209. On July 17, 2023, KHPG sent a request to the Luhansk Regional Military Administration to receive information about the cases of forced deportation of Ukrainian children in the region.
210. The response of the Military Administration of July 25, 2023, stated the following.
211. The region operates Luhansk Regional Orphanage No. 2, where children aged 0 to 3 years who have not been deported to the Russian Federation are brought up. On February 24, 2022, all orphans and children deprived of parental care were evacuated from the regional educational institutions abroad.
212. According to the Main Department of the National Police in the Luhansk region and military administrations of the region settlements, as of July 21, 2023, the National Information Bureau received information on the possible deportation of 98 minors.
213. Under the instruction of the Vice Prime Minister of Ukraine — Minister for Reintegration of the Temporarily Occupied Territories of Ukraine No. 15131/0/1-22 of June 16, 2022, and the order of the Cabinet of Ministers of Ukraine No. 434-p of May 31, 2022, the Regional State Administration informs the state enterprise “Ukrainian National Center for Peacebuilding” following the prescribed form about children who were deported from Ukraine. This Center performs the functions of the National Information Bureau under the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

***Information obtained from the Donetsk region local authorities***

214. On July 17, 2023, KHPG sent a request to the Donetsk Regional Military Administration to receive information about the cases of forced deportation of Ukrainian children in the region.
215. On August 02, 2023, a reply was received stating that as a result of the military aggression of the RF against Ukraine and active hostilities in the territory of Donetsk region since February 24, 2022, the Regional State Administration and local self-government bodies took all possible measures for temporary relocation (evacuation) of children from institutional care and education institutions with round-the-clock stay to the safe territory within Ukraine or abroad.
216. According to the operational information from the regional services dealing with children issues, as of July 01, 2023, 146 orphans and children deprived of parental care were taken from the region’s territory to the Russian Federation.

# IX. SUBJECTIVE (MENTAL) ELEMENT OF CRIME

## A. GENERAL PROVISIONS

217. The crime of genocide in this instance is distinguished by the presence of two intentions. The perpetrator not only commits the act of forcibly transferring children from one group to another; he (or she) does so with the particular intention of destroying in whole or in part a national, ethnic, racial or religious group, as such.

218. So far as the proof of the crime of genocide is concerned, the greatest difficulty is posed by the need to demonstrate the particular intention, also referred to as the *dolus specialis*. As indicated by the case of Jean-Paul Akayesu:<sup>103</sup>

498. Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in “the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.

219. The above approach was in practice implemented by the ICJ in the case of *Bosnia v Serbia*. The court ruled that in order to establish the crime of genocide had been committed the prosecutor must prove that the perpetrator had a special intent in addition to the elements of the crime listed in Article 2 of the 1948 Convention; according to the Court:<sup>104</sup>

187. In addition to those mental elements, Article II requires a further mental element. It requires the establishment of the “intent to destroy, in whole or in part, ... [the protected] group, as such”. It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis*; in the present Judgment it will usually be referred to as the “specific intent (*dolus specialis*)”. It is not enough that the members of the group are targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part. The words “as such” emphasize that intent to destroy the protected group.

220. In the *Muvunyi* case, the tribunal also made several important generalizations based on its previous practice:<sup>105</sup>

480. In *Akayesu*, the Trial Chamber noted that in the absence of a confession or other admission, it is inherently difficult to establish the genocidal intent of an accused. At the same time, it noted that a Chamber may make a valid inference about the mental state of

<sup>103</sup> ICTR, *The Prosecutor vs Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, 2 September 1998. <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS15217R0000619817.PDF>

<sup>104</sup> The Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina vs Serbia and Montenegro*), Judgment, 26 February 2007. <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>

<sup>105</sup> ICTR, *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgment and Sentence, 12 September 2006. <https://www.refworld.org/cases,ICTR,48abd529d.html>

the accused on the basis of a number of factors. Thus, where it is impossible to adduce direct evidence of the perpetrator's intent to commit genocide, such intent may be inferred from the surrounding facts and circumstances. In attempting to establish genocidal intent, the Chamber can rely on a variety of factors including the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership in a protected group, the fact that the perpetrator may have targeted the same group during the commission of other criminal acts, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, whether the perpetrator acted on the basis of the victim's membership in a protected group and whether the perpetrator's intent was to destroy that group in whole or in part, as such.

## **B. JUSTIFICATION OF THE SUBJECTIVE (MENTAL) ELEMENTS**

221. Thus, turning to the substantiation of the subjective element, special and separate efforts are required to prove particular intent (*dolus specialis*). Following the requirements of RS Art. 30, which deals with the mental element, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. For the purposes of this article, a person has intent where: a) In relation to conduct, that person means to engage in the conduct, or (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. In this case, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.
222. At the first meetings between the President of the RF and the Ombudsperson for Children's Rights (see para. 110), clear instructions were given to look for ways to solve the "problems" arising due to deported Ukrainian children. The search for possible options resulted in the adoption by Vladimir Putin on May 30, 2022, of a decree that simplified the procedure of acquiring Russian citizenship by Ukrainian children. According to the decree's content, this procedure was simplified just for citizens of the so-called DPR and LPR and Ukraine (see para. 123). Although the RF recognized the independence of the self-proclaimed republics before the full-scale invasion, these actions, by their nature, do not have any legal consequences. Thus, we are talking about simplifying the acquisition of citizenship exclusively for Ukrainian children. The latter is important to understand because otherwise, Russian officials will be able to use the argument that their actions are legitimate since a separate group of children are not citizens of Ukraine, and taking them away was coordinated with the local authorities of the so-called "republics." A similar thesis has already been used by Maria Lvova-Belova in an interview (see para. 162). Thus, in general, no argument can be made that the legislation allowing the acquisition of Russian citizenship by Ukrainian children was adopted by the President of the RF unknowingly and accidentally. Since the Decree applies exclusively to Ukrainian children, this strongly indicates a specific policy aimed at harming the Ukrainian national group. As for the consequences of his actions, considering the general context of a full-scale invasion, Vladimir Putin is fully aware of the effects of his decision and seeks to bring them about.
223. At the outset, we pointed out (see para. 80) that international legal documents, particularly the Fourth Geneva Convention, prohibit changing the civil status of a child. Considering this provision in the context of the Russian-Ukrainian war, it is possible to see that the RF

has taken an absolutely nihilistic approach to compliance with international law, deliberately violating it. One of the possible options, for example, could be the further acceptance of evacuated children by a third country. In this case, with the complete identification of all the evacuated children. However, representatives of the Russian authorities deliberately chose a different path, which consisted of granting citizenship, *i.e.*, changing the civil status, concealing information about the evacuated children, etc.

224. A separate important aspect of the system of deportation of Ukrainian children is their speedy inclusion in the Russian education system. At the same time, introducing the Russian education system is also an element of Russian policy in the occupied territories. As the Ombudsperson for Children's Rights pointed out when visiting one of the occupied regions: ***"We have to reconstruct them (children — note) to the Russian system so that children understand the new opportunities that the Russian Federation opens up to them"*** (see para. 144). As for those children who spent a long time in Russian vacation camps, the available data shows that these children were required to attend school studies, which included both history and culture, as well as patriotic education, including basic military training. The latter group, consisting of orphans or children deprived of parental care, was involved in the Russian education system to the maximum extent after their deportation, as such children started attending school regularly after being transferred to foster families. Additionally, we cannot exclude the domestic indoctrination of these children in families. It can include such indicative actions as visits to patriotic military parks and other quasi-cultural patriotic sites by adopted children (see para. 149). Thus, it is currently possible to state that, firstly, children learn the Russian version of history, culture, and society during their education. Children are imposed with the glorification of the actions of the Russian Federation aimed at destroying and conquering their own country. Secondly, children are taught in a language other than their own (communication in their native language is excluded). The political leadership of the Russian Federation coordinates the construction of such an education system. These actions are deliberate and quite conscious. Moreover, from the quoted words of the Russian officials, it can be concluded that these actions aim to integrate children into Russia.
225. Vladimir Putin's adoption of the Decree on expedited citizenship allowed Russians to formally resolve the issue of transferring children directly to Russian families. If initially, for some time, the deported children had been in holiday camps, sanatoriums, etc., after May 30, 2022, the process of transferring them to new parents began. At this point, it should be noted that Russian officials use the term "guardianship" rather than "adoption" in most cases. According to the RF Family Code, establishing guardianship and custody appears to be a more straightforward process than adoption, as it does not require application to the court. As stated in Art. 145 of the RF Family Code: "guardianship or custody is established over children left without parental care for their maintenance, upbringing, and education, as well as to protect their rights and interests"<sup>106</sup>. In addition, compared to adoption, in the case of guardianship and custody, foster families acquire a status similar to that of parents, but the scope of their powers is smaller. In any case, children are actually brought up in families, so for the purposes of this Communication, this does not affect the intent of the perpetrators to commit genocide. As the Ombudsperson for Children's Rights pointed out: ***"The highest priority is adoption. But we realize that it will require a more extended time. At the same time, now we need temporary guardianship for those children who may find***

<sup>106</sup> Family Code of the Russian Federation. <https://docs.cntd.ru/document/9015517>

*relatives in the future or for those children who may not have such an opportunity in the republic's territory*" (see para. 117). Children from the occupied territories should eventually be included in the federal data bank of orphans and children deprived of parental care. As mentioned earlier, currently, the work is being carried out at the local level, and it is only a matter of time before the first Ukrainian children appear in this data bank. Anecdotal evidence suggests a particular attitude towards Ukrainian children by Russian child welfare officials, who try to transfer these children from temporary accommodation facilities to foster families as soon as possible (see para. 155). Thus, the transfer of Ukrainian children to Russian families is another element of the system that demonstrates the intention of the Russian political leadership not only to remove children from the combat zone but also to assimilate them through direct upbringing and living in these families.

226. The transfer of children to foster families has also become an element of propaganda among the Russian population. In the corresponding Chapter, we analyzed five short videos describing children's lives in new Russian families (see paras. 148–152). These materials were prepared by the Institute for the Development of the Internet, which was founded, among others, by the Russian Ministry of Science and Higher Education. Thus, this may additionally indicate that the relevant materials were created on the initiative and at the request of the Russian authorities. In addition, the Ombudsperson for Children's Rights, Maria Lvova-Belova, personally adopted a Ukrainian boy, Pylyp, from Mariupol (see para. 127) and used various methods to promote this action. Of course, placing a child in the family of a person holding a high political office cannot be interpreted in any other way than as advertising such actions.
227. Turning to the conclusions, it should be emphasized once again that item (e) of Art. II of the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the founders of the Convention, as they proceeded from the thesis that the forced transfer of children to a group where they would be provided with an education that would be different from their own group, and would assume new customs, a new religion and probably a new language, is in practice equivalent to the destruction of a group whose future depended on the forcibly displaced generation of children. The RF, headed by Vladimir Putin, has deliberately and consciously created a system involving the mass removal of Ukrainian children from occupied areas of Ukraine. This system covers the provision of Russian education to the deported Ukrainian children, assuming by these children new customs and new religious values (in the context of the Russian Orthodox Church), and the communication of these children only in Russian, as Ukrainian is perceived as hostile in their new environment. There is nothing to suggest that these actions are committed accidentally or unintentionally. In the context of a full-scale invasion of Ukraine, a particular intent is clearly evident in the actions of Russian officials. These actions aim to cause substantial harm to the Ukrainian national group to achieve, as a consequence, its partial or total destruction.

### **C. CLAIMS OF DEFENDING “THE INTERESTS OF THE CHILD” IN THE CONTEXT OF THE CRIME OF GENOCIDE**

228. A separate important and controversial issue in considering the motives of genocide is the so-called problem of “protection of the child's interests”. Since, as noted at the beginning of this Communication, item (e) of Art. II of the Convention on the Prevention and Punishment of the Crime of Genocide item (e) of Art. II have never been the subject of consider-

ation by international tribunals or the ICC, it is appropriate to dwell on this issue in more detail.

229. Kurt Mundorff once drew attention to this problem. He pointed out that the current debate on the forced transfer of children often boils down to one main argument, namely, the transfer was carried out with benevolent intentions, and therefore, “by definition” cannot constitute a crime of genocide. In the next section, the researcher elaborates on the parameters of genocidal intent, arguing that mixed intentions and benevolent motives cannot generally “save” the perpetrators of such acts. The conclusions emphasize that most of those who planned and implemented programs of forced displacement of children sincerely and mistakenly believed that it was in the “best interests” of the children. However, this belief cannot justify an act of genocide. Benevolent treatment of individuals should not justify a crime against a group as a whole. The Convention against genocide draws a clear line by prohibiting five acts aimed at destroying a group. It does not contain exceptions deemed beneficial to individuals within the group. Such exceptions would allow the subjective beliefs of the perpetrator to outweigh the crime itself. This would set a dangerous precedent, especially in the historical context of genocide, where perpetrators often committed heinous acts in pursuit of what they considered to be the greater good.<sup>107</sup>
230. Russian officials have repeatedly used the claim about the “interests of the child” in the context of the deportation of Ukrainian children. For example, at the first meeting between the Russian President and Ombudsperson Maria Lvova-Belova, which was devoted to the issue of Ukrainian children, the Russian leader clearly stated that it was not the time to think about “bureaucratic” details but rather the interests of the child (see para. 110). In this way, Vladimir Putin effectively eliminated the need to comply with international norms, launching a search for mechanisms facilitating the illegal adoption of Ukrainian children. Another example is a comment made by Maria Lvova-Belova at a press conference. She said that when Iryna Vereshchuk (Vice Prime Minister of Ukraine; Minister for Reintegration of the Temporarily Occupied Territories of Ukraine — note) addressed her with a demand to return the forcibly removed children, the Ombudsperson refused her request “in the interests of the child”.<sup>108</sup> At one of the meetings of the ad hoc committee to synchronize the legislation of Russia and the so-called LPR and DPR on the family placement of orphans, the head of the Citizenship Department of the Main Department on Migration of the RF Ministry of Internal Affairs, Nikolai Evdokimov, emphasized that “the Ministry of Internal Affairs, exercising its powers to award Russian citizenship, including children left without parental care, always proceeds primarily from the interests of the child”.<sup>109</sup>
231. So, as we can see, Russian officials are pretty actively using the thesis of “protecting the interests of the child”. In the context of proving genocide in Ukraine, such statements should be assessed critically, as they express an intention to destroy the Ukrainian national group as such. Although the safety of children may indeed be the basis for their temporary removal from the area of active hostilities, their subsequent passportization and transfer to

<sup>107</sup> Taking 2(E) seriously : forcible child transfers and the convention on the prevention and punishment of the crime of genocide» Mundorff, Kurt. <https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/831/items/1.0077727>

<sup>108</sup> Children’s Ombudsperson Maria Lvova-Belova, at a press briefing in the Public Chamber, spoke about Ukrainian children, their adaptation to Russian reality, and their conscious choice in favor of the Russian Federation. <https://t.me/malvovabelova/605>

<sup>109</sup> The first meetings of the ad hoc committees for the synchronization of legislation of Russia, LPR, and DPR on the family placement of orphans were held. <http://deti.gov.ru/articles/news/sostoyalis-pervye-zasedaniya-shtabov-po-sinhronizacii-zakonodatel-stva-rossii-lnr-i-dnr-v-voprosah-semejnego-ustrojstva-detej-sirot>

foster families, their ideological re-education and education in Russian schools can in no way be justified by protecting their interests, but rather by satisfying the interests of the political leadership of the RF.

232. At this point, it is also important to recall once again that when it comes to forcible transfers, “‘forced’ is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the 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. The essential element is that the transfer be involuntary in nature, where the relevant persons had no real choice”.<sup>110</sup>

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<sup>110</sup> Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement (TC), 15 March 2002, para. 475. <https://www.icty.org/x/cases/krnjelac/tjug/en/krn-tj020315e.pdf>



# X. CONTEXTUAL ELEMENT

## A. GENERAL PROVISIONS

233. This element is common to all forms of genocide laid down in the Rome Statute. It is also referred to as the contextual element. As was indicated in the ICC decision on the arrest of Omar al-Bashir:<sup>111</sup>

123. The Majority further observes that, according to this contextual element provided for in the Elements of Crimes, the conduct for which the suspect is allegedly responsible, must have taken place in the context of a manifest pattern of similar conduct directed against the targeted group or must have had such a nature so as to itself effect, the total or partial destruction of the targeted group.

124. 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.

234. Before assembling all the evidence concerning this particular element, we must provide a more detailed analysis of its interpretation. It should be noted that the existence of this element in the Convention on the Prevention and Punishment of the Crime of Genocide is quite questionable. As it was noted in this regard within the framework of the ICTY, in the case of Radislav Krstic:<sup>112</sup>

223. The offence of extermination as a crime against humanity requires proof that the proscribed act formed a part of a widespread or systematic attack on the civilian population, and that the perpetrator knew of this relationship. These two requirements are not present in the legal elements of genocide. While a perpetrator's knowing participation in an organized or extensive attack on civilians may support a finding of genocidal intent, it remains only the evidentiary basis from which the fact-finder may draw this inference. The offence of genocide, as defined in the Statute and in international customary law, does not require proof that the perpetrator of genocide participated in a widespread and systematic attack against civilian population.

224. In reasoning otherwise, the Trial Chamber relied on the definition of genocide in the Elements of Crimes adopted by the ICC. This definition, stated the Trial Chamber, "indicates clearly that genocide requires that 'the conduct took place in the context of a manifest pattern of similar conduct.'" The Trial Chamber's reliance on the definition of genocide given in the ICC's Elements of Crimes is inapposite. As already explained, the requirement that the prohibited conduct be part of a widespread or systematic attack does not appear in the

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<sup>111</sup> Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-3 04, March 2009, para. 135.  
<https://www.icc-cpi.int/court-record/icc-02/05-01/09-3>

<sup>112</sup> ICTY: Prosecutor v. Radislav Krstic, Judgement, Case No. IT-98-33-A, 19 April 2004, para. 221, 224.  
<https://www.icty.org/x/cases/krstic/acjug/en/>

Genocide Convention and was not mandated by customary international law. Because the definition adopted by the Elements of Crimes did not reflect customary law as it existed at the time Krstic committed his crimes, it cannot be used to support the Trial Chamber's conclusion.

235. To some extent, this issue was also addressed by the ICTY Trial Chamber in the case of Radovan Karadžić and Radko Mladić:<sup>113</sup>

In all cases, it is the submission of the Prosecution that in the interests of international justice, genocide should not be diluted or belittled by too broad an interpretation. Indeed, it should be reserved only for acts of exceptional gravity and magnitude which shock the conscience of humankind and which, therefore, justify the appellation of genocide as the "ultimate crime".

236. In addition, remarks of the Trial Chamber of the ICTR on the meaning of para. (e) are quite interesting:<sup>114</sup>

The Chamber is of the opinion that the provisions of Article 2(2)(e) of the Statute, on forcible transfer of children from one group to another, are aimed at sanctioning not only any direct act of forcible physical transfer, but also any act of threat or trauma which would lead to the forcible transfer.

237. Claus Kress has discussed this issue in relation to the case of Ahmad al-Bashir. Analyzing the caselaw of other tribunals, he indicated that on the whole the intention to commit genocide must be a real threat and involve more than the hope of a single perpetrator who wished for reasons of hatred to destroy as a whole or in part the corresponding group. Adopting that realistic interpretation of intent, which is fully compatible with the formulation of the legal term, it is possible to offer a consistent explanation of the contextual element. A solitary criminal may operate with a realistic intention to destroy as a whole or in part the targeted group if his conduct in itself is capable of implementing that destruction. In almost every case, however, that is not what occurs. For practical purposes, therefore, the intent of the perpetrator requires that his conduct take place "in the context of a manifest pattern of similar conduct directed against that group". According to this approach, the last element becomes the objective point of departure for a genocidal intent. There is only a slight analytical nuance between this concept of genocidal intent and the widespread judicial practice of regarding a genocidal campaign as "only the evidentiary basis from which the fact-finder may draw the inference" that a genocidal intent exists.<sup>115</sup>

238. Faced with the need to establish intent in its ruling in the case of al-Bashir, the Pre-Trial Chamber took an approach very close to the concept of realistic intention. The Chamber

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<sup>113</sup> ICTY: The Prosecutor of the Tribunal v. Radovan Karadzic and Ratko Mladic, Case No. IT-95-5-R61, Judgement, 27 June 1996, page 25, p. 10–15.

<https://www.icty.org/x/cases/karadzic/trans/en/960627it.htm>

<sup>114</sup> Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000, para. 159; Prosecutor v. George Rutaganda, Case No. ICTR-97-20-T, Judgement (TC), 6 December 1999, ICTR, para. 54; Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998, para. 509.

<https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-13/MS21028R0000532581.PDF>;

<https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-03/MS17327R0000620654.PDF>; <https://www.refworld.org/cases,ICTR,40278fbb4.html>

<sup>115</sup> Claus Kress, *The Crime of Genocide and Contextual Elements: A Comment on the ICC Pre-Trial Chamber's Decision in the Al Bashir Case*, *The Journal of International Criminal Justice*, 2009.

<https://www.legal-tools.org/doc/ec3f98/pdf/>

distinguished between what it termed the “genocidal intention of the Sudanese government” and the genocidal intent of al-Bashir and, it appears, was of the opinion that there could not be an individual intent without a collective intention. “If ‘governmental intent’ is translated into a ‘plan to carry out a genocidal campaign,’” wrote Kress, “it becomes clear that the Chamber is of the view that the overall genocidal plan amounts to an objective point of reference for Al Bashir’s (realistic) intent.” He continued: “On the basis of such a concept of genocidal intent, a separate mental requirement concerning an objective circumstance element is superfluous. The Chamber has thus come halfway in adopting the concept of realistic intent and it is suggested that it should fully endorse this idea when the next opportunity arises”.<sup>116</sup>

239. On the one hand, the Chamber evidently established too high a threshold for committing the crime of genocide. It interpreted the last common element in such a way that the crime of genocide could only be completed 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.” How exactly the Chamber understood the ‘concrete threat’ is not clear. There is a risk that this phrase will be understood as creating an obstacle too great to be overcome.<sup>117</sup>
240. As Judge Anita Usacka rightly commented in her separate and partly dissenting opinion, the precondition of a “concrete threat” verged on “results-based evidence”, a requirement that the genocidal campaign had reached a point where destruction of the protected group might take place. A result of that kind, in other words, was imminent. Yet not one of the above-listed arguments requires the introduction of such a strict threshold and this applies to previous caselaw. As distinct from what the Pre-Trial Chamber apparently believed, the last common element does not require the emergence of such a dangerous situation. The alternative included in this element (“conduct that could itself effect such destruction”) refers to conduct that could potentially lead to such a result.<sup>118</sup>
241. As concerns the formulation of the first part of this element, it should be sufficient that the genocidal campaign could of its nature lead to the planned destruction of the protected group. This interpretation is confirmed by the comment in the introduction to the Elements of Crimes that the phrase “in the context” shall include the initial actions of a model in process of formation. This means that the crime of genocide is completed by the first act of the campaign of genocide. At that moment, however, the threat to the targeted group as such, or to a significant part of the group, will not yet be concrete. It follows, therefore, that to select an objective starting point to assess the intentions of the perpetrator in a typical case of genocide requires no more than the existence of a realistic collective goal of destroying the targeted group as a whole or in part. The court must clarify this issue, Kress suggested, the next time it assembles.<sup>119</sup>

## B. JUSTIFICATION OF THE CONTEXTUAL ELEMENT

242. In addressing the last element, we need to answer the following question: Is the threat to the existence of the Ukrainian national group or its part due to the forced displacement of Ukrainian children concrete and real, and not merely hidden or hypothetical? At the same

<sup>116</sup> Ibid, note 115.

<sup>117</sup> Ibid, note 115.

<sup>118</sup> Ibid, note 115.

<sup>119</sup> Ibid, note 115.

time, we fully agree with the thesis that the requirement of concrete threat should not be understood as requiring a direct actual result, which would consist of the elimination (in whole or in part) of the protected group. Therefore, we must demonstrate whether the perpetrators' conduct is inherently capable of leading to partial or total elimination and destructive results and whether there is a realistic collective goal to destroy the Ukrainian national group.

243. It should also be borne in mind that in this Communication, we are substantiating the presence of the crime of genocide consisting of the forced transfer of children of the relevant group to another group. This complicates the process of proving the contextual element to some extent. Analyzing the experience of the international tribunals in the previous subsection, we saw that the subject of their consideration was the acts that in themselves consisted of the direct physical destruction of the relevant group. In our case, there is a certain specificity because we are talking about the consequences of the crime in the form of partial or complete elimination of a national group in the relatively distant future, while a particular part of the group may remain safe. In other words, the consequences are prospective.
244. As of the date of this Communication, according to the Ukrainian portal Children of War data, 19,546 Ukrainian children have been deported to the RF. Their number is constantly increasing. This list includes children whose whereabouts were confirmed. A note on the portal states that according to open sources using Russian information, 744,000 children were deported from Ukraine.<sup>120</sup> In any case, the real numbers are much higher than 19 thousand, as it is impossible to identify all children. The search process is complicated by giving deported children Russian passports with their subsequent transfer to foster families, as well as the fact that, in some cases, children are likely to have their names changed (see para. 154). The number of deported children is an essential indicator of the vast scale of the perpetrators' actions.
245. As to the existence of a collective goal, it should be reiterated that Russia's actions to remove Ukrainian children forcibly constitute a system that involves their executors' interaction at many levels. At the highest political level, President Vladimir Putin issued a Decree authorizing the issuance of Russian passports to Ukrainian children expeditiously. At the lower levels, interaction has been established between the leadership of the so called LPR and DPR, the administrations of other occupied territories of Ukraine (Zaporizhzhia and Kherson regions), and representatives of Russia. In other words, the genocidal policy approved at the highest political level was adopted by other officials and executors. Moreover, the people involved in the process consider their actions the "highest good".
246. As noted, the contextual element does not imply an obligation to prove the crime of genocide only in the case of "approaching" the final genocidal outcome. Still, the deportation of Ukrainian children in the context of the large-scale invasion of Ukraine by the RF already raises the question of creating an actual threatening situation in which the Ukrainian national group finds itself. As a result of the full-scale war, a significant number of the Ukrainian population was mobilized to participate in military operations. Although the data on the war casualties is currently classified, it is easy to assume that due to the intensity of the hostilities, such losses have already amounted to a significant number. Civilian casualties should also be taken into account. In addition, it is worth mentioning the demographic situation in Ukraine. According to the State Statistics Service of Ukraine, during all the years of

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<sup>120</sup> The Children of War portal. <https://childrenofwar.gov.ua/>

Ukraine's independence (information for 1991–2021 inclusive), there was a negative natural population growth. Over these years, the average annual number of births was 443 thousand, and the average number of deaths — 702 thousand.<sup>121</sup> Thus, the current mass deportation of Ukrainian children already allows us to say that these actions, by their nature, can lead to the partial destruction of the Ukrainian national group.

247. The totality of circumstances indicates a significant threat to the physical existence of the Ukrainian national group due to the forced displacement of Ukrainian children, and this threat is quite concrete and tangible, not just hidden or hypothetical. Most of the deported children will lose any legal and cultural ties to Ukraine as a result of their removal from the national group, granting them Russian citizenship, their de facto adoption, and re-education. This, in turn, will mean that they will not contribute to the development of the national group, and the group itself will suffer significant losses in the future.

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<sup>121</sup> Demographic yearbook 2021. State Statistics Service of Ukraine.  
[http://db.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2022/zb\\_nasel%20\\_2021.pdf](http://db.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2022/zb_nasel%20_2021.pdf)

## XI. COMMENTS ON CHILDREN WHO HAVE BEEN RETURNED

248. As it has been established, the forced deportation of children generally involves several stages, which, in general terms, are as follows:

- 1) removal (transportation) of children to the territory of the RF;
- 2) placement in temporary detention centers (sanatoriums, orphanages, and other institutions);
- 3) granting citizenship in an expedited manner;
- 4) transfer of children to Russian families. However, some deported children are returned through incredible efforts.

As we will see below, this is usually possible if the child has not been granted Russian citizenship or placed in a foster family yet.

249. We have already cited stories of this kind in the section on the objective aspect of the crime (see para. 141). Other examples can be found online. For instance, an under-age inhabitant of Mariupol Oleksandr Radchuk told his story while the World Economic Forum was taking place in Davos. In March 2022, Russian soldiers took 12-year-old Oleksandr and his mother Snežana from Mariupol and sent them to filtration centres. During filtration the family was separated: Oleksandr saw his mother for the last time. The Russians did not allow him to call his relatives and told him that he would be adopted by a new family in Russia. However, the Oleksandr managed to contact his grandmother and avoid deportation. She says that Russian social workers tried to dissuade her from bringing back her grandson. It would not be easy, they said: she would need to put together many documents and go through bureaucratic procedures.<sup>122</sup>

250. Another example is that of 16-year-old David who before the war also lived in Mariupol. He was able to leave the city thanks to the help of a woman who presented herself at roadblocks as his guardian. When the bus from Mariupol arrived at the terminus in west Russia the local authorities confiscated his passport. David was taken to a children's home and told he would stay there until he turned 18. In early October 2022, David learned by chance that he could leave the children's home if his mother (who remained in Mariupol) gave her written consent: the staff had not told him this before. Russian volunteers came to help David and brought him a mobile phone. It took several weeks to persuade his mother to go to a notary to verify her letter. David stayed with one volunteer after another until he finally found himself in Kyiv.<sup>123</sup>

251. According to the Ukrainian foundation Save Ukraine, Ukrainian children are being returned to Ukraine in small groups. For example, in February 2023, 16 children deported to the Russian Federation were returned to Ukraine.<sup>124</sup> A March 7, 2023, publication reported the return of 44 children from the RF to Ukraine.<sup>125</sup> Subsequently, 17 more Ukrainian children

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<sup>122</sup> "Ukraine is You", live broadcast of Opening and Discussion, Day 1 (Ukr.), Victor Pinchuk Foundation.  
<https://www.youtube.com/watch?v=ARC8In2VeIE>

<sup>123</sup> 'I saw it was over': the boy who tried to escape war in Ukraine via Russia.  
<https://www.theguardian.com/world/2023/jan/05/boy-who-tried-to-escape-war-in-ukraine-via-russia>

<sup>124</sup> We returned 16 more children who had been deported to Russia!.  
<https://saveukraineua.org/tpost/6cr0jvdke1-mi-povernuli-sche-16-dtei-yak-buli-depor>

<sup>125</sup> The Save Ukraine team managed to return 44 children from enemy captivity.  
<https://saveukraineua.org/tpost/83p6efknr1-komand-save-ukraine-vdalosya-povernuti-z>

deported to Russia were returned in March.<sup>126</sup> In April 2023, 31 deported children returned to Ukraine.<sup>127</sup>

252. Given the above circumstances, it should be emphasized that for the purposes of this Communication, these children cannot be taken into account while qualifying the genocide in quantitative terms. In other words, when these children (or their families) are returned to the territory of Ukraine, we do not include these children in the total number of deported children. However, these children are witnesses to the events that took place during their stay in the RF, and we have included their stories in the relevant paragraphs of this Communication.
253. Still, firstly, we must emphasize that a group of forcibly removed children is not limited to orphans or children deprived of parental care. This group also includes children who were physically separated while their parents or persons accompanying them were undergoing filtration measures but were not returned later. Also, it includes children who were taken to children's holiday camps. Secondly, the number of returned children as a percentage of all deportees as of the date of this Communication is tiny. Therefore, it generally does not affect the overall situation with deportations.

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<sup>126</sup> They are tired of the road and prolonged stress.

<https://saveukraineua.org/tpost/mly82onks1-vtomlen-dorogoyu-i-trivalim-stresom>

<sup>127</sup> We managed to return 31 more Ukrainian children from Russia.

<https://saveukraineua.org/tpost/3sex6rgpk1-vdalosya-povernuti-z-ros-sche-31-ukransk>

## XII. INDIVIDUAL CRIMINAL RESPONSIBILITY

254. The system of deportation of Ukrainian children inherently involves the interaction of dozens of people with different levels of authority. In this Chapter, we want to focus on the officials who hold the highest political positions in the system and provide an overview of what they are responsible for.
255. Vladimir Vladimirovich Putin. As the President of the RF, he is the main person responsible for the deportation of Ukrainian children. His Decree of May 30, 2022, served as a final approval at the highest political level of the policy of forced deportation (see para. 123).
256. Maria Alekseevna Lvova-Belova. The Russian Presidential Commissioner for Children's Rights is the second person after Vladimir Putin responsible for organizing direct actions regarding the deportation of Ukrainian children. Under her direction, these actions are coordinated with the leaders of the unrecognized republics. The Commissioner herself adopted a Ukrainian boy to advertise the transfer of children to foster families.
257. Denis Pushilin. The head of the self-proclaimed DPR is responsible for organizing the deportation of children from the territory of Donetsk region that Ukraine does not control. He regularly has official meetings with Maria Lvova-Belova to discuss moving children from the occupied region.
258. Eleonora Mykhailivna Fedorenko. She is an adviser to the head of the self-proclaimed DPR on children's rights. On March 10, 2022, she participated in the signing of a protocol of intent with the Russian Federation on children issues (see para. 111). She is responsible for organizing the deportation of children from the Donetsk region at the local level.
259. Leonid Ivanovich Pasichnyk. As the head of the self-proclaimed LPR, he is responsible for organizing the deportation of children from the part of the Luhansk region that Ukraine does not control. He had numerous meetings with the Ombudsperson Maria Lvova-Belova to organize the deportation of Ukrainian children to the Russian Federation.
260. Yulia Ivanovna Nazarenko is the Commissioner for Children's Rights of the self-proclaimed LPR. On March 10, 2022, she participated in the signing of a protocol of intent with the Russian Federation on children's issues (see para. 111). She is responsible for organizing the deportation of children from the Luhansk region at the local level.
261. Andrey Yuryevich Vorobyov is the Governor of the Moscow region (Russian Federation). He actively assists Ombudsperson Lvova-Belova in organizing the process of transferring children to Russian families and their placement in temporary maintenance centers in the Moscow region. Andrey Vorobyov personally handed Ukrainian children the first Russian passports issued under an expedited procedure (see para. 126).
262. Aleksandr Ivanovich Bastrykin is the Chairman of the Investigative Committee of the Russian Federation (SKR). Under his leadership, Ukrainian children are trained in the SKR special educational institutions, including learning the Russian version of history and general patriotic education (see para. 164).



### XIII. COMPLEMENTARITY

263. The ICC operates on the basis of the principle of complementarity, which means that it starts to act only when national authorities are unwilling or unable to punish crimes that fall within the jurisdiction of the ICC. According to RS Art. 53(1)(b) and 17(1)(a)-(c), the complementarity assessment has to identify whether there have been or are genuine investigations and prosecutions in the State concerned related to the case or cases referred by the Prosecutor.
264. As set out by the Appeals Chamber, the complementarity assessment is a two-part test. The first part is to examine whether there are or have been any relevant domestic investigations or prosecutions. The absence of national proceedings, i.e., national inaction, is sufficient to make a case admissible to the ICC. If the answer to the first part of the test is positive, the Court assesses the unwillingness and inability as set out in RS Art. 17.<sup>128</sup>
265. According to RS Art. 17(3), in order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings. For a more detailed explanation of what constitutes “inability” within the meaning of the Rome Statute, see the ICC Policy Paper on Preliminary Examinations (2013).
266. Although some domestic proceedings are ongoing for certain crimes committed in connection with the full-scale invasion of Ukraine, we believe that Ukraine is not in a position to investigate and prosecute the crime of genocide committed on its territory.

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<sup>128</sup> ICC: The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Case No. ICC-01/04-01/07 OA 8, 25 September 2009.  
[https://www.icc-cpi.int/CourtRecords/CR2009\\_06998.PDF](https://www.icc-cpi.int/CourtRecords/CR2009_06998.PDF)

## **XIV. FAILURE OF UKRAINIAN AUTHORITIES TO INVESTIGATE OR PROSECUTE CRIMES**

267. One of the main factors that hinder the ability of the national authorities of Ukraine to investigate and prosecute the crime of genocide committed in the context of the full-scale war of the RF against Ukraine is the actual commission of this act by the highest political leadership of the RF, in particular President Vladimir Putin. Although it has been established that many other persons holding positions of various levels are involved in the deportation of Ukrainian children, they are executors, not organizers, of this crime. Consequently, the Ukrainian authorities have no real opportunity to investigate and, most importantly, effectively prosecute the highest political leadership of the Russian Federation, which commits the crime of genocide.
268. Another significant factor that hinders the ability of the Ukrainian authorities to investigate and prosecute the crime of genocide is that the territories where this crime is committed are occupied by the RF (Donetsk, Luhansk, Zaporizhzhia, and Kherson regions). This allows the RF authorities to deport Ukrainian children from these areas without hindrance and prevents Ukrainian law enforcement bodies from conducting an effective and real pre-trial investigation, including recording such cases, interrogating suspects (potential perpetrators) and/or witnesses, and collecting other necessary evidence.
269. Article 442 of the Criminal Code of Ukraine describes the elements of a crime of genocide and provides for liability for it, including the forced transfer of children from one group to another. Still, a conviction by a Ukrainian court will in no way influence the actions of the highest officials of the RF and force them to stop these actions in Ukraine.
270. It should also be noted that no other state, including the RF, is effectively prosecuting the individuals mentioned herein (see paras 254–262) for the acts giving rise to the crime of genocide against the Ukrainian national group by way of a transfer of children.
271. Therefore, the only way to bring the perpetrators to justice and stop the actions aimed at destroying the Ukrainian national group is to engage the ICC to investigate these actions. ICC has all the capabilities to effectively investigate and prosecute those responsible for the crime of genocide in Ukraine.

## XV. THE INTERESTS OF JUSTICE

272. The interests of justice under RS Art. 53(1)(c) provide a potentially countervailing consideration that may give the ICC Prosecutor a reason not to proceed. As such, the Prosecutor is not required to establish that an investigation serves the interests of justice. Rather, the Office of the Prosecutor “will proceed unless there are specific circumstances which provide substantial reasons to believe that the interests of justice are not served by an investigation at that time”.<sup>129</sup> Actually, there is a strong presumption in favor of the interests of justice if the requirements of jurisdiction and admissibility are met.
273. Taking into account the gravity of the crime described in this Communication and its impact on the population of Ukraine (Ukrainian national group) in the form of a direct threat to its future existence, we see no indications that an investigation would not serve the interests of justice.

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<sup>129</sup> Policy Paper on Preliminary Examinations. ICC, November 2013, para. 67.  
[https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf)

## **XVI. CONCLUSIONS**

274. We conclude that there are reasonable grounds to change the qualification of a crime of the deportation of Ukrainian children by Russia, which is a subject of the ongoing ICC investigation, from RS Art. 8(2)(a)(vii) and 8(2)(b)(viii) to RS Art. 6(e). We call on the Office of the Prosecutor of the ICC to preliminarily qualify Russia's actions as genocide as soon as possible, as such activities pose a significant threat to the existence of the Ukrainian national group.

*Інформаційне видання*

Микола Комаровський

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З УКРАЇНИ ДО РОСІЇ:  
ГЕНОЦИД ПОДАННЯ ДО ОФІСУ ПРОКУРОРА  
МІЖНАРОДНОГО КРИМІНАЛЬНОГО СУДУ**

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