



SAFEGUARDING CHILDREN FROM FORCED TRANSFERS AND DEPORTATION

Presented by the Bring Kids Back UA
Task Force

27 August 2024

BACKGROUND

The “Bring Kids Back UA” Task Force was established by the Office of the President of Ukraine to address two critical objectives:

1. Investigate and implement human rights-based mechanisms for the voluntary return of unlawfully deported and forcibly displaced children to Ukraine.
2. Develop recommendations to strengthen the international legal framework, with a focus on preventing similar violations of children’s rights in armed conflicts, using Ukraine as a case study.

The Task Force comprises experts from the policy, legal, and diplomatic fields, alongside recognized professionals in children’s rights protection in the context of armed conflicts, all serving in their personal capacities.

The Task Force is co-chaired by Andriy Yermak, Head of the Office of the President of Ukraine, and Lady Helena Kennedy LT KC, Director of the International Bar Association’s Human Rights Institute.

The work of the Task Force is guided by the fundamental principle of the best interests of the child.

FOREWARD

Few crimes in human history provoke as much revulsion and moral outrage as the deliberate targeting of children in wartime. Yet, the brutal reality of Russia's decade-long aggression against Ukraine confronts the civilized world with an extraordinary concentration of such atrocities.

The systematic, large-scale, and premeditated forced displacement and deportation of Ukrainian children bear all the hallmarks of a state policy deliberately enacted by the aggressor. This horrific practice, which began with the occupation of Crimea in 2014, is not only a blatant violation of international law but also a calculated assault on Ukrainian society and its future. The targeted transfers of children marks the apex of Russia's genocidal campaign to erase Ukrainian identity, replacing it with Russian narratives built on deception and falsification.

Many in the international community struggle to grasp the full magnitude of this crime. However, nations that have thrown off the yoke of Russian imperialism and Soviet domination, as well as those still oppressed by Moscow, are all too familiar with this tragedy. It is the continuation of a centuries-old campaign of national identity destruction, cultural oppression, and forced assimilation – culminating in the current totalitarian ideology of the “Russkiy Mir” [“Russian World”].

This document examines one of the most tragic large-scale crimes of the 21st century: the deportation of children. It begins with the understanding that criminals rarely see themselves as such, often seeking to justify their actions. The facts presented in this paper thoroughly expose the gross hypocrisy behind the Kremlin's narrative of “evacuation,” which is used to mask the largest kidnapping operation in modern history. We are acutely aware that we face one of the most powerful global propaganda machines ever created, one that distorts reality to portray the most heinous crimes as acts of mercy.

The arrest warrant issued by the International Criminal Court for Vladimir Putin and Maria Lvova-Belova marks the beginning of a long and difficult path toward justice. However, this is only the first step. To secure the safe return of Ukraine's stolen children and hold Russia accountable, concerted international efforts must continue and pressure must be increased.

As we delve into the details of this tragedy, we must keep in mind that behind every statistic and every political decision are real children – sons and daughters, brothers and sisters – torn from their families and homeland. Their stories must be told, their rights restored, and their future protected.

This document is part of Ukraine's broader efforts to intensify international action, namely through the Bring Kids Back UA action plan, initiated by President of Ukraine Volodymyr Zelenskyy to bring all Ukrainian children home. Without conditions or exceptions.

We hope that this study will inspire the international community not only to unite in condemning the grave human rights violations systematically committed by Russia but also to take decisive action to ensure the safe return of Ukrainian children. By safeguarding their future, we are upholding the principles of human dignity and justice that form the foundation of global society, and in doing so, we are protecting the future of all humanity.

We express our deepest gratitude to the esteemed experts and dedicated professionals who have contributed to this important cause. I would also like to give special thanks to my Co-Chair of the Bring Kids Back UA Task Force, Lady Helena Kennedy LT KC, whose deep understanding of the issue, expertise and commitment have been a powerful driving force behind this paper.

We remain committed to fulfilling President Zelenskyy's task – that of returning every single kid home.

Signed,
Andriy Yermak

Head of the Office of the President of Ukraine
Co-Chair of the Bring Kids Back UA Task Force

FOREWARD

Throughout my career in the law, which has spanned over 50 years, I have been committed to ensuring that the law protects and uplifts those most vulnerable in society – a mission that remains as vital today as ever. Against the backdrop of Russia’s war of aggression against Ukraine, the widespread evidence of Ukrainian children being deported away from their homes by Russian authorities strikes at the very core of our collective conscience. It tests the fortitude of the international legal architecture designed to safeguard the innocent.

Uprooting children from their families, culture, and identity causes deep psychological wounds. The ripples of trauma that follow are immeasurable. When this act is coupled with indoctrinating them with a foreign ideology and fostering hatred towards their homeland, the consequences are catastrophic. Such actions undermine sovereignty, cultural identity, and perpetuate intergenerational cycles of violence and conflict. The Ukrainian children subjected to this horrific ordeal are innocent victims caught in a war not of their making. Those children are the architects of Ukraine’s future, and their right to a safe, nurturing environment, and an education that respects their cultural heritage is non-negotiable.

This White Paper, authored by the Bring Kids Back Task Force, which I have the honour of co-chairing with Andriy Yermak, shines a spotlight on Russia’s heinous acts against Ukrainian children. It outlines the key facts surrounding the forced transfer and deportation of Ukrainian children, as presented by various reports, and examines the serious violations of international human rights law, international humanitarian law, international criminal law and the UN Children and Armed Conflict agenda that result from Russia’s actions.

The legal frameworks to protect children during armed conflict are robust and comprehensive from a substantive standpoint. Our duty, as the international community, is to translate these obligations into actions, by policing that they are upheld by the parties to the conflict and all other actors involved. The atrocities committed against the children of Ukraine are not just breaches of law; they are affronts to humanity itself. Children’s lives and futures are at stake, and we cannot afford to wait until the end of hostilities to seek justice. Time is of the essence. Immediate action is imperative.

I am profoundly grateful for the dedication of the drafting team behind this document. Their work lays the foundation for what will undoubtedly be a more extensive and detailed body of research in due course. This initial paper serves as a critical stepping stone, providing a comprehensive overview of the applicable legal frameworks. It is designed to help everyone navigate the complexities of these overlapping obligations with clarity and purpose.

Let this document be a call to action—a reminder that our legal obligations are not mere words on paper, but living commitments that must be honoured to protect the most fragile among us. We owe it to the children of Ukraine, and to children everywhere, to ensure that their protection is not only pursued but achieved without delay.

Signed,

Lady Helena Kennedy LT KC

Director of International Bar Association’s Human Rights Institute

Co-Chair of the Bring Kids Back UA Task Force

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EXECUTIVE SUMMARY

Introduction

Since February 2014, the Russian Federation has employed multiple strategies to threaten Ukrainian sovereignty, with the reported forcible transfer and/or deportation of children being among the most insidious. These actions are conducted under coercive circumstances and justified by disingenuous narratives to avoid responsibility. The paper provides an overview of the practice of forcible transfer and/or deportation, analyses Russia's justifications, highlights potential violations of international law, and provides recommendations for preventing future unlawful transfers, as well as locating, returning, and reintegrating them.

Analysis Of Existing Documentation

The Russian Federation employs a multi-pronged system to abduct Ukrainian children, severing their ties to their families, communities, and identities. Targeting both unaccompanied and accompanied children, these abductions involve systematic forced transfers and/or deportations through filtration camps, foster care, and adoptive families. These transfers are facilitated by state actors and processes, including legal procedures to alter children's identities. Committed against a backdrop of widespread violations of children's rights, their key characteristics include, early patterns of state-sponsored abductions, targeting children in alternative care, forced separations, absence of consent, as well as, logistical support by Russian forces and their allies. Their permanent character is cemented through the use of legal and administrative measures such as the issuance of Russian passports and name changes, reflecting the prolonged duration of such transfers, and significant obstacles posed for any genuine effort at family reunification.

Rebutting Current Justifications

The Russian Federation and its allies, including Belarus, justify the transfers and deportations of Ukrainian children as necessary for security, medical treatment, adoption, or temporary stays in 'recreation' camps. However, existing documentation refutes these claims. The separation of children through state-operated filtration camps lacks humanitarian objectives, which require an element of temporariness. Key contradictions to this proffered justification include the presence of coercion, the permanent and forcible nature of transfers and/or deportations, multiple barriers to family reunification, the use of deliberate measures ensuring permanent stays, the prolonged nature of potential evacuations, the failure to respect Geneva Conventions IV and Additional Protocol I, the lack of use of neutral third-party hosts, the absence of information bureaus or mechanisms to notify guardians, forced Russification, compulsory Russian education, and militarisation of youth. Additionally, there is a clear disregard for voluntary and informed consent of affected children.

Potential violations of international law

The Russian Federation's systematic forcible transfer and/or deportation of Ukrainian children may violate international law, including international humanitarian law, international criminal law, international human rights law, and related aspects of the United Nations' Children and Armed Conflict (UN CAAC) Agenda.

Related violations include but are not limited to:

International Humanitarian Law:

- Prohibition of forcible transfer and deportations of protected persons from occupied territory
- (Art. 49 GCIV)
- Grave breaches of the Geneva Conventions (Art. 147 GCIV and Art. 85 AP I)
- Evacuation of protected persons (Art 49, 50, 24/2 GCIV)

International Criminal Law:

- War crimes of unlawful deportation or transfer of populations (Arts. 8(2)(a)(vii), 8(2)(b)(viii) Rome Statute)
- Crime against humanity of deportation or forcible transfer of population (Arts. 7(1)(d), 7(2)(d) Rome Statute)
- Genocide, in the form of forcibly transferring children of the group to another (Art. 6(e), Rome Statute)

International Human Rights Law

- Right to identity (Art. 8, UNCRC)
- Right to family reunification (Art. 10, UNCRC)
- Prohibition of adoption without prior evaluation (Art. 21, UNCRC)
- Right to freedom of movement (Art. 12, ICCPR)
- Right to return to one's country (Art. 3, Protocol 4 ECHR)

Six Grave Violations within UN CAAC Agenda

- Abductions

This non-exhaustive list highlights the gravity in law of the conduct at issue; specifically, the treatment imputed to the Russian Federation and certain individuals against affected Ukrainian children. The gravity of these potential violations necessitate an urgent international response that features measures for prevention, protection, release, return, rehabilitation, reparation, and accountability.

Recommendations

The Russian Federation are under an international obligation to collaborate with international authorities on the return of affected Ukrainian children, comply with international child protection obligations, and cease further forcible transfers and/or deportations. The international community should ensure Russia's adherence to relevant child protection measures and support the return and reintegration of affected children.

To the Russian Federation and Allied Authorities

Identify and Return: Share information on all affected children from public registries; stop altering the personal status of children; collaborate with international efforts to establish neutral mechanisms for returning affected children; remove administrative and logistical barriers hindering the return of affected children; ensure the prompt return to Ukraine of all affected children.

Protect: Respect the legal regime of evacuations as prescribed by international humanitarian law; adhere to the prohibition on changes to a child's personal or familial status; respect the educational rights of children in occupied territories, and coordinate with neutral parties for legally justified evacuations.

Prevent: Issue directives to military personnel to prevent forced transfer and deportation of children; engage constructively with international partners, including by granting access to international missions to all sites where affected children are located; provide demonstrable evidence of compliance with preventive measures.

To the International Community

Respect for International Law: Ensure that Russia and its allies comply with international law, especially regarding the legal regime concerning evacuations, and secure guarantees from Russia to prevent recurrence.

Access: Negotiate the terms by which international missions will have access to all sites in Russia and other locations where affected children are located and support the work of such missions; request data on forcibly transferred and/or deported children, including records of name changes, citizenship, foster placements, and adoptions.

Return: Support efforts to trace, return, and reintegrate affected children; ensure effective application of the Temporary Protection Directive for Ukrainians at EU borders; promote communication and outreach to report and assist in tracing missing children and to counter disinformation, and monitor and assist Ukrainians wishing to return or seek asylum without passing through Ukraine.

Prevent: Strengthen Ukrainian emergency evacuation policies to mitigate further forcible transfers and/or deportations; support efforts to monitor and report violations against children; support and apply judicial and non-judicial accountability measures; including economic sanctions and travel bans, and engage with international and regional mechanisms and member states to hold violators accountable.

Reintegrate: Offer long-term support for sustainable, gender-sensitive, and age-sensitive reintegration programs for affected children; coordinate efforts between state actors and nongovernmental actors for the retracing, reunification, and rehabilitation of affected children; collaborate with Ukrainian stakeholders to provide remedies and reparation measures.

INTRODUCTION

This White paper provides a pivotal resource to guide and inform policymakers and international stakeholders in the crucial mission to address the grave issue of the forcible transfer and/or deportation of Ukrainian children. Its aim is to serve as a comprehensive basis for discussions that will lead to the formulation and implementation of concrete solutions to bring affected children back to their families and homeland. By analysing the violations of international law and laying out detailed recommendations, the White paper highlights the urgent need for action and proposes concrete areas for intervention to inspire a collaborative international response. By uniting in a sustained and decisive response, the international community can ensure the safeguarding of the rights and futures of affected children and restore their place in their communities. This White paper is, therefore, both a call to action and a roadmap for the international community to promptly bring affected children back home, with no conditions or exceptions.

Nature and Scope

The white paper is presented in **three parts**:

- **Part One: Key factual considerations**

The commission of forcible transfers and/or deportations of Ukrainian children, attributed to the Russian Federation and certain individuals and supporters of that state, has been well documented by United Nations (UN) bodies as well as international and national institutions and organisations.¹ By presenting the key characteristics of these violations, the White paper considers how, on a prima facie basis, they may constitute violations of international law. For this reason, the White paper should not be considered as a comprehensive presentation of the evidence of serious violations and corresponding international crimes. Rather, it collates existing evidentiary characteristics key to the establishment of such violations. Where possible, available evidence on individual and state responsibility for such violations is included.

- **Part Two: Core violations and corresponding crimes under international law**

Using the key characteristics identified in Part One, the paper presents a non-exhaustive list of potential violations of applicable international legal regimes. Four areas of international law are considered: i) international humanitarian law (IHL); ii) international criminal law (ICL); iii) international human rights law (IHRL); iiiii) and the United Nations Agenda on Children and Armed Conflict (UN CAAC Agenda). Potential violations under each body of law are presented to inform and guide current efforts to return affected children, establish guarantees of non-repetition, and facilitate the establishment of state responsibility. The paper does not discuss principles of individual criminal responsibility, as such discussion would be beyond its scope.

- **Part Three: Recommendations**

The third section presents detailed recommendations to safeguard the rights of children. These recommendations are directed at the Russian Federation and the international community. First, these recommendations seek to ensure the prompt return of affected Ukrainian children who have been forcibly transferred and/or deported, as well as guarantees of non-recurrence. Second, the recommendations aim to realise the rights of affected children to a remedy and reparation, with particular emphasis on delivering response to returned children.

¹See the White Paper's extensive Bibliography for a comprehensive compilation of publicly available material.

Consider also the briefings to the Task Force on findings from the OSCE Moscow Mechanism and the Yale Humanitarian Research Lab: Presidential Office of Ukraine, 'The second meeting of the Bring Kids Back UA International Task Force took place' (22 February 2024), Press release, Presidential Office of Ukraine.

Methodology

The white paper is based on desk research, legal research, and key informant interviews. Desk research considered open-source intelligence on the forcible transfer and/or deportation of Ukrainian children. The White paper proceeds based on allegations that enjoy a certain level of documentation (e.g. mention in a UN report) but that are yet to be formally proven in a court of law. Legal research assessed applicable norms, conventions, jurisprudence and expert analysis under applicable international law, as well as best practices and comparative approaches to safeguard children's rights. Through key informant interviews, qualitative data were collected with a range of stakeholders working in the child protection sector in Ukraine. This qualitative data sought to ensure that the findings and recommendations reflected local realities and priorities. To abide with the Do No Harm principle, anonymity of key informants was maintained due to the sensitive nature of the subject matter.

The initial findings of the draft working paper were presented on June 13th, 2024, in Brussels, Belgium, during a roundtable discussion attended by representatives of Ukraine, the EU and Canada. Subsequently, the insights and feedback obtained during the discussion were thoroughly reviewed and incorporated into the final version of the White paper.

The White paper refers to 'affected children' in relation to children transferred from the territory of Ukraine either to the territory of the Russian Federation, to territory temporarily occupied by and under Russian authority, or to territory under control of Russia (e.g. Belarus). Reference to the practices of 'forcible (or forced) transfers', 'deportations' and 'abduction' is made in line with the relevant definitions under the Geneva Conventions and additional Protocols, Genocide Convention, Rome Statute and relevant UN Security Council Resolutions.² This approach maintains consistency with terminology used by most international bodies reporting on this topic (e.g. OSCE Moscow Mechanism, UN Independent International Commission of Inquiry on Ukraine).

The White paper also refers to "temporarily occupied territories" (TOT) which should be understood as parts of the territory of Ukraine within which the armed forces of the Russian Federation and the occupation administration of the Russian Federation have effective control.

The White paper refers to the "best interests of the child" within the meaning of international law and particularly the United Nations Convention on the Rights of the Child (CRC). This principle mandates prioritising the child's well-being, development, and rights in all actions concerning them. It includes but is not limited to ensuring protection and care, promoting overall development, respecting the child's views, maintaining a supportive family environment, ensuring access to healthcare and education, protecting from discrimination, and safeguarding against harm. These elements collectively ensure that the child's best interests are at the forefront of every decision and action.

Disclaimer

This White paper reflects a comprehensive and diligent approach to the subject, acknowledging that some of the actions referred to may be subject to verification under a court of law. The legal assessment and evaluation of the facts provided herein have been carefully made by the authors of this White paper, drawing upon the most current and reliable information available at the time of writing.

²Whilst existing reports employ varying terminology, for the purposes of consistency with analysis by most international bodies, the White paper primarily refers to the "forcible transfer and/or deportation" of Ukrainian children.

I. KEY FACTUAL CONSIDERATIONS

A number of UN bodies as well as international and national organisations have published documentation of credible evidence of the forcible transfer and/or deportation of children. This section presents an analysis of this extensive body of research and investigations. Key factual considerations are presented that are relevant to establishing the possible commission of serious violations and corresponding crimes under international law. The analysis does not verify the information available; rather, this open-source information should serve as evidentiary leads. Moreover, the analysis does not consider evidentiary and related issues, such as age verification, child testimony, etc.

NOTABLE FACTUAL CONSIDERATIONS

- **TIME FRAME OF TRANSFERS:** Alleged incidents of forcible transfers and/or deportations before the full-scale invasion, including transfers of children in alternative care in Crimea, which has been temporarily occupied by Russia since February 2014, suggest an early pattern of state-sponsored forcible transfers and/or deportations.
- **TARGETING OF CHILDREN WITHOUT PARENTAL CARE:** Relocations of children in alternative care institutions for prolonged forcible transfer and/or deportation to Russia.
- **TARGETING OF SEPARATED/UNACCOMPANIED CHILDREN WITH PARENTAL CARE:** Separation upon filtration/detention of families, enforced disappearance, and incommunicado detention of parents in the temporarily occupied territories or Russian territory, followed by forcible transfer and/or deportation of children where they are subjected to assimilation practices.
- **ABSENCE OF CONSENT:** Absence of consent from parents/guardians for children in alternative care; absence of consent from authorised adults for children without parental care residing in alternative care facilities; absence of consent for prolonged stay of children in ‘recreation’ camps (including multiple relocations within temporarily occupied territories or in Russia). See also legal measures on name and citizenship changes.
- **ELEMENT OF COERCION:** Intimidation of parents/guardians of the child through threats of child removal, threats to life and health, in cases of refusal to send the child to recreation camps, undergo medical examinations, refusal to change citizenship, or refusal to study in schools following Russian programmes, etc. Forced separation of children from families at filtration camps; forcible transfers and/or deportation by unauthorised adults of children in alternative care; failure to implement tracing and reunification and obstacles to retracing and reunification.
- **LOGISTICAL SUPPORT:** Active logistical role by Russian armed forces and *de facto newly established occupation administrations*, including transportation and military escorts, organisation of filtration camps (in locations such as hospitals), etc.
- **LEGAL AND ADMINISTRATIVE MEASURES:** Assignment of Russian passports; changes to birthnames; simplified procedure to apply for Russian citizenship; introduction of the procedure for “exiting” Ukrainian citizenship in a unilateral administrative manner established in Russia; failure to exchange information with actors outside of Ukraine on all affected children.
- **ABSENCE OF A TEMPORAL CHARACTER OF FORCIBLE TRANSFERS AND/OR DEPORTATIONS:** Prolonged duration of transfers, including in cases of emergency evacuation.
- **LEGAL AND ADMINISTRATIVE OBSTACLES TO REUNIFICATION EFFORTS:** Denial of access to, and information on children from parents, child protection agencies and Ukrainian authorities; lack of humanitarian access to temporarily occupied territories, absence of humanitarian corridors for departure from temporarily occupied territories, closure of land border crossing points, enhanced filtration procedures for parents/guardians traveling to Russia; ignoring the need for unconditional return of orphans and children deprived of parental care whose relatives were killed or went missing; requirements that parents/guardians travel to Russia for retracing and reunification of children.

Impact of the War on Ukrainian Children

Since 2014, Russia's war of aggression against Ukraine has resulted in serious violations of the rights of children, with devastating consequences on their human security, well-being, and development. To date, at least 1,993 affected children have been reported as having suffered death or injury, with actual numbers estimated to be considerably higher.³ Over 4 million children in Ukraine require humanitarian assistance,⁴ with many in need of mental-health and psychosocial support,⁵ having been denied their rights to health and education.⁶ This is compounded by the routine disruptions of critical services. Affected Ukrainian children have suffered and continue to suffer the loss of relatives, orphanhood, forced displacement, family separation, exposure to aerial attacks, artillery shelling, and the risk of unidentified ordnance. Viewed against this broader backdrop to the war, the reported practice of the forced transfer and/or deportation of children by the Russian Federation demonstrates a routine disregard for the fundamental rights of Ukrainian children. Practices by Russia and Russian-allied actors do not only affect the rights of children. While the focus of this White paper is on children, the conduct under analysis also harms the rights of parents, families, and communities, as well as intergenerational implications.

To date, the Children of War initiative has identified tens of thousands of children that have been forcibly transferred and/or deported. While total numbers of affected children vary,⁷ only a few hundred children have been returned to Ukraine. In March 2023, the International Criminal Court (ICC) issued warrants of arrest against Vladimir Putin and Maria Lvova-Belova after finding reasonable grounds to conclude that each “bears responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children.”⁸

Early Transfers of Children

The forced transfer and/or deportation of children within occupied territories predates the full-scale invasion of Ukraine on 22 February 2022.⁹ These cases were reported, particularly in Crimea, starting from 2014.¹⁰ They appear to have begun in the eastern Ukrainian regions of Donetsk and Luhansk, whilst controlled by Russian-backed forces, and later extended to the Kherson, Mariupol, or Zaporizhzhia regions.¹¹ The forced transfer and/or deportation of children continued as described below.

Profiles of Children Targeted for Forcible Transfer and/or Deportation

Children who have been targeted for transfer or deportation can be divided into two categories: first, children without parental care; and second, unaccompanied children with access to parental care.

³UNICEF, ‘Nearly 2,000 children killed or injured since escalation of war in Ukraine’, (13 May 2024), Statement from UNICEF Europe and Central Asia Regional Office and Special Coordinator for the Refugee and Migrant Response in Europe.

⁴Adamenko V., ‘A Heavy Toll: The impact of one year of war on children in Ukraine’ (2023) Save the Children International.

⁵International Federation of Red Cross and Red Crescent Societies Reference Centre for Psychosocial Support (IFRC), ‘Two years on: mental health and psychosocial support needs in Ukraine and affected countries, (2024) IFRC Reference Centre for Psychosocial Support.

⁶UNSC, ‘2024 Annual Report of the Secretary General on Children and armed conflict’, UN Doc. S/2024/384 (3 June 2024), p.39, spec. paras. 325 and 331 (hereinafter “UNSC 2024 Annual CAAC Report”). See also UNICEF, ‘Widespread learning loss among Ukraine’s children, as students enter fourth year of disruption to education’ (29 August 2023).

⁷Bilkova V., Hellestveit C., and Šteinerte E., ‘Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation’ (2023) OSCE, p.12-13 (hereinafter “OSCE Report”).

⁸International Criminal Court (ICC), ‘Situation in Ukraine’, ICC-01/22 (17 March 2023).

⁹Ukraine Ministry of Reintegration and the National Information Bureau, ‘Children of war’.

¹⁰“OSCE Report”, p.40 (noting transfers of children in alternative care from Crimea, Donetsk and Luhansk); Fedosiuk T., ‘The Stolen Children: How Russia Attempts To Kidnap Ukraine’s Future’ (February 2023) International Centre for Defence and Security, p.13 (describing alleged incidents of children being abducted at checkpoints; also, referencing alleged incidents of deportation of orphaned children living in alternative care in occupied Crimea to the Russian Federation). Regional Center for Human Rights. Additional Submission to the State ‘Combined sixth and seventh periodic report of the Russian Federation (2011 - 2019)’ (CRC/C/RUS/6-7, submitted under Article 44 of the Convention on the Rights of the Child), paras. 1-7

¹¹ZMINA, ‘Forcible transfer and deportation of children from the temporarily occupied territories of Ukraine to the Russian federation – Analytical Report April 2023’ (2023) ZMINA, pp.11-12 (hereinafter “ZMINA Report 2023”); UN Human Rights Council (UN HRC), ‘Report of the Independent International Commission of Inquiry on Ukraine’, UN Doc. A/HRC/55/66 (18 March 2024) 55th session, para. 95 (hereinafter “UN Commission inquiry 2024”).

Children without parental care	Unaccompanied children with access to parental care
<ul style="list-style-type: none"> • Children in alternative care, such as public institutions, foster families or residential care in Ukraine or TOTs prior to or following the full-scale invasion and thus considered to be under guardianship status. • Children whose parents died, are missing, in captivity or disappeared since the 2022 full-scale invasion and thus are unaccompanied or separated. 	<ul style="list-style-type: none"> • Children with clear guardianship status whose parents or legal guardians agreed to their temporary stay in recreation or related camps in Russian-controlled territory, but whose returns were delayed or precluded against the consent of parents/guardians. • Children forcibly separated from their parents, such as when detained in filtration camps.

Children without parental care

Until the full-scale invasion, Ukraine had maintained a Soviet-era legacy of institutionalising children, including those with disabilities or from socio-economically disadvantaged backgrounds and those who still retained some level of parental or guardianship authority.¹²

Children in alternative care institutions have been disproportionately targeted for forcible transfers and/or deportations. Moreover, with public social care systems weakened by the war, children separated from or who lost parents during hostilities have also been targeted.

Details of both groups include:

Children in alternative care:

Children targeted for forcible transfer and/or deportation include children living in forms of state-sponsored institutional care, including orphans, situated in TOTs and frontline areas.¹³ It has been reported that the Russian Federation relocated many care institutions within TOTs before eventually forcibly transferring and/or deporting children in alternative care to the Russian Federation. Following forced transfer and/or deportation, children were placed with Russian families or relocated to pre-existing or newly established state-sponsored alternative care.¹⁴

Children who were separated from or lost their parents or guardians:

Children who lost or were separated from parents/guardians have also been forcibly transferred and/or deported. In some cases, upon being identified as orphaned, children have been reportedly sent to “filtration camps” or alleged “rehabilitation centres” (e.g. children from Mariupol).¹⁵ Relatedly, hospitals in the occupied Donetsk region have been reported to serve as a holding point for children before further transfer or deportation to other areas under Russian control.¹⁶

Children with access to parental care

Ukrainian children under parental care have also been targeted for forcible transfer and/or deportation. In cases where parents were detained in filtration camps,¹⁷ children were separated from their families and sent to TOTs or to the Russian Federation without the consent or full knowledge of their parents.¹⁸ In related cases, parents signed consent forms for their children to travel to centres that were presented as rehabilitation or vacation camps.¹⁹ In these cases, parents describe wanting to temporarily protect their children from the detrimental impact of hostilities, such as aerial shelling, food deprivation, artillery fire, and other dangers, compounded by limited evacuation options in frontline areas.

¹²Citing government figures, Human Rights Watch reports that over 105,000 children were kept in institutions before the full-scale invasion, nearly half of which constituting children with disabilities. Human Rights Watch, “We Must Provide a Family, Not Rebuild Orphanages” (13 March 2023).

¹³ZMINA Report 2023, p.3 and 7. See also UN Commission inquiry 2024, para. 95.

¹⁴ZMINA Report 2023, p.10.

¹⁵“Filtration” involves compulsory security screening, in which Russian authorities collect biometric data, conduct body searches, and search personal belongings and phones whilst questioning civilians about political views. To learn more about the filtration system, its functioning and how it facilitated forcible transfers and deportation of Ukrainian citizens, see Human Rights Watch (HRW) 2020 Report, “We Had No Choice” “Filtration” and the Crime of Forcibly Transferring Ukrainian Civilians to Russia”, (1 September 2020) HRW (hereinafter “HRW 2020 Report”). See also Bida O., ‘Stolen generation. Russia systematically abducts children from Ukraine, gives them to Russian families’, Kyiv independent (21 July 2023).

¹⁶Ibid. In some instances, children have needed medical care and were treated. But this consensual care was then transformed into deportation to TOTs or Russian federation, like Sasha case documented by Kyiv Independent documentary. See Kyiv Independent, ‘UPROOTED | An investigation into Russia’s abduction of Ukrainian children’ (18 July 2023), online (video) Youtube (hereinafter “Kyiv Independent, ‘UPROOTED Documentary’”).

¹⁷UN Commission inquiry 2024, para. 97. See also, reporting by Zmina on how two children were separated from their father at a checkpoint held by Russian forces because he was a former soldier. ZMINA Report 2023, p.25. See also

¹⁸Consider the case of Denys, a teenager who testified before the U.S. Helsinki Commission that his se deaf parents were had been helpless to refuse his forced transfer to a camp under Russian control. Kelly L, ‘Russia’s kidnapping campaign takes a crushing toll on Ukraine’, The Hill (24 February 2024).

¹⁹See ZMINA Report 2023, p.17 and 25.

Nonetheless, parents stipulated that consent was given for only a temporary stay, having been assured by authorities that children would be returned to their care. Moreover, in many instances, such consent was obtained under threats and duress, raising questions on its validity.²⁰

The Nature and Scope of Forcible Transfers and/or Deportations

Based on existing reports, forcible transfers and/or deportations typically involved the following:

Alternative care placements

Transfer and holding in recreation camps, children's homes, or related forms of displacement facilities that are located in TOTs, Russian Federation of Russian-allied areas (such as Belarus).²¹

Family care:

Placement with foster families and facilitated adoptions by Russian families.

Transnational network of recreation camps characterised by russification and militarisation

The forced transfer and/or deportation of children relied in part on a network of so-called "camps" designed to house children. At least 43 such camps have been identified, some of them located in the Russian Federation²² and others in Belarus.²³ Camp administrators claim to carry out the "education and cultural development" of Ukrainian children, thus pushing narratives of Russian patriotism and enforced russification. By way of example, some educational material has been described as depicting Russian forces as "safeguarding international peace".²⁴ Children from the Kherson region who were placed in the Kabardino-Balkari camp said they were subjected to repeated listening and singing of the Russian national anthem.²⁵ Returned male adolescents said they had been pressured to enrol in the Russian military or in a Russian military college.²⁶ A military and patriotic programme was reportedly launched for 200 "difficult teenagers" from the so-called Donetsk People's Republic and Luhansk People's Republic at the Russian Special Forces University in Gudermes, a town in the Chechen Republic of the Russian Federation.²⁷

Use of foster families and adoptions

Some Russian families have kept Ukrainian children in what the Russians call foster care, while other Russian families eventually adopted children following initial transfer, a process that includes assigning the children Russian nationality. Forced transferred and/or deported children are reported to undergo considerable changes to their identity, including changed names and dates of birth through the issuance of new vital records, such as passports and birth certificates.²⁸ These instances have extended to separated children who have living family members or guardians in Ukraine.²⁹

²⁰Ibid, p.25.

²¹The Yale Humanitarian Research Lab estimates that at least 6,000 Ukrainian children ranging in age from 4 months to 17 years old held in Russian-controlled camps, see Yale Report no.1. A subsequent report stated that at least 2,442 children from 6 to 17 years old were deported to Belarus between February 2022 and 30 October 2023. Khoshnood, K., et al., 'Belarus' Collaboration with Russia in the Systematic Deportation of Ukraine's Children' (2023), Yale School of Public Health Humanitarian Research Lab (hereinafter "Yale Report no.2 (Belarus)"). Regional Center for Human Rights. Legal assessment of the displacement of Ukrainian children to Belarus: the evolution of an international crime. p.3.

²²Khoshnood, K., et al., 'Russia's Systematic Program for the Re-education and Adoption of Ukraine's Children' (2023), Yale School of Public Health Humanitarian Research Lab (hereinafter "Yale Report no.1"); ZMINA Report 2023, pp.15-16; UN Commission inquiry 2024, para. 95 (reporting camps in the Kabardinka in the Krasnodar region of Russia).

²³350 children from Mariupol were reported to have been transferred to the Dubrava health resort in the Belarus Soligorsk district. ZMINA Report 2023, p.15; Yale Report no.1, p.10 and 18.

²⁴ZMINA Report 2023, p.19. Regional Center for Human Rights. Legal assessment of the displacement of Ukrainian children to Belarus: the evolution of an international crime. pp.4-5.

²⁵Ibid, p.20.

²⁶Findings from interviews conducted with representatives from child protection civil society organisations (CSO) working with returned Ukrainian children. See also Kelly L, 'Russia's kidnapping campaign takes a crushing toll on Ukraine', The Hill (24 February 2024).

²⁷ZMINA Report 2023, p.20.

²⁸OSCE Report, p.18, 43 and 62.

²⁹See for instance: OSCE Report, p.20; ZMINA Report 2023, p.23; Kyiv Independent, 'UPROOTED Documentary'.

The Widespread Character of Forcible Transfers and/or Deportations

The organisation, scale, and efficiency with which forced transfers and deportations of Ukrainian children have been carried out point to a practice that is sanctioned by the state and implemented in part via occupation administrations in TOTs. The widespread character is also in part demonstrated by the number of regions where forced transfers and/or deportations took place, including the purported regions of DPR and LPR, Crimea, and temporarily in Kherson, as well as Belarus.³⁰ Having been conducted without the knowledge or consent of family members, as well as against the will of children themselves, demonstrates their forced character of the transfers of children.

State-level organisation

Available evidence of the state-sponsored commission of organised transfers and deportations on a large scale includes the following:

Public declarations by state authorities

- Reports of staff from social services, childcare institutions, and medical facilities indicate the separation of children from their families and deportation from the territory of Ukraine (e.g. events in the City of Mariupol).³¹
- Declarations by Russian officials and institutions, such as Maria Lvova-Belova in a conversation with Russian President Vladimir Putin, Russian Prime Minister Mara Husnullin, Russian Minister of Education Sergey Kravtsov, the former Russian-run Ministry of Labour and Social Protection of Kherson Province, also formally recognise the recourse to individual and mass displacements of Ukrainian children.³²

Organisation of logistical, legal and administrative support by state actors

- Active logistical role by Russian armed forces, including transportation and military escorts.³³
- Operation by Russian authorities of a database of children said to be orphans available for adoption.
- Modifications to national laws in order to facilitate forcible transfers and/or deportations and adoptions.³⁴
- Russian-allied officials in the temporarily occupied territories (TOTs) have established special legal documents, such as powers of attorney, for over 30 children classified as orphans or those deprived of parental care. These documents are used to bypass standard documentation requirements, facilitating the deportation of these children to Belarus and Russia.³⁵
- Organisation and coordination by Russian central authorities, with logistical support from regional and local officials, as well as civil society organisations and private enterprises in Russia and Belarus.³⁶
- Alyaksandr Lukashenka's direct involvement, including overseeing the assistance provided by state and non-state entities in Belarus in the transportation of affected children across the Ukrainian-Belarus border.³⁷

Characterising transfers as forced and non-justifiable

The Russian Federation and Russian-allied actors do not deny that transfers and deportations have taken place. Rather, authorities seek to justify these measures as necessary for the reasons below:³⁸

³⁰In 2022 Kherson region for instance, ZMINA notes how the occupying administration incited local families to send their children to vacation to the Russian Federation or Crimea to protect them from shelling. ZMINA Report 2023, p.11 and 16.

³¹Kyiv Independent, 'UPROOTED Documentary'.

³²ZMINA Report 2023, p.11 and 16; UN Commission inquiry 2024, para. 96.

³³Gall C., Chubko O. and Engelbrecht C., 'Ukraine's Stolen Children', The New York Times (27 December 2023), hereinafter Gall C., Chubko O. and Engelbrecht C., 'Ukraine's Stolen Children'; OSCE Report, p. 64.

³⁴OSCE Report, p.19-20, 38.

³⁵Yale Report no.2 (Belarus).

³⁶Yale Report no.1, p.6 and Yale Report no.2 (Belarus).

³⁷Yale Report no.2 (Belarus), p.12.

³⁸UN Commission inquiry 2024, para. 96. See also Yale Report no.2 (Belarus), p.19.

Justifications used for the transfer and displacement of Ukrainian children

1. Evacuation for security, health or medical treatment
2. Necessary adoption or placement of orphaned children in alternative care (foster families or camps and traditional institutions)
3. Temporary and voluntary stay in 'recreation' camps

In terms of evacuations, the forced character of separations, transfer and deportations undercut these justifications. Existing reporting points to:

- **Lack of evacuation routes (also known as “green corridors”)**: Children and their parents or guardians had no means to evacuate from conflict zones to Ukraine-controlled territory, for the reason that there were no available, established routes that guaranteed their safety. To the contrary, Russian Federation missiles attacked civilian evacuation columns, thus forcing these civilians to move in the direction of Russia. Transfers occurred amidst these hostilities, which Russia itself had initiated.
- **Filtration camps**: Affected children separated from their families and placed in so-called filtration camps where they later were subjected to transfer. Hospitals have been used as filtration points under the guise of providing medical care to children to facilitate transfers and deportation.³⁹
- **Prolongation of transfers**: The duration of transfers no longer qualified them as temporary, particularly given routine measures taken by authorities with the Russian Federation to relocate affected children to other areas, as well as measures that serve to preclude retracing, return and/or reunification of such children by their families.⁴⁰ Information or related means of tracing children have not been made available.⁴¹
- **Coercive character**: The logistical role played by Russian armed forces was significant, particularly in terms of material and technical support such as facilitating the transportation of children and the use of military escorts. On the other hand, the Geneva Conventions expressly refer to the practice of armed escorts only in the context of defending medical units and establishments “against attacks by rioters or pillagers and unlawful attacks by enemy soldiers, or ensure the maintenance of order”.⁴²

³⁹See Bida O. (2023), previously cited.

⁴⁰OSCE Report, p 49; UN Commission inquiry 2024, para. 95.

⁴¹According to ZMINA, the Moscow regional administration suggested establishing a system to identify the relatives of separated children from Donbass and allow for adoption where families could not be tracked, which would rely on Russian state and ICRC data. ZMINA Report 2023, p.23.

⁴²ICRC, Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field, 2nd ed., Geneva, 2016 (ICRC Commentary on GC I), para. 1871 with respect to Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Art. 22(2).

II. APPLYING INTERNATIONAL LAW

The reported evidence that has been outlined above may be said to establish *prima facie* that forced transfers and/or deportations of Ukrainian children have occurred and continue to occur. Based on that premise, this section sets forth a non-exhaustive account of the international legal regimes that may have been violated. The regimes considered are international humanitarian law (IHL), international criminal law (ICL), international human rights law (IHRL), and the UN children and armed conflict (CAAC) agenda, as described below.

IHL	<ul style="list-style-type: none"> • Prohibition of forcible transfer and deportations (Art. 49 GCIV) • Evacuation of protected persons (Art 49, 50, 24/2 GCIV) • Grave breaches (Art. 147 GCIV and Art. 85 AP I)
ICL	<ul style="list-style-type: none"> • War crimes (Unlawful deportation or transfer, Art. 8(2)(a)(vii), Rome Statute) • Crimes against humanity (Art. 7(1)(a) Rome Statute) • Genocide (Art. 6, Rome Statute): Discussed only.
IHRL	<ul style="list-style-type: none"> • Right to identity (Art. 8, UNCRC) • Right to family reunification (Art. 10, UNCRC) • Prohibition of adoption without prior evaluation (Art. 21, UNCRC) • Right to freedom of movement (Art. 12, ICCPR) • Right to return to one's country (Art. 3, Protocol 4 ECtHR)
UN CAAC Agenda	<ul style="list-style-type: none"> • Abductions

International humanitarian law

Current hostilities between Russian armed forces and Ukrainian armed forces constitute an international armed conflict that is governed by international humanitarian law.⁴³ Found both in treaties and in customary international norms, IHL sets forth rules on protections civilians and other noncombatants and on permissible means and methods of warfare. Among the treaties applicable to the armed conflict in Ukraine – treaties to which both Russia and Ukraine are parties – are the four Geneva Conventions of 1949 (GC I – IV), Additional Protocol I to those conventions, adopted in 1977 (AP I).⁴⁴

Through the principle of distinction, civilians cannot be the deliberate target of an attack and merit reasonable precautions so as not to be caused harm from attacks.

The obligations relevant to transfers and deportation of Ukrainian children include:

Protected status of children:

Under IHL, children are a protected group of persons to whom ‘special respect’ is due (Art 4. GC IV). Specifically, Russian Federation is under a positive duty to safeguard the rights of children: children must be humanely treated and protected against “all acts of violence or threats thereof” (GC IV, Art. 27(1); see also GC IV, Art. 37; ICRC Study, Customary International Humanitarian Law, Rule 87, Humane Treatment).

Prohibition of forcible transfers and/or deportations:

IHL prohibits the forcible transfer and deportation of civilians (Art. 49 GC IV).⁴⁵ These violations constitute grave breaches and war crimes (Art. 147 GC IV and Art. 85(4)(a), (b) AP I).

⁴³International Criminal Tribunal for the former Yugoslavia (ICTY), Prosecutor v. Tadic, Case No. IT-94-1-A, Judgment (Appeals Chamber), 15 July 1999, para 84 (“It is indisputable that an armed conflict is international if it takes place between two or more States. In addition, in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.”).

⁴⁴Hereinafter “GCI, GCII, GCIII, GCIV” and “API”.

⁴⁵Chetail V., ‘The Transfer and Deportation of Civilians’ in The Geneva Conventions: A Commentary, Clapham A. et al. eds (Oxford: 2015), 1189 (hereinafter Commentary of 2015).

Circumstances for permitted evacuations

Evacuations of protected groups are permitted in particular circumstances (GC IV Art. 49(2)).⁴⁶ Total or partial evacuations are permitted if done to ensure the population's security or for a military imperative; meanwhile, protected persons should only be moved inside the occupied territory except when material reasons so require.⁴⁷ IHL requires that evacuations be temporary; in fact, it imposes a positive obligation to facilitate returns (Art. 49(2) GC IV).

Specific obligations govern the evacuation of children given the vulnerabilities inherent to minors and the risks that displacement presents to their development and well-being:⁴⁸

- **Strictly enumerated grounds:** Compelling reasons relating to health, medical treatment or safety of children. State Parties should secure parental or legal guardians' consent in writing.⁴⁹
- **Geographical limitations:** Evacuation from occupied territories for safety reasons is not permissible because evacuation in war zones itself poses a threat to safety. Moreover, Geneva Convention drafters aimed to avoid occupying powers abusing their discretion under this exception.⁵⁰ Evacuation to a neutral third country should be facilitated.⁵¹
- **Temporary nature:** The API reiterates that evacuations must be temporary.⁵² Art. 78(3) API and Art. 50 GC IV prescribe that evacuations be undertaken with the prospect of returning children and restoring family ties once conditions provoking the evacuations no longer exist. The Party evacuating children is responsible for facilitating returns, including identifying the concerned children and their living relatives or guardians, as well as sharing this information with the ICRC (Art. 50 GC IV and Art. 78 AP I).

The temporary character prescribed to evacuations can be considered alongside the non-derogatory prohibition on changes relating to family and personal status, which extend to nationality and civil status (Art. 50 GC IV). An additional safeguarding measure provides that priority should be for local care institutions to take charge of orphaned or separated children; where this is not possible, children should nonetheless be entrusted to individuals who share the same nationality, language and religion (Art. 50 GC IV). Likewise, the right to education continues to apply and should be entrusted to persons of a similar cultural tradition. (Art. 24 GC IV).

Characteristics of forcible transfers and/or deportations as grave breaches of IHL

Under IHL, evacuations for reasons of protecting civilians may thus be permitted under strict conditions. In certain situations, the displacement of Ukrainian children may have constituted humanitarian evacuations and thus permissible under IHL. Consider, e.g., the initial evacuations that were carried out in February 2022 inside TOTs;⁵³ or, the evacuation of children in Mariupol to hospitals in Donetsk for emergency surgencies or medical care.⁵⁴ Nonetheless, the bulk of the reported evidence to date suggests that the overall practice of transfers was not of a temporary character, and thus in breach of IHL.⁵⁵ It has been demonstrated that the duration of children's stays in foreign territories has been more than temporary, in some cases lasting more than two years, and affecting their sense of identity and belonging.⁵⁶ Relatedly, as described earlier, forced transfers and/or deportations also appear to have followed from the deliberate, forced separation of children with parental care, or children in alternative care, including and especially for being adopted in violation of Art. 50 GC IV.⁵⁷

⁴⁶Pilloud C. et al., 'Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949', Sandoz Y., Swinarski C. and Zimmermann B. eds, (Geneva: ICRC 1987), art 78 AP I para. 3213 (hereinafter "Commentary of 1987"); Jacques M., 'The prohibition of forced displacement in IAC', p.20.

⁴⁷For a detailed analysis of the exceptions to the prohibition, see Rusman R., Syofyan S., 'Prohibition of Civilians Transfer Under International Humanitarian Law and Its Relation to Genocide' (2024) 7:3 Nagari Law Review 455-465, p.458.

⁴⁸Commentary of 1987, art 78 AP I para. 3212; ZMINA Report 2023, p.8

⁴⁹ Art. 78 API.

⁵⁰ Commentary of 1987, art 78 AP I paras. 3227-3228.

⁵¹ Art. 24 GC IV.

⁵² Art. 78 API.

⁵³The OSCE mission report finds that evacuations within TOTs conducted before February 2022 fall into this legal category. OSCE Report, p.38.

⁵⁴Consider, the case of Sasha, Kyiv Independent, 'UPROOTED Documentary'.

⁵⁵Bisset A., 'Ukraine symposium – Russia's forcible transfer of children' (5 October 2022) Lieber Institute. Consider also, e.g., the Kyiv Independent documentary, where Sasha and his family recounts multiple obstacles created to prevent his reunion with his family and returned to territories controlled by Ukraine, Kyiv Independent, 'UPROOTED Documentary'.

⁵⁶Special Report by the Ukrainian Parliament Commissioner for Human Rights on the Observance of Children's Rights in the Context of Armed Aggression against Ukraine "Cross-pollinated. Russia's. Systemic Policy of Destroying Children's Ukrainian Identity", p.12.

⁵⁷Yale Report no.1, p.10.

The permanent character of forcible transfers and/or deportations

- Lengthy stays of children transferred to Russia and in TOTs;⁵⁸ deliberate prolongation of initial emergency evacuations and delays of scheduled returns.⁵⁹
- Barriers to, and deliberate prevention of family retracing and reunification of unaccompanied and/or separated children (multiple relocations, cases of transfers thousands of kilometers away from the Ukrainian border, confiscation of Ukrainian documents, prohibition on establishing contact with Ukrainian authorities and relatives).⁶⁰
- Deliberate measures to ensure the permanent stay of forcibly transferred and/or deported children (placement in families far from other forcibly displaced Ukrainian children, enrollment in educational institutions, issuance of documents and payments, Registration of permanent residence, etc.)⁶¹

Related failures to respect obligations under Geneva Conventions

- No known use of neutral third party to host ‘evacuated’ children
- No established national information bureau to identify Ukrainian children
- No known means to notify legal guardians of the whereabouts of children
- No known means to realise the reunion of separated families⁶²
- Use of forced russification and compulsory Russian education and use of the Russian language⁶³ as well as pro-Russian militarisation of youth in camps.⁶⁴

Related characteristics

- Disregard for the use of voluntary and informed consent.

Against the factual and legal backdrop presented over these two initial parts to this paper, several actors have made findings of breaches of IHL:

- **OSCE Moscow Mechanism Mission of experts** finding that the practice of forceful relocations of children, and the practice of non-consensual separation of families with ensuing transfer of children and delayed reunification to be a breach of IHL and war crimes, notwithstanding whether some instances of displacement may have initially been warranted.⁶⁵
- **UN Independent International Commission of Inquiry on Ukraine** finding that the forcible transfer and/or deportation of one group of children from the Kherson Regional Children’s Home to Crimea was constitutive of the war crime of unlawful transfer since it was not temporary in nature.⁶⁶

⁵⁸Koshiw I., ‘Weeks turn to months as children become stuck at camps in Crimea’ The Guardian (27 December 2022) (cases of family reunification or return of children appear to be the exception and not the norm); RBK, ‘Zakharova called accusations of Kyiv on the deportation of children from Ukraine a lie’ (‘Захарова назвала ложью обвинения Киева в депортации детей с Украины’), RBK (25 June 2022).

⁵⁹Del Monte M, Barlaoura N., ‘Russia’s war on Ukraine. Forcibly displaced Ukrainian children’ (2023), European Parliament Briefing, European Parliamentary Research Service, p.6 (hereinafter “European Parliamentary Briefing”). See also Yale Report no.1, p.11.

⁶⁰OSCE Report (describing transfers and subsequent relocations of children); Kelly L, ‘Russia’s kidnapping campaign takes a crushing toll on Ukraine’, The Hill (24 February 2024) (labelling SAVE Ukraine as a terrorist organisation); Kyiv Independent, ‘UPROOTED Documentary’ (Instance where a minor escaped his foster family in Moscow region to rejoin his family in Ukraine but was stopped at the Russia-Belarus border and sent back to the foster family).

⁶¹Multiple families have testified of human-made hurdles to reunification, such as refusing power of attorney done in Ukraine, refusing to communicate on the whereabouts of missing children, detaining and interrogating families at borders for hours, refusing to let people in TOTs or Russia, etc. Kyiv Independent, ‘UPROOTED Documentary’. See also OSCE Report, p.2 and 44; Kyiv Independent, ‘UPROOTED Documentary’.

⁶²Art. 74, API.

⁶³Eastern Human Rights Group (EHRG) (Education presenting Ukraine as an “artificial” country, governed by “Nazis”, and its current territories have always belonged to the Russian Empire and the USSR); Institute for Strategic Research and Security (ISRS), ‘Ideological education of children in the temporarily occupied territories of Ukraine - Analytical Report March 2023’ (2023) EHRG, p.5 and 42 (hereinafter “EHRG Report 2023”); UNSC, ‘Meetings Coverage - Deportation, Treatment of Ukraine’s Children by Russian Federation Take Centre Stage by Many Delegates at Security Council Briefing’, UN Doc. SC/15395 (24 August 2023), 9404th Meeting.

⁶⁴Gall C., Chubko O. and Engelbrecht C., ‘Ukraine’s Stolen Children’ (2023).

⁶⁵OSCE Report,

⁶⁶UN Commission inquiry 2024, para. 97.

International Crimes

By virtue of an agreement submitted by Ukraine in 2014, the International Criminal Court (ICC) has jurisdiction to investigate, prosecute, and punish crimes enumerated in its Rome Statute if they have been committed on the territory of Ukraine.⁶⁷ This section discusses ICC crimes that may be implicated by the conduct already described. Discussed in particular are two categories, war crimes and crimes against humanity. A third category, the crime of genocide, also suggests itself; however, it is recommended that an analysis of this crime be considered separately.

War crimes: Unlawful deportation and transfer

The forcible transfer and/or deportation of Ukrainian children to TOTs, to Belarus or to the Russian Federation may constitute the war crime of “unlawful deportation and transfer”.^{68 69} Specifically, forcible transfer (or forced displacement)⁷⁰ as a war crime involves:

- The deportation or transfer of one or more persons to another State or another location.
- Such persons should be classified as protected under the Geneva Conventions (see discussion above).
- The perpetrator was aware of the factual circumstances that established such protected status.

In terms of general elements, to be considered a war crime, the transfer and/or deportation must:

- Take place in the context of and was associated with an international armed conflict.
- The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Such acts need to be part of a plan or policy or as part of the large-scale commission of such crimes. As outlined earlier, there are reports of credible evidence challenging the humanitarian character of alleged evacuations, whether through the non-temporary character of prolonged stays at ‘recreation camps’ or through the international displacement of children for the purpose of illegal adoptions. Also relevant, the organisation and scale behind the transfer and/or deportation of Ukraine children, as outlined earlier.

Crime against humanity of forcible transfer and deportation

In terms of specific elements, deportation or transfer of population as a crime against humanity involves:⁷¹

- The impugned acts constitute the deportation or forcible transfer of civilians, without justification under international law, by expulsion or other coercive acts.
- The affected persons must have been lawfully present in the area from which they were transferred/deported.
- The perpetrators were aware of the factual circumstances of this lawful presence.

In terms of contextual elements,

- The acts took place in the context of a widespread or systematic attack against civilians;
- The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.⁷²

⁶⁷Ukraine has recognised the jurisdiction of the ICC and the applicability of the Rome Statute, Embassy of Ukraine, No. 6219/35-673-384, Registrar, International Criminal Court, The Hague, 9 April 2014. The second declaration of acceptance of the ICC’s jurisdiction states that it has been “made from an indefinite duration”, Minister for Foreign Affairs of Ukraine, “Second declaration on the recognition of the jurisdiction of the ICC” (8 September 2015). Its domestic law also defines war crimes, see for instance Art. 348 of the Criminal Code.

⁶⁸Art. 8 (2)(a)(vii) of the Rome Statute of the ICC. Regional Center for Human Rights. Additional Submission to the State ‘Combined sixth and seventh periodic report of the Russian Federation (2011 - 2019)’ (CRC/C/RUS/6-7, submitted under Article 44 of the Convention on the Rights of the Child), paras. 30, 35.

⁶⁹Art. 438 of the Criminal Code refers to a series of acts amounting to war crimes with a broader reference to “other violations of the laws and customs of war provided for by international treaties.”

⁷⁰International Criminal Tribunal for the former Yugoslavia (ICTY) Trial Chamber Judgement of 15 March 2000, Prosecutor v. Krnojelac, Case No. IT-97-25-T, para. 474; International Criminal Tribunal for the former Yugoslavia, Trial Chamber Judgement of 2 August 2001, Prosecutor v. Krstic, Case No. IT-98-3, para. 521; International Criminal Tribunal for the former Yugoslavia, Trial Chamber Judgement of 1 September 2004, Prosecutor v. Brđanin, Case No. IT-99-36, para. 540.

⁷¹ICC, Elements of Crimes, ISBN No. 92-9227-232-2, 2011.

⁷²ICC, Elements of Crimes, ISBN No. 92-9227-232-2, 2011.

Specific elements of the crime against humanity of forcible transfer and/or deportation

As outlined earlier, circumstances underpinning the situation in Ukraine are indicative that a majority of reported cases of displacement were not voluntary. Affected children have been displaced against the will of families/guardians, such as through filtration camps; whilst children in alternative care were transferred and/or deported contrary to clear obligations under IHL. Relatedly, the ICC has considered that the forcible nature of transfers can be inferred from duress, threats, coercion and other forms of power abuse and go as far as evaluation the circumstances and how they may have influenced individuals to consent to such transfers.⁷³ The ability of parents or guardians and children to provide voluntary and informed consent is also compromised given the circumstances of the full-scale invasion, on-going hostilities, and circulation of disinformation, rendering local populations extremely vulnerable. Together, the circumstances point to a credible finding that for separated children, voluntary and informed consent from parents/guardians was not forthcoming, especially in the case of children attending “recreational camps” for a temporary period or those separated at filtration camps.

Contextual elements of the crime against humanity

In addition to meeting specific elements, contextual elements apply to crimes against humanity, which are considered in the remaining sections below.

- **Lawful presence and perpetrators awareness:** As presented above, targeted children were lawfully present in TOTs and other regions of Kherson, Mariupol, or Zaporizhzhia as Ukrainian nationals. The legal reforms conducted by the Russian Federation, including the illegal deprivation of Ukrainian citizenship by Russian officials and the granting of Russian citizenship (forced passportisation), provide the basis for a strong inference of knowledge that these children were Ukrainian nationals.
- **Part of a widespread attack against a civilian population:** Jurisprudence under international criminal law supports a flexible interpretation of the criteria of scale and gravity of crimes against humanity.⁷⁴ The ICC interpreted the ‘widespread’ characteristic as involving an attack which “should be “massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims. It entails an attack carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians. The underlying offences must also not be isolated”.⁷⁵ Whilst the precise number of cases are not yet known, the scale of violations reported to date has led the OSCE Moscow Mission of experts to find the widespread criterion as met.⁷⁶
- **Perpetrators knowledge:** To establish the criteria of knowledge by alleged perpetrators, a *dolus generalis* is required whereby the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. Given the modalities in which the impugned violations were conducted, as well as the justifications provided to-date, such knowledge can not only be reasonably inferred but easily established. Finally, a single act can constitute a crime against humanity if linked with the broader context of widespread/systematic attack against civilians. In sum, there is no need for a “complete or intricate knowledge of the attack”.⁷⁷

Conclusions

Together, given the applicable contextual and specific elements of war crimes and crimes against humanity, the forcible transfer and/or deportation of affected Ukrainian children to TOTs, Russia, and Belarus have been considered to amount to war crimes as well as crimes against humanity (as charges are not mutually exclusive).⁷⁸ That said, to establish criminal liability, individual criminal responsibility must be established, which is beyond the scope of this paper.

⁷³OSCE Report p.66, citing ICC, Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, Judgement, 8 July 2019, para. 1056. See also ICTY, Prosecutor v. Milomir Stakić, IT-97-24-A, Judgement, Appeals Chamber, 22 March 2006, para. 279.

⁷⁴ICTY, Prosecutor v. Tihomir Blaškić, IT-95-14, Judgment, 29 July 2004.

⁷⁵ICC, Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Pre-Trial Chamber II, 15 June 2009, para. 83.

⁷⁶OSCE Report, p.67.⁷⁷See for instance UN-Commission inquiry 2024.T

⁷⁷ICTY, Prosecutor v. Kupreškić et al., IT-95-16, Judgment, 14 January 2000, para. 556.

⁷⁸See for instance UN Commission inquiry 2024.

Considering the Argument of Genocide

The question of whether the forcible transfer and/or deportation of Ukrainian children in relation to the crime of genocide deserves a separate, full analysis that includes broader circumstances of the war. This section highlights initial considerations and should not be considered a full analysis thereof.

The Genocide Convention treats atrocities committed against protected groups as crimes, whether committed in times of peace or time of war.⁷⁹ The Convention also prescribes that individuals bearing responsibility for such crimes be held accountable regardless of whether they are state officials or private individuals (art. 4), granting adjudicatory jurisdiction to the territorial state or an international criminal tribunal (art. 6).

Considering international criminal law, Art. 6(e) of the Rome Statute lists among the acts constituting genocide the specific act of “forcibly transferring children of the group to another group”.⁸⁰ Additionally, Art. 6 of the Rome Statute requires *a dolus specialis* or specific intent,⁸¹ which demands that the perpetrator clearly seeks to produce the act charged.⁸² Specifically, this element requires evidence of an intention to destroy, in whole or in part, a particular national, ethnical, racial or religious group. Moreover, the conduct should take place “in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁸³ Finally, establishing genocidal intent through only one of the genocidal acts listed under Article 6, has been considered an “onerous subjective requirement”.⁸⁴

Taken together, this paper suggests it would be prudent to consider the forcible transfer of children as an act of genocide within a broader range of acts committed in the context of the war in Ukraine. Within this broader analysis, consideration can be made as to whether the forcible transfer and deportation of Ukrainian children is accompanied by potential indicia of an intent to destroy the Ukrainian national group, or part of it, for instance through changes in identity, the granting of Russian citizenship, the placement in re-education camps in Russian-controlled territories with a strong patriotic dimension, forced russification, etc.⁸⁵

⁷⁹ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, United Nations, Treaty Series, vol. 78, p. 277, 9 December 1948, art. 1.

⁸⁰ Consider also, ICTY, Prosecutor v Momčilo Krajišnik, IT-00-39-T, Judgment, 27 September 2006, para 854 (“the group (or part of it) can be destroyed in other ways, such as by transferring children out of the group (or the part) or by severing the bonds among its members”); ICTY, Prosecutor v. Tolimir, IT-05-88/2-A, Appeals Chamber Judgment, 6 April 2015, para. 209 (Finding forcible transfers of population can constitute a means to commit genocide where it contributes to life conditions calculated to lead to the physical destruction of a protected group, including a national group).

⁸¹ The complexity of this specific crime has been recognised by the International Criminal Tribunal for Rwanda (ICTR), Prosecutor v. Jean-Paul Akayesu, ICTR-96-04, Trial Judgment, 2 September 1998, para. 523. See also Stahn C., ‘A critical introduction to international criminal law’ (Cambridge, United Kingdom; New York, NY, USA: Cambridge University Press, 2019), p.37.

⁸² ICTR, Prosecutor v. Jean-Paul Akayesu, para. 498.

⁸³ ICC, “Elements of Crimes”, Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3 – 10 September 2002

⁸⁴ Stahn C. ‘A critical introduction to International Criminal Law, p.37. Consider also the ruling by the International Court of Justice in Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia) [2015] ICJ Rep: “136. The Court notes that the travaux préparatoires of the Convention show that the drafters originally envisaged two types of genocide, physical or biological genocide, and cultural genocide, but that this latter concept was eventually dropped in this context (see Report of the Ad Hoc Committee on Genocide, 5 April to 10 May 1948, United Nations, Proceedings of the Economic and Social Council, Seventh Session, Supplement No. 6, UN doc. E/794; and United Nations, Official Documents of the General Assembly, Part I, Third Session, Sixth Committee, Minutes of the Eighty-Third Meeting, UN doc. A/C.6/SR.83, pp. 193-207). **It was accordingly decided to limit the scope of the Convention to the physical or biological destruction of the group** (Report of the ILC on the Work of Its Forty-Eighth Session, Yearbook of the International Law Commission, 1996, Vol. II, Part Two, pp. 45-46, para. 12, quoted by the Court in its 2007 Judgment, I.C.J. Reports 2007 (I), p. 186, para. 344)” ... **As regards the forcible transfer of children of the group to another group within the meaning of Article II (e), this can also entail the intent to destroy the group physically, in whole or in part, since it can have consequences for the group’s capacity to renew itself, and hence to ensure its long-term survival.** para. 136 (Emphasis added).

⁸⁵ Ibid, p.115. See for instance ZMINA Report 2023, p.23.

Violations under International Human Rights Law

International human rights law (IHRL) continues to protect individuals during armed conflict, and states' obligations to respect and ensure that law persist even when they are engaged in military hostilities.⁸⁶ In occupied territories, Russia is bound to comply with its treaty based human rights law obligations that extend beyond its sovereign territories where it possesses effective control of the territory or effective control over persons in that territory (including related obligations to respect applicable human rights standards prescribed under the IHL's laws of occupation).⁸⁷

Applicability of the UN Convention on the Rights of the Child⁸⁸

The obligations prescribed under the 1989 UN Convention on the Rights of the Child (UNCRC) apply to the Russian Federation, and Russian allies such as Belarus, in notable ways. Outlined below are obligations that the Russian Federation assumed under the CRC, as well as considerations that complement and inform provisions relating to the protection of children under IHL. Moreover, the CRC provides additional means to realising the right to a remedy for violations, including through the Committee on the Rights of the Child, the treaty-monitoring system designed to oversee compliance by CRC states parties.⁸⁹

Provisions of the CRC that are most relevant to the conduct under review include:

- **Right to identity:** Credible reports have alleged that the Russian Federation repeatedly failed to uphold the right of forcibly transferred and/or deported children to their identity under Art. 8.⁹⁰ The OSCE Moscow Mechanism Mission of Experts notes allegations of forced russification of affected children placed in 'recreational camps' or those separated from their families as well as instances of compulsory Russian patriotic education.⁹¹ The Presidential Decree No. 11 of 4 January 2024 further facilitates the unreasonable interference with the right to their Ukrainian nationality by simplifying the procedure to grant them Russian citizenship, especially for orphan children or children in alternative care.⁹² The Committee on the Rights of the Child further alleges instances of affected Ukrainian children being deprived of their nationality.⁹³ Relatedly, Section 19 of the Russian Family Code enables changes to children's identity, such as change of name, date and place of birth or the reedition of birth certificates. Of note, Russian law requires children to be Russian nationals, which may encourage forcibly depriving deported and illegally transferred children of their Ukrainian nationality for Russian citizenship under these broader practices,⁹⁴ which the OSCE monitoring mission has found to violate Art. 21.⁹⁵
- **Right to family:** The right to family is protected through Art. 9, which restricts the practice of family separation to instances where it is in the best interest of the child. Art. 10 provides for a right to family reunification; whilst Art. 16 prohibits unlawful interference with their family life. The circumstances underpinning the forced transfer and deportation of Ukrainian children, as described above, seem to run counter to the best interest of the child. Moreover, Russian authorities have been reported to fail to return children following requests from parents,⁹⁶ demonstrating disregard for the obligation to combat the illicit transfer and non-return of children abroad prescribed under Art. 11.
- **Illegal adoptions:** Art. 21 prohibits adoption without a prior evaluation pertaining to the child's family status (parents, relatives and legal guardians), and considers the use of transnational adoption only as a last resort. Moreover, when it comes to the issue of cross-border child protection and intercountry adoptions, the Hague Conventions set out a clear framework for the protection of the rights of children. Whilst the Russian Federation denies having facilitated the adoption of children of Ukrainian nationality,⁹⁷ a decree adopted in May 2022 simplified the adoption of orphans originating from TOTs.^{98 99}

⁸⁶ The principle of IHRL continuity has been recognised by numerous bodies. ICJ, Legality of the Threat or Use of Nuclear Weapons Case, Advisory Opinion, [1996] ICJ Rep 66, para. 25; ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, [2004] ICJ Rep 136, para. 106; ICJ, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, [2005], ICJ Rep 168, para. 216. For the ECtHR, see *Cyprus v. Turkey*, No. 25781/94, [2001]. For UN committees, see for instance the following documents: UN Human Rights Committee (UN HRC), 'General Comment 29: states of emergency (Article 4)', UN Doc. CCPR/C/21/Rev.1/Add.11 (24 July 2001) 1950th meeting, para. 3; UN Committee on Economic, Social and Cultural Rights (UN CESCR), 'Concluding observations: Israel', UN Doc. E/C.12/1/Add.69 (31 August 2001) 26th (extraordinary) session.

⁸⁷ Consider, Lubell N., 'Human rights obligations in military occupation' (2012) 94:885 ICRC 317, p.319.

⁸⁸ Detailed treatment of the following topics has not been included given that separate white papers will be dedicated to: i) the right to identity; and ii) the right to the best interests of the child.

⁸⁹ See UN Committee on the Rights of the Child (UN CRC), 'Concluding observations on the combined sixth and seventh periodic reports of the Russian Federation', UN Doc. CRC/C/RUS/CO/6-7 (1 March 2024) 2786th meeting, para. 46 (hereinafter 'UN CRC Concluding Observations').

⁹⁰ On January 27, 2023, the UN High Commissioner for Refugees, Filippo Grandi, emphasized that Russia is violating 'the fundamental principles of child protection' in wartime by giving Ukrainian children Russian passports and putting them up for adoption, Hunder M., 'U.N. refugee chief: Russia violating principles of child protection in Ukraine', Reuters (27 January 2023).

⁹¹ OSCE Report, p.55; Yale Report no.1, p.14.

⁹² UN CRC Concluding Observations, para. 45.

⁹³ Ibid.

⁹⁴ Such adoptions may lead to "obliterating" their Ukrainian identity, see Fronek, P., Rotabi-Casares, K. S. and Lypovetska, M., 'The taken children of Ukraine' (2024) 67:3 International Social Work 602.

⁹⁵ OSCE Report, p.63.

⁹⁶ OSCE Report, p.50.

⁹⁷ UN CRC Concluding Observations, para. 45.

⁹⁸ Kyiv Independent, 'UPROOTED Documentary'; OSCE Report, p.16 and 19.

⁹⁹ Consider Yale Report no. 1; OSCE Report.

Additional potential violations of the UNCRC

The totality of documented cases on the nature of forcible transfer and/or deportation and the treatment of Ukrainian children gives rise to additional potential violations under the UNCRC.¹⁰⁰ These may include:

- The right to thought, conscience and religion (Article 14)
- The right to information (Article 17)
- The right to education (Articles 28 and 29)
- The right to health (Article 24)
- The right to rest, leisure, play, recreation and participation in cultural life and arts (Article 31)
- The right to personal liberty (Article 37)

Additional IHRL obligations of note

In addition to the UNCRC, additional IHRL instruments and provisions may be considered, including but not limited to:

- Art. 12 of the International Covenant on Civil and Political Rights (ICCPR), forcible transfers and deportation as a violation of children's right to freedom of movement;¹⁰¹
- Art. 3 Protocol 4 of the European Convention on Human Rights, prohibition of expulsion of national and deprivation of the right to enter one's national territory.
- Protections for children: Art. 24, ICCPR; Art. 10(3), International Covenant on Economic, Social and Cultural Rights (ICESR).
- The prohibition of torture and other cruel and inhuman or degrading treatments (Art 37 UNCRC, Art 7 ICCPR, Art 3 ECHR, UN Convention Against Torture, norms of jus cogens).

United Nations Children and Armed Conflict Agenda

The first UN Security Council Resolution on the issue of children in armed conflict, Resolution 1612 of 1999, voted by Russia as veto-wielding permanent member of the UN Security Council, explicitly lists among the Six Grave Violations of Children's Rights During Armed Conflict the 'abduction and forced displacement of children'.¹⁰² These Six Grave Violations are reported under the UN Monitoring and Reporting Mechanism (MRM), which reports annually to the UN Security Council. The MRM includes a listing mechanism, which lists armed forces and groups responsible for a specific list of grave violations. Abductions are characterised as the "removal, seizure, capture, apprehension, taking or enforced disappearance of a child either temporarily or permanently, including for the purpose of any form of exploitation of the child" whilst being perpetrated by parties to the conflict.¹⁰³

In the 2022 report,¹⁰⁴ the Russian Federation was listed as a violator of children's rights in armed conflicts. This is the first time a permanent member of the UN Security Council has been included, with particular attention to violations involving killings and maiming, as well as attacks on schools and hospitals. For 2023, the violations described in the previous report were expanded to include deliberate attacks on infrastructure, forced displacement and deportation, as well as forced change of citizenship and transferring children to another national group. The 2023 Annual Report of the UN Special Representative of the Secretary General on Children and armed conflict confirms having verified the transfer or deportation of 33 children within the temporarily controlled or occupied areas of Ukraine or the Russian Federation.¹⁰⁵ The Russian Federation ignores the UN's demand to implement a national preventive plan to minimize violations against children in armed conflict. Additionally, the demand for humanitarian access to TOTs and places where children are held is also ignored.

¹⁰⁰For instance, see OSCE Report, p.50.

¹⁰¹Forced displacement in IAC p.21, citing UNCHR (Sub-Commission), Res. 1996/9 (1996), UN Doc. E/CN.4/SUB.2/RES/1996/9 (23 August 1996).

¹⁰²Key CAAC-related UN Security Council Resolutions include 1261 (1999), 1379 (2001), 1612 (2005), 2225 (2015).

¹⁰³SRSG CAAC, 'Guidance note on Abduction' (2022) SRSG CAAC, pp. 14-15. Regional Center for Human Rights. Evaluating the best interests of deported orphans and children deprived of parental care in anticipation of their potential return. pp.9-11

¹⁰⁴Children and armed conflict - Report of the Secretary-General (A/77/895-S/2023/363), p.48

¹⁰⁵UNSC, 'Annual Report of the Secretary General on Children and armed conflict', UN Doc. S/2024/384 (3 June 2024) para. 327 and 326 (hereinafter "2023 Annual CAAC Report").

III. CONCLUSION AND RECOMMENDATIONS

Within the context of Russia's full-scale invasion of Ukraine, this white paper highlights credible evidence of the commission of an array of violations of international human rights law and international humanitarian law, as well as international crimes, in relation to the removal of affected children from Ukraine by the Russian Federation, TOTs, or other countries allied with the Russian Federation. The recommendations proposed below seek to respond to these violations and prevent any further commission thereof.

The Russian Government

Identify and return

Ensure the expeditious return of the abducted, forcibly transferred and/or evacuated children in strict compliance with international law and refrain from adopting measures that would have a contrary effect:

1. Share information from public registries and/or related records of all unlawfully transferred or deported Ukrainian children.
2. Cease all measures to change the personal status separated, unaccompanied and orphaned children, including changes to nationality, names and adoptions.
3. Take all measures necessary to avoid a non-justified prolonged stay and preclude unfounded administrative and logistical obstacles to the return of children who have been forcibly transferred and/or deported.
4. Cooperate with international institutions and organizations in order to establish mechanisms operated through neutral parties to systematically return separated, unaccompanied, and orphaned Ukrainian children.
5. Facilitate in every possible manner the reunification and repatriation of separated children with their families, including access to, and cooperation with child protection and humanitarian organisations working on the retracing and reunification of separated children.
6. Release and return to Ukraine all Ukrainian children who have been forcibly transferred and/or deported to or detained in the Russian Federation, Belarus or transferred to TOTs, including those held in camps, placed in foster families or adopted by Russian families in accordance with the obligations under IHL and IHRL.

Protect

7. Respect the temporary nature of the evacuations allowed in exceptional circumstances under international humanitarian law.
8. Recognise and respect the non-derogatory prohibition on changes relating to family and personal status including nationality.
9. Cease deportations of children in alternative care in respect of the obligation that priority be accorded for local care institutions to take charge of orphaned or separated children; and where this is not possible, children should be entrusted to individuals who share the same nationality, language and religion (Art. 50 GC IV).
10. For children in occupied territories, respect their continued right to education from persons of a similar cultural tradition. (Art. 24 GC IV).
11. Coordinate with neutral parties on designating a third party through which the Russian Federation could return children legally evacuated for humanitarian reasons.

Prevent

Take measures to cease and prevent the unlawful deportation and transfer of separated, unaccompanied and orphaned Ukrainian children, including:

12. Issue unequivocal directives and apply the principle of command responsibility to all branches of armed forces and/or armed groups allied with the Russian Federation to cease and take all measures necessary to prevent the commission of abductions, forcible transfer and/or deportation of children and any related serious violations and corresponding crimes in the war.
13. Continue to constructively engage with designated international partners, including the UN SRSG on children and work to create and implement a national action plan in practice.

Government of Ukraine

A detailed set of recommendations for the Government of Ukraine is being prepared under a separate white paper on the response to the forcible transfer and/or deportation of abducted children and their reintegration of. For this reason, this paper focuses recommendations on the Russian Federation and the international community.

International Community

Support efforts by the Government of Ukraine in the following:

Respect for international law

1. Demand the Russian Federation and its allies to strictly comply with their obligations under international law outlined above, including and especially the temporary character of any forcible transfer of children such as in cases of emergency evacuation and the need to respect voluntary and informed consent by parents, guardians and authorised authorities.
2. Secure guarantees of non-recurrence of practices of unlawful transfer and deportation and accompanied IHL and IHRL violations from Russian Federation's authorities and its allies.

Access

3. Negotiate with the Russian Federation access to any and all forms of available data on forcibly transferred and/or deported children, including existing registries and records for name changes, granting of Russian citizenship, adoptions and placement in foster or alternative care.
4. Negotiate with the Russian Federation and its allies to provide access for international missions to temporary placement centres throughout Russia and other places where Ukrainian children are located following their transfer to Russia.
5. Negotiate with the Russian Federation and its allies to cooperate with the European Network of Ombudsmen and the European Network of Ombudspersons for Children on the possibility of visiting the reception facilities throughout Russia, with the view to obtain information on the facts of forced transfers and/or deportations, including the number of children and conditions of their stay in Russia.

Return

6. Support national efforts at retracing, returning and reintegrating Ukrainian children who have been forcibly transferred and/or deported.
7. Support communication and outreach efforts to individuals living in TOTs to report missing children and be appraised of available means of support, including available means through state and CSOs to trace and return children, as well as to counter disinformation in this respect.
8. Support Ukraine in ensuring the effective application of the Temporary Protection Directive by EU member states and other temporary protection measures to all Ukrainians who are seeking entry at EU borders from Russia, including and especially children with lost, damaged, or destroyed travel documents and those traveling with copies of documents or electronic identity documents.
9. In accordance with the Reykjavík declaration, taking note of the Ukrainian authorities' expectations that children who have been displaced or who have sought refuge in other Council of Europe member States, including those from institutions, will be repatriated to Ukraine when it is safe to do so, support Ukraine to monitor, report on, and assist, as appropriate, Ukrainian citizens, including children, who wish to return to the territory of Ukraine to do so, and Ukrainian citizens who wish to go to a third country to seek asylum/refugee status/family reunification without passing through Ukraine.

Prevent

10. Strengthen Ukrainian emergency evacuation policies and practice to mitigate risks of further forcible transfer and/or deportation in instances of territorial gains by the Russian Federation and allied forces, including early warning mechanisms.
11. Provide technical and financial support to official and non-governmental efforts to monitor and report on grave violations against children in Ukraine, including negotiating with the Russian Federation and allied authorities to ensure access to occupied territories for the same.

12. Explore and apply existing international and regional mechanisms of judicial (targeting both state and individual responsibility) and non-judicial forms of accountability (such as economic sanctions, asset freezing, travel bans and related measures) available to the international community.
 - a. This includes engagement with existing human rights bodies, such as the Committee on the Rights of the Child and any referrals to the UN General Assembly.
 - b. This includes engagement with member states to consider the nature and scope by which the Russian Federation and its allies appear on the listing process overseen by the UN SRSG CAAC, including through engagement by the UN Security Council CAAC Working Group.
13. Underscore in discussions with other member states of the United Nations the applicability of such measures where possible under international law to actors who may be supporting the commission of such violations.

Reintegrate

14. Provide long-term technical and financial support for sustainable, timely, gender- and age-sensitive, survivor-centred, and inclusive programmes, including reintegration for child victims of grave violations, and to address the specific needs of children with disabilities, as requested by the UN SRSG on Children and Armed Conflict.
15. Support coordination efforts between state and non-governmental actors in the retracing, reunification and rehabilitation of children who have been forcibly transferred and/or deported in a survivor-centred approach that prioritises the best interests of the child.
16. Engage with Ukrainian stakeholders on the nature and scope of measures to realise the right to a remedy for victims of the forcible transfer and/or deportation of Ukrainian children, including reparations.

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