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ANALYTICAL REPORT

COALITION

Mechanisms (ways) for returning Ukrainians deported to the territory of the Russian Federation



CONTENT

INTRODUCTION	3
LIST OF ABBREVIATIONS	5
SUMMARY	6
RECOMMENDATIONS	9
SECTION 1. Overview of the situation with the deportation of the civilian population from the territory of Ukraine to the territory of RF	11
1.1. Statistics and accommodation of Ukrainian citizens deported to the territory of RF.	11
1.2. Legislation of RF on the legal status of Ukrainian citizens in the territory of RF.	14
1.3. Legal status of Ukrainian children, including unaccompanied children deported to the territory of RF (legal forms of placement of children in families, support for foster families).	17
SECTION 2. Mechanisms for returning adult Ukrainian citizens deported to the territory of RF	19
2.1. Returning Ukrainian citizens deported to RF, including through the territory of third countries.	19
2.2. Issuing identity card for returning to Ukraine for people deported to the territory of RF.	22
2.3. Providing state support to people returning to the territory of Ukraine.	23
SECTION 3. Mechanism for returning children deported to the territory of RF to the territory of Ukraine:	26
3.1. Mechanism for returning children forcibly transferred to the occupied territories of Ukraine or illegally deported to RF.	26
3.2. Categories of children forcibly transferred to the occupied territories of Ukraine or illegally deported to RF and who require return.	28
3.3. Role of RF in the reunification of children with their families and their return to the Motherland.	29
3.4. Existing ad hoc mechanism for returning children: advantages and obstacles.	31
3.5. International standards for repatriation, rehabilitation, and reintegration of children, victims of armed conflict.	34

INTRODUCTION

In 2022, the world witnessed the unprovoked armed aggression of the Russian Federation against Ukraine, resulting inter alia in the forcible transfer of the civilian population of Ukraine to the temporarily occupied territories of Ukraine and the deportation to the territory of the Russian Federation (RF) and the Republic of Belarus (RB). It is difficult to estimate the number of people subjected to forcible transfer or deportation, but there have been thousands of them – adults and children – who were forcibly taken by the Russian military outside the populated settlements that were in the war zone or were occupied by RF.

Deportation or forcible transfer of population means forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present without grounds permitted under international law¹. Moreover, coercion in this case is not restricted to physical force, but may also include threat of force, persecution, detention, psychological oppression, abuse of power and the deliberate creation of an environment of danger by a party to an armed conflict.²

The prohibition of deportation and forcible transfer of the population from occupied territory is provided for in Article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and amounts to a serious violation of the Convention. These actions can be classified as war crime³ and/or crime against humanity⁴ under the Rome Statute of the International Criminal Court. Moreover, coercion in this case is not restricted to physical force, but may also include threat of force, persecution, detention, psychological oppression, abuse of power and the deliberate creation of an environment of danger by a party to an armed conflict. On March 17, 2023, Pre-Trial Chamber II of the International Criminal Court issued arrest warrants for Vladimir Putin and Maria Lvova-Belova over war crimes in the form of unlawful deportation⁵ of the population (children) and unlawful transfer of the population (children) from the occupied territories of Ukraine to RF (in accordance with Articles 8 (2) (a) (vii) and 8 (2) (b) (viii) of the Rome Statute⁶.

1 Rome Statute of the International Criminal Court, Article 7 (2) (d)

2 Krstić Trial Judgement 02 August 2001. URL: <https://www.icty.org/x/cases/krstic/tjug/en/krstj010802e.pdf>

3 Rome Statute of the International Criminal Court, Article 8 (2) (a) (vii)

4 Rome Statute of the International Criminal Court, Article 7 (1) (d)

5 "unlawful deportation" term is used to define the war crime of deportation, according to the wording of Article 8 (2) (a) (vii) of the Rome Statute; "deportation" is further used in the text in the sense of violation of Article 49 of Geneva Convention relative to the Protection of Civilian Persons in Time of War and for the general designation of deportation of the population, which can be classified, including, as crime against humanity.

6 Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova: <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>

Since the beginning of the large-scale armed aggression, the topic of deportation of Ukrainian citizens to the territory of RB and RF has become the subject of detailed study by national and international organizations and institutions⁷.

In addition, on March 30, 2023, the delegations of 45 participating States of the Organization for Security and Co-operation in Europe (OSCE), after consultations with Ukraine, invoked the Moscow Mechanism to investigate the deportation of Ukrainian children by the Russian authorities.⁸

Since the beginning of the large-scale armed aggression against Ukraine, Ukraine 5AM Coalition has been documenting the facts of international crimes committed by the forces of the aggressor country, including the deportation of Ukrainian citizens to the territory of RF. In the report presented by the Coalition in January 2023, the deportation of Ukrainian citizens was analyzed in detail as a large-scale and systematic practice pursued by RF in the territories of Ukraine temporarily occupied by it, and the accompanying measures of the so-called “filtration”, and the maximum amount of information and facts regarding these events were summarized⁹.

The purpose of the present analytical report is to outline the main mechanisms (ways) for returning Ukrainians who were deported to the territory of RF. Although the civilian population was also deported from the territories of Ukraine occupied by the Russian army to the territory of RB, the authors of the analytical report focus on the return from the territory of RF in connection with the difficulties that may arise as Ukraine does not have foreign diplomatic missions in the territory of RF and there have been no possibilities to cross the Russia–Ukraine border long since.

Authors of the report:

Alyona Lunyova, advocacy director at Human Rights Centre ZMINA

Onysiia Syniuk, legal analyst at Human Rights Centre ZMINA

Kateryna Rashevskya, expert at Regional Center for Human Rights

7 Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine (1 April – 25 June 2022) / OSCE, July 14, 2022: <https://reliefweb.int/report/ukraine/report-violations-international-humanitarian-and-human-rights-law-war-crimes-and-crimes-against-humanity-committed-ukraine-1-april-25-june-2022>; Russia’s systematic program for the re-education & adoption of Ukraine’s children. / Yale University (2023): <https://reliefweb.int/report/ukraine/russias-systematic-program-re-education-adoption-ukraines-children>; 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. / Moscow Mechanism, OSCE (2023): https://www.osce.org/files/f/documents/7/7/542751.pdf?fbclid=IwAR2dYYe70GEr70E7A0JHjffIDu8NT1D4_2AwhXA8JgwC8qVZdqoRWXfUyR8; Report of the Independent International Commission of Inquiry on Ukraine to the Human Rights Council (A/HRC/52/62), 16 March 2023: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf

8 Joint Statement on the invocation of the Moscow Mechanism to address the deportation of children amidst human rights violations and humanitarian impacts of Russia’s war of aggression against Ukraine, delivered during the 1417th Meeting of the OSCE Permanent Council on 30 March 2023. URL: <https://osce.delegfrance.org/Joint-Statement-on-the-invocation-of-the-Moscow-Mechanism-to-address-the>

9 Deportation of Ukrainian citizens from the territory of active military operations or from the temporarily occupied territory of Ukraine to the territory of the Russian Federation and the Republic of Belarus. Analytical report by Ukraine 5AM Coalition: <http://surl.li/iwlal/>

LIST OF ABBREVIATIONS

AR Crimea – Autonomous Republic of Crimea

“DPR” – so-called Donetsk People’s Republic

FDM – foreign diplomatic mission

FL – Federal law

ICRC – International Committee of the Red Cross

“LPR” – so-called Luhansk People’s Republic

MFA – Ministry of Foreign Affairs

OSCE – Organization for Security and Co-operation in Europe

RB – Republic of Belarus

RF – Russian Federation

SMS – State Migration Service

TACs – temporary accommodation centers

TOT – temporarily occupied territory

UN – United Nations

UNHCR – Office of the United Nations High Commissioner for Refugees

SUMMARY

- 1.** One of the key problems is establishing the number of Ukrainian citizens deported to the territory of RF since the Ukrainian side does not have access to the occupied territories and the territory of RF, and the Russian side manipulates numbers and does not report the number and statistics of the accommodation of Ukrainian citizens in its territory.
- 2.** All Ukrainian citizens, both adults and children, deported to the territory of RF, were accommodated in TACs mainly in the border regions of RF. However, taking into account the official conditions for the distribution of Ukrainians across the territory of RF, in practice, Ukrainian citizens were sent to other places, including more remote regions of RF, as soon as possible. In 2023, there is a tendency to decline in the number of TACs in connection with the smaller flow of people who need to be accommodated in them.
- 3.** People deported from custodial settings in the temporarily occupied territory of Ukraine are in special conditions because their movement possibilities are limited. The Russian side also sends both children and adults from custodial settings to separate regions, carrying out this transfer entirely at its own discretion.
- 4.** Different procedures are provided for Ukrainian citizens who ended up in the territory of RF – from temporary stay, which does not require obtaining any documents but is limited in time, to the acquisition of refugee status or a simplified procedure for temporary residence. It is also important to take into account numerous amendments to Russian legislation expediting the acquisition of Russian citizenship for Ukrainian citizens, including minors.
- 5.** Ukrainian children deported to RF are also accommodated in TACs with subsequent placement in Russian facilities or families – both in foster families and in custody and guardianship with the possibility of further adoption. Amendments to Russian citizenship legislation allow this to be done on the same grounds and under the same procedure as for Russian children.
- 6.** The return of adult Ukrainian citizens deported to the territory of RF depends significantly on financial resources and whether a person has documents certifying identity and confirming belonging to the citizenship of Ukraine. In the absence of a passport of a citizen of Ukraine, an ID card for returning to Ukraine may be issued, which, in cases where a Ukrainian citizen was deported to the territory of RF, is issued by the State Migration Service in the territory of Ukraine.

- 7.** For a long time, the only route for Ukrainian citizens to return from the territory of RF was through third countries. The most popular routes were Estonia, Latvia, Finland, Georgia, Turkey, as well as Lithuania and Poland (through the territory of the Republic of Belarus). However, at the moment, the Kolotilovka–Pokrovka border crossing point on Ukraine–RF border operates in a limited regime exclusively for the entry of Ukrainian citizens into the territory of Ukraine.
- 8.** After returning, Ukrainian citizens may need state assistance and support. Currently, deported Ukrainian citizens, upon their return to the territory of Ukraine, can apply for assistance if they are registered as internally displaced persons if they do not return to the abandoned place of residence. However, there are separate categories of adult Ukrainian citizens who, after returning, cannot claim any kind of state support or assistance from international donors – these are persons who do not have a passport of a citizen of Ukraine for various reasons. Such people should have systemic support while a passport is being issued.
- 9.** The return of Ukrainian minors, deported and forcibly transferred to the territory under the effective control of RF, is the duty of Ukraine in accordance with its international obligations in the field of protection of children's rights. Such return should take place without delay, which indicates the urgency of intensifying efforts in this area, taking into account the availability of information on at least 19,499 identified minor victims of deportations and forcible transfers. Time limits on the development and implementation of mechanisms for the repatriation, rehabilitation, and reintegration of children are also due to the high level of risk of committing other rights violations against them, some of which reach the threshold of war crimes (forced conscription), crimes against humanity (ill-treatment), and genocide (forcible placement in Russian families).
- 10.** Since RF refuses to cooperate with Ukraine on the organized return of children, it is considered appropriate to involve third countries, competent international organizations and the international community as a whole in the development and implementation of a unified legal mechanism for repatriation. Resolutions by leading international organizations, which, however, do not yet include a specific requirement for repatriation, play an important role in political pressure on Russia to return minors. Independent multilateral monitoring of the return process should be carried out to prevent the aggressor state from “hiding” a part of the deported children.
- 11.** The main element of the future repatriation, rehabilitation, and reintegration mechanisms is the development of individual trajectories for each child. Assessment of compliance with the principle of the best interest of the child is mandatory in this process.
- 12.** It is important to facilitate the reunification of a child with his/her relatives and close environment. That is why, even if rehabilitation and reintegration can only be carried out abroad, professionals from the state of the minor's citizenship should be involved. The role of the state varies depending on whether a child belongs to a separate group of children under the

effective control of RF. At the same time, orphans and children deprived of parental care need Ukraine to implement the *parens patriae* principle. For children who have a legal representative and for the legal representatives themselves, a financial support program should be developed at the national level. Unaccompanied children should also have access to it on a priority basis.

13. In each case, repatriation, rehabilitation, and reintegration should not lead to re-traumatization of a child. Among other things, this concerns the regulation of media access to the coverage of sensitive process data. The state should not only encourage the development, adoption, and implementation of media publication standards, codes of conduct, and other precautionary measures but also monitor their proper implementation, including by independent journalists and persons with similar employment. Commitment to relevant standards may be a mandatory requirement for accreditation.

14. The development and implementation of repatriation, rehabilitation, and reintegration mechanisms require amendments to existing or the development of new legislation at the national level. To this end, the competent authorities of Ukraine should cooperate with foreign states, international organizations, and civil society with the involvement of associations that represent the interests of child victims and their legal representatives.

RECOMMENDATIONS

TO THE NATIONAL AUTHORITIES OF UKRAINE:

(a) at the international level:

- To continue negotiations to ensure the achievement of agreements with a third country under Article 8 of the Vienna Convention on Consular Relations, which will allow another country to protect the interests of Ukrainian citizens in the territory of RF
- To promote the departure of Ukrainian citizens from the territory of RF or RB to safe countries (EU countries, Georgia, etc.) through interaction with international partners
- To ask UNHCR, IOM, ICRC, OSCE to facilitate the return of Ukrainian citizens to the territory of Ukraine and document the facts of deportation, the number of persons subjected to such a process, the conditions of their stay in RF, etc.
- To work out a mechanism for returning adult Ukrainian citizens, who lived in custodial settings in the temporarily occupied territory of Ukraine and were deported to the territory of RF, from the territory of RF
- To continue negotiations with international partners regarding the creation of a mechanism for returning children, who were deported to the territory of RF or forcibly transferred to the temporarily occupied territory of Ukraine, in particular, to the territory of Ukraine by adopting a corresponding resolution at the level of the UN General Assembly.

(b) at the national level:

- To ensure high-quality and complete documentation of and effective investigation into crimes of deportation and forcible transfer of Ukrainian citizens to temporarily occupied territories
- To ensure effective cooperation, exchange of information with the International Criminal Court, in particular, information at the disposal of the National Information Bureau, in matters of investigation into the crime of forcible transfer and deportation, as well as genocide
- To introduce, with the assistance of international partners, systematic support for Ukrainian citizens who were deported to the territory of RF and are returning to Ukraine but do not have a passport of a citizen of Ukraine (while a passport is being issued)

- To ensure verification of lists of children deported to the territory of RF or forcibly transferred to the temporarily occupied territories of Ukraine and make efforts to establish the location of each child in the territory of RF
- To create a national system of rehabilitation and reintegration of children deported or forcibly transferred in connection with the armed aggression of RF against Ukraine, taking into account existing international standards and practices, in particular, regarding the assessment of compliance of measures within such a system with the principle of the best interests of the child.

INTERNATIONAL ORGANIZATIONS AND PARTNERS:

- To cooperate with the Government of Ukraine on the development of mechanisms to facilitate the departure of Ukrainian citizens from the territory of RF or RB to safe countries (EU countries, Georgia, others)
- UNHCR, IOM, ICRC, OSCE, within the limits of their mandates, should adjust access to Ukrainian citizens in the territory of RF and ensure documentation of the facts of deportation, the number of persons subjected to such a process, the conditions of their stay in RF, and also facilitate the return of Ukrainian citizens to the territory of Ukraine
- To promote the development and functioning of the mechanism for returning adult Ukrainian citizens, who lived in custodial settings in the temporarily occupied territory of Ukraine and were deported to the territory of RF, from the territory of RF
- To make efforts to create a mechanism for returning children, who were deported to the territory of RF or forcibly transferred to the temporarily occupied territory of Ukraine, to the territory of Ukraine, in particular by adopting a corresponding resolution at the level of the UN General Assembly which will provide for international cooperation in returning minors through the appointment of a third party.

SECTION 1.

OVERVIEW OF THE SITUATION WITH THE DEPORTATION OF THE CIVILIAN POPULATION FROM THE TERRITORY OF UKRAINE TO THE TERRITORY OF RF

To develop effective mechanisms for returning Ukrainian citizens, both adults and minors, who were deported to the territory of RF, it is important to determine the number of such citizens, the geography of their location, the conditions of their stay in the territory of RF, as well as the difficulties they face during the stay in the territory RF and in the context of obstacles to leaving the territory of this state.

1.1. STATISTICS AND ACCOMMODATION OF UKRAINIAN CITIZENS DEPORTED TO THE TERRITORY OF RF.

Although the large-scale practice of deportation of civilians from the territories of Ukraine occupied by the Russian army began immediately after February 24, 2022, it is currently impossible to establish real numbers of Ukrainian citizens, both adults and children, who were deported to the territory of RF due to several reasons. As a result of the armed aggression and occupation of part of the territory, the Ukrainian authorities temporarily do not control certain sections of the Russia–Ukraine state border, through which the Russian authorities have been deporting the civilian population. In addition, Ukraine does not have access to its citizens in the territory of RF as the consular institutions of Ukraine stopped to perform their functions in the territory of RF in March 2022¹⁰.

According to the Ukrainian authorities, about two million Ukrainians, mostly women, children, and the elderly¹¹, could be deported. As of June 20, 2023, the National Information Bureau of Ukraine recorded 19,499 cases of child deportation¹².

International organizations also do not have access to Ukrainian citizens in the territory of RF. The last update of information on the number of Ukrainians in the territory of RF was given in December 2022, and the recorded number of crossings

¹⁰ Announcement for Ukrainian citizens in RF / official website of the Ministry of Foreign Affairs of Ukraine, 12.03.2022: <https://mfa.gov.ua/news/povidomlennya-dlya-gromadyan-ukrayini-v-rf>

¹¹ President: Russia has deported about two million Ukrainians, including many children / Ukrinform, 18.12.2022: <https://www.ukrinform.ua/rubric-ato/3636642-prezident-rosia-deportuvala-blizko-dvoh-miljoniv-ukrainciv-sered-nih-bagato-ditej.html>

¹² Children of War portal: <https://childrenofwar.gov.ua>

of the Russian border from Ukraine was 2,852,395, while the number of refugees and asylum seekers recorded in the country was 100,835¹³.

Russia, contrary to its obligations, does not inform the responsible authorities of Ukraine about the number of Ukrainian citizens deported to the territory of RF. Previously, the Russian side reported that as of March 13, 2023, there were 5.4 million refugees from Ukraine¹⁴ in the territory of RF, and as of May 27, 2023, only “over 3.5 million”¹⁵ were reported. However, according to the analytical data of Russia’s Civic Assistance Committee, these figures also reflect only the number of border crossings¹⁶. According to the data of the Ministry of Internal Affairs of RF, which the researchers refer to, only five Ukrainians received refugee status and 97,591 received temporary asylum in the territory of Russia in 2022¹⁷.

Ukrainians deported to the territory of RF were accommodated in temporary accommodation centers (TACs) throughout the territory of Russia. In November 2022, the Russian side reported the presence of deported persons in 850 TACs in the territory of 59 regions of Russia and the readiness of another 1,600 TACs to receive Ukrainians¹⁸. As of March 2023, only one TAC in the town of Armiansk remained working in the temporarily occupied territory of Crimea, which sheltered 43 people at that time, according to the occupation authorities¹⁹. Other TACs in the territory of the occupied Crimea were closed due to the decline in the number of “refugees”. In April 2023, the largest TAC in Belgorod, designed to receive up to 840 people, was also closed because an average of 50-60 people passed through the center recently²⁰.

On March 12, 2022, the Resolution of the Government of the Russian Federation No. 349 also established the distribution of Ukrainian citizens who “forcibly left the territory of Ukraine” and “arrived in the territory of the Russian Federation” in an emergency mass order” among subjects of RF²¹, including not only regions bordering with Ukraine, but also remote regions of Russia.

13 Operational Data Portal, Ukraine Refugee situation / UNHCR: https://data2.unhcr.org/en/situations/ukraine#_ga=2.224219615.511807607.1684768820-1058219920.1684768820

14 Number of refugees arriving in RF from Ukraine exceeds 5.4 million people / TASS, 13.03.2023: <https://tass.ru/obschestvo/17248303>

15 Border Service reports that 3.5 million Ukrainian citizens admitted to Russia since SMO started / TASS, 27.05.2023: <https://tass.ru/obschestvo/17858829>

16 How many refugees from Ukraine are in Russia?/ Civic Assistance Committee, 10.03.2023: <https://refugee.ru/dokladyi/how-many-refugees/>

17 ibid.

18 Almost 4.8 million refugees arrive in Russia from Ukraine / TASS, 18.11.2022: <https://tass.ru/obschestvo/16365735>

19 Temporary accommodation center for refugees closed in Crimea as their flow drops / Novye Izvestiya, 06.03.2023: <https://newizv.ru/news/2023-03-06/v-krymu-zakryli-punkt-vremennogo-razmescheniya-dlya-bezhentsev-posle-snizheniya-ih-potoka-399824>

20 Belgorod to close largest temporary refugee accommodation center / BEL.RU, 05.04.2023: <https://bel.ru/news/2023-04-05/v-belgorode-zakroyut-samyi-krupnyy-punkt-vremennogo-razmescheniya-bezhentsev-2895123>

21 Resolution of the Government of the Russian Federation dated March 12, 2022 No. 349 "On the distribution of citizens of the Russian Federation, Ukraine, Donetsk People's Republic, Luhansk People's Republic and stateless persons permanently residing in the territories of Ukraine, Donetsk People's Republic, Luhansk People's Republic, who forcibly left the territory of Ukraine, Donetsk People's Republic, Luhansk People's Republic and arrived in the territory of the Russian Federation in an emergency mass order"/ 12.03.2022: <http://publication.pravo.gov.ru/Document/View/0001202203120005?index=4&rangeSize=1>

In April 2023, the governor of Voronezh region, whose quota according to the distribution of Ukrainian citizens in the territory of RF was the largest – 7,000 people – reported on the stay of more than 6,400 people in 100 TACs in the region²².

Russian volunteers also reported that the deportees at the railway station in Taganrog were sent to trains that were supposed to take them to TACs throughout Russia. Even the employees of the railway station did not know where the train would go until the last moment, and accordingly, people did not have a choice about where to go²³.

Children who were taken out of the territory of Ukraine by the representatives of RF were also first placed in TACs with the prospect of being sent to different regions of Russia²⁴, or were immediately sent to the regions, where they were picked up by “new families” at a railway station. In particular, in October 2022, the Moscow region governor reported the presence of more than 800 Ukrainian children in the region, 30 of whom had already been placed in Russian families²⁵. In June, Maria Lvova-Belova, Commissioner for Children’s Rights under the President of the Russian Federation, stated that Moscow, Yamalo-Nenets Autonomous District, Kaluga, Tula, Rostov, and Voronezh regions are also ready to receive Ukrainian children²⁶. Already in August, Maria-Lvova Belova stated that Russian families were ready to receive Ukrainian children in the following regions of Russia: Astrakhan, Volgograd, Leningrad, Murmansk, Nizhny Novgorod, Novosibirsk, Omsk, Penza, Samara, Tyumen and Chelyabinsk regions²⁷.

Separately, it is worth examining the issue of deportation of Ukrainian citizens, who lived in custodial settings in the temporarily occupied territories of Ukraine, to the territory of RF. Thus, in December 2022, the Russian NGO “Russia Behind Bars” reported that approximately 5,000 people from custodial settings were taken from the occupied territories of Ukraine since the beginning of the full-scale invasion, in particular, patients of a psycho-neurological residential care facility and prisoners from Chornukhyne and Olenivka penal facilities. The prisoners were taken to at least four regions of the Russian Federation – Volgograd, Vladimir region, Stavropol Krai, and Krasnodar Krai²⁸.

The Ministry of Justice of Ukraine stated that about 2,000 convicts²⁹ were taken out of facilities in the occupied territories. At the beginning of June 2023, information appeared that deported prisoners from penal facilities in the territory of RF were taken to the temporarily occupied territory of Crimea, to penal facility No. 126 (Kerch).

22 <https://novayagazeta.ru/articles/2023/06/05/zhivut-kak-na-kurorte>

23 <https://www.expertsouth.ru/news/pamyatka-dlya-bezhentsev-s-territorii-ldnr-i-ukrainy/>

24 For example, the Romashka children’s camp in Rostov region received 250 children from DPR / TASS, 23.02.2022: <https://tass.ru/obschestvo/13822423>; and Refugees from Mariupol were accommodated at the Solnechnaya hotel in Azov / BezFormata, 10.03.2022: <https://azov.bezformata.com/listnews/mariupolya-poselili-v-gostinitce-solnechnaya/103282871/>

25 <https://tass.ru/obschestvo/15990389>

26 <https://ria.ru/20220608/deti-1793939863.html>

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

28 Olga Romanova on why Russia takes Ukrainian prisoners out of occupied territories / Nastoyashcheye Vremia, 01.12.202: <https://www.currenttime.tv/a/32156850.html>

29 Olena Vysotska, Deputy Minister of Justice / Ukrinform, 03.03.2023: <https://www.ukrinform.ua/rubric-ato/3677438-olena-visocka-zastupnica-ministra-usticii.html>

1.2. LEGISLATION OF RF ON THE LEGAL STATUS OF UKRAINIAN CITIZENS IN THE TERRITORY OF RF.

For Ukrainians who have found themselves in the territory of RF, Russian legislation offers the following statuses of stay in RF:

1. **temporary stay** that does not require any documents; in this status, Ukrainians are allowed to stay in the territory of RF for 90 days, while for those who have permanently lived in the territory of the so-called “LPR/ DPR” – 180 days³⁰
2. **temporary asylum**, for which it is necessary to apply to the territorial body of the Ministry of Internal Affairs of Russia, it is granted for one year and may be extended. This status provides for the possibility of employment and study in RF. For Ukrainian citizens, Russian legislation provides for an exemption from the obligation to hand over a passport or other identity documents upon receipt of a certificate of temporary asylum³¹
3. **refugee status**, for which it is also necessary to apply to the territorial body of the Ministry of Internal Affairs of Russia. If the application for temporary asylum must be considered for three days, then the application for refugee status – three months, however, this status is granted for three years and also gives the right to work, study and receive healthcare and social assistance in the territory of RF³²
4. **temporary residence** as an intermediate stage on general terms before obtaining Russian citizenship, the permit for which is granted for three years and requires confirmation of knowledge of the Russian language and the provision of medical documents on the absence of diseases³³. After eight months of residence in the territory of RF, one can apply for a residence permit.

At the same time, at the end of 2022, only 65,000 people who arrived from Ukraine had the status of asylum seeker in RF³⁴. Such a small number of people who officially obtained this status may have several reasons – the reluctance of Ukrainians to officially register their stay in RF, their entry into RF only for transit to third countries, taking into account the impossibility of leaving the occupied territory directly to Ukraine-controlled territory, and the use of the simplified pro-

30 <https://www.expertsouth.ru/news/pamyatka-dlya-bezhentsev-s-territorii-ldnr-i-ukrainy/>

31 Article 12 of Federal Law of 19.02.1993 N 4528-1 (revised 14.07.2022) “On Refugees”: http://www.consultant.ru/document/cons_doc_LAW_4340/27f2b85f7fcc6d7e04c456a9db05fcdd608715cd/

32 Guide for refugees from LPR/DPR and Ukraine / Expert Yug, 01.04.2022: <https://www.expertsouth.ru/news/pamyatka-dlya-bezhentsev-s-territorii-ldnr-i-ukrainy/>

33 Article 6 of the Federal Law of 25.07.2002 N 115-FL (revised 29.12.2022) “On the Legal Status of Foreign Citizens in the Russian Federation” (amended and supplemented, entered into force on 11.01.2023): https://www.consultant.ru/document/cons_doc_LAW_37868/c9b9574537c49598dac3a13845550e8995a3f405/

34 Human rights defender: Russian Federation manipulates data on refugees from Ukraine / DW, 23.03.2023: <https://www.dw.com/ru/pravozasitnik-rf-manipuliruet-dannymi-o-bezencah-iz-ukrainy/a-65082470>

cedures for acquiring Russian citizenship by Ukrainian citizens provided for by the new Russian legislation.

Payments are provided for certain categories of persons from Ukraine who found themselves in the territory of RF³⁵. A one-time payment of RUB 10,000 is also provided for each person who arrives in Rostov region from Donbas³⁶. To receive payment, however, one needs to have an account in a Russian bank³⁷.

RF also offered the residents of Kherson city and the region a program of housing certificates – they have the right to receive a social payment for the purchase of housing based on an issued state certificate³⁸ or cash payment for the purchase of housing – RUB 100,000 per person³⁹. At the same time, payments can be delayed for several months, and sellers do not want to provide housing based on a state certificate⁴⁰.

Ukrainian citizens deported to the territory of RF also face many other difficulties.

One of them is the loss of documents, which makes it difficult to obtain any status in RF and is the biggest obstacle to leaving the territory of RF.

It is also becoming more difficult to find any job. Russian employers are reluctant to accept and often refuse to hire persons without Russian citizenship⁴¹.

To register at the employment center, it is also necessary to obtain official status in the RF – temporary asylum or refugee status.

Another factor regarding the status of Ukrainians in the territory of RF is **the legislation on the expedited conferral of Russian citizenship to Ukrainian citizens**. An expedited conferral of Russian citizenship to residents of the occupied areas of Donetsk and Luhansk regions was established in 2019 as a result of the adoption of the relevant Decree of the President of the Russian Federation⁴².

35 Decree of the President of the Russian Federation of August 27, 2022 No. 586 "On payments to citizens of Donetsk People's Republic, Luhansk People's Republic, Ukraine and stateless persons who were forced to leave the territory of Donetsk People's Republic, Luhansk People's Republic, Ukraine and arrived in the territory of the Russian Federation": <https://base.garant.ru/405203785/>

36 Putin instructed to pay RUB 10,000 to each refugee from Donbas / Vedomosti, 18.02.2022: <https://www.vedomosti.ru/society/news/2022/02/18/910054-putin-poruchil-viplatit-bezhentsam>

37 One-time allowances, payments to refugees and forced migrants in 2023 / Official site of the administration of Suetsky district of the Altai Krai: <https://admin-suet.ru/articles/zhaloby/edinovremennye-posobiya-vyplaty-bezhentsam-i-vynuzhdennym-pereselentsam-v-2022-godu.html>

38 Resolution of the Government of the Russian Federation of October 21, 2022 No.1876.

39 Financial and social assistance / Obyasnyem.rf: https://объясняем.рф/new_regions/material_support/

40 Hoping for a new home: refugees from Kherson have been living in a hotel since October and waiting for state payments / Moscow online, 30.01.2023: <https://msk1.ru/text/world/2023/01/30/72014858/>; "We have to live somehow, but how?" A refugee family from Kherson, which is raising eight sons, cannot achieve the required payments / Moscow online, 18.02.2023: <https://msk1.ru/text/world/2023/02/18/72066764/>

41 How the lives of refugees from Ukraine have changed in Russia / RBC, 25.03.2023: <https://www.rbc.ru/society/25/03/2023/641439d69a79476c60ed27b9>

42 Decree on determining for humanitarian purposes the categories of persons who have the right to apply for Russian citizenship in simplified manner (of 24.04.2019): <http://kremlin.ru/acts/news/60358>

After the full-scale invasion, this process only intensified. In particular, the Decree of 2019 was extended in May 2022 to orphans, children deprived of parental care, and disabled persons who are Ukrainian citizens and stay in the temporarily occupied territories of Ukraine⁴³. Later, the procedure for obtaining Russian citizenship by Ukrainian citizens who reached the age of 14 was also simplified⁴⁴.

The Federal Law, adopted in March 2023, provides that persons are considered to have no Ukrainian citizenship after applying to the relevant Russian authorities to renounce Ukrainian citizenship, and for children under the age of 14, such a refusal can be submitted by parents, adoptive parents, guardians⁴⁵.

Persons under the age of 18 can get Russian citizenship if the child's parents, adoptive parents, guardians have Russian citizenship and even if a child was placed in a Russian organization for orphans and children left without parental care⁴⁶.

In addition, it is worth considering amendments to Russian legislation that affect the status of Ukrainian citizens in the temporarily occupied territory and may become an additional basis for their deportation to the territory of RF. In particular, on May 29, 2023, amendments were made that provided for the possibility of "forced and controlled transfer of citizens from the territory where martial law was imposed to territories where martial law was not imposed"⁴⁷. At the same time, the Russian authorities imposed martial law only in the occupied territories of Ukraine, thereby providing for the only direction of deportation – to the territory of RF.

In general, human rights organizations point to the systematic state policy of RF aimed at imposing citizenship of the aggressor state on Ukrainian citizens. This course of RF towards creating conditions under which residents of the occupied territories are forced to obtain a Russian passport in order to survive, amendments to the Russian legislation that legitimize "forced displacement", and in fact – the deportation of the Ukrainian population, a de facto ban on the use of a Ukrainian passport after obtaining a Russian one is additional evidence of RF's desire to destroy the Ukrainian identity of Ukrainian citizens who stay in the occupied territories or were deported to the territory of RF and to destroy their ties with Ukraine.

43 Decree of the President of the Russian Federation of 30.05.2022 No. 330 "On amendments to decree of the President of the Russian Federation of April 24, 2019 No. 183 "On determining for humanitarian purposes the categories of persons who have the right to apply for Russian citizenship in simplified manner" and Decree of the President of the Russian Federation of April 29, 2019 No. 187 "On certain categories of foreign citizens and stateless persons who have the right to apply for Russian citizenship in simplified manner"

44 Decree of the President of the Russian Federation of 26.12.2022 No. 951 "On some issues of obtaining Russian citizenship"

45 Federal Law of 18.03.2023 No. 62-FL "On Peculiarities of Legal Status of Citizens of the Russian Federation with Ukrainian Citizenship": <http://publication.pravo.gov.ru/Document/View/0001202303180001>

46 Federal Law of April 28, 2023 No. 138-FL "On Citizenship of the Russian Federation": <http://publication.pravo.gov.ru/Document/View/0001202304280013>

47 Federal Constitutional Law of 29.05.2023 No. 2-FCL "On Amendments to Certain Federal Constitutional Laws": <http://publication.pravo.gov.ru/document/0001202305290002?index=2>

LEGAL STATUS OF UKRAINIAN CHILDREN, INCLUDING UNACCOMPANIED CHILDREN DEPORTED TO THE TERRITORY OF RF (LEGAL FORMS OF PLACEMENT OF CHILDREN IN FAMILIES, SUPPORT FOR FOSTER FAMILIES).

Children, who belong to particularly vulnerable groups of the population due to their age, especially in conditions of armed conflict, became almost the first victims of the crime of deportation, which RF has been committing since the very beginning of the armed aggression against Ukraine since 2014. This issue became particularly acute after the large-scale armed aggression against Ukraine in 2022...

For Ukrainian children who were deported to the territory of RF unaccompanied by their parents, the Russian authorities are looking for placement in Russian institutions for orphans and children deprived of parental care and in Russian families. In Russian families, children can be placed in custody and guardianship, in foster family, or adopted.

As early as April 2022, Maria Lvova-Belova, Commissioner for Children's Rights under the President of the Russian Federation, announced the creation of a single coordination headquarters between RF and the occupation authorities of the so-called "LPR" and "DPR" for the placement of Ukrainian children in families. At the same time, she stated that there were already 1,700 children from the occupied territories of Donetsk and Luhansk regions in the territory of RF and some of them already had guardians and adoptive parents. In the future, it was planned to resolve the issue of their citizenship and placement in families in Moscow region on a permanent basis⁴⁸.

From open sources, it is known about the facts of placing children both in custody⁴⁹ and in foster families⁵⁰.

After amendments to the legislation on citizenship were made, the general Russian adoption procedure now also extends to children from the temporarily occupied territories of Ukraine. Back in June 2022, Lvova-Belova stated that 120 Russian families applied to adopt orphans from Ukraine⁵¹. In March 2023, the so-called "Commissioner for Children's Rights of LPR" stated that families from various regions of Russia were waiting for court hearings to take children to their families⁵².

If, when placing a child in a family in custody or foster family, additional difficulties are not created for the identification and search for such a child, then in the case

48 https://senatinform.ru/news/ustroystvom_detey_sirot_iz_donbassa_v_priyemnye_semi_zaymetsya_spetsialnyy_shtab/

49 <https://riamo.ru/article/593402/okolo-350-detej-sirot-iz-donbassa-vzyali-pod-opeku-rossijskie-semi-po-vsej-strane-xl>

50 <https://360tv.ru/tekst/obschestvo/dvuh-bratev-iz-donetska-primet-podmoskovnaja-semja/>

51 <https://rg.ru/2022/06/01/120-rossijskih-semej-podali-zaiavki-na-usynovlenie-sirot-donbassa-i-ukrainy.html>

52 <https://russian.rt.com/russia/article/1123996-lnr-donbass-deti-ukraina-rossiya-interview-ombudsmen>

of adoption, a family can change information about a child, such as last name, first name and patronymic. As a result, it is extremely difficult to find such a child.

It is also worth noting that families who receive a child into a foster family or get custody of them also have a financial incentive – a one-time payment, the amount of which can increase if a child has a disability, is older than seven years, or a family receives more than one child so as not to separate siblings. Monthly payments are also provided.

Therefore, the Russian side ensures the systematic implementation of a unified policy regarding the deportation of Ukrainian children to the territory of RF, as well as their placement in a Russian group, for which a series of measures were taken. In particular, amendments were made to the Russian legislation on citizenship, which simplify its acquisition by minors who are in the occupied territory of Ukraine or in the territory of RF – both those minors who have parents and those who are deprived of parental care. Russia also established a system of placing unaccompanied minors in Russian child care facilities, as well as in foster families and in custody and guardianship in Russian families, without properly searching for the relatives of these minors.

The deportation of adult and minor Ukrainian citizens by the Russian side is part of a complex system aimed at changing their national status and identity. All measures, from forcible transfer and deportation to the distribution of Ukrainians among various subjects of RF, sending them to remote regions, providing them with minimal financial resources that make it impossible to leave the territory of RF, placing children in institutions and directly in Russian families, are aimed at severing their connection with Ukraine and making their return impossible.

SECTION 2.

MECHANISMS FOR RETURNING ADULT UKRAINIAN CITIZENS DEPORTED TO THE TERRITORY OF RF

The issue of the return of Ukrainian citizens deported to the territory of RF, including children, is one of the most acute problematic issues that arose as a result of the large-scale armed aggression against Ukraine. The lack of adequate statistics on the number of deported persons only worsens the situation: the lack of objective data on the scale of the crime of deportation becomes an obstacle in the way of finding systemic solutions for the return of Ukrainian citizens to the territory of Ukraine or ensuring their departure to the safe territory of third countries.

2.1. RETURNING UKRAINIAN CITIZENS DEPORTED TO RF, INCLUDING THROUGH THE TERRITORY OF THIRD COUNTRIES

For a long time, the only possible way for deported Ukrainian citizens to return to the territory of Ukraine was through third countries. Among the most common routes are Estonia, Latvia, Finland, Georgia, Turkey. Lithuania and Poland could be reached through the territory of Belarus.

If Ukrainian citizens deported to the territory of RF have documents certifying their identity and confirming belonging to the citizenship of Ukraine, leaving the territory of the RF to/through third countries is not complicated usually and depends, with certain exceptions, on the availability of financial resources and desire of a person to leave the territory of RF.

Since the beginning of the large-scale armed aggression, the requirements for traveling to European countries bordering RF or RB were significantly mitigated for Ukrainian citizens who were deported to the territory of RF, including those who were forced to leave their places of residence and travel through the territory of RF as a result of the danger and atmosphere of fear created by the Russian army. Thus, to enter Lithuania, Poland, Estonia, a passport of a citizen of Ukraine for traveling abroad, as well as a national passport of a citizen of Ukraine, as well as a birth certificate, could be presented.

For example, according to the Ministry of Foreign Affairs of Ukraine, as of October 2022, out of more than 108,000 Ukrainian citizens who entered the territory of Estonia, more than half (63,649 people) came from the territory of RF. At the same time, 53,825 Ukrainian citizens entered Georgia, all of them crossed the border from the territory of RF.

In several cases, after the beginning of the large-scale armed aggression against Ukraine, adult Ukrainian citizens from the temporarily occupied territories of Ukraine, who lost or were never issued a passport of a citizen of Ukraine as a result of the occupation, were admitted to the territory of European countries on the basis of a Ukrainian-standard birth certificate. Later, in these countries, such persons could apply for temporary protection despite the absence of a passport of a citizen of Ukraine.

The situation is much more complicated if Ukrainian citizens lose their documents which certify their identity and confirm their citizenship of Ukraine, or if they only have documents issued by the occupation authorities (for example, a child's birth certificate). In the absence of a passport of a citizen of Ukraine, a passport of a citizen of Ukraine for traveling abroad, leaving for the territory of third countries from the territory of RF is practically impossible since there are no foreign diplomatic missions of Ukraine operating in the territory of RF that can issue an identity card for returning to Ukraine in cases defined by law.

However, at some border crossing points on the state border of RF, Russian border guards allowed people to cross the border based on a certificate of a lost passport issued in the territory of RF. There is a practice when representatives of Russian law enforcement agencies draw up a conclusion on the identification of a foreign citizen or stateless person in accordance with Article 10.1 of Federal Law No. 115-FL of 25.07.2002 "On the Legal Status of Foreigners in the Russian Federation". This document makes it possible to move through the territory of Russia, and in some cases, it was on the basis of this document that Ukrainian citizens were able to leave the territory of RF⁵³. However, drawing up such a document, in addition to the fact that it could take months, was associated with an additional risk for Ukrainian citizens due to appeals to law enforcement agencies of RF.

A separate problematic issue is for Ukrainian citizens who received a passport of a citizen of RF to leave the territory of RF. The fact that the authorities of RF have been pursuing a policy of forced passportization of Ukrainian citizens since the occupation of the territory of the Republic of Crimea and the city of Sevastopol⁵⁴ is known for sure and does not raise any doubts. This policy, tested in Crimea, was extrapolated with certain changes to the occupied territory of Donetsk and Luhansk regions, and later in 2022-2023 – in particular, to the territory of Donetsk, Zaporizhzhia, Luhansk, Kharkiv, Kherson regions of Ukraine which were occupied after the beginning of the large-scale armed aggression against Ukraine⁵⁵.

One of the negative consequences of obtaining a Russian passport is possible restrictions on leaving the territory of RF. Thus, in October 2022, information began to appear that the Russian Federal Security Service (FSB) does not let Ukrainians

53 Deportation of Ukrainian citizens from the territory of active military operations or from the temporarily occupied territory of Ukraine to the territory of the Russian Federation and the Republic of Belarus. Analytical report by Ukraine SAM Coalition: https://zmina.ua/wp-content/uploads/sites/2/2023/01/deportation_eng.pdf

54 Report "Human rights in the context of imposition of citizenship in Crimea": https://www.irf.ua/content/files/report_crimea_human_rights.pdf

55 Annual report by the Ukrainian Parliament Commissioner for Human Rights on the observance and protection of human and citizen rights and freedoms in Ukraine in 2022: <https://ombudsman.gov.ua/report-2022/postrazhdali-vid-zbroinoi-ahresii-rosiiskoi-federatsii#rights>

with Russian passports go to Latvia and Estonia⁵⁶. However, notices of restrictions on the right to leave the territory of RF for those Ukrainian citizens who received a Russian passport are currently not of a systematic nature.

At the same time, the “Kolotilovka–Pokrovka” border crossing point operates on Ukraine–Russia border in a limited regime exclusively for the entry of Ukrainian citizens into the territory of Ukraine. The presence of this border crossing point allows Ukrainian citizens, who were deported to the territory of RF, and especially those who have certain difficulties with documents confirming their identity and belonging to Ukrainian citizenship, to return to the territory of Ukraine after a thorough check. However, the return through the “Kolotilovka –Pokrovka” border crossing point can be stopped at any time by the decision of the Russian side.

The question of the return of adult Ukrainian citizens, who were deported from custodial settings in the occupied territory of Ukraine, from the territory of RF remains without a proper answer. It is currently known that in the period October–November 2022, prisoners of at least four penal facilities (Hola Prystan penal facility No. 7, Daryivka penal facility No. 10, Kherson penal facility No. 61 and Pivnichna penal facility No. 90) were deported from the occupied territory of Kherson region. There is also information about the transfer of Snihurivka penal facility No. 5 in Mykolaiv region to Hola Prystan penal facility No. 7.⁵⁷ The probable number of deported prisoners, according to the Ministry of Justice of Ukraine, is about 2,000 people⁵⁸, and according to NGO “Protection of Prisoners of Ukraine” – more than 3,500 people who were accommodated in at least three regions of RF – Volgograd and Vladimir regions, Stavropol Krai and Krasnodar Krai⁵⁹.

Apart from penitentiary institutions, the occupation authorities deported other closed institutions which remained in the temporarily occupied territories of Ukraine. So, probably in November 2022, at least 208 patients of the Kayiry psycho-neurological residential care facility, which is located in the village of Kayiry, Hornostayivka district, Kherson region, Ukraine, were forcibly transferred to the temporarily occupied territory of Crimea and then deported to the territory of RF⁶⁰. Similarly, in November 2022, at least 114 patients of the Dnipriany psycho-neurological residential care facility (Dnipriany village, Kherson region) were deported to the territory of RF. Some of the patients were accommodated in closed facilities in Stavropol Territory.

Currently, there is no effective state mechanism for returning Ukrainian citizens who lived in custodial settings in the territory of Ukraine and were deported to the territory of RF. At the same time, there are cases of the return of convicted Ukrainian citizens after serving their sentence, but there is no information on the number of such persons.

56 <https://www.slovoidilo.ua/2022/10/06/novyna/suspilstvo/rf-ne-vypuskayut-ukrayincziv-rosijskymy-pasportamy-minreintehracziyi>

57 Kherson prisoners held captive by Russian occupiers / NGO "Protection of Prisoners of Ukraine", 29.12.2022: <https://ngoauu.org/xersonski-vyazni-v-poloni-u-rosijskix-okupantiv/>

58 Olena Vysotska, Deputy Minister of Justice / Ukrinform, 03.03.2023: <https://www.ukrinform.ua/rubric-ato/3677438-olena-visocka-zastupnica-ministra-usticii.html>

59 Kherson prisoners held captive by Russian occupiers / NGO "Protection of Prisoners of Ukraine", 29.12.2022: <https://ngoauu.org/xersonski-vyazni-v-poloni-u-rosijskix-okupantiv/>

60 <https://www.kavkazr.com/a/banaljno-vykrali-hto-izvestno-o-patsientah-ukrainskogo-internata-v-volgogradskoy-oblasti/32252317.html>

2.2. ISSUING IDENTITY CARD FOR RETURNING TO UKRAINE FOR PEOPLE DEPORTED TO THE TERRITORY OF RF

To ensure the return of Ukrainian citizens deported to the territory of RF, the Cabinet of Ministers of Ukraine launched in November 2022 a pilot project on the registration of identity cards for returning to Ukraine in the territory of Ukraine⁶¹.

In accordance with Article 27 of the Law of Ukraine “On the Unified State Demographic Register and Documents Confirming Citizenship of Ukraine, Certifying Identity of Person or Their Special Status”, an identity card for returning to Ukraine is a document that certifies the identity of a person, confirms the citizenship of Ukraine (except for the cases provided for in Part 2 of this Article), gives the right to enter Ukraine and is drawn up and issued to Ukrainian citizens if:

- 1.** The documents, which certify identity, confirm Ukrainian citizenship, and give such a person a right to leave Ukraine and enter Ukraine, are lost while staying outside of Ukraine
- 2.** The term of validity of such documents expired
- 3.** It is established that such a document is invalid for other reasons
- 4.** A Ukrainian citizen did not draw up documents, which certify identity, confirm Ukrainian citizenship, and give such a person a right to leave Ukraine and enter Ukraine.

Identity cards for returning to Ukraine can also be issued to stateless persons who have the right to permanent residence in Ukraine, foreigners and stateless persons recognized as refugees or persons in need of additional protection if they lost the documents certifying identity and giving the right to leave Ukraine and enter Ukraine issued in Ukraine while staying abroad.

In accordance with the Law, an identity card for returning to Ukraine is drawn up and issued by a foreign diplomatic mission of Ukraine. However, since there are no such institutions in the territory of RF after February 24, 2022, the Cabinet of Ministers of Ukraine launched a pilot procedure, according to which identity cards are drawn up by the State Migration Service of Ukraine in the territory of Ukraine. In particular, an identity card is issued upon an application to the territorial body of the SMS filed by one of the parents or another legal representative (for a person under the age of 18), and for an adult – upon an application filed by a family member (one of the parents, a spouse, an adult child, (full, half) brother / sister or an official appeal from the Ministry of Reintegration (if a deported person does not have relatives in the territory of Ukraine or they cannot apply to the SMS department due to their stay in the occupied territory). The decision to issue an identity card is made by the appropriate SMS department based on the results of the identification of a person, verification of the fact of belonging to the citizenship of Ukraine, or recognition as a stateless person in Ukraine, and verification of the

⁶¹ Resolution of the Cabinet of Ministers of Ukraine of October 21, 2022 No. 1201 "On the implementation of a pilot project on the issuance of identity card for returning to Ukraine in the territory of Ukraine"

information submitted by a legal representative, family member, or the Ministry of Reintegration.

An identity card is issued free of charge within five working days from the day of submission of the application-questionnaire of the established model. The validity period of an identity card issued is up to three months, according to the pilot procedure.

An identity card is issued to an applicant (parents, legal representatives in the case of a minor, or family members of adults). If an identity card was issued at the request of the Ministry of Reintegration, a card is sent to the Ministry of Reintegration for further transfer to the person for whom it was issued.

According to the SMS data, as of June 20, 2023, 28 identity cards for returning to Ukraine were issued under the pilot procedure.

The most difficult moment remains to send identity cards to the territory of the RF due to the lack of transport links and functioning border crossing points (which would ensure departure from the territory of Ukraine).

2.3. PROVIDING STATE SUPPORT TO PEOPLE RETURNING TO THE TERRITORY OF UKRAINE.

Despite the absence of Ukrainian consulates in the territory of RF, the state authorities of Ukraine take measures to facilitate the return of Ukrainian citizens who were deported to the territory of RF.

Thus, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine (Ministry of Reintegration) is the main body in the system of central executive bodies that ensures the formation and implementation of state policy in the field of protection of the rights of forcibly transferred (deported) persons. In accordance with the tasks assigned to it, the Ministry of Reintegration coordinates the implementation of measures to return Ukrainian citizens, in particular children, who were forcibly transferred (deported) to the temporarily occupied territory or to the territory of RF or other countries, to the territory of Ukraine where state authorities exercise their powers in full⁶².

To implement the function of assisting in the return of Ukrainian citizens deported to the territory of RF, two coordination headquarters were established by the decision of the Cabinet of Ministers of Ukraine:

- On June 17, 2022, the Coordination Headquarters for the protection of the rights of persons deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine was established⁶³

62 Item 2 of Paragraph 1, Subparagraph 9-1 of Paragraph 4 of the Regulation on the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, approved by Resolution No. 376 of the Cabinet of Ministers of Ukraine of June 8, 2016: <https://zakon.rada.gov.ua/laws/show/376-2016-%D0%BF#n10>

63 Resolution of the Cabinet of Ministers of Ukraine of June 17, 2022 No. 708 "On the establishment of the Coordination Headquarters for the protection of the rights of persons deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine" : <http://surl.li/iwlua>

- On October 18, 2022, the Coordination Headquarters for the departure of Ukrainian citizens from the territory of Ukraine temporarily occupied by the Russian Federation, in particular the Autonomous Republic of Crimea and the city of Sevastopol, through the territory of other countries to the territory of Ukraine and the assistance in returning to Ukraine was established.⁶⁴

Both coordination headquarters are headed by the Deputy Prime Minister of Ukraine – the Minister for Reintegration of the Temporarily Occupied Territories.

In their activity, the headquarters are focused on coordinating the efforts of the state authorities of Ukraine, national and international organizations made to return citizens, who stay in the temporarily occupied territories of Ukraine, left for or were deported to the territory of RF, to Ukraine-controlled territory.

Ukrainian citizens who were deported to the territory of RF may need state support after their return, in particular, in cases where they cannot return to the place of residence from which they were forcibly transferred or deported (for example, if a settlement where a person lived is occupied or destroyed).

In practice, after returning to the territory of Ukraine, a person who was deported can, on general grounds, apply to the authorized bodies for registration as an internally displaced person if he/she does not return to the place of residence from which he/she was deported. General guarantees of social protection, employment, education, provision of housing for temporary residence are regulated by the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” and by-laws. In addition, several international organizations and UN agencies provide assistance, including financial, to IDPs. At the same time, the legislation of Ukraine does not provide for special assistance for deported persons.

At the same time, since the beginning of large-scale armed aggression, one of the categories of persons for whom the way to return to Ukraine-controlled territory is very difficult and for whom it is practically impossible to receive assistance from the state or international organizations after their return are persons who have lost the documents which certify their identity and belonging to the citizenship of Ukraine (documents could be taken by the occupation authorities, could be destroyed during shelling, etc.), or these documents were not issued (mostly these are young people who reached the age of 18 already during the occupation and were not issued a passport of a citizen of Ukraine).

After returning, Ukrainian citizens, who received a passport of a citizen of Ukraine in the form of a booklet in the territory that was occupied until February 24, 2022 (AR of Crimea and the city of Sevastopol, certain areas of Donetsk and Luhansk regions), must go through the identity verification procedure to be issued a passport of a citizen of Ukraine if their passport is lost or destroyed. Persons, who reached the age of 18 and were not issued a passport of a citizen of Ukraine, must undergo the same procedure. In accordance with the Procedure for drawing up, issuing, exchanging, sending, withdrawing, returning to the state, invalidating, and destroying the passport of a citizen of Ukraine, approved by Resolution No. 302 of the Cabinet

64 Resolution of the Cabinet of Ministers of Ukraine of October 18, 2022 No. 1187 On the establishment of the Coordination Headquarters for the departure of Ukrainian citizens from the territory of Ukraine temporarily occupied by the Russian Federation, in particular the Autonomous Republic of Crimea and the city of Sevastopol, through the territory of other countries to the territory of Ukraine and the assistance in returning to Ukraine": <https://zakon.rada.gov.ua/laws/show/1187-2022-%D0%BF#Text>

of Ministers of Ukraine of March 25, 2015, such persons undergo the procedure of identification which may last two to three months. If, based on the results of the specified procedure, a person is not identified, a decision is made to deny a person the issuance of a passport. In this case, it is necessary to appeal to the court. Despite the fact that this is the case of a separate proceeding, its consideration may last several months.

During the entire period of consideration of the issuance of a passport of a citizen of Ukraine to a person, who left or was deported from the temporarily occupied territory of Ukraine, as well as during the court consideration of establishing identity, an applicant requires support. Applicants often have no relatives or friends in Ukraine-controlled territory, no place to live, and no means of subsistence. In the absence of a passport of a citizen of Ukraine, they cannot apply for financial assistance from the state or international organizations, cannot open a bank account, or get a job. Even finding a place of residence becomes a problem because a person does not have any documents that can prove his/her identity.

A possible solution to the problem is to provide support, including financial (emergency cash assistance) to Ukrainian citizens after their return to the territory of Ukraine while a document that certifies identity and confirms belonging to the citizenship of Ukraine is being drawn up. However, it is equally important to assist in the accommodation of such persons, in particular, in places of compact settlement (PCS), provision of legal aid, humanitarian aid, etc.

In May 2023, the Ministry of Reintegration, in coordination with the International Organization for Migration (IOM), UNHCR, and the Ukrainian Red Cross Society, launched an information campaign to support people who return to the territory of Ukraine and do not have a passport of a citizen of Ukraine⁶⁵.

Thus, we can talk about the existence of different ways of leaving the territory of RF for deported Ukrainian citizens. Ukrainian citizens either leave on their own (if they have the necessary resources) or with the help of volunteer initiatives and organizations. It is most difficult to leave the territory of RF for those citizens who do not have documents certifying their identity and belonging to Ukrainian citizenship. Departure through third countries is almost impossible for such persons. In October 2022, the Government of Ukraine launched a pilot procedure for the issuance of an identity card for returning to Ukraine which is issued by the SMS of Ukraine and can be given to the relatives of a deported person for further transfer of the document to the territory of RF. At the same time, there is at least one border crossing point, "Pokrovka", on the state border with RF, through which Ukrainian citizens can return to the territory of Ukraine. At the same time, the mechanism to return citizens, who stayed in custodial settings in the occupied territory of Ukraine and were subsequently deported to the territory of RF, to the territory of Ukraine remains unclear.

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<https://minre.gov.ua/2023/05/26/dopomoga-tym-hto-vyyihav-z-tot/>

SECTION 3.

MECHANISM FOR RETURNING CHILDREN DEPORTED TO THE TERRITORY OF RF TO THE TERRITORY OF UKRAINE

The return of children, who were forcibly transferred to the occupied territories of Ukraine or illegally deported to RF, is an important element of countering Russia's policy aimed at exterminating the Ukrainian nation. As long as the minors remain in the territory under the effective control of the aggressor state, where they become victims of the eradication of their national identity, the international illegal actions of Russia and the international crimes of its top officials continue. To date, there is no single legal mechanism for returning Ukrainian children. This complicates the process of repatriation and family reunification and requires an appropriate response, first of all, from the competent authorities of Ukraine. This section will analyze international obligations regarding the repatriation of children, victims of armed conflict; current ad hoc return mechanism; a potential model of a unified legal mechanism for the return, rehabilitation, and reintegration of children.

Evaluating the effectiveness of the current return procedures, identifying the advantages and disadvantages of their operation, and outlining the role of the state in the return process are fundamental to the creation of a unified legal mechanism for the repatriation, rehabilitation, and reintegration of children.

3.1. AD HOC MECHANISM FOR RETURNING CHILDREN FORCIBLY TRANSFERRED TO THE OCCUPIED TERRITORIES OF UKRAINE OR ILLEGALLY DEPORTED TO RF.

As of June 20, 2023, according to information on the Children of War portal, 373 minors, who had been forcibly transferred to the occupied territories of Ukraine or illegally deported to RF, were returned.⁶⁶

The obligation to ensure timely and unconditional repatriation of the civilian population, in particular, minors, as well as family reunion, is stipulated by a series of norms of international humanitarian law and international law.

Article 74 of Additional Protocol (I) to the Geneva Conventions (1977) contains a requirement for states to facilitate in every possible way the reunion of families dispersed as a result of armed conflicts, encouraging the activities of relevant

66 Children of War portal: <https://childrenofwar.gov.ua>

humanitarian organizations⁶⁷. Article 78 of the same international treaty, which refers to the temporary evacuation of minors for security reasons and compelling reasons of the health or medical treatment, provides that in order to return children as soon as possible, the state responsible for such a measure is obliged to establish for each child a card with a photo and detailed information about a displaced person and send it to the Central Tracing Agency of the ICRC. The mentioned requirement corresponds to the obligation of states in accordance with the UN Convention on the Rights of the Child, Article 9 of which stipulates that information about children separated from their parents or other relatives as a result of deportations must be transferred to legal representatives upon request⁶⁸.

In this case, the ICRC should act as a kind of mediator and facilitator of the family reunion process.

According to Article 85(4)(b), unjustifiable delay in the repatriation of civilians also constitutes a grave breach of Protocol I. The fact that the Article was adopted by consensus is important, indicating the customary nature of the rule and the universal recognition of its binding nature. Unjustifiable delay in the repatriation as a serious violation of laws and customs applied in international armed conflicts within the established framework of international law is a war crime⁶⁹.

It should be noted that on March 17, 2022, the National Information Bureau⁷⁰ was established in Ukraine, among the goals of which is the identification of children, promotion of their repatriation, and reunification with their families. At the same time, contrary to Articles 50 and 136 of the Geneva Convention (IV)⁷¹, RF has no body with relevant powers. Therefore, it is unclear whether the aggressor state keeps records of forcibly transferred and illegally deported children and at what level (federal, regional, or local), as well as which body has this function. From this point of view, Maria Lvova-Belova's "lack of understanding" of the lists Ukraine and specialized international organizations⁷² ask her to provide can confirm the thesis that there is no unified database of children who were forcibly transferred to the occupied territories of Ukraine or illegally deported to RF, which is even more so makes their identification and repatriation difficult.

The lists of children deported to the territory of RF or forcibly transferred to the temporarily occupied territories of Ukraine, formed by the NIB, with the further establishment of the location of each child in the territory of RF, also require verification.

67 Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), of June 8, 1977 : https://zakon.rada.gov.ua/laws/show/995_199#Text

68 UN Convention on the Rights of the Child of November 20, 1989: https://zakon.rada.gov.ua/laws/show/995_021#Text

69 Legal Commentary on the Right to Challenge the Lawfulness of Detention in Armed Conflict: <https://www.icj.org/wp-content/uploads/2015/09/Universal-Commentary-WGAD-PrincGuideArmedConflict-Advocacy-2015-ENG.pdf>

70 Official website of the National Information Bureau: <https://nib.gov.ua/uk>

71 Convention relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949: https://zakon.rada.gov.ua/laws/show/995_154#Text

72 Press conference of Maria Lvova-Belova, Commissioner for Children's Rights under the President of the Russian Federation, on the main areas of activity of the Russian Institute of Commissioners for Children's Rights and current topical tasks. April 4, 2023: <https://twitter.com/i/broadcasts/1vAGRAVPkNvKl>

3.2. CATEGORIES OF CHILDREN FORCIBLY TRANSFERRED TO THE OCCUPIED TERRITORIES OF UKRAINE OR ILLEGALLY DEPORTED TO RF AND WHO REQUIRE RETURN

The return of children, who were forcibly transferred to the occupied territories of Ukraine or deported to RF, requires the distribution of all the mentioned identified groups of minor victims according to clear legal categories:

- 1.** Children accompanied by legal representatives
- 2.** Unaccompanied children
- 3.** Children separated from legal representatives (separated children)

According to General Comment No. 6 of the UN Committee on the Rights of the Child “Treatment of unaccompanied and separated children outside their country of origin”, unaccompanied minors are persons under the age of 18 who are not being cared for by parents, relatives or other representatives who, by law or custom, is responsible for doing so. In turn, separated children are persons under the age of 18 who were separated from both parents or other representatives by law or custom.⁷³

The difference between the two categories actually lies in whether a child has parents or other relatives with whom he/she can potentially be reunited. These differences are also important, taking into account the existing practice of treating unaccompanied children in RF, which consists in placing them in temporary custody immediately, which, according to Article 12 of Federal Law No. 48-LW “On Custody and Guardianship”, can be replaced with permanent or for adoption after 6-8 months⁷⁴. We are talking, for the most part, about children taken out during the active phase of military operations, those whose parents or legal representatives were killed, as well as about orphans who lived in residential care facilities at the time of the beginning of the armed conflict.

Unaccompanied children are the first victims of forced citizenship of the aggressor state and placement in Russian families or Russian residential care facilities. It is more difficult to return such minors than separated children due to several circumstances:

- 1.** Competent authorities of RF refuse to provide a list of such children, violating the relevant obligations under international humanitarian law
- 2.** Identification of such minors is complicated by changing their personal data (for example, the Russian pronunciation of the name “Pylyp – Filip, Daryna – Darya”, etc., indicating the wrong year or place of birth)

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

74 Federal Law of April 24, 2008 No. 48-FL (revised April 30, 2021) “On Custody and Guardianship”: https://www.consultant.ru/document/cons_doc_LAW_76459/ff9a4233704115d5ac3caa40d67acbf1445dfa8/

3. In legal relations, these minors are recognized exclusively as Russian citizens. In particular, after the deported boys reach the age of 18, in accordance with Article 23 of Federal Law No. 138-FL “On Citizenship of the Russian Federation”, they will not be able to withdraw from Russian citizenship and independently leave the territory of RF due to non-fulfillment of obligation to RF⁷⁵, namely the military duty provided for in Article 59 of the Constitution of RF⁷⁶.
4. Direct and unconditional refusal of senior officials to repatriate unaccompanied children. Such a general refusal has specific manifestations, in particular, the impossibility of returning minors to another legal representative under a power of attorney, change in the place of keeping (actual “hiding”) a child, choice in favor of continuing the child’s stay in a Russian family instead of reuniting with blood relatives.

As for separated children, the vast majority of them are minors who were forcibly transferred or deported from Ukraine to so-called re-education camps or for medical and social rehabilitation. It is also worth noting that the category of separated children includes those whose relatives were detained during the filtration process, as well as children deprived of parental care, children with disabilities, and children who lived in residential care facilities due to difficult life circumstances. All mentioned minors have parents, other legal representatives, or close relatives.

3.3. ROLE OF RF IN THE REUNIFICATION OF CHILDREN WITH THEIR FAMILIES AND THEIR RETURN TO THE MOTHERLAND.

Despite the creation of special monitoring groups and headquarters to find relatives of children who were forcibly transferred to the occupied territories of Ukraine or deported to RF⁷⁷ in partnership with the so-called “LPR” and “DPR” in April 2022, the results of their activities turned out to be limited. The April 2023 Bulletin of the Russian Commissioner for Children’s Rights contains information on the promotion of reunification for the entire time since the beginning of the full-scale invasion of only 16 minors with nine families⁷⁸. At the same time, the verification of the information provided by the Office of Maria Lvova-Belova allows us to draw a conclusion about the distortion of information regarding measures aimed at returning children to their family members in Ukraine. Thus, at least five children from the

75 The official website of the Commissioner for Children's Rights under the President of the Russian Federation: <http://deti.gov.ru/articles/news/otvety-po-voprosam-semejnogo-ustrojstva-detej-sirot-iz-dnr-i-lnr-v-rossijskie-sem-i>

76 "Constitution of the Russian Federation" (adopted by the national vote on 12.12.1993 with amendments approved during the national vote on 07.01.2020): https://www.consultant.ru/document/cons_doc_LAW_28399/5004a75d54e54d5824c87ac2b96954f252610504/

77 The official website of the Commissioner for Children's Rights under the President of the Russian Federation. Answers to the questions of the placement of orphans from DPR and LPR in Russian families. 2022: <http://deti.gov.ru/articles/news/otvety-po-voprosam-semejnogo-ustrojstva-detej-sirot-iz-dnr-i-lnr-v-rossijskie-sem-i>

78 The official website of the Commissioner for Children's Rights under the President of the Russian Federation: <http://deti.gov.ru/detigray/upload/documents/April2023/QYQjD1VHtlNu74bQuDAF.pdf>

Mezhevykh⁷⁹ and the Lazechko⁸⁰ families experienced many additional obstacles (the requirement to provide documents that, for example, confirm the continuation of education in Ukraine in the Russian language) or were intimidated with placing them in the custody of Russian citizens in the territory of the aggressor state.

Other artificially created conditions that made it difficult for children to be repatriated by their parents or legal representatives include:

1. Refusal to recognize powers of attorney issued in Ukraine
2. Requirement to provide confirmation of the inability to pick up a child on their own (in particular, for parents who can cross the border in a special manner during martial law)
3. Arbitrary change in the place of stay of a minor
4. Many hours of “preventive conversations” with representatives of the Russian law enforcement agencies
5. Bribery and other incentives to stay with a child in the territory of the aggressor state (this led to the fact that the relative acted in violation of the principle of the best interests of a child, or, for example, outside the limits of the powers granted to him by the parents (in case of grandmothers))
6. Intimidation and manipulation with a vulnerable situation (in particular, threats of prosecution by the competent authorities of Ukraine for collaboration in connection with giving “consent” to placing a child in “re-education camps”, as well as intimidation by intensifying hostilities, brutal behavior of the Ukrainian military or security forces, etc.)

The Report of the Independent International Commission of Inquiry on Ukraine dated March 16, 2023 stated that it did not appear that Russian authorities sought to establish contact with the children’s relatives or with Ukrainian authorities. While the transfers were supposed to be temporary, due to a variety of reasons, most became prolonged, and parents or legal guardians and children encountered an array of obstacles in establishing contact, achieving family reunification, and returning the children to Ukraine⁸¹.

Despite the desire to stop the commission of a war crime in the form of forced transfer and illegal deportation, as well as to facilitate the repatriation of children, by issuing ICC arrest warrants for Vladimir Putin and Maria Lvova-Belova on March 17, 2023⁸², according to the testimony of representatives of non-governmental

79 ‘They want to adopt us, you have five days.’ A father of many children from Mariupol manages to return children forcibly deported to Russia. February 19, 2023. *Nastoyashcheye Vremia*: <https://www.currenttime.tv/a/deportation-children-russia/32272586.html>

80 A father’s struggle to repatriate his children to Ukraine. *The Times Hub*. February 21, 2023: <https://thetimeshub.in/a-fathers-struggle-to-repatriate-his-children-to-ukraine/>

81 Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/52/62. March 16, 2023: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf

82 Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova: <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>

organizations that are directly involved in the process of returning minors, family reunification has become more difficult. Among other things, parents are obliged to participate in the recording of propaganda videos, in which they must testify that they voluntarily transferred their children to the camps and have no claims against RF. In addition, parents and legal representatives are not allowed to enter places where minors are accommodated. “Preventive talks” with representatives of the law enforcement agencies of RF became record long, reaching the rate of 13-hour continuous interrogations⁸³.

In the Report dated May 4, 2023, the Moscow Mechanism experts note that the absence of a separate system for the repatriation of Ukrainian children brought out of the war theatre is a violation of the right to repatriation and the duty to facilitate such return. The pattern of efforts of the Russian authorities shows that they deliberately make further evacuation of minor children to third countries or back to safer areas of Ukraine impossible. The Moscow Mechanism experts also emphasized that even in the case of the advance of the Ukrainian armed forces, it was RF as a state that was obliged to look for alternative ways and methods of timely return of children⁸⁴.

3.4. EXISTING AD HOC MECHANISM FOR RETURNING CHILDREN: ADVANTAGES AND OBSTACLES

At the same time, the main burden regarding the return of children who were forcibly transferred to the occupied territories of Ukraine or illegally deported to RF still rests with non-governmental initiatives, volunteers, journalists, and representatives of the religious community⁸⁵. This is due, in particular, to the fact that the competent authorities of the aggressor state have already several times refused to cooperate with the Ministry of Reintegration of Ukraine⁸⁶, which has the authority to repatriate minors according to the national legislation, and the Office of the Ukrainian Parliament Commissioner for Human Rights⁸⁷, did not respond to calls for the return of children from international governmental organizations

83 ‘Taught to love Russia’. What happened to children held in Crimea and Russian Federation? Radio Liberty. April 14, 2023: <https://www.radiosvoboda.org/a/novyny-pryazovyya-dity-deportatsiya-rosiya-krym-povernennya/32362782.html>

84 Moscow Mechanism, OSCE (2023). 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. pp. 45, 49: https://www.osce.org/files/f/documents/7/7/542751.pdf?fbclid=IwAR2dYYe7OGEr7OE7A0JHjffIDu8NT1D4_2AwhXA8JgwC8qVZdqoRWXfUyR8

85 “We had to hide them”: how Ukraine’s “kidnapped” children led to Vladimir Putin’s arrest warrant. The Guardian. March 18, 2023: <https://www.theguardian.com/world/2023/mar/18/how-ukraine-kidnapped-children-led-to-vladimir-putins-arrest-warrant-russia>

86 Telegram channel of the Commissioner for Children’s Rights under the President of the Russian Federation: <https://t.me/malvovabelova/605>

87 Official Facebook account of the Office of the Ombudsman of Ukraine. Human Rights Ukrainian Parliament Commissioner for Human Rights Dmytro Lubinets unveil the details of the third round of negotiations with the Russian side in Turkey. (2023): <https://www.facebook.com/office.ombudsman.ua/posts/pfbid0ad9DNJ8ijGSht2bcRgLMHyKpmyhSbJTJtcopydaRJYQVKckinXdvZJSXLN8UbxX2l>

(OSCE⁸⁸, Council of Europe⁸⁹, EU⁹⁰, UNHCR⁹¹). Therefore, today the role of government bodies is limited to the identification of minors who are under the control of RF, the provision of legal aid and assistance to parents and legal representatives, the sporadic organization of trips for the return of children from RF, consultations and explanatory activities.

At the same time, the number of government bodies of Ukraine, which express readiness or have functions regarding the repatriation of children, who were forcibly transferred to the occupied territories of Ukraine or deported to RF, established by law continues to grow.

On August 8, 2022, the Decree of the President of Ukraine No. 568/2022 established the Coordination Council for the Protection and Safety of Children, the separate function of which is to monitor the situation regarding the temporary displacement (evacuation) of children, including orphans, children deprived of parental care, children with disabilities, children with special educational needs, who live or are enrolled in institutions of various types, forms of ownership and subordination for round-the-clock stay, from territories in the area of military (combat) operations or that are under temporary occupation, encirclement (blockade) or bordering such territories, the return and accommodation of such children in the post-war period⁹².

Since the beginning of 2023, the Coordination Headquarters for the Protection of Children's Rights in Wartime, established on March 17, 2022, has been coordinating activities related to the return of children forcibly transferred to the temporarily occupied territory or deported to the territory of RF and other states to the territory of Ukraine. In April 2023, the identification of children deported to RF, in particular, orphans and children deprived of parental care and those who stay in temporarily occupied territories, was discussed within the framework of the Headquarters' activities⁹³.

88 Moscow Mechanism, OSCE (2023). 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: https://www.osce.org/files/f/documents/7/7/542751.pdf?fbclid=IwAR2dYYe7OGEr7OE7A0JHjffiDu8NT1D4_2AwhXA8JgwC8qVZdqoRWXfUyR8

89 Deportations and forcible transfers of Ukrainian children and other civilians to Russian Federation or to Ukrainian territories temporarily occupied: create conditions for their safe return, stop these crimes and punish the perpetrators. PACE Resolution on April 27, 2023: <https://pace.coe.int/en/files/31776>

90 European Parliament resolution of 15 September 2022 on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia (2022/2825(RSP)): https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320_EN.pdf

91 U.N. refugee chief: Russia violating principles of child protection in Ukraine. January 28, 2023: <https://www.reuters.com/world/europe/un-refugee-chief-russia-violating-principles-child-protection-ukraine-2023-01-27/>

92 Decree of the President of Ukraine No. 568/2022 of August 8, 2022: <https://www.president.gov.ua/documents/5682022-43581>

93 Resolution of the Cabinet of Ministers of Ukraine of March 10, 2023 No. 217 "On amendments to the Resolution of the Cabinet of Ministers of Ukraine of March 17, 2022 No. 302": <https://zakon.rada.gov.ua/laws/show/217-2023-%D0%BF#Text>

Meetings of the Coordination Headquarters for the Protection of Children's Rights in Wartime and a working meeting on identification of deported children were held on March 28, 2023: <https://dn.gov.ua/news/vidbulisya-zasidannya-koordinacijnogo-shtabu-z-pitan-zahistu-prav-ditej-v-umovah-voyennogo-stanu-ta-robocha-narada-z-pitan-viyavlennya-deportovanih-ditej>

On May 15, 2023, the Bring Kids Back UA initiative was presented, and the implementation of the action plan was agreed upon by the Coordination Council for the Protection and Safety of Children under the President of Ukraine, headed by Andriy Yermak, Head of the President's Office⁹⁴.

Separate initiatives regarding the repatriation of Ukrainian children are also being developed at the level of the Office of the Ukrainian Parliament Commissioner for Human Rights.

To identify and further return children who were forcibly transferred to the occupied territories of Ukraine or illegally deported to RF, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine together with the National Information Bureau, the Prosecutor General's Office, the National Police of Ukraine, the Office of the Ukrainian Parliament Commissioner for Human Rights, the President's Office, in the person of the Advisor – President's Commissioner for Children's Rights and Children's Rehabilitation, joined forces to create the Children of War platform⁹⁵. The aforementioned Resolution No. 339 also provided for the creation of the Unified register of persons, including children, deported or forcibly transferred in connection with the armed aggression of RF against Ukraine, which will be filled every month with information received from ministries, central and local authorities, heads of regional military administrations, the National Information Bureau⁹⁶. As of June 20, 2023, the Register is not yet operational.

It is worth emphasizing that today only two legal categories of children, who were forcibly transferred to the occupied territories of Ukraine or deported to RF, can potentially be repatriated – children accompanied by parents or other legal representatives and individual separated children (mainly “from re-education camps”). The return of unaccompanied children who were actually “appropriated” by RF is a challenge both for Ukraine and the international community as a whole. The primary task in this case is to find subjects who can perform the functions of the child's legal representative. For orphans, such a role should be played by the competent government body of Ukraine in accordance with the *parens patriae* principle. The latter, among other things, provides for the provision of special protection by the state to orphans, children deprived of parental care and disabled persons, as well as activities in the role of one of the parents in order to implement the principle of the best interests of the child.

On April 19, 2023, the Cabinet of Ministers of Ukraine adopted Resolution No. 339 “Some issues of protection of persons, including children, deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine.” According to the mentioned normative legal act, the National Information Bureau will represent the interests of orphans and children deprived of parental care if their legal representatives are unknown to protect their rights and

94 President gets acquainted with the Bring Kids Back UA plan for the return of children illegally deported by Russia and took part in the opening of the Center for the Protection of Children's Rights. Official website of the President of Ukraine: <https://www.president.gov.ua/news/prezident-oznajomivsyia-z-planom-povernennya-nezakonno-deport-83261>

95 Children of War portal: <https://childrenofwar.gov.ua>

96 Resolution of the Cabinet of Ministers of Ukraine "Some issues of protection of persons, including children, deported or forcibly transferred in connection with the armed aggression of the Russian Federation against Ukraine" of April 18, 2023: <https://www.kmu.gov.ua/npas/deiaki-pytannia-zakhystu-osib-u-tomu-chysli-ditei-deportovanykh-abo-prymusovo-peremishchenykh-uzviazku-iz-zbroinoiu-ahresiieiu-rosiiskoi-federatsii-proty-ukrainy-i180423-339>

interests. At the same time, it should be noted that the NIB was given appropriate powers solely for the purpose of communication with the ICRC: it cannot appoint and delegate persons who will go to the occupied territories or to RF and take children to Ukraine. Therefore, the issue of proper representation of these groups of minors for the purpose of their repatriation at the state level remains unresolved.

A separate aspect of the repatriation of Ukrainian children that requires special attention is taking relevant measures in the territory of the Republic of Belarus. From open sources, as well as on the basis of cooperation with volunteer organizations, it is known about the continued removal of minors from the occupied territories of Luhansk, Donetsk, and Zaporizhzhia regions to the Republic of Belarus for the purpose of “rest and recovery”. In some cases, the date of removal coincides with the “forced evacuation” of the civilian population carried out by RF, which has elements of forced transfer and/or illegal deportation. Despite the availability of information about the whereabouts of minors from Ukraine in RB, it remains unknown to which category they belong (unaccompanied children or separated children), as well as whether they are returned to their legal representatives. Like RF, Belarus does not have a body competent for the identification and registration of Ukrainian minors in its territory and does not submit such data to the ICRC for the purpose of repatriation and family reunification.

A separate problematic issue is the identification and return of children deported and adopted by Russians during 2014-2021, in particular those who, due to the temporary occupation, did not have Ukrainian identity documents. In the Report dated May 4, 2023, the Moscow Mechanism experts established that more than 1,000 minor Ukrainian citizens could be illegally deported to RF from Crimea only within the framework of the Train of Hope program.

3.5. INTERNATIONAL STANDARDS FOR REPATRIATION, REHABILITATION, AND REINTEGRATION OF CHILDREN, VICTIMS OF ARMED CONFLICT.

Taking into account the intention of the top leadership of RF to permanently remove Ukrainian minors from their own country, as it was emphasized in the Statement by Prosecutor of the International Criminal Court Karim Khan of March 17, 2023⁹⁷, Ukraine needs a unified legal mechanism for the repatriation of children who were forcibly transferred to the occupied territories of Ukraine or illegally deported to RF. During the development of such a mechanism, existing international standards and positive practices in the field of return, developed with the partici-

97 Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova. ICC. March 17, 2023: <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>

pation of the UN General Assembly⁹⁸, OHCHR⁹⁹, UNICEF¹⁰⁰, the EU¹⁰¹, and the Council of Europe¹⁰², as well as the relevant recommendations made by the Moscow Mechanism experts in the Report of May 4, 2023¹⁰³, should be taken into account. The key principles in the field of repatriation, rehabilitation, and reintegration of minors in connection with the armed conflict are the following:

1. Active actions regarding the return, rehabilitation, and reintegration of children without any delay are the duty of the state of citizenship of the minor in the field of human rights protection.
2. The mechanism must be safe, integral, and balanced and based on the principle of respect for the rights of the child, set forth in the Convention on the Rights of the Child and other relevant international treaties.
3. Ensuring the principle of the best interests of the child should be a priority in all actions related to the return, rehabilitation, and reintegration of a minor in the state of citizenship. Appropriate procedures must be in place to determine the best interests of the child.
4. The mechanism should provide for cooperation and division of responsibility between the respective states, as well as constant consultations with representatives of civil society and international organizations.
5. Actions and policies on the return, rehabilitation, and reintegration of children should be differentiated according to the group to which minors belong.
6. Long-term decisions on the return, rehabilitation, and reintegration of children should provide for the provision of appropriate legal status to a minor, which will facilitate reintegration into the state of citizenship.
7. An individual trajectory of return, rehabilitation, and reintegration should be developed for each child. The decision regarding the future of a minor must be made by the competent government body of the state of the child's citizenship as soon as possible, but no longer than six months.

98 Guidelines for the Alternative Care of Children: resolution A/RES/64/142 adopted by the General Assembly on February 24, 2010: <https://digitallibrary.un.org/record/673583>

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

100 Inter-agency Guiding Principles on Unaccompanied and Separated Children. UNICEF: <https://www.unhcr.org/4098b3172.pdf>

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

102 International obligations concerning the repatriation of children from war and conflict zones. Committee on Social Affairs, Health and Sustainable Development (PACE). Doc. 15055 on January 27, 2020: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28498&lang=en>

103 Moscow Mechanism, OSCE (2023). 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: https://www.osce.org/files/f/documents/7/7/542751.pdf?fbclid=IwAR2dYYe70GEr70E7A0JHjffIDu8NT-1D4_2AwhXA8JgwC8qVZdqoRWXfUyR8

8. Actions and policies regarding the return, rehabilitation, and reintegration of children should imply a gender-sensitive approach.
9. The state shall take all appropriate measures at the national and international level to prevent the abduction, sale or trafficking of children for any purpose and in any form.
10. Media coverage of any actions and events related to the return, rehabilitation, and reintegration of children should not create risks of physical or mental harm to minors.

Russia's reluctance to directly cooperate with Ukraine regarding the repatriation of all children who were forcibly transferred to the occupied territories of Ukraine or illegally deported to RF, makes relevant the creation of a special legal return mechanism. Moreover, it should be remembered that on October 13, 2022, PACE Resolution 2463 (2022) "Further escalation in the Russian Federation's aggression against Ukraine"¹⁰⁴ declared the current regime in RF as a terrorist one, which limits the possibility of concluding direct agreements with it. In this case, in accordance with Article 11 of the Geneva relative to the Protection of Civilian Persons in Time of War, Ukraine and RF should seek help and/or good services from a third party and further ensure its full and unhindered access to minors.

Such a third party can be either a neutral state (Kazakhstan, Turkey, the Vatican, Saudi Arabia, etc.), or a specialized international governmental (UNICEF, UNHCR, OSCE, etc.) or non-governmental organization (ICRC, Save the Children International).

Given that the obligation to immediately and unconditionally repatriate children, victims of forcible transfer and deportation is universally recognized, the legal form of the potential mechanism should be not only a series of international treaties between Ukraine, Russia, and a mediator but also a specialized resolution adopted at the level of the UN General Assembly, by which states will demonstrate their commitment to the protection of children's rights during armed conflicts and will become a kind of guarantor of the proper identification and return of minors.

When developing the architecture of such a mechanism, the above-mentioned international standards should be taken into account, supplementing the repatriation process with rehabilitation and reintegration of children with the involvement of expert organizations, specialized non-governmental organizations, and associations of victims.

104 Resolution 2463 (2022) "Further escalation in the Russian Federation's aggression against Ukraine": <https://pace.coe.int/en/files/31390/html>



Within the framework of the project
«From fixation to justice: ensuring
proper documenting of war crimes»,
implemented by the Regional Center
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For all additional questions regarding the information covered in this analytical
report, you can contact by «Ukraine. 5 am» ukraine5am.coalition@gmail.com

