

## **The ICC's Arrest Warrant Against Vladimir Putin**

### **Introduction:**

On March 17, 2023, the International Criminal Court (ICC) announced the issuance of arrest warrants for Russian President Vladimir Putin. The ICC's Pre-Trial Chamber II has determined, based on evidence submitted by the Office of ICC Prosecutor Karim Khan that there are reasonable grounds to believe Putin, as well as Maria Lvova-Belova, Russia's Commissioner for Children's Rights, against whom an arrest warrant was also issued, are responsible for the war crimes of unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to Russia, in violation of the Rome Statute establishing the ICC.

Substantial evidence has been gathered over by the past year, including by UN human rights monitors and independent researchers, indicating that Russian forces have committed patterns of several different war crimes and serious violations, some of which involve children. Russian and Russia-aligned forces have also been implicated in patterns of war crimes predating the February 2022 invasion and stemming from Russia's 2014 attempted annexation of Crimea. Indeed, the ICC has been investigating the situation in Ukraine since 2014, ever since Ukraine (which, like Russia, has not ratified the Rome Statute) voluntarily referred the situation to the Court.

While the ICC's arrest warrants against Putin and Lvova-Belova are being kept confidential to protect the victims, the ICC has indicated that they relate to a specific subset of allegations: "the deportation of at least hundreds of children taken from orphanages and children's care homes,"<sup>i</sup> It is alleged that many of these children have since been adopted by Russian families, a process facilitated by Presidential decrees issued by President Putin that expedite the process for children to acquire Russian citizenship. The ICC Prosecutor has said that these legal and policy measures "demonstrate an intention to permanently remove these children from their own country."<sup>ii</sup>

These are the first arrest warrants issued by the ICC in connection with the situation in Ukraine. President Putin is now the third serving head of state against whom the ICC has issued an arrest warrant, the others being Sudan's Omar al-Bashir and Libya's Muammar Qaddafi. However, the ICC has no independent enforcement power, and it will be up to States that have accepted the Rome Statute to execute these warrants.

### **Background:**

#### *The ICC's Investigation*

Neither Ukraine nor the Russian Federation are State Parties to the Rome Statute. However, in 2014, Ukraine accepted the jurisdiction of the court with respect to alleged crimes committed on Ukrainian territory from November 21, 2013, to February 23, 2014; Ukraine later accepted the Court's jurisdiction over alleged crimes committed throughout the territory of Ukraine, including Crimea, from February 20, 2014, onwards. On February 28, 2022, days after Russia's invasion began, ICC Prosecutor Khan announced that his office was seeking authorization to open an investigation into the situation in Ukraine encompassing any new alleged crimes falling within the jurisdiction of the Court. Within days, 44 States referred the situation in Ukraine to the Office as well, allowing it to proceed expeditiously. The Prosecutor's office is being assisted by the

Office of the Prosecutor General of Ukraine and the Joint Investigation Team set up by authorities of Lithuania, Poland, Ukraine, Estonia, Latvia, Slovakia, and Romania, and which signed a Memorandum of Understanding with the US Department of Justice on March 5.<sup>iii</sup>

Since the arrest warrants issued on March 17 have not been disclosed, it is not possible to know with certainty whether all of the conduct at issue is alleged to have occurred after February 2022. ICC Prosecutor Khan’s statement issued shortly after the Court’s announcement concerning the arrest warrants is ambiguous, stating “most acts in this pattern of deportations were carried out in the context of the acts of aggression committed by Russian military forces against the sovereignty and territorial integrity of Ukraine which began in 2014.”

### *Allegations of Forcible Transfer and Deportation of Ukrainian Children to Russia*

Within weeks of Russia’s 2022 invasion, allegations were made that Ukrainian children were being detained and forcibly deported to Russia. Estimates of the number of children affected by this practice vary widely, ranging from 13,000 to over 300,000. A database maintained by the Government of Ukraine purports to track 16,221 children who have allegedly been deported to the Russian Federation as of the end of February 2023.

That many Ukrainian children have traveled to Russia, permanently or temporarily, since 2022 is not disputed. Indeed, a Russian government representative said in August 2022 that over 550,000 children had entered Russian territory from Ukraine. However, Russian government officials have generally alleged that in all such cases children have been brought to Russia according to the will and with the consent of their parents, or that children who were living in institutional settings like orphanages were moved for safety reasons in the context of the conflict.

In contrast, Ukraine’s Human Rights Ombudsman has alleged that thousands of orphans and children without parental care have been forcibly deported to Russia or within Ukraine to territory controlled by Russia-aligned forces. NGOs also reported allegations that children separated from their families during the so-called “filtration process” of security screenings implemented by Russian authorities, street children, and the children of Ukrainian soldiers, had been forcibly deported to Russia and subsequently put up for adoption there.<sup>iv</sup> One August 2022 report alleged that at least 400 unaccompanied children were being held at a camp in Crimea near the Black Sea, and that the children were being adopted by Russian families.<sup>v</sup>

In June 2022, the former UN High Commissioner for Human Rights Michelle Bachelet confirmed that UN investigators were aware of allegations that children had been taken from orphanages in areas of Eastern Ukraine occupied by Russian forces, and UNICEF expressed concern that Russia’s government was in the process of modifying existing legislation to facilitate the fast-tracking of adoption of orphans from Ukraine, stressing that “adoption should never occur during or immediately after emergencies.”<sup>vi</sup>

Among the revelations, recounted in a UN Human Rights report published on December 2, 2022, was that Russia’s Commissioner for Children’s Rights, Ms. Lvova-Belova, who is the subject of one of the ICC’s newly-issued arrest warrants, had personally taken custody of a Ukrainian child who had been separated from his family. The boy was one of a group of about 30 children who a witness recounted seeing at a camp for Ukrainian children within Russia, outside Moscow, to

which he had traveled to retrieve his own children after having been separated from them and placed in detention for a month by Russia-affiliated forces. Ms. Lvova-Belova claimed the teenager had been abandoned by his stepfather and was voluntarily placed in the Russian military's custody; she also confirmed that he had received Russian citizenship.<sup>vii</sup>

A comprehensive recounting of publicly available information about these cases appears in a February 2023 report published by the Yale Humanitarian Lab, which tracks reports concerning some 1,000 missing Ukrainian children who were in institutional care at the time of the February 2022 invasion, who were “evacuated” to Russia, and whose whereabouts are mostly unknown today.<sup>viii</sup> The report also recalls that Russian Commissioner Lvova-Belova has said publicly that 350 Ukrainian “orphans” have been adopted by Russian families.

The same report also investigates a separate but related phenomenon involving at least 5,000 children from temporarily occupied areas of Ukraine whose families agreed for them to be taken to camps in Russia where they were exposed to pro-Russia indoctrination and, in some cases, poor treatment; while the report finds that many of these children were returned to their families, over 100 of them were not returned, for unclear reasons, and many others were returned very late or were only reclaimed by their families with great difficulty.

A report published on March 16 by the UN's Commission of Inquiry on Ukraine also addresses these phenomena.<sup>ix</sup> In it, the Commission reveals that it has reviewed incidents concerning the transfer of 164 Ukrainian children, none of which satisfied the conditions required by international humanitarian law: “The transfers were not justified by safety or medical reasons. There seems to be no indication that it was impossible to allow the children to relocate to territory under Ukrainian Government control. It also does 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 Ukraine.”

The Commission finds that both categories of transfers, as well as the cases in which Russian authorities have required the parents or the legal guardians of children sent to camps to travel in person to locate and retrieve their children, “violate international humanitarian law, and amount to a war crime,” because Russian authorities failed to “facilitate in every possible way the reunion of families dispersed as a result of the armed conflict,” and may also amount to the war crime of unjustifiable delay in the repatriation of civilians.

### **What Next?**

The announcement of the ICC arrest warrants for Putin and Lvova-Belova have been met with derision by Russian authorities, including the Foreign Ministry's spokesperson, Maria Zakharova, who said they have “no meaning” for Russia and that its authorities would not cooperate with the ICC. The ICC has no independent enforcement power, and it does not conduct trials in absentia, although it is possible that the Court could grant a request from the Prosecutor to hold a “confirmation of charges hearing” in Putin and Lvova-Belova's absence. At such a hearing, the Prosecutor and victims would present evidence in order to establish that there

is “substantial grounds to believe” that the defendants committed the crimes with which they have been charged; if they did so, the case would be transferred to an ICC trial chamber. Prosecutor Khan recently appealed to hold such a proceeding in the absence of a defendant for the first time in the Court’s history, in the case of Lord’s Resistance Army Commander Joseph Kony, against whom an ICC arrest warrant was issued in 2005 and who has evaded justice since that time.<sup>x</sup>

Nevertheless, the warrant means that Putin will be at risk of arrest if and when he travels abroad; some suspects who have evaded the Court for years have eventually been delivered to its custody. Stephen Rapp, former US ambassador at large for war crimes, remarked that the impact of the arrest warrants on Putin will be long-lasting: “This never goes away.”

In the meantime, the ICC Prosecutor’s investigation into other alleged violations of the Rome Statute, which prohibits war crimes, crimes against humanity, and genocide, in Ukraine continues and additional charges against Vladimir Putin and other Russian officials may follow. All would-be interlocutors with Mr. Putin would be well-advised to assist in bringing him to The Hague.

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<sup>i</sup> Russia: International Criminal Court issues arrest warrant for Putin, available at <https://news.un.org/en/story/2023/03/1134732>

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

<sup>iii</sup> <https://www.eurojust.europa.eu/news/national-authorities-ukraine-joint-investigation-team-sign-memorandum-understanding-usa>

<sup>iv</sup> Conflict Observatory, Mapping the Filtration System in Donetsk Oblast, August 25, 2022, available at: <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/filtration-1>.

<sup>v</sup> Conflict Observatory, Mapping the Filtration System in Donetsk Oblast, August 25, 2022, available at: <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/filtration-1>.

<sup>vi</sup> UN’s Bachelet concerned over Ukraine orphans ‘deported’ to Russia for adoption available at: <https://news.un.org/en/story/2022/06/1120412>

<sup>vii</sup> OHCHR Report on Ukraine, Dec. 2022, [https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU\\_Update\\_2022-12-02\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf).

<sup>viii</sup> Russia’s Systematic Program for the Re-education and Adoption of Ukraine’s Children, Yale School of Public Health, Conflict Observatory, available at:

<https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data>

<sup>ix</sup> March 2023 of the UN Commission of Inquiry on Ukraine, available at [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A\\_HRC\\_52\\_62\\_AUV\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf)

<sup>x</sup> <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-request-hold-hearing>.