



Published by the International Reference Centre for the rights of the children deprived of their family (ISS/IRC)

NEWSLETTER

Relocating Ukrainian children: ensuring safety while doing no harm

Over the past weeks, Ukraine has seen a rapid and massive displacement of millions of persons, whether internally¹ or across borders. As per available estimations, over 5 million persons² fled Ukraine to other European countries, mainly unaccompanied children, or children accompanied by their mothers, family member(s), informal caregiver(s), or institutional staff.

While this major and unprepared movement across borders – the largest since World War II - has called on rapid responses³ in terms of protection, support, identification, registration and reunification, it has also raised numerous legal and practical questions, ranging from providing humanitarian relief to ensuring that, despite good intentions, no harm is being done, in compliance with international humanitarian law; hence upholding the rights of children, especially those who are deprived of parental care (see [CRC Committee statement](#) on 24 March 2022, [civil society statement](#) in March 2022).

For several weeks, there was unclarity and lack of information about children still or formerly in the Ukrainian care system, as well as children who were in adoption processes prior to the outburst of the conflict and children who were - or were about to – be born to surrogate mothers in Ukraine.

Today, fortunately, in addition to the work of civil society on the ground and at regional/international levels⁴, further clarification has been brought by the Ukrainian authorities which are regularly sharing information and issuing statements as well as adopting new legal provisions applicable to the situation of Ukrainian citizen seeking refuge abroad (see e.g. [Ukrainian communication on evacuated children](#), March 18, 2022), including accompanied and unaccompanied children, or with the residential care staff (see in particular, [Resolution No. 166, adopted on February 28, 2022](#)) or children moving with a relative or a non-relative (see in particular Resolution No. 383, adopted on March 29, 2022) and children with disabilities (see [guidance](#)). Based on these provisions, several key elements are to be considered: as per the Ukrainian requirements, unaccompanied children shall for instance not be relocated beyond neighbouring countries. Children previously institutionalized in Ukraine and moving as a group are to remain together and not to be separated. Further, a delegation of

¹ Over 7 million internally displaced persons as per the latest IOM data, [Update on Internally Displaced People Figures in Ukraine: 5 April 2022](#).

² See <https://data2.unhcr.org/en/situations/ukraine>

³ A specific focus is also put on the consolidation of the child protection systems in Ukraine's neighboring countries to provide quality care to concerned children and families. The EU also reacted swiftly by activating for the first time the [Temporary Protection Directive](#), granting citizen of Ukraine a special temporary status in most countries. [Some countries have taken further national protection measures in response to the arrival of displaced persons](#)

⁴ Ongoing mappings of children's whereabouts are being developed (e.g. by UNICEF, Eurochild), guidance documents and recommendations are being developed (e.g. [ChildCircle](#)) coordinated and comprehensive responses are being initiated, technical assistance provided, field child protection cluster groups and joint advocacy groups created.

Ukrainian Government officials is currently visiting different States, such as Poland, Germany and Italy, to collect information on the responses provided in terms of child protection in said countries.

It remains indeed extremely difficult to have an exact picture of the scale and pace of the situation, and the fate and whereabouts of children given the current absence of uniformed and coordinated registration systems at borders and among different national child protection and case-management systems; this existing gap increases risks for child rights violations, including children disappearing.

In addition, Ukraine has one of the largest populations of **children in residential care**: in 2020, there were over 700 institutions run by different ministries with a total of 102,570 children in residential care (77,000 as per the latest official data from January 2022)⁵. Nearly half of them having special needs.⁶ In light of the conflict, these figures raise questions: Where and with whom are these children now? To what extent are [children with severe disabilities](#) being evacuated from care institutions? For children still in Ukraine, how to ensure tracking and monitoring of their whereabouts, safety and wellbeing? Should children who were relocated to other countries together with staff of the care facility be considered as being accompanied by a legal guardian? If yes, whom do these responsibilities concretely vest in, and what are the legal effects of such guardianship/custody as per Ukrainian law? What if no formally appointed process was followed?⁷ Or should these children be dealt with as unaccompanied children who call for a new guardian to be appointed to protect and defend their rights in the host country?⁸ If yes, under what conditions? In the host country, given the traumatising situation most children have gone through, how can sufficient attention be given to access to psychological support, and children able to maintain contact with their families?

Regarding cross-border child protection issues, especially related to recognition of placements, guardianship etc., it is important to recall the useful mechanisms provided by the [1996 Hague Convention](#), ratified by Ukraine and most European countries (see also [HCCH statement](#)). ISS/IRC will continue exploring the application of this legal instrument in further newsletters.

As per **adoption**, in recent years, Ukraine has been an important State of origin (see [ISS/IRC 2020 Annual ICA Statistics](#)). Hence, certain receiving States were quickly faced with questions on cooperation issues, as well as on the status of initiated adoption procedures (*pending cases*). Consequently, different approaches and communications were adopted before clarity was provided by the Ukrainian government on the current situation of adoption proceedings in Ukraine. However, remaining open questions relate to: how many families and children are concerned by such pending cases? Once an adoptable child has been relocated to a neighbouring country, what are the consequences on the initiated adoption procedure? Would the child's habitual residence be called to evolve depending on the duration of the war? What lessons can we learn from this armed conflict? Shall existing principles evolve to respond to current challenges that become more and more visible? And how to deal with the numerous appeals shared all over social media "to care for or adopt a Ukrainian orphan"? More than just an issue of standards and guidance, this armed conflict is clearly the occasion to further sensitise the general public on the international standards applicable to adoption.

For ISS, it is certain, and in line with international standards and its previous recommendations on intercountry adoption in times of humanitarian crises, whether man-made or natural catastrophe, that **intercountry adoption should not take place during or immediately after an emergency**, including in the context of armed conflict. Crises are a breeding ground for illicit practices, in part because there is little oversight, if any. Further, to avoid heterogenous practice and create hence an enabling environment for illicit practices, ISS urges all concerned States to **adopt a harmonised approach**.

Further, **PAPs in an adoption proceeding should refrain from any independent actions**.

(See [ISS factsheet](#)).

Finally, in recent years, an estimated 2,000 to 2,500 children have been born, per year, through **surrogacy arrangements** in Ukraine. Consequently, numerous foreign couples are currently in an arrangement with surrogate mothers and/or have embryos stored at clinics in Ukraine. In these cases, how to ensure quality care

⁵ See Replies to list of issues, [CRC/UKR/RQ/5-6](#).

⁶ Information provided during ISS mission in 2020.

⁷ Common practice for many residential care placements as per ISS 2020 mission.

⁸ See [ISS Factsheet](#) and Annexes with certain answers to these complex legal questions available upon request.

for surrogacy-born children in the absence of intending parents? How to adequately protect the surrogate mother? Should she stay in Ukraine and risk her life as well as that of the baby she is carrying, or look for refuge abroad and give birth in a country where surrogacy is eventually illegal?⁹ How to ensure that she is not unwillingly separated from her own family and children? Some of the salient questions that require dire answers and actions to respect the rights of children and other parties concerned.

In definitive, whatever the family situation of children, any child should benefit from adequate identification and registration processes at borders as key safeguards to counter any illicit practice or rights violations and allow for suitable responses in other child protection systems. As to children deprived of parental care, it is of peremptory importance to avoid unnecessary separations, including of siblings and groups of children as requested by Ukrainian officials to deploy all efforts to reunify children with family members and to provide quality temporary family- or community-based care solutions based on existing promising practices.

Through its newsletter, ISS/IRC will continue informing its readers on the different developments, practice guidance and recommendations.

In addition, in light of the plight of many children, young people and families who have to face a war and displacement, without forgetting other ongoing conflicts in the world, CELCIS, IFRC and ISS and other partners are pleased to announce the reactivation of the MOOC *Children moving alone* in the coming weeks based on the strong conviction that the MOOC is an extremely valuable tool that concretely helps to equip professionals and volunteers to provide quality care and protection to **unaccompanied and separated children**.

ISS/IRC Team
April 2022

⁹ See "[Des mères porteuses ukrainiennes prises au piège de la guerre](#)", by [Julia Pascual](#), published in *Le Monde*, 24 April 2022.



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