

**Restoring Justice for Ukraine Conference- Ministerial Ukraine Accountability Dialogue Group, 2  
April 2024, The Hague, The Netherlands**

**Statement by Nadia Volkova, Ukrainian Legal Advisory Group (ULAG) and Ukraine 5am Coalition**

Excellencies,

I am addressing you today with a heavy heart in the wake of the most recent activation in frequency and intensity of the aerial strikes on Ukraine. Third year in a row the entire population of Ukraine continues to suffer from the terror caused by the aggressive war of the Russian Federation against the entire Ukraine and the eleventh year of the ongoing armed conflict in the territory of Ukraine including Crimea and eastern Ukraine. For me, as I am sure for many of the colleagues from Ukraine, it had not been an easy decision to come here as many of us had to leave our families behind in these frightening and dangerous times in which anyone at any given moment can become a casualty, as indeed many already have, including children, mothers and fathers, husbands and wives, grandparents, brothers, sisters, friends... Nevertheless, I am grateful for this opportunity and honored to address you today as a representative of civil society and co-chair of workstream 4 of the Dialogue Group.

Excellencies,

The reason why my colleagues from Ukraine and I decided to be here today was because accountability for the crimes that have been and continue to be committed in Ukraine is important, justice for those who have suffered the consequences of this brutal war is essential. They are important not only to us, the people of Ukraine, they are important for humankind, and for the values which will ultimately prevail and will guide our collective future. We are at a critical juncture where we are making a choice as to what kind of world we will live in: where responsibility for the actions bears real over superficial consequences, where every single life is precious and of the highest value over just a statistic, where every time when faced with the choice we choose peace and life over war and death:

***Without justice there can be no peace. Without peace there can be no life. Without life there can be no future.***

Living in the war teaches you the true meaning of this lesson.

While many of us have dedicated over a decade to this fight for justice and accountability, we are grateful to the Government of the Kingdom of the Netherlands, the European Commission, and the International Criminal Court for this initiative almost two years ago to support Ukraine and to

support justice. Justice related immediate response to the Russian full-scale invasion of Ukraine, including the Ukraine Accountability Conference, set down a new marker in how the international community should react to those who choose war and commit international crimes. Many states, including those represented here by you, Excellencies, chose the path of justice at the expense of economic, geopolitical and other benefits. Naturally we believe it was the right choice to choose justice for victims and we commend it.

We believe that the Dialogue Group is the product of such choice. Let us be honest: after two years of such an intense aggression, with flaring up conflicts elsewhere, naturally there is already a certain degree of global fatigue from Ukraine, including accountability processes, because the going gets indeed tougher with each step. But let me ask you this, Excellencies: in your experience has anything worthwhile ever come easy? In my experience the answer is no. Justice is extremely tough, but justice also matters. We owe it to the victims, to ourselves and to our future generations.

To this end after one year of the Dialogue Group's operation, it would be fair to conclude that it has a unique potential to facilitate coordination of effective and efficient paving of a justice and accountability path for Ukraine and perhaps if successful, it can be extrapolated onto other conflict situations.

Excellencies,

Bearing in mind the above, today I would like to address the issues that are central to the work of our workstream. We aptly adapted the initial title of this workstream to "Accountability Efforts of Civil Society" as opposed to "Documentation Efforts..." because in reality the efforts of civil society, although include essential documentation efforts for both accountability and other purposes, in no way are they limited to only those.

Civil society has been at the forefront of justice issues since 2014, even when justice and accountability were not yet at the top of the international agenda. Our collective experience has informed the approach of our workstream.

To this end I would like to address the following today:

1. First, I will expand on the purpose, relevance and pertinence of workstream 4 of the Dialogue Group, co-chaired by my colleagues: Virginie Amato of the Coalition for the ICC present here today together with some of our members and the Ombudsman's Office of Ukraine. (Members represented here are: International Renaissance Foundation, Media Initiative for Human Rights and Human Rights Centre "ZMINA")
2. Secondly, I will speak to civil society's objectives, activities, and priority areas;

3. Thirdly, I will address the challenges, opportunities and solutions we have identified as relevant and pertinent to achieving meaningful justice and accountability for Ukrainian people and how we can work together in the Dialogue Group.

With regards to the first point:

Excellencies,

From almost the very beginning of the full-scale invasion, when many justice and accountability initiatives were launched, one of the most challenging issues was coordination. Many existing actors operated in silos while new actors continued to emerge. This resulted in the duplication of efforts on the one hand and glaring gaps on the other. While this challenge is not overcome yet the Dialogue Group has a potential to become a solution hereto. When brought to its full potential, the coordination function will come down to bringing together different perspectives to the same issues (for instance, evidence related issues, domestic approaches, practicalities and international standard) or identify issues that are useful to be considered by the others (for instance pros and cons of the trials in absentia) , it may thereby break down the existing silos, create a bird's eye view of challenges and opportunities and push to search for holistic and efficient solutions rather than ad-hoc and one-sided ones.

Here, the role of civil society cannot and should not be underestimated. Civil society organisations often play the role of first responders, documenters, of analysts, of advocates for the necessary change, victims representatives, etc and that of a support system. Most importantly, however, they are the voice of victims and the voice of people. Therefore, while they have a unique perspective that must not be disregarded, they are also a compass on the road to accountability solutions and to redress for victims.

With regards to the second point:

Excellencies,

In 2022 on the margins of the UAC civil society organisations held a one-day workshop which resulted in the list of 6 recommendations which we presented to you at the Conference the next day.

Let me take this opportunity to remind you briefly what they were:

1. Ukraine urgently ratifies the Rome Statute.
2. Establish a hybrid accountability mechanism for Ukraine to help streamline domestic capacity building, to ensure effective complementarity and coordination of initiatives, transparency and impartiality of proceedings
3. Cooperate and engage effectively with NGOs in all justice and accountability initiatives.

4. Ensure the independence, impartiality and transparency of the ICC and provide sustainable funding to the court through its regular budget, for all situations;
5. Boost global justice efforts everywhere to avoid perceptions of a two-tier accountability system in which some victims are more deserving than others.
6. Find effective and strategic solutions based on the collective long-term commitment and responsibility of states

Although thanks to the great efforts and commitment from some states and institutions there have been some shifts towards implementing these, for the most part these recommendations remain relevant today. In the past years, we have relentlessly raised awareness and called for ensuring implementation of these recommendations fully to achieve a strategic shift in the current approach to justice and accountability. At this point in time justice related initiatives vis-a-vis situation in Ukraine remain fragmented, disjointed and not fit for effective response to the existing challenges caused by the Russian aggression.

Since the beginning of armed conflict in Ukraine in February 2014, civil society organisations, members of Workstream 4 have been tirelessly documenting facts of gross human rights violations and the Rome Statute crimes, representing the interests of victims in domestic proceedings and in regional and international institutions, identifying and analysing legislative gaps and looking for and offering solutions, infrastructural and resource-related challenges, advocating for an increased domestic capacity – first during annexation and occupation of Crimea and armed hostilities in eastern Ukraine and later during the full -scale invasion. Yes, we have rich experience, depth and scale of understanding of the pertinent issues that can serve as an invaluable contribution to the work of the Dialogue Group, but most importantly, we have the trust of the victims and affected communities which is central to finding the most effective justice solutions for them.

In relation to the third (and final) point:

Excellencies,

We have thought deep and hard about how to respond to the challenges, identify opportunities and offer solutions. I would like to share a few examples as to how we have contributed to advancement of the work of the Dialogue Group. One of the challenges that we have identified is the need to safeguard the reform process in Ukraine. To this end, one very simple but one that after almost 10 years remains an unachieved step - the ratification of the Rome Statute by Ukraine, which has been a long-standing goal of the civil society. Ever since Ukraine recognised jurisdiction of the ICC in 2014 and 2015 because of the two article 12(3) declarations submitted by the parliament of Ukraine, civil society organisations have been tirelessly campaigning for Ukraine to ratify the Rome Statute. It is important for several reasons. The most important of them is there is no reason not to; the second most important reason is the catalysing effect of the ratification on the reform process in Ukraine which would push Ukraine to align its domestic criminal legislation with the international provisions

and standards, and thus ensure a meaningful justice and accountability for the victims. We have facilitated coordination of the advocacy campaign within our workstream.

Another example concerns transparency and strategising in the coordination of justice efforts and implementation of the Rome Statute principle of complementarity/subsidiarity raised on numerous occasions by our members. Through our practical experience and efforts to get justice for victims outside of Ukraine, we have identified a lack of transparency in the third states' authorities' interpretation of the principle of complementarity in relation to the overlapping investigations. As opposed to prosecutorial discretion as to whether to move forward an investigation, a better solution could be developing a criterion under which third states can and will step in to complement the ongoing investigations in Ukraine. This is crucial not only for coordination and resource management purposes, but it is also essential for managing victims' expectations.

Another example that is a cause for concern among members of the workstream 4 and has been raised is victims' discrimination in the current and future international mechanisms for Ukraine. One such concern is a limited temporal jurisdiction of the Register of Damages, one of the the main themes of today's conference. Limiting it to only the past two years will leave many of the victims who suffered grave violations in Crimea and eastern Ukraine prior to full-scale invasion out. Members are also concerned, that ICC investigation appears to be focused on the incidents post-invasion, although the conclusions of the preliminary examination in the situation in Ukraine in 2015-2020 stated that there was reasonable basis to believe that Rome Statute crimes had been committed both in Crimea and eastern Ukraine.

Finally, with regards to the special tribunal for the crime of aggression, it is important that the accountability gap vis-a-vis the crime of aggression is closed. However, while collective political will is critical to finding and implementing the right decision, it should not be confused with a politically driven solution. It must rest solely in the legal plane and must be based on the international standards of due process, internationally recognised definitions, rules of evidence and procedure and have enough capacity to prosecute this crime effectively. Furthermore, from the victims' perspective, one crime should not be treated preferentially over the others. If there is not enough existing capacity to ensure justice and accountability for the other core crimes, this must not be ignored by the decision-makers.

To conclude, we would like to thank once again the founders of the Dialogue Group for including civil society in this endeavor, this is one positive example of implementing recommendation 3. Looking forward we would like to contribute to making it about real dialogue, meaningful exchanges and sharing of expertise across all the workstreams. While we understand and appreciate the issues of confidentiality and are not interested in overstepping certain boundaries, if we are to achieve the full potential of the Dialogue group there needs to be trust and a balance struck in respect of transparency and openness in communication. We all ultimately work towards the same goal: justice and accountability for the people of Ukraine.