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UN Committee on Protection of Rights of All Migrant Workers and Members of Their Families

Ukrainian Displaced Persons and Russian War Crimes against Migrants:

Submission for General Comment on the Convention on Migrant Workers and the Global Compact for Migration

Situation in Ukraine and Migration Issues

Our Association of Reintegration of Crimea (ARC)¹, is non-governmental expert and human rights organisation²; our expert researches are related with human rights and humanitarian issues, including their fundamental, economic, labour and social rights, informational rights, right to development, also as with issues of the transitional justice for Crimean peninsula, with relevant humanitarian, informational, economic, social and financial impacts.

Since 2020 we sent more than 50 submissions and proposals to UN, CoE, OSCE and EU human rights' strictures, major part of them were published in the official web-sources. Our experts researched the issues of negative impact of the Russian aggression against Ukraine, including activities of Russia-financed and Russian-controlled activities of terroristic groups on the Russia-occupied territories and related war crimes and strong human rights violations, committed against Ukrainian displaced persons and causing such displacement³⁴⁵⁶⁷⁸⁹¹⁰.

We pointed that after the occupation of Crimea in 2014, Russia, in violation of the requirements of the IV Geneva Convention, extended the action of its own criminal, administrative, civil and labour legislation to the occupied peninsula, discriminating displaced persons from Ukraine's mainland as alleged "foreign migrants" and "refugees".

As it is well-known, since 24th of February 2022 Russia committed broad and open military aggression to all Ukraine's territory. Due last seven months of fights Russia occupied some territories of Donetsk, Kharkiv, Kherson, Luhansk, Mykolaiv and Zaporizhzhya regions and strong fights are going near cities of Kharkiv, Mykolaiv and others with total population more than 8 millions persons near the frontline¹¹¹²¹³¹⁴¹⁵

Russia-controlled troops and mercenaries committed in Ukraine, during this invasion, gross violation of international humanitarian law and international human rights' law already, including broad crimes against property, social and cultural rights and environment, attacks on medics,

¹ <https://arc.construction/>

² https://www.journal-officiel.gouv.fr/associations/detail-annonce/associations_b/20210005/1348

³ <https://www.ohchr.org/Documents/Issues/Slavery/SR/Submissions/CSOs/Association-of-reintegration-of-Crimea.docx>

⁴ <https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/ReportHRC48/CSOs/ARC.pdf>

⁵ <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/GA76/Association-of-reintegration-of-crimer.pdf>

⁶ <https://owncloud.unog.ch/s/65CjhIud3G2yBu?path=%2FCivil%20Society%20Organizations>

⁷ <https://www.ohchr.org/sites/default/files/2022-04/AssociationReintegrationCrimeaSubmission.pdf>

⁸ <https://www.ohchr.org/sites/default/files/2022-04/Association-Crimea.pdf>

⁹ <https://www.ohchr.org/sites/default/files/documents/issues/children/cfi/vulnerabilities-children/csos/2022-07-26/submission-sdgs-cso-ARC-second-submission.pdf>

¹⁰ <https://www.ohchr.org/sites/default/files/documents/issues/disappearances/cfi/draft-stm/submissions/2022-09-05/association-of-reintegration-of-crimea-draft-stm.pdf>

¹¹ <https://www.ohchr.org/sites/default/files/2022-04/association-reintegration-crimea-ukraine-minnesota-protocol.pdf>

¹² <https://www.ohchr.org/sites/default/files/2022-04/AssociationReintegrationCrimeaSubmission.pdf>

¹³ <https://www.ohchr.org/sites/default/files/2022-04/association-reintegration-crimea.pdf>

¹⁴ <https://www.ohchr.org/sites/default/files/2022-04/association-reintegration-crimea.pdf>

¹⁵ https://www.ohchr.org/sites/default/files/2022-05/arc_replies-dp.pdf

teachers, and journalists, social, medical, educational and informational infrastructure, *that caused internal displacement and flows of Ukrainian refugees, non-precedent in XXI century*¹⁶¹⁷¹⁸¹⁹²⁰²¹²²²³.

All war crimes, committed by Russian invaders, including actions of the so-called Russia-controlled “republics of Donbass” and “administrations” in Crimea and Sevastopol, during ongoing hostilities, are connected with absolutely clear Russia’s war targets in maximal destruction the population and civil infrastructure, including objects, essential for all Ukrainian ethnic and social groups, that is clear terroristic activities, causes massive internal displacement and refugees flows²⁴.

Those issues should be the subject of the investigation the International Criminal Court²⁵ Due to gross violation the human rights Ukraine filed an application to the European Court of Human Rights also²⁶. Russian government refused to execute the demand of the ECtHR and the order of International Court of Justice to immediately suspend the military operations that it commenced on 24 February 2022.²⁷

UN Human Rights Council (HRC) adopted its resolution 49/1 on 4 March 2022 where it expressed grave concern at the documented harm to the enjoyment of many human rights, resulting from the aggression against Ukraine by Russia²⁸. On 8 March 2022 UN human rights experts called on Russia to immediately end its invasion of Ukraine to avoid further bloodshed; experts recalled that intentional attacks against civilian objects amount to war crimes²⁹, that are terroristic by their nature. In other UN experts’ statements the negative impact of Russia’s aggression on persons was condemned³⁰, and relevant risks for right to life were pointed³¹³².

UN General Assembly in its resolution ES-11/1 on 2 March 2022 recognized that the military operations of Russia inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war³³. UN General Assembly in its resolution ES-11/2 on 24 March 2022, demanded again that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders³⁴.

Those decisions are not executed by Russian troops, Russia-controlled mercenaries and terroristic groups, which established policy or terror and repressions over the Russia-occupied territories of Ukraine, including Donetsk and Luhansk Regions, AR Crimea and Sevastopol.

A lot of persons, including them who tried to evacuate themselves from conflict zone, were killed or kidnapped as “non-loyal” ones or during looting their property. Russian occupation of Kherson, Melitopol and other cities in Southern Ukraine in March-May 2022 led to mass actions of resistance to the aggressor³⁵. Russian troops block the humanitarian corridors established to evacuate civil population from hostilities zones and occupied territories of Kherson and Zaporizhzhya regions and block any information about such corridors.

Since March 2022 Russia makes sustainable illegal steps to prepare crime of attempted annexation the territories of Donetsk, Kherson³⁶, Luhansk and Zaporizhzhya³⁷ regions of Ukraine. Russian

¹⁶ <https://sofrep.com/news/russian-soldiers-gang-raped-ukrainian-woman-as-her-child-was-crying-in-the-next-room/>

¹⁷ <https://www.icj-cij.org/public/files/case-related/182/182-20220307-PRE-01-00-EN.pdf>

¹⁸ <https://www.bbc.com/ukrainian/features-60888528>

¹⁹ <https://hromadske.radio/en/news/2022/03/09/members-of-the-wagner-group-have-been-killed-in-ukraine>

²⁰ <https://www.bbc.com/news/world-europe-60547807>

²¹ <https://arc.construction/26892>

²² <https://news.un.org/en/story/2022/03/1113652>

²³ <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

²⁴ <https://www.washingtonpost.com/world/interactive/2022/ukraine-before-after-destruction-photos/>

²⁵ <https://www.icc-cpi.int/ukraine>

²⁶ <https://hudoc.echr.coe.int/eng-press?i=003-7282553-9922068>

²⁷ <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

²⁸ <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session49/Pages/ResDecStat.aspx>

²⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28231&LangID=E>

³⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28200&LangID=E>

³¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28201&LangID=E>

³² <https://www.ohchr.org/en/press-releases/2022/05/ukraine-millions-displaced-traumatized-and-urgently-need-help-say-experts>

³³ <https://digitallibrary.un.org/record/3959039?ln=ru>

³⁴ <https://digitallibrary.un.org/record/3966630?ln=en>

³⁵ <https://arc.construction/26918>

³⁶ <https://arc.construction/27771>

³⁷ <https://arc.construction/28052>

criminal illegal “administrations” in Kherson and Melitopol pursues tasks that are mostly related to the suppression of pro-Ukrainian resistance, the subjugation of the will of local inhabitants³⁸ and the involvement of the relevant districts in the so-called “ruble zone” and “Russian informational space”.

Russia blocked the possibility for Ukrainians, residing in the Russia-occupied territories, to get the territory, controlled by government of Ukraine. The only available point of crossing the frontline in Vasylivka, Zaporizhzhya Region, is possible for transfer not every day and such transfer is connected with strong personal risks for displacing persons from the Russian troops and mercenaries.

More than 1000 persons were kidnapped by Russian militaries and punitive structures in Russia-occupied part of Kherson Region only. A lot of persons were kidnapped by Russian invaders in the “checkpoints” between the Crimea and Ukraine’s mainland³⁹. In the Russia-occupied Crimea a lot of children, transferred from Ukraine’s mainland, disappeared in April-May, 2022^{40,41,42}.

According to our sources in the Crimea, all Ukrainian minors taken in this way from the war zone to the peninsula are subject to criminal “sorting”. And our Association knows for sure from a number of sources that all Ukrainian children that were deported from the mainland and dead in hospitals in Crimea and Sevastopol, are not subject to any registration as patients there at all; according to the documentation of the hospitals controlled by the aggressor, “they have never been there”⁴³. A lot of displacing persons, including children, disappeared after they were captured by Russians to the so-called “filtration camps”.⁴⁴

This approach is accompanied by the criminal attitude of the Russian occupiers, Russian colonizers and Crimean collaborators to “Ukrainian refugees” as allegedly “third-class people” because of “their long residence in nationalist Ukraine”⁴⁵.

So hundreds of thousands of Ukrainian residents had to displace from the hostilities zone via Russia-occupied Crimea, districts of Donetsk and Luhansk regions, where they are in full power of Russian illegal administration. Later they had to displace further to Russia and via Russia to the third countries. On such way they are under full power of Russia’s authoritarian regime and its punitive bodies; sufficient part of such Ukrainian residents had to act in de-facto labor-relations with Russia-controlled structures.

So the issues of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convention on Migrant Workers, CMW) and of the Global Compact for Safe, Orderly and Regular Migration (GC) must be researched regarding possible application on such displacement as minimum on its certain stages.

Ukrainian Migrants under Russian Control and International Migrants’ Standards

The issues of application both the CMW and GC to Ukrainian displaced persons under Russian control are connected with international humanitarian law issues, as in the Russia-occupied Crimea, also as in the Russia-occupied districts of Donetsk and Luhansk regions statute of such persons is determined by the IV Geneva Convention and in the Russia, as minimum partially by III Geneva Convention, as the intermitted persons.

At the same time the issue of application the CMW and GC to Ukrainian migrants under Russian control in the Russia-occupied territories of Ukraine is complicated, as such persons did not migrate from Ukraine as a state, but they just migrated from hostilities zone to other part of Ukraine, that is non-controlled by its government.

So such persons did not migrate from one state to another but they come to other, illegal jurisdiction, where they are illegally determined as allegedly “foreigners”, “foreign migrants” under Russian illegal control.

So the international law must determine the mechanisms of possible application the standards of migrants’ rights in compliance with Geneva Conventions, 1949.

³⁸ <https://arc.construction/29020>

³⁹ <https://arc.construction/30144>

⁴⁰ <https://arc.construction/29005>

⁴¹ <https://arc.construction/32309>

⁴² <https://arc.construction/28407>

⁴³ <https://arc.construction/29005>

⁴⁴ <https://arc.construction/33269>

⁴⁵ <https://arc.construction/28224>

And, as minimum in Russia itself, Russian authoritarian regime, its punitive structures and Russia-controlled enterprises and institutions brutally violate, regarding Ukrainians migrants, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, including principle 1 on human rights' importance, principle 2 regarding non-discrimination, principle 3 regarding access to justice, principle 4, regarding migrants' right to life etc.

Current relation to Ukraine's migrants in Russia itself is also far from provisions of GC, that point that every migrant is able to access appropriate protection of her or his rights, the situation of each person must be assessed individually. Such behavior of Russian authoritarian authorities is far from such provisions of GC as its Objective 7 in part "f" regarding ongoing violation the rights of Ukrainian migrants' minors in Russia, and its Objective 8 including parts "e" and "f" regarding disappearances of Ukrainian migrants in Russia without any traces.

The correlation of GC and CMW is stressed correctly by the Committee as both instruments refer to the prohibition of slavery, servitude and forced labour (Article 11 of CMW and Objective 6 of the GC); Article 10 of CMW protects migrants against torture and cruel, inhuman or degrading treatment or punishment and Objective 21 of the GC mentions related protection in a specific context.

Also Objective 7 of the GC really addresses and reduces migration vulnerabilities and the right to liberty and security of person, protection against arbitrary arrest and detention and a fair trial for migrant workers and members of their families is guaranteed by articles 16, 17 and 18 of the CMW, while Objective 13 of the GC establishes the need to first apply alternatives to immigration detention before resorting to detention.

As Russia does not fully recognize the competence of the Committee regarding CMW complex demands, it is hard to ask Committee to react on above-pointed violations the CMW by Russia directly. *But in framework of General Comment on the Convention on Migrant Workers and the Global Compact for Migration we must mention that increasing attention to other international human rights mechanisms, including the treaty bodies, the issue of international humanitarian law, such as Geneva Conventions, 1949 and Protocols to them must be taken into account, as the specific situation of the working migrants in conditions of the broad-scale interstate conflicts is not well reflected in the international migration and international human rights law.*

We hope that above-pointed special statements of the UN experts and rapporteurs regarding situation in Ukraine must be supported by next Committee's official position. Our Association believes that urgent, immediate steps of the UN OHCHR bodies must be done; monitoring procedure, mentioned in UN HRC resolution 49/1, must be enforced immediately. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families may communicate with other UN authorized structures on this issue.

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