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To UN Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

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Freedom of Opinion, Right to Development and Russian Aggression in Ukraine

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Our Association of Reintegration of Crimea (ARC)¹, as non-governmental expert and human rights organisation², present own proposition regarding the drafting of thematic study on “Freedom of opinion and expression and sustainable development: why voice matters”.

Such proposals reflect the ARC’s experience of participation in discussions on the 6th Session of the UN Expert Mechanism on the Right to Development, in our Association’s communications with International Telecommunication Union (ITU)³ also as our Association’s expert researches, related with human rights and humanitarian issues, including their fundamental rights, informational rights, right to development, freedom of opinion and expression⁴⁵⁶ also as with issues of the social development goals (SDGs) transitional justice for Crimean peninsula, with relevant humanitarian, informational, economic, social and financial impacts⁷⁸.

1. The example of ongoing Russia’s aggression against Ukraine shows the genuine link between the right to freedom of opinion and expression contribute to the achievement of the SDGs, especially on issue of absence for Ukrainian citizens of free access to media, Internet and mobile communications.

Since 2014 Crimean peninsula was illegally occupied by Russia. Since 24th of February 2022 Russia committed broad and open military aggression to all Ukraine’s territory. Due last eight months of fights Russia occupied some territories of Donetsk, Kherson, Luhansk, Zaporizhzhya regions and strong fights are going in areas with total population with some millions persons near the frontline.

All war crimes, committed by Russian invaders during ongoing hostilities, are connected with absolutely clear Russia’s war targets in maximal destruction the civil infrastructure, including objects, essential for all Ukrainian ethnic and social groups, including mobile, Internet, TV and radio broadcasting networks⁹.

¹ <https://arcrimea.org/en/about/>

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

³ <https://arcrimea.org/en/activity/2022/11/11/russian-occupation-and-the-international-telecommunication-union/>

⁴ <https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/conflict/2022-10-07/submission-disinformation-and-freedom-of-expression-during-armed-conflict-UNGA77-cso-arc.pdf>

⁵ https://www.ohchr.org/sites/default/files/documents/issues/iedebt/digital-systems/2022-12-15/ARC_Submission.pdf

⁶ <https://www.ohchr.org/sites/default/files/documents/issues/digitalage/reportprivindigage2022/submissions/2022-09-06/CFI-RTP-Association-of-Reintegration-of-Crimea.pdf>

⁷ <https://www.ohchr.org/Documents/Issues/UCM/ReportHRC48/NGOs/submission-association-of-reintegration-of-crimea.pdf>

⁸ <https://arc.construction/19284>

⁹ <https://www.washingtonpost.com/world/interactive/2022/ukraine-before-after-destruction-photos/>

At the ITU's Plenipotentiary Conference in Bucharest in October 2022, delegations of representatives from 44 states, including Ukraine then issued a joint statement, where pointed: Joint statement pointed that, "as an important member of the UN family, the ITU cannot ignore the fact that it is Russia which is responsible for the war in Ukraine. ...Russia's actions have had a devastating impact over the operation of telecommunication facilities and services in Ukraine and on the exercise of Ukraine's sovereign right to regulate telecommunications within its internationally recognised territory. Russia has lost its status as a credible partner for ITU activities and cannot claim to promote its values".

ITU Report¹⁰ published on 23 of December, 2023 as it was foreseen by ITU Resolution 1408 "Assistance and support to Ukraine for rebuilding their telecommunication sector"¹¹ states that information and communication technologies networks of operators were partially and, in some instances, fully destroyed or occupied, that within a period of six months of Russia's broad-scale aggression against Ukraine, 1123 cyber-attacks were reported, targeting all the sectors of the economy of Ukraine, including IT and telecommunications; that as of July 2022, 12.2 per cent of homes lost access to mobile communications services including 3.1 per cent partially, 11 per cent of base stations of mobile operators were out of service and 20 per cent of the country's telecommunication infrastructure was damaged or destroyed.

Report states that the economic losses of the telecommunication sector have been estimated to be more than USD 0.1 billion and direct damage of telecommunication facilities, networks, systems, and equipment is estimated at USD 0.71 billion. Also, Report points, telecommunication companies provide 22 per cent fewer services, which has resulted in reduced income and revenues, and USD 1.79 billion is needed to restore the telecommunication sector.

Also, as out Association also informed to ITU, Report points that the aggressor illegally unilaterally changed the international numbering system defined by the ITU in Recommendation ITU-T E.164 (11/2010)⁴⁵ and Recommendation ITU-T E.212 (09/2016)⁴⁶ and the national numbering system of Ukraine, by illegal introducing new national destination codes (NDC) for the temporarily occupied and war-affected territories of Ukraine and illegal using them under the country code (CC) [7], allocated by ITU to Russia and Kazakhstan.

Ukraine national destination code (NDCs) and a mobile network code (MNC) as well as other NDCs have been illegally used by "fixed and mobile communication networks" operating for the benefit of an aggressor in the temporarily occupied territories of Crimea, Sevastopol, Donetsk, Luhansk, Kherson and Zaporizhzhia regions by illegal switching to the international numbering system of Russia, adds the Report.

2. 3. Russian troops occupied, since end of February, 2022 significant part of Ukraine's Kherson Region and southern part of Ukraine's Zaporizhzhya Region, including towns of Nova Kahovka, Skadovsk, Henichesk, Melitopol, Prymorsk and Berdyansk.

In all those towns and other settlements Russian occupying forces and Russia-controlled so-called "military-civil administrations" and "commandant's service" establish full control over the objects of tele- and radio-communication infrastructure. Since the April 2022 they started broadcasting Russian and Russia-controlled "Crimean TV and radio companies" illegally in the Russia-occupied parts of Kherson and Zaporizhzhya regions, where Ukrainian TV and radio companies' broadcasting was blocked forcibly¹².

¹⁰ https://www.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/Interim%20assessment%20on%20damages%20to%20telecommunication%20infrastructure%20and%20resilience%20of%20the%20ICT%20ecosystem%20in%20Ukraine%20-2022-12-22_FINAL.pdf

¹¹ <https://www.itu.int/md/S22-CL-C-0095/en>

¹² <https://arc.construction/28973>

More, since May, 1 Russian military forces blocked the Ukrainian suppliers of Internet and Ukrainian mobile communication services in the Russia-occupied parts of Kherson Region and Zaporizhzhya Region¹³. After 3rd of May Internet traffic in Kherson, Melitopol and Berdyansk was restored but via Russia's and Russia-controlled Crimean providers like "Miranda"¹⁴¹⁵¹⁶

Such illegal Russia's military interference to the Ukraine's tele- and radio-communication systems, including mobile network and Internet providers have features of terroristic activities and those Russia's illegal actions are not in compliance with demands of international humanitarian law, including IV Geneva Convention.

Such Russia's illegal activities violated brutally articles 40, 42, 45 and 47 of the Constitution of the International Telecommunication Union, norms of Convention of the International Telecommunication Union, and its Administrative Regulations, including Unions' resolutions such as resolution R 800 "Telecommunications, an important factor in economic and social development: role of the ITU in this domain".

7. Such Russia's illegal activities, violating both the right to development and freedom of expression is connected with Russia's racial discrimination of Ukrainian citizens, especially ethnic Ukrainian and Crimean Tatars on those occupied territories, also as in Russia-occupied Crimea, as it was pointed in Report of UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance A/HRC/50/61¹⁷. Such aggressor's illegal activities include repressions against bloggers and journalists.

Report points that Russia has sought to "justify" its military invasion and territorial aggression in Ukraine on the purported basis of alleged "eliminating neo-Nazism". The use of neo-Nazism as a pretext to "justify" territorial aggression seriously undermines genuine attempts to combat neo-Nazism, stated the UN Rapporteur, who denounced and condemned in the strongest terms such Russia's criminal "pretextual use", including in relation to the unlawful breach of the sovereign territory of Ukraine and the humanitarian crisis that breach has caused¹⁸. So all Ukrainian citizens, especially ethnic Ukrainian and Crimean Tatars are discriminated by Russian troops and illegal "administrations" on Russia-occupied territories as alleged "neo-Nazi".

Report includes the thesis of our Association on systemic violations of human rights and humanitarian standards, including racial and ethnic discrimination against, inter alia, ethnic Crimean Tatars, in the Russia-occupied Crimea since 2014. Report recognized that ARC outlined how multiple "justifications" for this military aggression were criminally used by Russia, including the allegedly need to "denazify Ukraine". Report stresses, as ARC described – how, in conjunction with such fake criminal "justifications", the Russian government had been using hate speech against ethnic Ukrainians, as well as neo-Nazi symbols, including marking its troops and paramilitaries with the letter "Z". Such illegal actions of Russia-controlled structures are directly connected with violation of rights to freedom of expression and to development

UN Special Rapporteur stressed that our Association described the catastrophic harms to Ukraine, including among its military and civilians, as a result of the above-mentioned aggression, she also points on ARC-provided examples of such harm, including the death of civilians, kidnappings, illegal detention practices and attempts to create a food blockade.

¹³ <https://arc.construction/30379>

¹⁴ <https://www.unian.net/techno/communications/internet-v-herson-e-zahvachen-okkupantami-ob-etom-govoryat-dannye-nablyudeniy-11810127.html>

¹⁵ <https://twitter.com/netblocks/status/1520874432046239745>

¹⁶ <https://arc.construction/30571>

¹⁷ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/349/09/PDF/G2234909.pdf?OpenElement>

¹⁸ <https://arcrimea.org/en/activity/2022/12/19/russian-neo-nazism-was-researched-in-un-report-on-crimean-examples/>

Report A/HRC/50/61 recognized that ARC pointed on mass displacements as a result of Russian military aggression and that also ARC claimed that the government of Russia was preparing to undertake the criminal mass deportation of the Crimean Tatar population from the AR of Crimea.

Russia's above-pointed discrimination includes serious violations of international humanitarian law and violations and abuses of human rights committed against residents of Crimea and other Russia-occupied territories, who are Ukrainian-origin, Ukrainian-speaking, activists, human rights defenders, journalists, minority and indigenous representatives, abusing other fundamental freedoms, including the freedoms of expression, religion or belief and association and the right to peaceful assembly.

Those ARC thesis later were supported in UN General Assembly's resolutions 77/229¹⁹ and 77/204 on 15th December, 2022²⁰

Above-pointed issues of Russian aggression against Ukraine are now the main challenge to maintaining and strengthening international peace and security in context of sustainable development at the global and European levels.

All those violations make broad negative impact on realization the right to development by population of those territories. Now Russian invaders deport en masse the Ukrainian population of Kherson region to the Crimea and then to Russia with a direct goal to change the ethnic and cultural dimension of such population, also Russian occupiers discriminate the indigenous Crimean Tatars and ethnic Ukrainians in the Russia-occupied Crimea, that was condemned inter alia by UN General Assembly Resolution 77/229.

8. Ukraine re-acts on these violations of Ukrainian citizens' rights, including right to development. Ukraine immediately filed an Application with the International Court of Justice (ICJ) on 25 February 2022, instituting proceedings against Russian in a dispute concerning the interpretation, application or fulfillment of the UN Convention on the Prevention and Punishment of the Crime of Genocide. Russia refused to execute the ICJ order in this case to stop the aggression²¹. Russia-controlled troops and mercenaries committed in Ukraine, during this invasion, gross violation of international law already²²²³²⁴²⁵²⁶²⁷²⁸²⁹.

All war crimes, committed by Russian invaders during ongoing hostilities, are connected with absolutely clear Russia's war targets in maximal destruction the civil infrastructure, including media, Internet, TV and radio objects, essential for all Ukrainian ethnic and social groups³⁰. Those issues now are the subject of the investigation the International Criminal Court³¹ Due to gross violation the human rights Ukraine filed an application to the ECtHR also³². Russian government refused to execute the demand of the ECtHR and the order of ICJ to immediately suspend the military operations that it commenced on 24 February 2022.³³

On 7 April 2022 the UN General Assembly adopted a resolution ES-11/3³⁴ calling for Russia to be suspended from the Human Rights Council³⁵. The UN Human Rights Council

¹⁹ <https://www.un.org/en/ga/77/resolutions.shtml>

²⁰ <https://press.un.org/en/2022/ga12483.doc.htm>

²¹ <https://www.icj-cij.org/en/case/182>

²² <https://sofrep.com/news/russian-soldiers-gang-raped-ukrainian-woman-as-her-child-was-crying-in-the-next-room/>

²³ <https://www.icj-cij.org/public/files/case-related/182/182-20220307-PRE-01-00-EN.pdf>

²⁴ <https://www.bbc.com/ukrainian/features-60888528>

²⁵ <https://hromadske.radio/en/news/2022/03/09/members-of-the-wagner-group-have-been-killed-in-ukraine>

²⁶ <https://www.bbc.com/news/world-europe-60547807>

²⁷ <https://arc.construction/26892>

²⁸ <https://news.un.org/en/story/2022/03/1113652>

²⁹ <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

³⁰ <https://www.washingtonpost.com/world/interactive/2022/ukraine-before-after-destruction-photos/>

³¹ <https://www.icc-cpi.int/ukraine>

³² <https://hudoc.echr.coe.int/eng-press?i=003-7282553-9922068>

³³ <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

³⁴ <https://digitallibrary.un.org/record/3967950?ln=ru>

³⁵ <https://news.un.org/en/story/2022/04/1115782>

adopted on 12th of May a resolution on the deteriorating human rights situation in Ukraine where pointed that Russia should immediately cease its aggression and provide international human rights and humanitarian institutions with unhindered, immediate and safe access to persons transferred from conflict-affected areas³⁶.

Those decisions are not executed by Russian troops, Russia-controlled mercenaries and terroristic groups, which established policy of terror and repressions over the Russia-occupied territories of Ukraine, including Kherson and Zaporizhzhya regions³⁷³⁸.

From the point of view of international law, such Russia's illegal acts can be considered as terrorism, also as racial discrimination and also as attempted genocide against people of Ukraine. According to the International Convention for the Suppression of the Financing of Terrorism, terrorism is considered, among other things, "any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act"³⁹⁴⁰.

All Ukraine's attempts for the peace-building, including peace talks and negotiations with Russian government were unsuccessful and Russia rejects all peace propositions and it refuses to execute the demands of ICJ and ECtHR orders to stop the aggression and hostilities that are directly pointed against the Ukrainians' rights, including rights to freedom of expression and to development. Next urgent, immediate steps of the UN Special Rapporteur must be done in Ukraine, in condition of ongoing interstate conflict and hostilities, of ongoing Russia's terroristic criminal, discriminative and racist policy against Ukrainians citizens' rights must be done, including all observation procedures and visits to Ukraine.

Such discrimination of Ukrainian citizens by Russian invaders, that violated brutally their freedom of expression and right to development reminds the provisions of preamble of Universal Declaration of Human Rights, that points that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. So the issues of any human right, including the right to development includes the freedom from fear and want, pointed in Atlantic Charter, 1942⁴¹. So the connection between right to development, freedom of expression and freedom from fear and want must be confirmed and supported on international level.

Special situation of such violations in conditions of armed conflicts must be stressed and issue of non-possibility of state's derogation from right to development, also as from right not to be discriminated (regarding freedom of expression issues) must be pointed. The special situation of violation of such rights against colonisation, foreign occupation, armed conflicts, genocide, deportations and racial discrimination must be stressed; the duty of states to recognise the inalienable indigenous rights must be reflected.

Relevant decisions of international courts and tribunals must be taken into account, including decisions of ECtHR in interstate cases like 20958/14 and 38334/18 where the issues of violation of right to development in conditions of interstate conflict and foreign occupation, including illegal repressions, discriminations, deportations and attempted genocide, are

³⁶ <https://arc.construction/31039>

³⁷ <https://hromadske.radio/en/news/2022/03/09/members-of-the-wagner-group-have-been-killed-in-ukraine>

³⁸ <https://www.bbc.com/news/world-europe-60547807>

³⁹ <https://arc.construction/16791>

⁴⁰ <https://casebook.icrc.org/case-study/icty-prosecutor-v-galic>

⁴¹ <http://hrlibrary.umn.edu/education/FDRjointdec.html>

mentioned⁴². Special attention must be paid to the ban of repressions against the bloggers, journalists, human rights defenders, other NGOs and indigenous structures that have goal in supporting and defending the right to development, including situations of freedom of expression in non-democratic regimes and armed conflicts.

Also the issue of right to education, including high and post-graduated education, of right to scientific activities as issues, closely related with the whole essential issue of development and freedom of expression must be taken into account, especially regarding issues of non-discrimination.

Next urgent, immediate steps of the UN Special Rapporteur must be done in Ukraine, in condition of ongoing interstate conflict and hostilities, of ongoing Russia's terroristic criminal, discriminative and racist policy against Ukrainians citizens' rights to development and to freedom of expression must be done, including all observation procedures and visits to Ukraine.

3rd of February, 2023

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⁴² <https://hudoc.echr.coe.int/eng?i=001-207622>