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To: the United Nations Office of the
High Commissioner for Human Rights
For the Universal Periodic Review of Ukraine
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SUBMISSION ON THE HUMAN RIGHTS SITUATION WITH REGARD TO THE UNIVERSAL HUMAN RIGHT TO A SAFE ENVIRONMENT IN UKRAINE

1. Forty years ago, the Stockholm Declaration of the UN Conference on the Human Environment declared that the environment is "essential . . . to the enjoyment of basic human rights," including the most basic one: "the right to life itself." Principle 1 of the Stockholm Declaration was clear: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." This right was recognized in subsequent years more at the national level, in numerous constitutions, than at the international level.

2. Since then the formal international recognition of the fundamental right to a safe environment has been slow in coming. Only in March of 2012 has the HR Council on its 19th session decided to appoint an independent expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment.

3. However, the *procedural* or *participatory* aspects of the right to a safe environment were recognized twenty years later, in Principle 10 and 17 of the Rio Declaration in 1992 (the right to access to information, public participation, access to justice and the performance of environmental impact assessment).

4. Furthermore, in Europe and nearby the procedural rights were embedded in two regional treaties – the UNECE Convention on Access to Information, Public

Participation in Decision-Making and Access to Justice in Environmental Matters (also known as the Aarhus Convention) and the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (also known as the Espoo Convention). The Conventions entered into force in 2001.

5. These rights are crucial for the legitimacy of environmental decision-making for present and future generations and, thus, they are crucial aspects of human rights and the environment.

A. Environmental Impact Assessment:

6. In 2008 the Implementation Committee of the Espoo Convention found that Ukraine had been in non-compliance with its obligations under the Convention. In its findings the Committee stated that Ukraine has established a domestic Environmental Impact Assessment (EIA) system, but that Ukraine does not comply fully with the Convention provisions on the EIA preparation.

7. At that time of the Espoo Implementation Committee decision of 2008 Ukraine had the following EIA system. With regard to construction projects a developer drafted EIA documentation and submitted it for the approval to the environmental authority (the procedure called ecological expertiza). No project could go forward without a positive decision of the environmental authority. Public participation was envisaged during drafting of EIA documentation to some extent. The results of the public participation process were required to be reflected and addressed in the decision of the environmental authority. Thus, at least at the legislative level the rights and interests of the communities (both living and the generations to come) were considered and taken into account by both performing a comprehensive EIA and by including the public into the decision making process itself.

8. In 2011, however, the Government drastically amended its legislation on construction activities and abolished the procedure of ecological expertiza. Today only EIAs of construction projects that potentially endanger more than 10000 persons are subject for an independent audit performed by a public or a private company. EIAs are not required for other construction projects. Thus, not environmental considerations (consideration of what we leave to our children), but only potential danger to the living ones or to the infrastructure are the criteria for a decision on whether a project needs EIA. Although public participation is still envisaged in the procedure of EIA preparation, the law has no requirement to reflect and address public participation results in the report of an auditor or further permitting decisions of the construction control authority. This means that the scope of the main instrument safeguarding the right to a safe environment, which is an EIA, has been dramatically narrowed. Moreover, from now on the Government and developers are the sole decision-makers whereas the public gets no right to say a

word in the protection of ecosystems and natural resources for themselves or for their children.

9. The procedures of decision-making for permits for projects other than construction (deforestation, water resources use, exploration of minerals) do not require EIA and public participation whatsoever.

10. In 2011 the Espoo Convention's Implementation Committee reaffirmed its finding on non-compliance by Ukraine with its obligations under the Espoo Convention and expressed specific concerns regarding the new legislative framework on construction activities.

B. Public participation in environmental decision-making:

11. In 2005, 2008 and 2011 the Aarhus Compliance Committee found Ukraine in non-compliance with the provisions of the Convention relating to the first and second pillars (access to information and public participation in environmental decision-making).

12. For 6 years almost no attempts were made by the Government to create a clear and adequate legal framework for meaningful public participation in Ukraine. No earlier than in June of 2011 threatened by the international sanctions did the Government adopt Regulations on public involvement in environmental decision-making. These regulations covered PP in drafting of EIA documentation and ecological expertiza process. However, the above-mentioned amendments to the construction legislation were passed also in June of 2011 leaving Regulations on public participation without a legal basis for application.

13. Thus, starting June 2011 both the public and the environmental authority are excluded from the permitting procedure for new development projects. EIA is being drafted and assessed by an environmental expert (outside the environmental authority) and only with regard to construction projects that can endanger more than 10000 persons or big infrastructure sites.

14. At the practical level, the public is not consulted with when important decisions with serious environmental impact are made. For example, in 2010 the decisions on prolongation of the period of exploitation of the oldest nuclear power reactors in Ukraine were taken without any consultations with the public. In 2012 the Government auctioned shale gas deposits for industrial exploration and exploitation to an international investor without any participation of either the public concerned or local governments.

15. Furthermore, due to lack of detailed national regulations, public hearings, in those rare occasions when they happen, are held with serious violations of the procedure

established by the Aarhus and Espoo Conventions, prohibiting local residents from efficient participation.

16. Having abolished a meaningful EIA process, the Government in November of 2011 continued to amend various kinds of legislation meant to exclude local communities and local authorities from the process of decision-making. The Law on Product Sharing Agreements was amended to exclude local authorities from the process of approving land lots which are being allocated for exploration by international investors. Consequently, neither local communities nor local authorities have the right to participate in such environmentally controversial issues as shale gas extraction or offshore hydrocarbon exploration.

C. Access to environmental information:

17. Adoption of the Access to Public Information Law is a considerable breakthrough in the sphere of access to environmental information. Despite this obvious progress in the legislation, there are still some difficulties in obtaining environmental information such as classification of environmental information as confidential or information for official use only.

18. Although the newly adopted Access to Public Information Law does formally meet access to information requirements under the Aarhus Convention, the practice of implementation of access to information rights lags behind laws. Lack of administrative rules that are detailed and coherent with the Law and the Convention, as well as lack of official capacity and willingness to implement the laws, create this gap between law and practice.

D. Recommendations

19. Through this submission, it is respectfully submitted that the following recommendations be referred by the body to the State Party for its consideration, support and implementation:

20. **Recommendation one:** to dedicate resources to bringing Ukraine into compliance with Principle 17 of the Rio Declaration and environmental impact assessment requirements under the UNECE Espoo Convention which would mean to enact an sufficient legal framework and to insure adequate enforcement of the requirement to perform Environmental Impact Assessment of the projects which may have a significant effect on the environment;

21. **Recommendation two:** To dedicate resources to bringing Ukraine into compliance with Principle 10 of the Rio Declaration and public participation in decision-making requirements under the UNECE Aarhus Convention which would mean to enact a

sufficient legal framework and to insure adequate enforcement of meaningful public participation in the course of Environmental Impact Assessment;

22. **Recommendation three:** To further its efforts in ensuring adequate enforcement of new Access to Public Information Law and access to environmental information requirements under the Aarhus Convention.

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