

Statement by Nadia Volkova of Ukrainian Legal Advisory Group on behalf of Ukraine 5 AM Coalition, 6 December 2022

Excellencies, distinguished delegates, dear friends

My name is Nadia Volkova, I represent Ukrainian Legal Advisory Group and it is an honour to address you today on behalf of Ukraine 5 AM Coalition. As some of us sat yesterday at the launch of the annual report by the Office of the Prosecutor, we received notification of air raid alert followed by messages saying “Looks like it has started”. And what started was another missile attack by the Russian Federation on Ukraine. It was not so much a surprise at this point because everyone had expected this follow up to the earlier 23d November attack, when people died and most of the country was plunged into the worst blackout to date. However, the pain, the fear, the suffering each and every one of us has been experiencing for the past 9 months is still overwhelming, real and there is no end to it in sight. Although everybody understands that this war will run its course hopefully sooner rather than later, a question remains: how much more pain can we endure? Is it measurable? Probably not. Can it be reduced? Difficult to say. But it can definitely be offset and made a little more bearable, lessons can be learned and future suffering can be prevented. And the only answer to that is Effective Justice. What does it look like in case of Ukraine?

The armed conflict has been ongoing since 2014, its drastic deterioration in February this year was among other things due to the failure to ensure that justice that had been delivered was effective. We believe that now we are given yet another chance to put things right, even though the stakes are a lot higher, not only for the victims of the war in Ukraine but for the benefit of those bearing the brunt of the war in other situations too. There are few basic ingredients that form a basis for the recipe for the effective justice.

One, Ukraine must ratify the Rome Statute. For many years civil society in Ukraine has been fiercely advocating for ratification because it seemed a right thing to do for any state that respected the rule of law. Now it must do it out of necessity because lack of ratification undermines effective cooperation of the domestic authorities with the ICC thereby adversely affecting the effectiveness and efficiency of the work of the Court which is so vital now. The international community, in particularly states parties to this Assembly, could and should put more pressure on the Government of Ukraine to make this critical step towards ensuring justice, especially in light of Ukraine’s EU candidacy status. It has become clear over the years that Ukraine’s Government is unlikely to make this step voluntarily. But a proactive position of the international community like it was with anti-corruption reform, for example, can indeed be very persuasive.

Two, Ukraine should amend its legislation to ensure effective investigations, prosecution and adjudication of core crimes in accordance with the international standards of due process.

Three, there is an urgent need for specialist knowledge and skills among investigators, prosecutors and judges which Ukraine critically lacks. While there is a lot of gratitude for the steadfast and continuous support and assistance provided by the international community, large gaps remain in respect of capacity of domestic authorities *needed* to tackle this scale of grave crimes that are being committed on the daily basis. This is why we insist on identifying the needs of the justice system first before any sustainable and long-lasting solutions can be offered and further discussed. And to that end we concur with the position of the Prosecutor Khan voiced yesterday during plenary and then reiterated at the launch of the OTP report that setting up new institutions as a solution to the problems before attempting to strengthen the existing ones is not an effective approach.

In conclusion, a patient who has flatlined cannot be resuscitated and rehabilitated by putting band aids all over their body. Ukrainian situation needs to be looked at and analysed holistically and not in isolation whether it is vis-a-vis separate elements of the justice system and/or other international mechanisms. Many colleagues from other conflict situations are now looking to Ukraine as an example of “effective Justice”, let us not disappoint them and make sure that Justice is not a myth but a real possibility for all.

I thank you for your attention.