



ASSOCIATION OF REINTEGRATION
OF CRIMEA

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To the UN Expert Mechanism on the Rights of Indigenous Peoples

Crimean Indigenous Peoples and Constructive Agreements' Perspectives

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Our Association of Reintegration of Crimea (ARC)¹, as non-governmental expert and human rights organisation², with activities devoted to Crimea's issues, submits this application to the UN Expert mechanism on the rights of indigenous peoples for its next thematic study to the Human Rights Council at its fifty-first session in September 2022 for Study on "Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition".

Our submission is devoted to the situation of indigenous peoples, including Crimean Tatars, Crimean Karaites and Krymchaks in the Autonomous Republic of Crimea and city of Sevastopol (hereinafter – Crimea). The response deals with the issues identified by the Association in its work, namely the issue of intentional and organised Russian policy against indigenous rights in the Crimea, the issue of Ukraine's policy related to those indigenous peoples, including the right to identity and right to development.

ARC informs UN, Council of Europe and OSCE structures on indigenous issues, including transitional justice, and it publishes analytics, regarding challenges for human and indigenous rights in Crimea. In 2020-2021 ARC sent more than forty relevant submissions to UN HRC bodies, including OHCHR³, informing on the relevant gross violations, and made more than 20 publications on transit justice issues⁴, including collective memory⁵, indigenous peoples' representation⁶ and their cultural rights⁷, indigenous property issues⁸. Association researched Ukrainian preparatory work on transitional justice in indigenous framework⁹, it granted own proposals to Ukraine's government on the development of the draft laws where the transitional justice issues were reflected¹⁰, Association's experts

¹ <https://arc.construction/>

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

³ <https://arc.construction/21494>

⁴ <https://www.ejiltalk.org/the-proceedings-flow-while-water-does-not-russias-claims-concerning-the-north-crimean-canal-in-strasbourg/> ; <https://arc.construction/category/analytics>

⁵ <https://arc.construction/7505>

⁶ <https://arc.construction/7465>

⁷ <https://arc.construction/7449>

⁸ <https://arc.construction/7303>

⁹ <https://arc.construction/5594>

¹⁰ <https://arc.construction/21627> ; <https://arc.construction/9921>

presented our impacts on the sessions of the Crimean Discussion Club¹¹ and for the World Law Congress 2021 in Barranquilla, Colombia¹².

The illegal occupation and attempted annexation of the Crimea, motherland for three indigenous peoples by Russia since 2014 have been condemned in a series of international acts, including UN GA resolutions 2014 68/262, 2016 71/205, 2017 72/190, 2018 73/263 2019 74/168, 2020 75/192, 2018 73/194, 2019 74/17, 2020 75/29 2021 76/179¹³, resolutions of the OSCE Parliamentary Assembly, of the Parliamentary Assembly of the Council of Europe 1988 (2014), 2028 (2015), 2067 (2015), 2112 (2016), 2132 (2016), 2145 (2017), 2198 (2018), 2231 (2018) etc., of the European Parliament's resolutions 2014/2841 (RSP), 2014/2965 (RSP), 2016/2556 (RSP), 2016/2692 (RSP), 2017/2596 (RSP), 2017/2869 (RSP), 2018/2754 (RSP), 2018/2870 (RSP), 2019/2734 (RSP), 2019/2202 (INI) etc. Those acts paid special attention to the brutal violation the fundamental rights of indigenous peoples.

The attempted annexation the Crimea by Russia was never recognized by the international community. Human rights violations in the Crimea, including racial and other discrimination of the indigenous Crimean Tatars now are the subject to consideration in international courts, including the International Court of Justice (case 166)¹⁴ and the European Court of Human Rights (case 20958/14 and others).¹⁵

The ongoing russification of the ethnic groups in Crimea in all areas of life is the key challenge for the Crimean Tatars today. The number of schools with education in Crimean Tatar language has been reduced by Russian de facto "authorities" and the indigenous language is studied just as one subject of the curriculum in regular schools. Ukraine provided for the special status of the Crimean Tatar language in its current laws on education and media broadcasting, but the state now operates only some primary schools with Crimean Tatar classes on the Ukrainian mainland. The ongoing clericalization of the Crimean Tatars in Crimea is another sharp challenge, as the Russian regime stimulates it and pushes the policy of integration of the indigenous people to the "Muslim commonwealth" of Russia.

Crimean Tatars now constitute only 20 % of the Crimean population, so possible tensions having an ethnic background, are very limited. The key source of discrimination of the Crimean Tatars is concentrated in Russian punitive and propaganda policy, which revitalized the Soviet myth about the "enemy people" and determined any indigenous activists as "extremists", if they manifested any disloyalty towards the Russian policies. In the same way, the Russian de facto "authorities" are interested in the demonstration of "inter-ethnic peace" on the peninsula and in formation of the loyal Crimean Tatar elites, by integrating them into the Russian institutions in Crimea¹⁶.

Before the World War II, all state authorities that controlled Crimea recognized the three ethnic groups mentioned above as peoples (nations), traditional for Crimean peninsula. At the same time, Russian Empire authorities never made any official agreements with indigenous peoples of Crimea on their rights, lands etc. In XVIII century Crimea was annexed by Russia's unilateral acts without any guarantees to the peninsula's indigenous

¹¹ <https://arc.construction/23596>

¹² <https://arc.construction/23309>

¹³ for example, <https://undocs.org/en/A/RES/76/179>

¹⁴ <https://www.icj-cij.org/public/files/case-related/166/166-20191108-JUD-01-00-EN.pdf>

¹⁵ <http://hudoc.echr.coe.int/eng/?i=001-207622>

¹⁶ <https://www.incomindios.ch/en/?view=article&id=1394:interview-with-dr-borys-babin-the-situation-of-the-crimean-tatars&catid=131>

population. During the XIX century Russian runs the policy of discrimination of the Crimean Tatars that had features of genocide and it promoted their emigration from Crimea to the third countries. Krymchaks were discriminated by the Russian authorities' practices in the framework of the anti-Semitic law and up to 1917 as People with Judaism as their traditional religion. In 1941, Krymchaks felt victims of genocide (Holocaust) in Crimea during the Nazi occupation. In 1944 Crimean Tatars felt victims of genocide (forced deportation) under the control of the Soviet authorities. In the Soviet period since 1967, the USSR state authorities refused to recognize of Crimean Tatars as separate ethnic group, they were determined as "Tatars," as the part of undetermined Tatar population of the USSR. Up until 1987-1989, the Crimean Tatars were not allowed by Soviet authorities to resettle back to the Crimea from the Soviet-controlled Central Asian regions.

Crimean Karaites and Krymchaks are non-numerous ethnic groups that became completely urbanized before 2014. On 1990–2014, when approximately 300 thousands of Crimean Tatars returned to the Crimea, Ukraine was trying to preserve the interethnic peace in Crimea, however this policy resulted in practical impossibility for the indigenous land claims, restitution claims, and defamation claims. Anyway Ukraine restored the Crimean Autonomy by Law on 12 February, 1991 № 712-XII¹⁷, established by Soviet Authorities for the Crimean Tatars with declarative purposes and liquidated in 1945. Such restoration was not correlated with any agreements with Crimean Tatar People, who established in 1991-1992 own representative bodies, Mejlis and Qurultai.

The Ukraine's central and local authorities and municipal entities, law enforcement structures, courts, and the Ombudsperson had the common position that all the property taken away from the Crimean Tatar owners since 1944 will not be returned to former owners or their successors and will not be compensated. Most of the land lots and buildings once owned by the Crimean Tatars have been transferred from state property to the private property of non-indigenous users that controlled it in the late Soviet time, during the common privatization proceeding in Ukraine before 2000¹⁸.

However, the Crimean Tatars managed to obtain from the authorities, or squatted (with subsequent legalization) the land lots in the rural districts of Crimea. Ukraine till 2014 granted budget costs on support the municipal infrastructure in Crimean Tatar settlements, on their national language primary schools and cultural institutions, but the principles of free, prior and informed consent was not always realized. Mejlis of Crimean Tatar People co-operated with Ukrainian central and regional authorities till 2014 as the Council of Representatives of Crimean Tatar People, in framework of the Presidential Decree on 18 May, 1999 № 518/99¹⁹

Before deportation of 1944, Crimean Tatars mostly resided in the Southern Coast of Crimea and in the Crimean Mountains. After returning in 1990-s, the majority of the Crimean Tatar land lots were concentrated in the rural areas of Central Crimea, resulting in establishment of satellite Crimean Tatar settlements near Simferopol and other cities. Also the Crimean Tatars resettled to the small Crimean towns, traditional for Crimean Tatars like

¹⁷ <https://zakon.rada.gov.ua/laws/show/712-12>

¹⁸ <https://www.intechopen.com/books/indigenous-aboriginal-fugitive-and-ethnic-groups-around-the-globe/legal-statute-and-perspectives-for-indigenous-peoples-in-ukraine>

¹⁹ <https://zakon.rada.gov.ua/laws/show/518/99>

Staryi Krym, Sudak, Bilohirsk (Karasubazar) and Bakhchysarai. However, now the economic crisis in the occupied Crimea forces Crimean Tatars to resettle to Simferopol.

Importantly, it is exactly Simferopol that became a destination for most Russian citizens illegally resettled by the de facto Russian “authorities” to Crimea, including military officers, officials, servicemen, and their families²⁰. The quantity of city’s population increased from 300 thousand in 2014 to 500 thousand in 2020 and it continues to grow. Yet, the infrastructure of Simferopol, including its water and sanitation systems^{21,22}, road network, schools, kindergartens, hospitals²³ etc. does not satisfy the needs of its half-million residents²⁴. In 2020-2022, the deficiencies in the city and regional management of the Russian de facto authorities caused the systematic water crisis²⁵ in Simferopol²⁶ and other localities²⁷ of Crimean Tatars’ urbanized settlements. Furthermore, chaotic construction of residential and non-residential buildings²⁸ by the Russian commercial structures associated with the de facto “authorities”, accompanied by failure to comply with any imaginable architectural and safety standards²⁹, ruins the unique landscapes^{30,31} and creates risks for the indigenous residents of Crimean cities³².

Russian de-facto “authorities” do not recognize since 2014 the indigenous statute for the Crimean Tatars, Crimean Karaites and Krymchaks; they did not make any agreements with them. Representative body of Crimean Tatar People, Mejlis is banned by Russian de-facto “authorities” since 2016. Russia did not execute the order of International Court of Justice of 19 April 2017 in case 166 (Ukraine v. Russian Federation)³³ where the Court, indicated, as the provisional measures with regard to the situation in Crimea, that Russia must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis.

In 2017-2022 Russia refused to make any negotiations or agreements with Mejlis’ representatives regarding execution this ICJ’s Order and cancel the ban of Mejlis.

Ukraine recognized the Crimean Tatar People as indigenous one and the regime of its Mejlis and Qurultay, also as the powers of UN Declaration on the Rights of Indigenous Peoples by the statement of Ukraine’s Parliament (Verkhovna Rada) on 20th of March 2014³⁴. In this act Ukrainian Parliament instructed the Cabinet of Ministers of Ukraine to urgently submit draft laws of Ukraine, normative legal acts of Ukraine, which determine and consolidate the status of the Crimean Tatar People as the indigenous people of Ukraine, and

²⁰ <https://arc.construction/5816>

²¹ <https://arc.construction/7625>

²² <https://arc.construction/5483>

²³ <https://arc.construction/6449>

²⁴ <https://arc.construction/6010>

²⁵ <https://arc.construction/7194>

²⁶ <https://arc.construction/9566>

²⁷ <https://arc.construction/9110>

²⁸ <https://arc.construction/9848>

²⁹ <https://arc.construction/7514>

³⁰ <https://arc.construction/7198>

³¹ <https://arc.construction/5647>

³² <https://arc.construction/6474>

³³ <https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-00-EN.pdf>

³⁴ <https://zakon.rada.gov.ua/laws/show/1140-18>

to develop practical mechanisms for cooperation between the executive authorities of Ukraine and the Mejlis of the Crimean Tatar People. Statement declared that drafting of relevant laws of Ukraine and regulations will be developed in consultation with the Mejlis, in close cooperation with the UN, the OSCE, the Council of Europe in accordance with international law and standards of human, indigenous peoples', national minorities' rights.

In 2021 Ukraine adopted the Law on Indigenous Peoples of Ukraine on 1 July, № 1616-IX³⁵. This law did not establish the procedure of agreements with indigenous peoples, but it adopted some procedures of consultations with indigenous peoples' representative bodies.

Such consultation must be held by Ukraine's government on issues of indigenous peoples' sacral and cultural objects' lists and exploitation (law's part 2 of art. 4); on renaming the settlements (law's part 3 of art. 4); on Crimea's reserve of lands and granting land plots to indigenous peoples' representatives (law's part 4 of art. 7); on order of cooperation the indigenous peoples with local government offices on land, water forest and other environment issues in Crimea (part 2 of art. 7); by Ukraine's ministries on issues of teaching the indigenous history and language (law's part 2 of art. 5) and other issues (law's part 3 of art. 8). Regarding the article 7 of this law the indigenous peoples of Ukraine, through their representative bodies, have the right to set priorities and develop strategies for the realization of their right to development. This right includes participation in the development and implementation of state and regional programs, as well as other strategic and policy documents on the basis of free, prior and informed consent.

Now our Association experts, together with Mejlis and Crimean Tatar Resource Center representatives, are included by the Ukraine's State Service for Ethno-Politics and Freedom of Conscience in the special working group for development the drafts of Ukraine's sublegal acts, which will establish the order of above-pointed consultations with government and ministries. Such sublegal acts are not adopted till now and we will inform the UN Expert Mechanism on the development of this situation.

The specific problem is that another Ukraine's sublegal act should be adopted, regarding order of registration the indigenous peoples' representative bodies by Ukraine's government. The article 8 of the Ukrainian law, 2021 № 1616-IX points that indigenous representative bodies acquire and lose the rights and obligations provided by this and other laws of Ukraine, after the Cabinet of Ministers of Ukraine decides to consolidate their legal status or deprive it. The draft of such a decision is submitted to the Cabinet of Ministers by the central executive body, which ensures the formation and implementation of state policy in the field of interethnic relations, religion and protection of the rights of national minorities of Ukraine (which is Ministry of Culture of Ukraine).

Our Association believes that Ukraine need expert support from UN Expert Mechanism for further development the pointed sublegal acts and realization the demands of Ukrainian law, 2021 № 1616-IX on indigenous peoples of Ukraine.

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³⁵ <https://zakon.rada.gov.ua/laws/show/1616-20>