**Modern Challenges of the Right to Land**

**for Indigenous Peoples in Ukraine**

*Submission for the study on “Right to Land under the UN Declaration on the Rights of Indigenous Peoples: A Human Rights focus"*

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Aspects of defense and support the right to land of the indigenous peoples of Ukraine in modern conditions are closely connected with their recognition as indigenous peoples, with further perspectives for renovation their violated collective and individual rights, with the current situation of the ongoing interstate conflict between Russia and Ukraine and related to the Crimean peninsula as to the Native Land of the indigenous peoples.

For last decades three ethnic groups residing in Ukraine struggled for the recognition as the indigenous peoples and coherent rights – Crimean Karaites, Crimean Tatars and Krymchaks. Crimean Tatars are the indigenous people residing in Crimea, deported from peninsula by illegal acts of Soviet government in 1944 and particularly repatriated to Crimea in 1989-2010, they have approximately 200000 representatives in Ukraine, first of all in Crimea. Crimean Karaites and Krymchaks are the indigenous peoples, having now less than 500 representatives in Ukraine, most of all in Crimea [1].

Any land agreements were not done between Russia and Crimean Tatars during and after the annexation the Crimea by Russian Empire in XVIII century. After conquest of the Crimean Khanate by Russia since 1783 Crimean Tatars were discriminated in their land ownership in favour of the Russian colonists, but the private property on agricultural lands for Crimean Karaites, Crimean Tatars and Krymchaks was formally recognised. The feudal land relations established by Russia in Crimea were combined with traditional Islamic heritage of vakuf lands that were managed by the Muslim clergy for collective purposes of Crimean Tatar development such as schools, mosques and hospitals. Since the end of XVIII century till 1917 the acreage of Crimean lands, owned by Crimean Tatars reduced more than in ten times.

In Soviet State since 1929-1932 all agricultural lands in Crimea were transferred from the private property to the collective or state property of socialist kind. Crimean Tatar lost their lands formally and preserved for ‘personal usage’ only small land pieces adjacent to the rural home ownership. During the illegal deportation of the Crimean Tatars since 1944 from Crimea all their houses and adjacent land plots were confiscated by Soviet State; collective socialistic agricultural enterprises of Crimea were transformed. All those lands in 1944-1967 were given to the new established collective and state socialistic agricultural enterprises that were created for the colonists from Ukrainian mainland and Russia as the U.S.S.R. republics.

Also the houses and adjacent land plots of Crimean Tatars in rural areas of Crimea were given to those colonists. During 1944-1967 any resettlement of Crimean Tatars to Crimea was officially forbidden in Soviet State; since 1967 such ban transformed to the unofficial but still effective one. Soviet authorities refused to register or agree with the private deals of purchase and sale the rural houses in Crimea, if the Crimean Tatar representative was a party of such deal (Soviet internal passports, issued to the Crimean Tatars as to the “Tatars”, had special confidential marks, allowed authorities to recognise the nationality of this person). And more, Crimean Tatar activists were forcibly resettled from the houses bought by them in Crimea, with temporal hiding their nationality from local authorities. A little part of Crimean Tatars (about 300 families from 300000 people) was allowed by Soviet regime to resettle officially in Crimea during 1967-1989 for propaganda purposes.

Since 1989 Crimean Tatars started massive initiative resettlement to Crimea from the Central Asia. But Soviet authorities, recognising in full volume the rights of Crimean Tatars to reside freely in Crimea, did not establish any mechanism of land transfer or land compensation for them. During the main wave of Crimean Tatars returning to Crimea in 1989-1993 the major part of agricultural lands in Crimea were still in collective socialist property, and the private plots both with old or new houses were in property of Russian and Ukrainian migrants and their descendants, such property since 1992 was recognised as private by new Ukrainian state [2].

The Ukrainian Law on Rehabilitation the Victims of Politic Repression in Ukraine, 1991 № 962-XII did not establish, also as other Ukrainian legislation acts of last decade of XX century, any mechanism of land compensation for the Crimean Tatars [3]. In such situation the National Gathering of Crimean Tatars (Qurultay of the Crimean Tatar People, QCTP) in June 1991 proclaimed the Declaration on the National Sovereignty of the Crimean Tatar People, art. 4 of which proclaimed that lands and natural sources of Crimea, including its healthy-recreational potential, are the ground of the national welfare of the Crimean Tatar People and the source of prosperity of all the Crimean inhabitants. So Declaration pointed that the lands in Crimea can’t be used against the will and consent of the Crimean Tatar People (CTP), that any actions against the ecologic situation and historic landscape of the Crimea must be stopped, that harm to the nature and sources of the Crimea must be compensated [4].

The same session of the QCTP adopted the Address to the all Crimean residents where declares that Crimean Tatars do not encroach to the property of such residents but stated that Crimean Tatars retained in Crimea “the good marks of own multi-centenary residing: methods of lands cultivating, water excavation and usage, with respect for the unique nature of the region.” This Address also stated that “our homes, property, utensil, gardens, arable and other wealth were illegally ceased in one moment” but that “our actions on renovation our rights may not include the violence and force” [5].

Also the same session of the QTCP in 1991 adopted the Resolution “On Execution the Decisions of State Bodies, Related to the Repatriation of the Crimean Tatars to Crimea” that ascertained the extremely hard situation with ongoing unlimited dispensation the Crimean lands to non-Crimean Tatar residents by the local authorities for the garden, kailyards and dacha plots, in the same time of refusal to the repatriated Crimean Tatars in land allocation for building homes. This resolution of the QCTP trusted to the Mejlis of the Crimean Tatar People (MCTP) to make demands to all the state governing bodies to stop this practice of the lands dispensation to non-Crimean Tatar residents without the consent with MCTP [6].

Ignorance of the new Ukrainian authorities on those land problems caused the mass practice of self-seizure of agricultural lands by organised Crimean Tatar groups in 1990-2010. Such self-seizure were organised by the activists and MCTP decisions on lands that were not in the private property, primarily on lands of the former socialistic agricultural enterprises, seized from Crimean Tatars in 1929-1932 and private and in 1944 as collective ownership. The approximate calculations pointed that such self-seizure covered more than 40000 hectares.

State authorities reacted on such situation by start the official land allocation for Crimean Tatars and by gradual recognition the rights of the Crimean Tatar representatives on the relevant self-seized land parcels. Disposal of Cabinet of Ministers of Ukraine № 187-p, 2001 in its art. 3 demanded to the Ministry of Agrarian Policy, State Committee on Land Sources and Council of Ministers of the ARC “to rapid the solution the land issues in the legal framework” in ARC, firstly related to the land plots allocation to the formed deported persons and their descendants, other returning persons [7]. So in 2007 the self-seized and not legalised lands were near 1300 hectares only. Attempts of some Ukrainian legal enforcement structures to start the criminal proceedings relevant to those self-seizures were not effective and almost nobody of Crimean Tatars was punished for it. [8].

The development the Crimean autonomy in Ukraine during 1991-1996, the Constitution of Ukraine, 1996 did not connect the status of Autonomous Republic of Crimea (ARC) with Crimean Tatars and/or with other indigenous peoples of Ukraine. The Constitution of the ARC, 1998 avoided to mention the rights of the indigenous peoples of Crimea, including the land rights. Ukrainian land legislation did not recognise neither the indigenous land rights not the special land rights for the former deported persons or other victims of the Soviet regime.

At the same time the development of the democratic social and legal state institutions and civil society in Ukraine objectively made it necessary to provide the legal status to the indigenous peoples of Ukraine as an integral part of the multinational Ukrainian People and to create the preconditions for their development, including the land rights. So the Constitution of Ukraine, 1996 launched a national constitutional institute of Indigenous Peoples.

According to Art. 11 of the Constitution of Ukraine, the state shall promote the development of ethnic, cultural, linguistic and religious identity of all IPs of Ukraine; under its art. 92 rights of IPs have to be determined by the laws of Ukraine. Section 3 of art. 119 of the Constitution states, that local state administrations provide on relevant territory, in areas where indigenous peoples live, the implementation of the programs of their cultural development. However, practically the similar rights were secured by the Constitution for the national minorities and any special right to land was not established. Alas, Ukraine has not passed later the legislation that would specify even those provisions of the Constitution [9].

At the same time since 1991 Ukraine de-facto recognized the politic statute of CTs and gave to them some preferences not for their Indigenous origin but as reparations for the victims of Soviet deportation. Such preferences were individual; they grounded on sublegal acts of programmatic and financial character that did not let for CTs claim to court for recognition their indigenous rights. Agreement on Aspects Connected with Restoration of Rights for Deported Persons, National Minorities and Peoples, adopted in Bishkek by some post-Soviet states, 1992 did not foresee the right of deportees to claim on national of international level, including the land claims [10]. National acts devoted to deportees such as Governmental Decrees № 1952, 2003; № 626, 2004 etc. did not set the clear procedure of court arbitration for deportees, including land claims [11].

In 1990-2014 Ukraine tried to preserve the inter-ethnic conflict in Crimea, Such situation caused practical impossibility for the Indigenous land claims, restitution claims and diffamation claims in conditions of their repatriation and reconciliation. The consolidated position of the state and self-government bodies, judicial institutions, courts and even the Ombudsman of Ukraine was that the property taken at the time of deportation might not be returned due to the lack of Ukrainian laws on the restitution (or giving back) or compensation of that property; the vast majority of such object and lands were privatized by Russian immigrants in 1992-1998 [12]. It caused refusal of formal recognition exactly the indigenous peoples’ rights, especially for former deported Crimean Tatars, even when their right to lands were recognised and guaranteed for the individual rights of the certain Crimean Tatar representative de-facto.

During the Russian military and politic actions in 2014 caused the occupation and attempt of annexation the Crimea by Russia, Verkhovna Rada of Ukraine (Parliament) made official Statement on the Guarantee of the Rights of the CTP in the Ukrainian State, approved by the Resolution № 1140-VII of March 20, 2014. According to the Statement Ukraine guarantees the preservation and development of ethnic, cultural, linguistic and religious identity of the CTP as an Indigenous People [13]. The preamble of the Statement contained a reference to the objectives and principles enshrined in arts. 3, 11, 15 of the Constitution of Ukraine, in art. 1 of the UN Charter and in the UN International Covenant on Economic, Social and Cultural Rights also as in the Vienna Declaration. By this Statement (point 4) Parliament has declared its support to UN Declaration on the Rights of Indigenous Peoples (DRIP).

Ukraine guaranteed the protection and implementation of the inherent right of self-determination of the CTP in the sovereign and independent Ukrainian State. Ukraine recognized the MCTP, as the executive body of QCTP, and as the highest representative body of the Indigenous People. By this Statement Parliament instructed the Ukrainian Government to submit immediately the draft laws and other legal acts of Ukraine that define and confirms the status of the Indigenous Peoples of Ukraine. Development of relevant projects might be done in consultation with the MCTP, in close cooperation with the UN, the OSCE, the Council of Europe in accordance with international law and standards of human, minorities and indigenous rights.

Alas, special Ukrainian law on rights of the Indigenous Peoples of Ukraine in conditions of the ongoing Ukrainian-Russian conflict is not still adopted. Anyway the Draft of such law (№ 4501) was registered in Ukrainian Parliament in one day with the project of the Statement № 1140-VII; and its provisions reflected maximally the DRIP demands, including right to land. Articles of 26-30 of the Draft of such law (№ 4501) reflected the articles 26-30 of DRIP, but this draft was not supported by the Ukrainian Parliament [14].

After attempt of annexation the Crimean Peninsula in February-March 2014 by Russia President of Russia adopted the Decree № 268 on April 21, 2014 “On the Measures for the Rehabilitation of the Armenian, Bulgarian, Greek, Crimean Tatar and German Peoples and the State Support of their Recovery and Development”. Such Decree did not recognise any special land rights for nether Crimean Tatars nor to other ethnic groups. Decree № 268 demanded to establish the specialties of execution the Federal Law № 93-ФЗ, 2006 in Crimea (that is related to the land plots allocation) [15], but relevant changes were not done by the Russian illegal authorities in Crimea, that violate brutally own duties in areas of the modent international human rights and humanitarian law [16-20].

As experts say, Decree № 268 obviously ignores deported CTP as the indigenous people and equalizes Crimean Tatars with the settlers from European nations implanted in Crimea at the XIX century as a part of policy of displacement of CTP; de jure this is the repudiation of the Indigenous Rights of CTP. We must point on content of the Decree № 268 that is rather poor and very far from the norms and principles established by international law and good practice for indigenous rights.

The same position is in the Draft of “law” of the “Republic of Crimea” № 1520/30-10 “On Some Guarantees of the Rights of Peoples Deported without Court Order on a National Basis in 1941-1944 from the Crimean Autonomous Soviet Socialist Republic”, adopted by the Supreme Council of ARC (s.c. “State Council”) for the first reading on June 4, 2014. Proposed Draft № 1520/30-10 even does not recognise the illegality of deportation, some rights of deported CTP are given in it, as it is marked in art. 2, as the “Steps on the Social Defence the Repatriates”, including the “land plot allocation for building individual homes”.

Art. 6 of the Draft № 1520/30-10 foresee the regulation of such land plot allocation by other “law” of the “Republic of Crimea” but limits such land plot only for purposes of home building and house-keeping; the land plot allocation for the self-seized houses was foreseen only after the consent of the special municipal commission and in compliance with demands of the urban planning documentation of the settlement [21]. Draft № 1520/30-10 was not adopted by the Russian illegal authorities in Crimea, instead of it they declared the “recognition” of some self-seized plots, seized before 2014 but those declarations were not realised till now.

Steps of Russia for legitimating the attempt of annexation of Crimea were not recognized by the world community; more, those steps were recognized as dangerous for human and indigenous rights. So in Resolution 68/262 “Territorial integrity of Ukraine” UN General Assembly (UN GA) called upon all states, international organizations and specialized agencies “not to recognize any alteration of the status of the ARC and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status” [22].

After Russian military and politic actions in Crimea Ukraine adopted the Law № 1207‑VII “On the Protection of Rights and Freedoms of Citizens and on Legal Regime for the Temporarily Occupied Territory of Ukraine” on April 15, 2014. The preamble of this Law, concerning the basis for public policy for temporarily occupied territory of Ukraine, determined duty of defence and full implementation of national, cultural, social and political rights of citizens of Ukraine, “including indigenous peoples” [23]. This Law in parts 4-6 of art. 10 forbids during the occupation period to change and stop the real property rights including the land rights without registering such act or transaction on the Ukrainian mainland under the Ukrainian law. All transactions regarding the real property including the land plots done in other ways are determined by Law № 1207‑VII as the invalid ones; this law establishes special ban for any public property land allocations in Crimea.

This legal configuration suggests that the rights of indigenous peoples of Ukraine in Crimea is covered by the provisions of this Law № 1207-VII, under which Ukraine is taking all necessary measures “to guarantee the rights and freedoms guaranteed by the Constitution and laws of Ukraine, by international treaties, to all citizens of Ukraine residing occupied territory”. “In the occupied territories liability for violations of human rights, which are guaranteed by the Constitution and laws of Ukraine, relies on Russia as on the state-occupier in accordance with the norms and principles of international law”, as this law says. UN DRIP, of course, can be regarded as a collection of relevant “norms and principles” of international law applied by Ukraine to implement the requirements of the Law № 1207-VII. According to those norms Ukraine are going to give to the IPs effective mechanisms for legal protection in relation to any action which has the aim or effect of depriving historic lands, territories of their compact residence or resources [24].

At the same time Ukraine adopted the Law № 1223-VII “On the Restoration of the Rights of Persons Deported on National Grounds”. This act does not contain the term “Indigenous Peoples”; but there are mentioned about both deported Peoples and the Crimean Tatars; at the same time the Law № 1223-VII is the universal document covering all criminal ethnic deportations made by Soviet state (deportation of Ukrainians etc.). Article 7 of this Law № 1223-VII defines the procedure and terms of compensation to the deportees. Among others, buildings and other property seized as a result of the deportation must be returned to the deportees or to their kind in nature if it is possible (if the house is not occupied, and if the property is preserved). In the case of absence of such possibility the applicant is reimbursed by the cost of buildings and property. Applications for compensation and return of property must be filed not later than three years from the date the person status of deportees (those norms came into force from January 1, 2015) [25].

Article 6 (parts 4-7) of this Law № 1223-VII declares that deported persons may got the one-time material support for building the individual house (except those who already got from state such property or support before 2014), that the deported persons “if necessary” may “extraordinary” got the land plot for the individual house building in way established by the Land Code of Ukraine. The sublegal procedures of realisation for those norms are still not established in Ukraine. Later, in 2018 Ukrainian Ministry of Social Policy proposed for public hearings the relevant draft but it was not later adopted by Ukrainian Government [26].

So we may do the ***common conclusion*** that rights to land for the indigenous people of Ukraine were brutally violated by Russian Empire and U.S.S.R. More, those rights to land are not well-guaranteed by the Ukrainian national legislation. The realization of such rights for individuals in 1991-2014 happened primarily under their own initiative and in the framework of the relevant MCTP and QCTP policy. Illegal occupation and attempt of annexation the Crimea by Russia till 2014 sufficiently complicated the realization of those rights to land for the indigenous people and their representatives. Ukrainian legislation still does not recognize the collective rights to lands for the indigenous peoples or for their institutions; it recognizes the special right to lands to the former deported persons and their descendants (which are for the most part indigenous Crimean Tatars). The adoption the special law of Ukraine on the rights of the indigenous peoples [27] is the only way for changing this negative situation.

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