

№ 01/02
«15» January, 2020

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Contributions for Study on the Right to Land under the UNDRIP: A Human Rights Focus

United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, in article 25 confirms the right of indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26 of this Declaration establishes that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

More, article 27 of this Declaration, demands that states shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

The right of indigenous peoples to redress is fixed in the article 28 of Declaration, that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

More, regarding the article 29 of Declaration, indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the territories of indigenous peoples without their free, prior and informed consent.

Article 30 of this Declaration, demands that military activities shall not take place in the territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. And, regarding the article 32 of this Declaration, indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

Implementation of the provisions of Art. 26, 27, 28, 29, 30, 32 of the UN Declaration on the Rights of Indigenous Peoples is closely related and impossible without the realization of the indigenous peoples to self-determination.

Crimean Tatars are the indigenous people of the Crimean peninsula, formed in the XIII – XV centuries. From 1441 until the occupation of Crimea by the Russian Empire in 1783, they had an independent and sovereign state - the Crimean Khanate.

The policy of assimilation and relocation of the indigenous people of Crimea from their land, pursued by the Russian Empire, led to the fact that at least about a million Crimean Tatars immigrated from the territory of Crimea over a century and a half. In 1917, the first Qurultay of the Crimean Tatar People was convened, the purpose of which was to restore the rights of the indigenous peoples of Crimea in their land.

On October 18, 1921, the Crimean Autonomous Soviet Socialist Republic was created, during the creation of which, it was declared that the Crimean Tatars were an indigenous people, oppressed for many decades, therefore, considering the aforementioned, autonomy was created. The first repressions in the Crimean Autonomous Soviet Socialist Republic were conducted against the leaders of the Crimean Tatars, namely after Veli Ibrahimov, tried to present a plan for the re-emigration of Crimean Tatars, which encompassed the return of about 20 000 people to their historical homeland from Turkey, Bulgaria and Romania. In 1928, Veli Ibrahimov, as well as 63 other prominent representatives of the Crimean Tatar patriotic leadership, who dreamed of the freedom of their people in their native land, were executed by firing squads.

May 18, 1944 was the day of the beginning of the Deportation of the Crimean Tatars (also known as Sürgün), one of the most tragic episodes in the history of the Crimean peninsula. The total number of forcibly deported Crimean Tatars amounted to more than 208 000 people who were taken out for special settlements in Central Asia, the Ural mountains and Siberia. The lack of shelter, food and any tools for cultivating the land contributed to the fact that the chances of survival in a foreign land were minimal. In the first six months of deportation, 30 000 Crimean Tatars died - every fifth individual. This is officially confirmed by data that appeared in the reports of the NKVD (People's Commissariat for Internal Affairs) of the Uzbek SSR.

Information about toll was carefully hidden, so the Crimean Tatars were forced to take an independent census of their own people. According to the Crimean Tatar national movement, more than 46% of the total number of deportees died as a result of forced relocation.

At the same time, everything related to Crimean Tatars was eradicated in Crimea - it was repopulated by residents of other republics of the USSR, mainly from Russia and Ukraine, and Crimean Tatar toponyms were renamed.

In 1967, the Decree "On Citizens (Crimean - Approx. Author) of Tatar Nationality, Previously Living in Crimea" was issued. This decree abolished the indiscriminate accusations against the Crimean Tatar people, but did not allow the Crimean Tatars to return to their homeland. Immediately after that, a resolution was adopted which stated that the Crimean Tatars, like other citizens of the USSR, have the right to reside throughout the Soviet Union in accordance with the current legislation on employment and passport regime. In 1967, 2000 Crimean Tatars tried to return to the peninsula, however, the existing passport regime blocked the representatives of the Crimean Tatar people from living in their homeland - in Crimea.

Crimean Tatars were not allowed to return to their homeland until 1989. On November 14, 1989, the Supreme Soviet of the USSR adopted the Declaration "On the recognition of repressive acts against peoples subjected to forced resettlement as illegal and criminal...". This document provided for the full political rehabilitation of the Crimean Tatar people and the abolition of a repressive and discriminatory legislation, recognized the legal right of the Crimean Tatar people to return to Crimea, the restoration of the autonomy of Crimea as a multinational entity, and the review of cases initiated for participation in the Crimean Tatar national movement. To implement the approved proposals, a new commission of the Supreme Soviet of the USSR was formed, however, the collapse of the USSR interrupted its work.

By May 1, 1990, 83 116 Crimean Tatars had returned to Crimea. On February 12, 1991, the Verkhovna Rada of the Ukrainian SSR adopted the Law "On the Restoration of the Crimean Autonomous Soviet Socialist Republic". However after the collapse of the USSR in 1991 and till present day, the right to self-determination has not been realized.

In 1991, the Crimean Tatar people formed a representative body of national self-government – the 2nd Qurultay of the Crimean Tatar People, which elected a representative-executive body - the Mejlis of the Crimean Tatar People. The Qurultay - Mejlis system is a democratic body that regulates all spheres of life of the Crimean Tatar People. On June 28, 1991, at the first session of the 2nd Qurultay of the Crimean Tatar people, a Declaration of National Sovereignty of the Crimean Tatar People was adopted, art. 4 of which proclaimed that lands and natural resources 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 the Declaration pointed that the lands in Crimea can't be used against or without the will and consent of the Crimean Tatar People, that any actions causing harm to the environment and historic landscape of Crimea must be stopped and compensated.

Since 1989, the Crimean Tatar people began to return to their homeland. For the Crimean Tatars, the issues of obtaining land for housing construction became acute. Local authorities refused to allocate land for building houses, there was resistance when registering the purchased houses, where people were not registered. People were not employed, children were not accepted at schools and kindergartens, pensions were not paid etc. The current situation forced the Crimean Tatars to occupy uncultivated land plots, free from development, and begin unauthorized construction of housing. The authorities did not support such a solution of the problem of providing housing for the Crimean Tatars and continued to resist in the form of not providing permits for the supply of communications, as well as not providing these areas with the necessary infrastructure.

After the collapse of the USSR, the privatization of state-owned enterprises began in Ukraine, both in industrial and agricultural spheres. According to the methodology proposed by the government and by the Decree of the President of Ukraine dated of August 08, 1995 No. 720/95 and June 28, 1999 No. 765/99, the Crimean Tatars could not participate in the privatization of state property, since they were not citizens of Ukraine, were not members of the state-owned enterprises and were not members of collective farms. The Mejlis of the Crimean Tatar people has repeatedly appealed to the government and the President of Ukraine with suggestions for amendments to the legislation, but there was no reaction from the side of authorities. Thus, the factor of deported citizens was not taken into account, despite the Agreement on issues related to the restoration of the rights of deportees, national minorities and peoples signed by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Ukraine and was ratified by the Verkhovna Rada of Ukraine on December 17, 1993. This Agreement dealt with the restoration of all rights of deportees, as well as assistance in the return and arrangement of these citizens.

The Crimean Tatar people consists of three main sub-ethnic groups - the Steppe (Noğay) , the Mountain (Tats or Tatlar) and the Southern Coast (Yalıboynu) - each of which lived in certain regions of Crimea and engaged in its own traditional type of agriculture. But, when the Crimean

Tatars began to return to their historical homeland, the authorities did not allow them to return to the territory of their traditional ex-residence. So, for example, representatives of the southern coastal group of Crimean Tatars were forced to settle in the steppe or foothills of Crimea and did not receive the opportunity to return to their lands.

In the early 2000s, the second wave of unauthorized seizure of free land began throughout Crimea including the southern coast. This was due to several reasons, firstly, the Crimean Tatars sought to return to the regions of their traditional residence; secondly, most Crimean Tatars were forced to settle in rural areas, where the only means of survival was land, which was not possible to obtain. In this regard, representatives of the indigenous people held rallies and protests, regularly went to Kiev where they demanded the provision of land for housing. On September 18, 2002, the Land Reform Program in the Autonomous Republic of Crimea for 2001-2005 was adopted, which was developed without consultation and coordination with the representative body of the indigenous Crimean Tatar people. This program provided the sale of land on the territory of the Autonomous Republic of Crimea, but there was no mechanism for providing land for Crimean Tatars in urban areas, 70% of whom used to live in the cities being in exile and only land plots in rural areas were proposed for farming.

Since at the legislative level the Ukrainian state did not recognize Crimean Tatars as the indigenous people until 2014, the right of Crimean Tatars to lands, territories and resources was not regulated accordingly. Since 2007, the Ukrainian authorities have tried to solve the problem of allocating land for Crimean Tatars by creating the appropriate commissions and working groups. Thus, from 2007 till January 2014, 5,358 plots were allocated on the territory of the AR of Crimea for individual housing construction in the city of Simferopol, Simferopol district, in the south and west of Crimea.

In 2014, the Russian Federation occupied the homeland of the indigenous Crimean Tatar people - Crimea. On March 16, 2014, an illegal referendum was held on the status of Crimea, where the position of the indigenous people was not taken into consideration. In 2016, the occupation court of Simferopol recognized the activities of Mejlis of the Crimean Tatar people as extremist and banned its activities in the Russian Federation, in fact, left the indigenous people without their national body of self-government. The occupation power persecutes members of Mejlis of all levels, and this is more than 2000 representatives of the indigenous people. The interim decision of the UN International Court of Justice obliges the Russian Federation to resume the activities of Mejlis of the Crimean Tatar people, but the occupant once again ignores the decision of the authoritative international body. At the legislative level, Crimean Tatars are not recognized as the indigenous people in the Russian Federation, respectively, the realization of the right to self-determination, as well as to the land, territory and resources in this situation is not possible.

The occupation bodies illegally apply Russian legislation in all spheres of life on the peninsula, and also adopt local unauthorized laws. So on January 15, 2015, the "Law of the Republic of Crimea "On the Provision of Land Plots in State or Municipal Ownership, and Some Issues of Land Relations" was approved. Article 5 of this "Law" stipulates the conditions for the provision of land to privileged categories of citizens, including deportees. The provisions of this article are discriminatory because, for example, a citizen who, at the time of application, has lived in the city of Simferopol for more than 5 years, can get a plot in Simferopol. Considering that the Crimean Tatars who apply for a land plot in accordance with this "Law" mainly live on lands occupied without permission, do not meet this criterion, since they do not have an appropriate registration. To date, there still remain unresolved issues with registration of land plots arbitrarily occupied in such regions as Zhigulina Roscha, Strelkovoye, Krym Avtogaz, Balaklava, Kurban-koy, Molodezhnoye, Airport Zavodskoy, Yevpatoriya, Sudak, and the Southern coast of Crimea. According to the activists of the Crimean Tatar people, the de-facto authorities refuse to resolve the issue of allocation of land plots in the South Coast and other regions until the issue of allocation of land plots in Simferopol is resolved. In addition to the adoption of such discriminatory "laws" in the legal field, there is another problem. In the legislation of the Russian Federation there is no concept

of private ownership of land. Despite of the legal conflict and disputes the Administration of Simferopol City in the period between May and September of 2016 was approving the contract between JSC “Crimean Rose” and Constructing Firm “Akura” LTD on the long-term lease for the construction of houses on the territory of Strelkovo settlement. It had be done long time before the final court decisions on its cases. Akura immediately had started the campaign of the intimidation of the families threatening to destroy houses not waiting for the final court decisions. The Administration of Simferopol City suggested to the community another plot of land for housing building in another part of suburb territory of Simferopol City so called Mirnoye. That place has no any kind of social infrastructure as water supply, internal roads, electricity, sanitation, medical care, schools etc. It is in distance of 7 kilometers till the closest road without any transportation. They proposed to pay to Crimean Tatars “a compensation” for the houses to be destroyed by fixed prices of constructive materials only and did not proposed any kind of temporary housing until we could build new houses.

Administration totally ignores the Russian legal acts concerning the possibility of legalizing houses of Crimean Tatar People including its own previous decisions. Crimean Government and local Simferopol administration tries to disguise their responsibility for the organization of the displacement of the community hiding behind the back of a private company. While there was not yet the court decision about their displacement, many violent actions were undertaken by the staff of Akura LTD.

During 2017-2018, The Police and Courts of Crimea prosecuted to administrative responsibility a number of the people from this community for the non-obedience to authorities and not allowed meetings and demonstrations the people, who publically protested against destruction of our houses and Mosque. They were Mr Razin Dzhapparov, Mr. Enver Kurtseitov, Mr. Zamir Anarbayev, Mr. Ervin Abdullayev, Mr. Rustem Muslimov, Mrs. Emine Sultanova and others about 10 families altogether. The Sum of the fines was 5000-15000 rubles. Total sum they were made to pay for these acts consists of 300 000 ruble (approximately 4 400 USD), which is rather big sum for ordinary people. At February 2018 6 Crimean Tatars declared a hunger strike in order to request the attention of the authorities to the problem. Authorities prohibited the continuation of the hunger strike under the threat of the prosecution. One of the leaders of the Community Mr. Fazil Ibrahimov was arrested in February 2018 and held in preliminary detention more than 6 months despite he has diabetes mellitus and chronic obstructive pulmonary disease. He have being accused for the illegal manipulation with the land based on the verbal evidence of four people of Russian origin, whom nobody from us new earlier. Only after range of public protests, he was transferred to house arrest at 19th of July 2018. Now he is waiting for criminal trial against him.

The Akura firm started the campaign of threatening and partial occupying of the land plots even not waiting for the final decisions of the courts. They used the mercenaries for private security firms to provoke the Crimean Tatars and intimidating the physical violence and destruction of houses, who will not leave the land voluntarily. They even have destroyed small mosque built by Crimean Tatars several years ago. Now a big new mosque for 1500 prayers is endangered to be destroyed, which may produce a great inter-confessional conflict in Crimea.

From 2011 to the present day, auctions for the sale of land are held in Crimea. Considering the ongoing policy of population replacement on the peninsula, the occupation authorities are assisting Russian citizens to purchase land in Crimea, providing them with beneficial employment conditions.

In addition to depriving the right of the indigenous Crimean Tatar people to land, all these years the inalienable right of the indigenous people to resources and minerals in Crimea was ignored. On December 6, 2009, the Qurultay Statement of the Crimean Tatar People of the 5th convocation “On the inalienable right of the Crimean Tatar People to land and natural resources” was adopted. On November 17, 2019, at a meeting of the Mejlis of the Crimean Tatar people, the Statement of the Mejlis of the Crimean Tatar People “On the observance of the inalienable rights of the indigenous Crimean Tatar people in the context of temporary occupation of Crimea by the

Russian Federation” was adopted. However, the practice of using of natural resources, marine mineral and biological resources of the Crimean peninsula without free, prior and informed consent of the representative bodies of the indigenous Crimean Tatar People continues to this day. For example, the de facto authorities of the peninsula solved the problem of insufficient water supply in Crimea by drilling wells and pumping water from underground lakes in the north of Crimea, which led to salinization of soils in the region, as well as a change in the chemical composition of water, the levels of calcium and limestone have drastically increased. Given the insufficient level of precipitation during the entire period of use of the underground lakes, as well as the level of exploiting on these wells, the water balance of groundwater is not restored, which can subsequently lead to subsidence of the soil in this region.

Since April 2015, the construction of the so-called “Crimean bridge” has been underway, the automobile part of which was opened in 2018, and at the end of 2019, railway communication was launched. The construction of this bridge was initiated without coordination with representatives of the indigenous Crimean Tatar People and was carried out with disruptions of the ecosystems of the Azov and Black Seas. Construction could entail a regional environmental catastrophe. The bridge and automobile approaches to it should become a part of the Kerch - Novorossiysk motorway. Also with gross violations of the ecosystem of the Crimean mountains, the Tavryda highway was built, during the construction of which karst rocks of the Crimean mountains and local landscape were destroyed, which could affect the traditional livelihood of the Crimean Tatars. For example, half of the top of Mount Aharmysh was blown up, which led to its destruction, as well as disruption of the functioning of groundwater. Due to the construction of the Kerch bridge and the Tavryda highway, a shortage of building materials was announced on the peninsula, which are extremely difficult to deliver to Crimea by the ferry. The Russian-controlled authorities of the peninsula are developing quarries to extract crushed stone and other minerals, thus changing the landscape of Crimea. For example, in the village of Kholodovka in the Kirovskoye district, the river has dried up, and 300-400-year-old juniper forests are also being destroyed. Moreover, due to all the explosions, local residents’ dwellings are literally falling apart.

In modern conditions de-facto authorities in Crimea, controlled by Russian Government, and commercial entities, governed by such authorities and their certain representatives, act in some areas of mass excavation of mineral and biologic resources of the Black and Azov Seas and Sivash Bay:

1) mass industrial production of gas and gas condensate on the Black Sea shelf adjacent to Crimea, by militarised platforms and pipelines with further usage of such gas as a fuel for two new thermal power plant, built for military purposes in Crimea since 2015;

2) mass industrial excavation of sand form the coastal sea bottom in Karkinit and Kalamita bays of the Black Sea, with further usage this sand in building the military objects in Crimea and relevant total destruction of the coastal maritime ecosystems and unique riparian territories like Baqual plat, Swan Islands and Donuzlav lake;

3) industrial maritime fishery in the Black and Azov Seas, Kerch Strait and Eastern Sivash Bay;

4) mass industrial excavation of mineralised waters of Western Sivash Bay for duties of chemistry plants in Krasnoperekopsk (Yeni-Kapu).

Thus, such management, in addition to violating the rights of the indigenous Crimean Tatar people, poses a threat to the preservation of the biological diversity of the peninsula.

Russian de-facto authorities do not execute any demand of international law for recognition, realization and protection of relevant rights of the Crimean Tatar People for those maritime resources. After illegal ban of Mejlis of the Crimean Tatar People in 2016 and mass discrimination of Crimean Tatars in Crimea, persecution the “Crimean Tatar extremism” by occupiers, even open discussion on those topics in Crimea or in Russia is absolutely impossible and dangerous for its initiators.

Alas Ukrainian government, that ratified the Convention, 1992 and recognized the Declaration, 2007 also does not execute own obligations for recognition, realization and protection of relevant rights in the part of its modern practical possibilities in Crimean issue.

For example, Azov Sea and Kerch Strait, adjacent to Crimea, with all their resources, were declared in 2003 as “historic internal waters” of Russia and Ukraine – but nobody in governments of both countries did not ever, as before 2014 so later, asked the opinion of the indigenous Crimean Tatar People and of its representative bodies for this issue.

Position of the Crimean Tatar People and of its representative bodies was never taken into account in the work of the Ukrainian-Russian Commission on Azov Fishery, holding its annual sessions in framework of the bilateral Agreement, 1993 even after 2014. More, when in October 2018 Head of Mejlis of the Crimean Tatar People, Refat Chubarov initiatively attended the 30th Session of this Commission, held near Kyiv, and demanded to stop the criminal practice of passing the fishing quotas by Russian authorities to Crimean commercial structures – his demands were ignored. The relevant annual protocol of this Commission was postponed by later, in February 2019, signed by parties, rejecting all the demands of the Crimean Tatar authorized leader without any explanations.

Ukrainian Government till this moment tolerate the illegal excavation in the waters of National Park in Sivash Bay for duties of chemistry plants in Krasnoperekopsk by the pump station, located in Kherson region.

More, Ukrainian Government in summer, 2019 proclaimed a contest for usage the part of the Black Sea shelf (“Dolphin” plot) with extremely short and non-transparent procedure, and later gave the rights for such usage to firm, controlled by Russian businessman. Later the results of this contest were cancelled, but anyway the position of the Crimean Tatar People and of its representative bodies was never taken into account in this proceeding.

The occupying power places military bases, imports heavy military equipment into the territory of Crimea; there are suggestions that the nuclear weapons were also brought into the territory of Crimea. UNGA resolutions A / RES / 73/194 of December 17, 2018 “The problem of militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, and areas of the Black and Azov Seas” and A / RES / 74/17 of December 9, 2019 “The problem of militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine and areas of the Black and Azov Seas” condemned the ongoing militarization of the peninsula and the Black and Azov Seas. In this regard, an access to the forests in the territory of Crimea is limited, which is an obstacle to the preservation and development of such a traditional and unique type of farming of the Crimean Tatars as Çayır gardening. Çayır gardens are considered to be an ancient historical tradition of Crimea. The formation of such gardens is the result of centuries of human exposure to mountain vegetation, a kind of selective work, in which those tree species that were able to adapt to harsh conditions and grow without human intervention, without pruning, watering, cultivating and protecting against diseases and pests were naturally selected. Until 1917, the peninsula had 8,000 hectares of Çayır gardens, and by the beginning of the 21st century, no more than 20 hectares of ancient Çayır gardens were preserved. On the territory of Alushta, Bakhchisaray, Belogorsk forestry you can find relic 100-120-year-old trees of white Rosemary, Ranet Champagne and Kandil-synapain in teal gardens.

Military exercises as well as the illegal conscription of the representatives of the indigenous people into the Armed Forces of the Russian Federation are also regularly conducted. A number of conscripts are sent to serve outside Crimea.

The Crimean Tatar people were deprived of the right to land, territories and resources back in 1783 and up to this day has not been restored. A similar situation will continue as long as Crimea remains occupied by the Russian Federation and the Ukrainian state does not adopt the Law on Indigenous Peoples of Ukraine, which will take into account all the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples.

Referring to Articles 41 and 42 of the UN Declaration on the Rights of Indigenous Peoples, the Crimean Tatar Resource Center calls on the Expert Mechanism to visit Ukraine with the aim to

study the situation in detail, and also, within its mandate, to hold an expert consultation on the implementation of the UN Declaration on the Rights of Indigenous Peoples into the national legislation of Ukraine. The visit of the Expert Mechanism to Ukraine will send the message to all Ukrainian people from the indigenous peoples, will contribute to the popularization and deeper understanding of the Declaration on the Rights of Indigenous Peoples by Ukrainian politicians, experts and society.

Best regards,

**Head of the Board
of the Crimean Tatar Resource Center,**

**Member of Mejlis
of the Crimean Tatar people**



Eskender Bariiev