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OF CRIMEA

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To UN Office of the High Commissioner for Human Rights

**Inputs for the preparation of the report of the UN OHCHR
pursuant to HRC resolution 42/17**

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In response to the Call for inputs for the preparation of the report of the Office of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 42/17 on “Human rights and transitional justice”, the Association of Reintegration of Crimea has an honour to submit the following input. Our Association is a non-government organization registered and operating in France and Ukraine. It brings together experts in the field of international law, human rights, transitional justice working on issues related to peaceful de-occupation of Crimea – an integral part of Ukraine occupied by the Russian Federation since 2014¹.

The transitional justice effort of Ukraine is a response to a multi-layer conflict, which includes dealing with the legacies of the totalitarian rule and the subsequent kleptocratic regime, response to open occupation of parts of the territory of Ukraine by another state and a proxy occupation of other parts. A specific feature of the Crimea region is that it is home of three indigenous people, all of which were subjected to different forms of genocide by the Nazi and Soviet regimes. Those peoples are now opposing the occupation and are subjected by the occupying power to a systematic campaign of intimidation and cultural erasure, also as the ethnic Ukrainians on the peninsula.

This input will concentrate on the issues related to the Crimea (the Autonomous Republic of Crimea and the City of Sevastopol), which is an integral part of Ukraine openly and forcibly occupied by the Russian Federation. The issues related to the region of Donbas, where Russia exercises proxy occupation, will not be covered in this input.

The illegal occupation and attempted annexation of the Crimea 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 75/29², 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

¹ <https://arc.construction/>

² for example, <https://undocs.org/en/A/RES/73/263>

(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 by Russia the fundamental human rights in the peninsula.

Ukraine fully realizes the potential and necessity of transitional justice for the resolution of the conflict and post-conflict settlement and reconciliation. After a comprehensive discussion, which included consultations with the civil society organizations, scholars and international partners, the Ukrainian Ministry of Reintegration of Temporally Occupied Territories developed a draft law “On the Foundations of the State Policy of Transitional Period”, that is now pending before the Parliament and the Venice Commission³. The draft covers issues related to restoration of the justice system, prosecutions, compensations to victims, memorialization. However, the draft is still in the first reading, so significant amendments can be made in the future. It is unknown at what date will the draft become law of Ukraine.

Experts of our Association sent before the prepared comments and proposals to that Ministry on the previous draft Law of Ukraine “On State Policy of Transitional Period”, announced for public discussion. The remarks indicated that one law is not enough for the legal regulation of all areas. A whole branch of transitional law is needed, and this branch must be combined with the achievements of other sciences in the field of conflict resolution and overcoming. For such complex legal phenomena it is more expedient to create a whole set of legal acts. The Association’s comments also provided a critical assessment of the terms and conditions proposed by the project, regarding a significant number of general declarative norms of the project, regarding the project’s approach to ensuring the rights of indigenous peoples.

The comments stated that the administrative procedure proposed by the project for the recognition of agreements and documents formed in the occupied territories creates risks of restricting the rights of individuals and creates huge corruption challenges, for which the project does not provide any obstacles. This is especially true of transactions concerning property located in the occupied territories, the “convalidation” of which may lead to the acquisition of rights to things, including real estate, obtained by criminal or manifestly unlawful tools during the occupation⁴. Some our proposals were taken into account by the Ministry in the finalized version of draft, given to the Venice Commission.

Some other legal acts can be considered as having a potential for the future transitional justice efforts. Importantly for Crimea, this includes the recently adopted Law “On the Indigenous Peoples of Ukraine”. The Law largely repeats the provisions of the UN Declaration on the Rights of Indigenous Peoples, including the right of the Indigenous Peoples to representation, land and natural resources. Article 7 of the Law recognizes the right of the Indigenous Peoples to sustainable development, including to the preservation of the environment, and to a share of income from exploitation of natural resources of their land⁵. The provisions of this article can become effective only upon de-occupation of Crimea and full restoration of Ukraine’s control over its presently occupied territory. As of now, the Government of Ukraine continues working on the bylaws aimed at practical enforcement of the new law, including recognition of the representative bodies of the

³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72625

⁴ <https://arc.construction/9921>

⁵ <https://zakon.rada.gov.ua/laws/show/1616-20>



indigenous peoples.

Ukraine's "Strategy of Deoccupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol" includes "measures in the sphere of transitional justice, including compensation of damages caused in connection with the armed aggression of the Russian Federation, armed conflict, temporal occupation of the territory of Ukraine, protection and restoration of the violated rights, bringing the perpetrators to justice"⁶. The measures described above are beneficial for achieving the 2030 Sustainable Development Goals, including Goal 16 on promotion of peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective and accountable institutions at all levels.

The main obstacle to realization of Ukraine's transitional justice strategy, including for the purposes of achieving the 2030 development goals, is the occupation of parts of the territory of Ukraine by Russian Federation. The fact of the occupation of Crimea was on many occasions recognized on the international legal level, including by the Prosecutor of the International Criminal Court (§ 158)⁷ and the European Court of Human Rights (§ 315 and onwards)⁸.

The Russian Federation openly enforces its laws on the occupied territory of Crimea. These laws do not include any legal acts on transitional justice or sustainable development, as these notions are uncommon for the Russian legislation. The Russian Federation does have a law "On the Guarantees of Rights of Indigenous Small-Numbered Peoples of the North", however, that law lacks guarantees provided in the UN Declaration on the Rights of Indigenous Peoples and in any event it does not apply to the indigenous peoples of Crimea⁹. The occupation precludes application of the significantly more developed legislation of Ukraine in Crimea.

Regarding the issue of transitional justice and Russian authorities our Association stressed on the importance of the analytical report by Russian experts Nikolai Bobrinsky and Stanislav Dmitrievsky "Between revenge and oblivion: a concept of transitional justice for Russia". The authors positioned the work as "a report in the genre of legal futurism on how in the future to overcome the impunity of crimes of the past and present"¹⁰.

Among other things, this document, published in 2021, analyzes the consequences of the Russian aggression in Ukraine, including the attempt to annex Crimea. The authors acknowledge that the international crimes previously committed by the Russian authorities in Chechnya are "to some extent relevant" for the situation with the armed conflict in Ukraine, since "here the number of victims is also calculated in very significant numbers, and the practice of enforced disappearances, although not so horrific in number missing is also present"¹¹.

To the contrary, the Russia's occupying "authorities" runs a policy of ethnic discrimination, cultural erasure, social hatred and division, combined with predatory exploitation of the natural resources of the Crimea without paying attention to the rights

⁶ <https://www.president.gov.ua/documents/1172021-37533>

⁷ https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf

⁸ <http://hudoc.echr.coe.int/eng?i=001-207622>

⁹ <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102059473>

¹⁰ <https://trjustice.ilpp.ru/>

¹¹ <https://arc.construction/19494>

and needs of indigenous peoples. The occupational regime is characterized by systematic injustice, endemic corruption, neglect of human rights, massive persecution of those, whom the occupying powers considers its rivals, including, first and foremost, the Crimean Tatar People. The representative bodies of the people are declared extremist organizations, their media is silenced, their culture is marginalized.

With regards to these violations, Ukraine submitted applications against the Russian Federation to the International Court of Justice, the European Court of Human Rights, and recognized the jurisdiction of the International Criminal Court to investigate the events in Ukraine. The situation with human rights in Crimea is described in the reports of the UN High Commissioner for Human Rights¹².

Our Association of Reintegration of Crimea systematically brings the attention of the United Nations, its bodies and agencies, to the situation in the Crimea, including the transitional justice issues. Among other things in our statements and analytic publications we pointed on issues of the symbolic dimension of transitional justice for the indigenous peoples of Crimea in Ukraine which needs further active and systematic work¹³.

Our Association pointed in published analyticts that the Ukrainian strategy of transitional justice for Crimea must ensure the representation of indigenous peoples of Crimean Tatars, Crimean Karaites and Krymchaks. The transitional justice mechanisms must interact with the representative bodies of these peoples. Furthermore, the transitional justice strategy itself should aim to develop solutions to ensure the representation of the indigenous peoples of Crimea in the Ukrainian state and society, as well as to support the proper representation of these peoples on the international level¹⁴.

And more, as we pointed already, these groups, the Crimean Tatars, Karaites and Crimean Tatars are the indigenous peoples of Crimea, who have no connection with any land other than that of Crimea, and whose cultural life is inextricably linked with the existing cultural monuments and values in Crimea, and at least some of these sites are of global value to all mankind. Thus, the work on protection and restoration of the cultural rights of the indigenous peoples of Crimea, as well as on compensation for previous wrongs, is a direct responsibility of Ukraine, which stems from its own Constitution and international legal obligations and such work should become part of Ukraine's transitional justice strategy for the Crimea¹⁵.

Our Association stressed also on importance of the restoration of justice for the Crimean Tatar People in the framework of Ukraine's transitional justice strategy should include restoring and guaranteeing of the property rights of the indigenous people. Within such mechanisms, the Ukrainian government and civil society, with the participation of the representatives of the Crimean Tatar people, should develop concrete actions to restore the collective property rights of the Crimean Tatar people as the indigenous people of Crimea, establish procedures for exercising these rights, and determine compensation for damage to indigenous peoples¹⁶.

Association stated that transitional justice for the Crimean Tatars can be considered

¹² <https://www.ohchr.org/en/countries/enacaregion/pages/uareports.aspx>

¹³ <https://arc.construction/7505>

¹⁴ <https://arc.construction/7465>

¹⁵ <https://arc.construction/7449>

¹⁶ <https://arc.construction/7303>



either in the format of a part of the all-Ukrainian strategy of transitional justice, or in the form of a separate strategy. It is important that these two approaches are not mutually exclusive. Perhaps the ideal option would be to implement both, but in practice, in order to increase the cost-effectiveness and efficiency of government and expert efforts, it is possible to split the work on both of these approaches over time.

However, it remains important not to lose both perspectives: the current perspective of transitional justice for Crimean Tatars to restore their rights after the de-occupation of Crimea, and the historical perspective of overcoming the consequences of the deportation of the indigenous people of Crimea¹⁷.

Our Association's experts concluded that the justice of the transition period for the Crimean Tatar People must go through two stages. At the first stage, it should be part of Ukraine's national transitional justice strategy for the armed conflict with Russia. The second stage requires a special strategy for transitional justice for Crimean Tatars. Obviously, a truth and reconciliation commission can be set up on the model of similar commissions for indigenous peoples in other countries. However, other instruments of transitional justice, such as restitution or working with society's collective memory, should be considered and opportunities used. The definition of such mechanisms can already be the subject of consultations between the Ukrainian authorities and representatives of the Crimean Tatar community¹⁸.

We believe that a special research on the situation of transitional justice in the "grey zones" like Crimea, done by the UN OHCHR in cooperation with civil society and academician structures, may be a starting point for improvement of the current situation. Also we may recommend the UN to enforce its monitoring missions in various conflict zones, such as UN Human Rights Monitoring Mission in Ukraine with exchanging information and data regarding the governmental, civil and academician initiatives regarding the transitional justice issues in the framework of their mandates.

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In the name of the Association of Reintegration of Crimea
Respectfully Submitted by

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¹⁷ <https://arc.construction/5594>

¹⁸ <https://arc.construction/5582>