**Modern Issues of the Recognition, Reparations and Reconciliation of Indigenous Peoples in Ukraine**

*Submission for the Report on Recognition, Reparations and Reconciliation*

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Issues of defense and support the rights of the Indigenous Peoples of Ukraine in modern conditions are tightly united with their recognition as indigenous peoples, with established and real possibilities for reparation of their violated collective and individual rights, with issues for reconciliation in conditions of the interstate conflict, ongoing in Ukraine and related to Crimea as to the Native Land of the Indigenous Peoples.

***Recognition.*** 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 (CTs) are the Indigenous People (IP) 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 (CKs) and Krymchaks are the IPs which are non-numerous peoples, having now less than 500 representatives in Ukraine, most of all in Crimea [1].

Before II World War all state authorities that controlled Crimea recognized those three ethnic groups as Peoples (nations), traditional for Crimean Peninsula. At the same time Russian authorities during XIX century held the policy of discrimination the CTs and promoted their emigration from Crimea to third countries. Krymchaks were discriminated by the Russian anti-Semitic law and authorities` practices till 1917 as People with Judaism as their traditional religion. In 1941 Krymchaks were the victims of genocide (Holocaust) in Crimea during the Nazi occupation. In 1944 CTs were the victims of genocide (forced deportation) under the control of Soviet authorities. In Soviet period since 1967 U.S.S.R. state authorities rejected the statute of CTs as separate ethnic group, they were determined as “Tatars”, as the part of undetermined Tatar population of the U.S.S.R [2].

Krymchaks and CKs were recognized in independent Ukraine on the regional level as non-numerous Peoples in 1992, CTs were recognized by Ukrainian State authorities as separate ethnic group. From the end of XX century those three ethnic groups demanded from Ukraine, international structures and world community to recognize their rights as IPs.

Issues of defense and support the rights of the IPs of Ukraine in modern conditions are tightly united with their recognition as indigenous peoples, with established and real possibilities for reparation of their violated collective and individual rights, with issues for reconciliation in conditions of the interstate conflict, ongoing in Ukraine and related to Crimea as to the Native Land of the IPs. Occupation and attempt of annexation of Crimea by Russian Federation (RF) in 2014, spreading the Russian national jurisdiction, economic, social, cultural and ethnic policy over Crimea totally changed the situation in peninsula for IPs and their representatives, including issues of recognition, reparation and reconciliation.

After the politic decision of problem of 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 CTs and/or with other IPs of Ukraine. The Constitution of the ARC, 1998 avoided to mention the rights of the IPs of Crimea as a legal basis of the autonomy also (however, the status of official languages of the ARC was fixed both for the Russian and Crimean Tatar languages).

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 IPs of Ukraine as an integral part of the multinational Ukrainian People and to create the preconditions for their development. 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 IPs live, the implementation of the programs of their cultural development. However, practically the similar rights were secured by the Constitution for the national minorities [3].

In independent Ukraine in period of 1991-2014 those IPs had some problems with realization their rights, but those violations were caused by common problems of development the new post-soviet state. The introducing to the text of Constitution those norms of art. 11, 92 and 119 with the “IPs” term became possible due to the peculiarities of the democratic process of adoption of the Constitution in June 1996. Alas, Ukraine has not passed later the legislation that would specify those provisions of the Constitution.

According to the governmental draft of the Concept of the State Ethnic Policy of Ukraine, elaborated in 2000-2001, I should be determined as an autochthonous ethnic community, which has its ethnic origin and genesis on the territory in the boards of contemporary Ukraine and is an ethnic minority in the composition of Ukrainian population and does not have own state formation outside the Ukrainian state. Some Laws of Ukraine approved in the 1990s, contain the term “IPs”, in particular the Law “On Local State Administrations”, 1999 and the Law “On the Supreme Council of the ARC”, 1998. Also we may point on some regulative acts of the ARC at the period of 1998-2003, that established de jure some special status for Crimean Tatar language in Crimea although in fact they mostly were not realized. Not complete recognition of CTs, CKs and Krymchaks as IPs in this period was caused by escalation of pro-Soviet policy in Crimea in 1990-1998 by Russian immigrants, initiated and supported by RF, that were resettled in Crimea by Soviet government after the II World War [2].

In 1990-2014 Ukraine was trying 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 [4].It caused refusal of official recognition the IPs rights, especially for former deported CTs.

In the independent Ukraine representatives of the Karaites, CKs and CTs claimed to be recognized as the IPs. The National movements of CKs and CTs have arranged their specific organizational forms. CTs created the system of Meilis as executive body elected by Qurultai as National Congress since 1991. CKs created the representative council – Ulu Beylik, elected by Karaites National Congress in 2003. The compliance of CKs, CTs and Krymchaks towards of the international requirements according with the characteristics of IPs may be noticed for some points:

- the emergence and development of this IPs as separate ethnic groups in Ukraine, the absence of their own historical country abroad of Ukraine and lack of other state or public entity, with which they could connect their own national identity (autochthonous character of these ethnic groups);

- the presence of their indigenous’ traditional territory of residence (Crimea) in Ukraine, with a close organic historical and cultural ties for these IPs;

- national, linguistic, cultural and religious identity of this IPs;

- self-consciousness of the representatives of these ethnic groups in a capacity of IPs [3].

During first decades of XXI century some acts, concerning the IPs issues were adopted in Ukraine. Prescript of Cabinet of Ministers of Ukraine (CMU) on May 16, 2001 № 187-р ordered to the Ministry of Justice of Ukraine and to the Council of Ministers of ARC to research the issue on compliance the rights of CKs and Krymchaks and, if it will be able, to give the coherent propositions to the Government [5]. State Program of Secure and Preservation the Intangible Cultural Heritage on 2002-2008, adopted by the Resolution of CMU on December, 23 2004 № 1732 prescripts to the National Academy of Science and the Council of Ministers of ARC to held the scientific researches the history and cultural heritage of CKs and Krymchaks [6]. Ukrainian Law “On Grounds of State Language Policy” adopted on July 3, 2012, provided the minority language statute for Karaite and Krymchak language [7]. Also we may point on norms of Resolution of Verkhovna Rada of ARC № 582-6/11 on November 16, 2011 “On Measures of Preserving the Historic-Cultural Heritage of CKs and Krymchaks for 2012” [8].

During the Russian military and politic actions Verkhovna Rada of Ukraine (Parliament, VRU) made official Statement on the Guarantee of the Rights of the Crimean Tatar People (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 IP [9]. 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) VRU 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 Mejlis of the CTP, as the executive body of Kurultay of the CTP, and as the highest representative body of the IPs. By this Statement VRU instructed the CMU to submit immediately the draft laws and other legal acts of Ukraine that define and confirms the status of the IPs of Ukraine. Development of relevant projects might be done in consultation with the Mejlis of the CTP, in close cooperation with the UN, the OSCE, the Council of Europe in accordance with international law and standards of Human Rights (HRs), IPs and ethnic minorities.

At the art. 8 of this Statement Ukraine also strongly condemned any attempt to restrict the political and social rights, civil liberties of Ukrainian citizens of different ethnicities living in Crimea, in particular, Ukrainian, Russian, Crimean Tatars, Armenians, Bulgarians, Greeks, Germans, Karaites, Krymchaks observing as a result of unconstitutional referendum in the ARC. The Statement on March 20, 2014 has the historical character; implementation of the Statement was conducted by Ukraine on the international scene during the regular annual session of the UN Permanent Forum on Indigenous Issues (PFII) in May 2014.

Permanent Mission of Ukraine to the UN organized event of support for the CTP in Crimea during the forum; on May 13, 2014 the Representative of Ukrainian Mission made the formal declaration at the session of the PFII about the support of the UN DRIP by Ukraine. We should add that this announcement was made on behalf of the Government of Ukraine. It managed to get rid of ambiguity due to the fact that as usually unilateral acts of states, including their international decisions, are issued by national Government (as it was made by Australia, Columbia, Canada and New Zealand governments for DRIP issue), not by the Parliament [3].

Alas, special Ukrainian law on statute of the IPs of Ukraine in conditions of permanent Ukrainian-Russian conflict is not still adopted. Anyway project of such law (№ 4501) was registered in VRU in one day with the project of the Statement № 1140-VII; project was adopted in a first reading only.

After attempt of annexation the Crimean Peninsula in February-March 2014 by RF President of RF 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” [10]. As experts say, Decree obviously ignores deported CTs as an IP and equalizes them with the settlers from European nations implanted in Crimea at the XIX century as a part of policy of displacement of CTs; de jure this is the repudiation of the Indigenous Rights of CTs. We must point on content of the Decree that is rather poor and very far from the norms and principles established by international law and good practice for IPs [4].

As we may see even from the title of this act, it shows the official position of RF government about own possibility to “rehabilitate” the Greek or German People without any awareness of the position of Armenians, Bulgarians, Greeks and Germans in Crimea as minority not whole People, and of the existing the national states of such peoples in Europe. Anyway Decree № 268 contains the declaration thesis only, but there is no any norm that may be used as a legal ground by the CTs defending their rights violated by Soviet deportation.

The same position is in the project of law of the “Republic of Crimea” (RC) № 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 (SC) of ARC (s.c. “State Council” of RC) for the first reading on June 4, 2014. Proposed project does not talk even about the illegality of deportation, no any rights of deported CTs are given in it; project refers only on some “measures of social protection” for repatriates such as compensation of railroad ticket to Crimea. Project № 1520/30-10 did not foresee any court procedure or other form of access to justice for CTs [11].

In those conditions a draft of the resolution “On Statement of Verkhovna Rada of Ukraine on Preserving in Ukraine the Originality and Cultural Heritage of CKs (Karays) and Krymchaks” № 2680 was registered in Ukrainian Parliament on April 20, 2015. The profile parliamentary Committee on Issues of Culture and Spirituality researched this draft and recommended to adopt it (protocol of session on May 13, 2015 № 13); also this project was adopted by the parliamentary Committee on HRs, National Minorities and Ethnic Relations and other committees.

Later the same draft was registered in Ukrainian Parliament on June 16, 2016 № 4827 [12] but was not voted. Then, according to the p. 10 of art. 112 of the Working Plan for realization the National HRs Strategy, adopted by Ukrainian Government on November 23, 2015, till the end of 2016 Ministry of Culture of Ukraine together with international experts and NGOs were determined as responsible for the development the draft of the Law on IPs of Ukraine. This draft was not developed. Alternative project was developed by the Foundation on Research and Support of the IPs of Crimea and Crimean Tatar Recourse Center, it was discussed on UN EMRIP and ODIHR OSCE annual Sessions in 2016, it got positive expert opinion from Legislation Institute of Verkhovna Rada of Ukraine [13].

For the reason of increasing of the international attention to IPs in Crimea the Russian occupation authorities decided to implement the Indigenous legislation of the RF in relation to the CKs and Krymchaks. This step has a political importance but in practice it is clearly seen that less than hundred of assimilated Krymchaks and some hundreds of CKs were not considered by the Russian regime in Crimea also as by central authorities of RF as any kind of a threat. So called “State Council of the RC” had adopted a Resolution on June 25, 2014 № 2254-6/14 “On the presentation of the proposal to the Government of the RF “On the Inclusion the CKs and Krymchaks into the Unified List of Indigenous Non-Numerous Peoples of the RF”. This proposal recognized that in a multi-ethnic community of Crimea special position is occupied by non-numerous IPs – CKs and Krymchaks, which had been formed historically precisely on this territory and have a complex and multi-layered ethnic genesis, own ethnic identity, cultural identity and religious independence [14].

This resolution of Russian occupation authorities was the ground for a project of the Resolution of the Government of the RF that was officially proposed for a public discussion for June 27 – August 18, 2014 on governmental web-site but was not adopted. Later the issue of including of CKs and Krymchaks to the Unified List of Indigenous Non-Numerous Peoples of the RF discussed some times during 2015-2019 but was not realized [15].

Steps of RF for legitimating the attempt of annexation of Crimea were not recognized by the world community; more, those steps were recognized as dangerous for HRs and for rights of IPs. 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” [16].

In some acts of the international organizations and bodies CTs also were recognized as the IP. In Reports of the Office of the UN High Commissioner for HRs on the HRs situation in Ukraine (April 15 and June 15, 2014) UN officials expressed the view that “CTs as indigenous people boycotted the “referendum” on March 16, 2014”; also UN pointed on cases of discrimination and violence against the CTs as an IP. In those Reports UN recommended to the de-facto Crimean authorities to protect the rights of minorities and IPs in Crimea, in particular – the rights of the CTs, including right not to be deported from the historic Native Land [17] .

The Caucus of IPs attending the 13th session of UN PFII evaluated that the legal manipulations with the intention to escape the recognition and observation of Indigenous Rights of CTs, CKs and Krymchaks in Crimea makes them vulnerable for any oppression from dominating population and from Russian government controlling that territory; in its resolution Caucus pointed that Russian policy in Crimea is very dangerous and is not being in compliance with the international standards concerning the rights of IPs [18].

IPs recommended to the UN PFII to propose to the Special Reporter on the Rights of IPs to visit Crimea in order to collect information and data related to the situation of the IPs, to include a delegation of IPs of Crimea into the mandatory participants of the forthcoming World Conference of IPs 2014. During PFII session (May 11, 2014) IPs also proposed to RF to recognize the rights of persons belonging to IPs of Crimea to preserve their citizenship, or to change it or to have dual citizenship on their own choice, to come and to stay in Crimea from the areas of their exile without any negative consequences for their civil, political, economic, social or cultural rights in Crimea [4].

Also on 12 May 2016 European Parliament (EP) adopted special Resolution 2016/2692(RSP) on the CTs [19] where reminded that the entire population of CTs, an IP, was forcibly deported to other parts of the then U.S.S.R. in 1944, with no right to return until 1989; whereas on 12 November 2015 the VRU adopted a resolution in which it recognized the deportation of the CTs in 1944 as genocide and established 18 May as a Day of Remembrance.

In the art. 2 of the Resolution 2016/2692(RSP) it is pointed out that the ban on the Mejlis of the CTP, which is the legitimate and recognized representative body of the IP of Crimea, will provide fertile ground for stigmatising the CTs, further discriminating against them and violating their HRs and basic civil liberties, and is an attempt to expel them from Crimea, which is their historical motherland; is concerned that the branding of the Mejlis as an extremist organization may lead to additional charges in accordance with provisions of the Criminal Code of the RF.

***Reparations and Reconciliation.*** 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 9 of October, 1992 did not foresee the right of deportees to claim on national of international level [20].

National acts devoted to deportees such as CMU Decrees № 1952 of 17 December, 2003; № 626 of 13 of May, 2004 etc. did not set the clear procedure of court arbitration for deportees. Law of Ukraine “On the Restoration of Rights for Persons, Deported on a National Basis” № 1872­IV, adopted by VRU 24 of June, 2004, provided for CTs the court procedure of establishing the fact of deportation (articles 5, 6) and possibility of appeal in case of refusing for recognition the deportee statute. But this law had got veto from President of Ukraine and special justice mechanisms for CTs did not appeared [21].

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 defense and full implementation of national, cultural, social and political rights of citizens of Ukraine, “including IPs” [22].

This legal configuration suggests that the rights of IPs 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 HRs, which are guaranteed by the Constitution and laws of Ukraine, relies on RF 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 integrity as distinct peoples, or of their cultural values or ethnic origin;

- any action which has the aim or effect of depriving historic lands, territories of their compact residence or resources;

- the forced displacement of the population in any manner, which has the purpose or result of a violation or undermining any of their rights [23].

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 “IPs”; but there are mentioned about both deported Peoples and the CTs; 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.). According to the article 9 of this Law, state decision of refuse in granting to the CTs person the status of deportees in way of non-giving the license may be appealed in court. Article 7 of this law of Ukraine 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) [24].

We discussed the practical possibility of implementation in Ukraine criminal proceedings concerning deportations of CTs on ethnic grounds, committed by the Soviet authorities in 1939-1991 [25]. This possibility has become almost confirmed, when on December, 2015, the Investigation Department of the Prosecutor's Office of the ARC (which is based in Kiev now) initiated criminal proceedings under Art. 442 ‘Genocide’ of the Criminal Code of Ukraine on the fact of deportation of the CTs. As it followed from the official information of the Security Service of Ukraine (SSU), in 2009 the SSU jointly with the Prosecutor General’s Office of Ukraine started pre-investigation of the facts of illegal resettlement of ethnic groups of Crimea in 1944; the special department was established in the Investigation Department of the Head-Office of the SSU of the ARC by the order of the Chairman of the SSU. The investigators of this department collected evidences of the illegal deportation of the indigenous population of Crimea until 2010, but after that the work of the investigators has been suspended, the subdivision was disbanded, the materials collected in 2014 were not taken out by the SSU from the occupied Crimea and were captured by the Russian authorities. Since 2014 Russian administration do not act for any investigation for deportation of the CTs in own jurisdiction.

Hence, the proceedings of the Prosecutor's Office of the ARC are actually started from scratch and need the assistance of the remedial structures. These proceedings are practically feasible, particularly in the conditions of inhabitation of some victims of the corresponding deportation or their legal representatives in Ukraine, the presence of numerous historical data, etc. Ukrainian citizens, who were victims of the deportation from its beginning or became such victims by being born in locations of special settlements, are still alive; also there are witnesses and co-participants of the deportation of 1944 and of unlawful actions to counteract the return of deportees and their descendants to Crimea in 1954-1989 by the Soviet authorities, party organs and structures of the State Security Committee (KGB) of the Soviet Ukraine, and they live now in Ukraine.

According to the Provision on the Ukrainian Institute of National Remembrance approved by the governmental Resolution of December 12, 2014 № 684, this Institute, as the authorized central executive body, assigned with the function of submission of proposals to the Minister of Culture to provide assessment of forced deportations, actions of organizers and executors of these crimes and the consequences of their actions for Ukraine and the world. According to the letter of this Institute of April 22, 2015 № 01/301, this body has confirmed an opportunity and recognized the implementation of the proper legal qualification of the deportation on ethnic grounds as expedient.

Moreover, considering the role of military personnel and commanders of the Soviet force structures, the Ministry of International Affairs, the Ministry of State Security and the KGB of the U.S.S.R. in the processes of organizing the deportation, detenting the deportees in a special settlement regime in 1944-1956 and countering to their return in the Ukrainian Crimea in 1956-1989 (since 1967 such countering have become illegal even by the Soviet legislation), there should be noted a certain role of the military prosecutor's offices in the relevant processes [26].

Consequently, the deportation of CTs from the Crimea is an international crime, which has no statute of limitations, and is such that still lasting. Ukraine has the proper substantive and procedural jurisdiction for its investigation and the final qualification; legal recognition of this deportation as genocide will become ultimate after the commencement of the relevant decision of the competent court. Taking into consideration the lasting occupation of Crimea by the RF, it is necessary for ODIHR OSCE, OSCE Special Monitoring Mission to Ukraine, OSCE Project Co-ordinator in Ukraine, to assist the relevant criminal investigation of the Ukrainian authorities with cooperation with UN bodies and agencies, remedial structures, historical institutions, representative and social structures of the CTs and other IPs.

But not only the investigating the Soviet deportation is important for reparation and reconciliation the IPs rights in Ukraine especially for those who become internally displaced persons from Crimea since 2014. For a long period, the Ukrainian government provided minimal assistance to internally displaced persons, many of whom found themselves in an administrative limbo due to their uncertain legal status. Recognizing the long-term reality of internal displacement for these groups, the legislation was intended to provide better access to legal documentation and essential services to those who had fled the fighting [27].

More, the ban of Mejlis of the CTP as an “extremist organization” by Russian authorities in Crimea and Moscow in 2016 caused the additional violations of the rights of this IP. Threats to ban the Mejlis began in October 2015, and on February 15, 2016 the de facto prosecutor of Russian-controlled “RC” Natalya Poklonskaya announced that an application had been made for the ban, with the claim being that the Mejlis was “extremist”. Modern authors pint of the “clear Soviet echoes” in the claim that this was based on “appeals from the CT population, including from the heads of CT organizations, asking for the activities of the CT Mejlis to be declared unlawful and provocation”.

The formal ban was issued on April 26, 2016, with this upheld by the Supreme Court of RF (SC RF) on September 29, 2016. RF has consistently tried to treat the Mejlis as a “civic organization” which can be banned as “extremist”. The “evidence” provided at the court hearings was quite absurd, including even a document published by Mustafa Dzhemiev back in Soviet times (1988) as well as the Mejlis’ founding documents from two decades before Russia’s annexation. Their supposed “extremism” lay in the aim declared as being the reinstatement of the CTP’s national and political rights as part of Ukraine [28].

During this proceeding the defense of Mejlis pointed to the SC RF duty to execute the DRIP provisions relating to the Mejlis. Even supporting the position of the “Supreme Court of the RC” to ban the Mejlis, in this case, analyzing the DRIP provisions, SCRF confirmed that DRIP is actual for Russian jurisdiction, including the Mejlis case. By this SCRF de-facto recognized the IPs rights for CTs in the DRIP framework.

Issues of violation of CTs` rights were reflected in the Resolution 71/205 adopted by the UN GA on 19 December 2016 [29]. In this act UN GA welcomed the reports of the Office of the UN High Commissioner for HRs on the human rights situation in Ukraine, of the Commissioner for HRs of the Council of Europe, and of the HRs assessment mission of the Office for Democratic Institutions and HRs (ODIHR) and the High Commissioner on National Minorities (HCNM) of the OSCE, in which they stated that violations and abuses of HRs continued to take place in Crimea and pointed to the sharp deterioration of the overall HRs situation

In this act UN GA condemned also the reported serious violations and abuses committed against the residents of the temporarily occupied Crimea, including CTs, in particular extrajudicial killings, abductions, enforced disappearances, politically motivated prosecutions, discrimination, harassment, intimidation, violence, arbitrary detentions, torture and ill-treatment of detainees and their transfer from Crimea to the RF, as well as reported abuses of other fundamental freedoms, including the freedoms of expression, religion or belief and association and the right to peaceful assembly. UN GA urged RF to uphold all of its obligations under applicable international law as an occupying Power; to take all measures necessary to bring an immediate end to all abuses against residents of Crimea, in particular reported discriminatory measures and practices, arbitrary detentions, torture and other cruel, inhuman or degrading treatment, and to revoke all discriminatory legislation; to immediately release Ukrainian citizens who were transferred across internationally recognized borders from Crimea to the RF.

Issues of internal displacement from Crimea were also reflected in the Resolution 72/190 adopted by the UN GA on 19 December 2017 [30]. In this act UN GA condemned again the reported serious violations and abuses committed against residents of Crimea, in particular extrajudicial killings, abductions, enforced disappearances, politically motivated prosecutions, discrimination, harassment, intimidation, violence, including sexual violence, arbitrary detentions, torture and ill treatment, in particular to extract confessions, and psychiatric internment, and their transfer or deportation from Crimea to the RF, as well as reported abuses of other fundamental freedoms, including the freedoms of expression, religion or belief and association and the right to peaceful assembly.

In this act UN GA urged the RF to revoke immediately the decision declaring the Mejlis of the CTP an extremist organization and banning its activities, repeal the decision banning leaders of the Mejlis from entering Crimea and refrain from maintaining or imposing limitations on the ability of the CTs to conserve its representative institutions. Also in Resolution 72/190 UN GA supported the efforts of Ukraine to maintain economic, financial, political, social, informational, cultural and other ties with its citizens in the occupied Crimea in order to facilitate their access to democratic processes, economic opportunities and objective information.

Some acts of the EP as of the European Union politic representative body also reflect the situation with internal displacement of the Indigenous CTs and violation of their individual and collective rights in Crimea caused such displacement. In the art. 9 of the EP resolution of 4 February 2016 on the HRs situation in Crimea, in particular of the CTs (2016/2556(RSP)) the impediments to CTP leaders returning to Crimea and their prosecution were deplored [31].

Resolution of EP 2016/2692(RSP) on the CTs [19] reflected the concern of the European Union and the international community over the situation of HRs in the occupied territories and the systematic persecution of those who do not recognize the new authorities; whereas these so-called authorities have targeted the indigenous community of CTs, a majority of whom oppose the Russian takeover of the peninsula and boycotted the so‑called referendum on 16 March 2014; whereas CT institutions and organizations are increasingly branded as ‘extremists’ and prominent members of the CT community are, or risk, being arrested as ‘terrorists’; whereas the abuses against CTs include abduction, forced disappearance, violence, torture and extrajudicial killings that the de facto authorities have failed to investigate and prosecute, as well as systemic legal problems over property rights and registration.

Resolution 2016/2692(RSP) also reflected that CTs` leaders, including Mustafa Dzhemilev and Rafat Chubarov, have previously been banned from entering Crimea, and are now allowed to do so but under threat of arrest – thus sharing the same fate as numerous other members of the Mejlis and CTs` activists and displaced people; whereas more than 20 000 CTs` have had to leave occupied Crimea and move to mainland Ukraine.

By the art. 6 and 9 of the Resolution 2016/2692(RSP) EP condemned the severe restrictions on the freedoms of expression, association and peaceful assembly, including at traditional commemorative events such as the anniversary of the deportation of the CTs by Stalin’s totalitarian Soviet regime and at cultural gatherings of the CTs; it recalled that the Indigenous CTP have suffered historic injustices which led to their massive deportation by Soviet authorities and to the dispossession of their lands and resources; regrets the fact that discriminatory policies applied by the so-called authorities are preventing the return of these properties and resources, or are being used as an instrument to buy support.

Also the Resolution of the EP 2017/2596(RSP) of 16 March 2017 on the Ukrainian prisoners in RF and the Crimean situation should be mentioned. In its art 8 there is Underlines that the CTs, as an IP of the peninsula, and their cultural heritage seem to be prime targets for repressions; calls for unrestricted access to Crimea by international institutions and independent experts from the OSCE, the UN and the Council of Europe. In its art. 9 the Resolution reminds the Russian authorities that despite the illegality of the annexation of Crimea, RF is, in a de facto capacity, fully responsible for upholding the legal order in Crimea and protecting Crimean citizens from arbitrary judicial or administrative measures.

This document pointed that restrictive Russian legislation regulating political and civil rights has been extended to Crimea, which has resulted in the freedoms of assembly, expression, association, access to information and religion being drastically curtailed, as well as credible reports of intimidation, enforced disappearances and torture; whereas there are approximately 20 000 internally displaced persons from Crimea in other Ukrainian regions, the Mejlis of the CTP has been banned and proclaimed an extremist organisation.

By the art. 10 the Resolution EP expresses strong concern over the many credible reports of cases of disappearances, torture and systematic intimidation of local citizens opposed to the annexation of Crimea, and calls on Russia to immediately cease the practices of persecution, to effectively investigate all cases of HRs violations, including enforced disappearances, arbitrary detentions, torture and ill-treatment of detainees, and to respect the fundamental freedoms of all residents, including the freedoms of expression, religion or belief and association and the right to peaceful assembly; calls for all disappearances and kidnappings during the period of occupation of Crimea to be investigated immediately, including the case of Ervin Ibragimov. In its art. 18 EP calls for EU support for Ukrainian and CTs` media projects for Crimea as well as those initiated by the European Endowment for Democracy and Radio Free Europe/Radio Liberty, and in defense of CTs` schools and other initiatives to protect their cultural heritage [32].

EP also voted the resolution of 5 October 2017 on the cases of CTs`leaders Akhtem Chiygoz, Ilmi Umerov and the journalist Mykola Semena (2017/2869(RSP)) [33]. In art. 3, 4 of this act the EP condemned the discriminatory policies imposed by the so-called authorities against, in particular, the Indigenous CTs, the infringement of their property rights, the increasing intimidation in political, social and economic life of this community and of all those who oppose the Russian annexation; he considered that the rights of the CTs have been gravely violated through the banning of the activities of the Mejlis and declaring it an extremist organization on 26 April 2016, and through the ban on their leaders re-entering the peninsula.

Also the issues of violation of CTs`rights were reflected in the OSCE documents. Report of the HRs Assessment Mission on Crimea, prepared by OSCE ODIHR and the OSCE HCNM in 2015 [34] in point 178 stated that de facto authorities in Crimea have especially restricted the movement of CTs` leaders, including through entry bans, restrictive measures to prevent travel abroad, and in one case deportation, despite those targeted individuals’ originating from Crimea and theoretically being conferred Russian citizenship following annexation.

The current HRs situation in Crimea and the challenges faced by HRs defenders working on and in Crimea were discussed at an expert meeting on 14 June 2018 in Kherson, Ukraine. The meeting was organized by the OSCE ODIHR in co-operation with the Mission of the President of Ukraine in the ARC. The event brought together 28 participants (15 women and 13 men) from leading civil society organizations working on Crimea HRs issues, intergovernmental organizations and the presidential Mission. Participants examined the current HRs situation in light of the recommendations provided in the abovementioned 2015 Report of the HRs Assessment Mission on Crimea. This will further the efforts of this Mission to promote and monitor the observance of the HRs of Ukrainian citizens living in Crimea and of internally displaced persons from the peninsula, including Indigenous representatives[35].

The ban of Mejlis of the CTP was watched by the International Court of Justice (ICJ) in Ukrainian claim against RF under the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and which the Court sought to protect in ordering the RF “to refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis of the CTP”. Such Order was added to the preliminary decision of the ICJ handed down on April 19, 2017, acknowledging own jurisdiction over the Ukraine vs Russia case.

As Judge of the ICJ James Crawford pointed related to this case, nothing in CERD prevents a State party from regulating an organization that represents an ethnic group or even from banning it in the most serious cases. But such measures must be carefully justified. In this case, such justification is particularly necessary given the historical persecution of the CTs and the role of the Mejlis in advancing and protecting the rights of the people it represents at a time of disruption and change. In an eventual merits hearing (should the case proceed so far), it will be for the ICJ to assess the evidence provided by the Parties in that regard. At this stage of the proceedings it is sufficient to say that the measure in question, for the reasons given, plausibly affects rights under CERD.

The provisional measures ordered by the ICJ in relation to the Mejlis requires that Russia refrain from maintaining that ban. The Order does not purport to question the decisions of the Crimean bodies and SC RF in terms of Russian law. Instead, the Court is concerned that the ban may plausibly implicate rights under international law. Nothing prevents the ICJ from making an order concerning a matter that has been dealt with by domestic courts, added Jugde Crawford in his Declaration [36].

In September 2017, representatives of the Mejlis lodged a formal application with the “Supreme Court of the RC” in light of the executing the ICJ Order, asking for a review of Russia’s ban. In fact, several individual applications were lodged a week after the de facto prosecutor in Crimea informed the First Deputy Head of the Mejlis, Nariman Dzhelyal that it was seeking “clarification” about the ban following the ICJ’s Order. There had also been a separate application lodged by Russian lawyer Nikolai Polozov on July 18, 2017 to this issue [29]. “Supreme Court of the RC” rejected all those application by the formal grounds. During the 2017 Mejlis of the CTP, local Mejlises of CTs and some members of Mejlis and Qurultay bodies lodged their individual application to the European Court on HRs against Russia for their Rights, guaranteed by European Convention on HRs and brutally violated by the illegal ban of Mejlis.

So we may do the ***common conclusion*** that since 2014 Crimean Tatars were recognized by Ukraine as Indigenous People de-jure and Crimean Karaites and Krymchaks de-facto. Russian Federation did not recognized any ethnic group of Crimea, controlled by it from 2014, as the Indigenous People de-jure. The key issues for reparations and reconciliation for Indigenous Peoples of Ukraine are connected with consequences of:

- the genocide started against them during II World War, including the deportation of the Crimean Tatar People (1944-1989),

- the internal displacement of representatives of Indigenous Peoples from occupied Crimea to others regions of Ukraine since 2014,

- the ban by Russian authorities the Mejlis of the Crimean Tatar People since 2016,

- the discrimination of the Indigenous Peoples in the occupied Crimea since 2014.

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