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**Expert Mechanism on the Rights of Indigenous Peoples**

Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, CH 1211 Geneva 10, Switzerland

**Input to Study on “Laws, legislation, policies, constitutions, judicial decisions and other mechanisms in which States had taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration”**

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In 1991, the Crimean Tatar people managed to reestablish a high representative body of the national self-government Qurultay of the Crimean Tatar people, which elected a representative-executive body - the Mejlis of the Crimean Tatar people. The Qurultay-Mejlis system is the democratic representative bodies that regulate all spheres of life of the Crimean Tatar people.

November 25, 1995 the Mejlis of the Crimean Tatar People was accredited to the UN Intersessional Working Group to develop the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In accordance with UN ECOSOC Decision 1995/317, the Mejlis of the Crimean Tatar People was recognized as an indigenous people’s organization and, as such, was admitted to the work in the UN; this decision, in accordance with a special procedure, was made with the prior written consent of the host country of the organization of indigenous peoples. That is, Ukraine agreed to admit the Mejlis of the Crimean Tatar people to the UN as an indigenous people’s organization.

On June 28, 1996, the Verkhovna Rada of Ukraine adopted the Constitution of Ukraine[[1]](#footnote-1), where indigenous peoples are mentioned for the first time in Articles 11 and 92.

On December 23, 1998, the Verkhovna Rada of Ukraine approved the Constitution of the Autonomous Republic of Crimea[[2]](#footnote-2). This document recognized and established linguistic and cultural rights of the Crimean Tatar people. Unfortunately, other rights provided by the UN DRIP have not been realized, and the use of the Crimean Tatar language has remained more declarative. Meanwhile, the cultural revival of the people continued, folklore ensembles were created, and the Crimean Tatar theater was revived. Crimean Tatars systematically sought the right to learn their native language in schools. During this period, 15 schools and 384 classes were opened with the Crimean Tatar language of instruction, thus only 3% of Crimean Tatar children had access to education in their native language. However, the Crimean Tatar language was not used in governmental proceedings.

During the 8 years of the actual activity of Mejlis of the Crimean Tatar people as a representative and executive body of the indigenous people in the political system of Ukraine, the Crimean Tatars constantly raised the issue of its legalization in the legal field of Ukraine. It was only during mass public street actions dedicated to the 55th anniversary of the deportation of the Crimean Tatar people that the President of Ukraine signed Decree No. 518/99 of May 18, 1999. In accordance with the Decree of the President of Ukraine dated May 18, 1999 No. 518/99[[3]](#footnote-3), the Mejlis of the Crimean Tatar People received official status in the legal system of Ukraine as the Council of Representatives of the Crimean Tatar People under the President of Ukraine. This was the first step towards the legitimization of the representative-executive body of the indigenous Crimean Tatar people in the legal system of Ukraine at the level of a bylaw. However, this legal form was not sustainable because it depended on the political attitude of the President of the country to the indigenous people, and there was no clear mechanism for interaction between the representative body and other authorities, including in the formation of state policy on the protection of the rights of indigenous peoples. In addition, the Crimean Tatar people did not receive the status of indigenous people in the legal system of Ukraine.

On May 28, 1997, a number of agreements were signed between Ukraine and Russia, which regulated the issue of the division of the Black Sea Fleet between the countries, as well as the conditions for the stay of the Black Sea Fleet of the Russian Federation in Crimea, Ukraine. On April 27, 2010, Ukraine ratified the Agreement, which extended lease on naval facilities of the Black Sea Fleet of the Russian Federation in Crimea for another 25 years.

In both cases, the agreements were signed and ratified without consultations and taking into account the position of the indigenous Crimean Tatar people, who by the end of the 1990s had already end masse returned to their historical Motherland Crimea for permanent residence after enforced deportation by the Soviet authorities in 1944, and had restored the activities of the representative institutions in understanding of Art. 18-19 UNDRIP.

In February 2014, the Russian Federation occupied Crimea, the homeland of the indigenous Crimean Tatar people, and part of the territory of the sovereign state of Ukraine, violating Article 3 of the UN Declaration on the Rights of Indigenous Peoples, as well as its obligations under the Budapest Memorandum. The Crimean Tatar people opposed the occupation and determined their future with the Ukrainian state. On March 15, 2014, the Mejlis of the Crimean Tatar people appealed to the Verkhovna Rada and the Ukrainian people to support the territorial integrity of Ukraine.

The Russian occupation authorities of Crimea do not recognize the Crimean Tatar people as an indigenous people in accordance with their procedures, and moreover in 2016, the Supreme Court of the Russian Federation recognized the Mejlis of the Crimean Tatar people - the representative executive body of the indigenous people of Ukraine - as an extremist organization and banned its activities. On April 19, 2017, the International Court of Justice of the United Nations issued an interim decision in the case “Ukraine v. Russian” Federation in the part of the complaint about the violation of the International Convention on the Elimination of All Forms of Racial Discrimination, by which it obliged Russia to restore the activities of the Mejlis of the Crimean Tatar people - the representative body of the indigenous people of Crimea. However, the Russian Federation has not yet implemented this decision.

Since 2014, the Ukrainian State has been active in the way of realizing the rights of the indigenous Crimean Tatar people. On March 20, 2014, the Verkhovna Rada of Ukraine adopted the Resolution[[4]](#footnote-4) “On the Statement of the Verkhovna Rada of Ukraine on ensuring the rights of the Crimean Tatar people as part of the Ukrainian state”, which recognized the Crimean Tatar people as an indigenous people of Ukraine and joined the UN Declaration on the Rights of Indigenous Peoples.

On May 11, 2017, the Constitutional Commission created a working group to develop changes to Chapter X Autonomous Republic of Crimea of the Constitution of Ukraine, but there were no results from the work of this working group.

On March 24, 2021, the President of Ukraine by his Decree No. 117/2021 approved the Strategy for the de-occupation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol[[5]](#footnote-5), one of the expected results of which is the restoration and protection of the rights of the representatives of the Crimean Tatar people and other indigenous peoples, national minorities. On September 29, 2021, the Cabinet of Ministers of Ukraine approved the Action Plan[[6]](#footnote-6) for the implementation of this Strategy. According to this Plan, the Ukrainian state should focus on five areas: preserving the cultural heritage of the indigenous Crimean Tatar people, preserving and developing the Crimean Tatar language, restoring the historical toponyms of the Crimean Peninsula, increasing Ukrainian awareness of the indigenous peoples of Ukraine, and involving the Mejlis of the Crimean Tatar people in international events, associated with the occupied Crimea. This Plan was updated on April 4, 2023, and all of the above objectives were upheld.

On July 1, 2021, on the initiative of the President of Ukraine the Verkhovna Rada of Ukraine adopted the Law of Ukraine [[7]](#footnote-7)“On Indigenous Peoples of Ukraine”. International experts on the rights of indigenous peoples generally positively assessed this legislative act. However, there were reservations that the adopted Law does not fully enshrine at the national level the rights granted to indigenous peoples by the UN Declaration on the Rights of Indigenous Peoples. This Law is a framework and establishes certain principles of interaction between indigenous peoples and authorities, specific mechanisms and clarifications should be established in by-laws. However, this Law explicitly stipulates the obligation of state authorities and local self-government bodies to consult with the representative body of an indigenous people on a number of issues, including:

- measures of enhanced support for indigenous peoples of Ukraine (temporary measures taken by the state to overcome negative social, legal or cultural phenomena for indigenous peoples through the creation of special favorable mechanisms for the realization of the rights, freedoms and needs of indigenous peoples);

- determining the list of places and objects of religious and cultural significance of the indigenous peoples of Ukraine, the procedure for using these objects, their financing and receiving income from such activities;

- restoring the historical toponymy of the indigenous peoples of Ukraine;

- support for media owned by representative bodies of indigenous peoples of Ukraine;

- environmental protection, ensuring effective and fair use of land, water, forest and other natural resources located in the territory of the Autonomous Republic of Crimea and the city of Sevastopol;

- the procedure for reservation of agricultural and other lands for representatives of indigenous peoples of Ukraine returning to the territory of the Autonomous Republic of Crimea and the city of Sevastopol, allocation of land plots and their register;

- adoption of acts and decisions of executive authorities on the development of languages, culture, ensuring the rights of indigenous peoples of Ukraine to education in the language of the indigenous people, the activities of media in the languages of indigenous peoples of Ukraine, and the integration of indigenous peoples of Ukraine.

Despite the rather wide range of issues on which the Ukrainian state is obliged to hold consultations with the representative body of an indigenous people and the relevant bylaw - Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for holding consultations of executive authorities with representative bodies of indigenous peoples of Ukraine" - currently, they are not legally obliged to do so, since at the same time this Law in paragraph 4 Article 8 states that if a representative body does not have legal status in accordance with Article 8(1) of the Law, no consultations are held.

To fulfill this requirement, the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for establishing the legal status of the representative body of the indigenous people of Ukraine and deprivation of such status" was adopted. In accordance with this procedure, the Mejlis of the Crimean Tatar people submitted a corresponding application with the necessary documents to the State Service of Ukraine for Ethno-Politics and Freedom of Conscience on June 14, 2023. In accordance with the procedure the State Service of Ukraine for Ethno-Politics and Freedom of Conscience prepared and submitted to the Cabinet of Ministers of Ukraine a draft resolution on October 6, 2023, on the legal status of the representative body. This draft resolution has passed all the necessary approvals, but the decision has not yet been made.

 Delaying the decision to formalize the legal status of Mejlis of the Crimean Tatar people creates a situation of uncertainty, as consultations with Mejlis of the Crimean Tatar people are actually taking place on many of these issues, but now it is purely political will, these consultations are not taking place in accordance with the established procedure and have no legal force, including the terms of taking into account the position of the representative body when making the final decision.

 In addition, the lack of a fixed legal status deprives the Mejlis of the Crimean Tatar people of the right to be a plaintiff as a legal entity and to protect its legitimate rights and interests in Ukrainian courts.

In the process of developing normative legal documents between representatives of indigenous peoples, the expert environment and representatives of the authorities, disputes often arise, which are caused by different interpretations of the provisions of the UN Declaration on the Rights of Indigenous Peoples and other international standards, which significantly slows down the decision-making process. The presence of an international mechanism, which would have the authority to provide clarifications and conclusions regarding draft legal acts, would have a significant positive impact on the process of implementing the UN Declaration on the Rights of Indigenous Peoples and would contribute to better mutual understanding between indigenous peoples and states.

However, as already noted, the adopted Law does not fully implement the rights of the indigenous peoples, in particular the right to self-determination. According to the existing legal system of Ukraine, this issue can be resolved only by making changes to the Constitution of Ukraine, but due to the military situation in the country, there are no legal mechanisms for making such a decision.

Thus, despite Ukraine's significant efforts in implementing the UN Declaration on the Rights of Indigenous Peoples, there are still many problematic issues and much work to be done to achieve the final result. However, it remains extremely important to establish and follow clear legal procedures.

1. [Constitution of Ukraine](https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text) [↑](#footnote-ref-1)
2. [Law of Ukraine “On Approval of the Constitution of the Autonomous Republic of Crimea”](https://zakon.rada.gov.ua/laws/show/en/350-14#o409) [↑](#footnote-ref-2)
3. [Decree of the President of Ukraine "On the Council of Representatives of the Crimean Tatar People"](https://zakon.rada.gov.ua/laws/show/518/99#Text) [↑](#footnote-ref-3)
4. [Resolution of the Verkhovna Rada of Ukraine "On the Statement of the Verkhovna Rada of Ukraine Regarding the Guarantee of the Rights of the Crimean Tatar People as Part of the Ukrainian State"](https://zakon.rada.gov.ua/laws/show/1140-18#Text) [↑](#footnote-ref-4)
5. [Strategy of the deoccupation and reintegration temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol](https://www.president.gov.ua/documents/1172021-37533) [↑](#footnote-ref-5)
6. [Order of the Cabinet Ministers of Ukraine “On Approval of the Action Plan for the Implementation of the Strategy of Deoccupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol](https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-zahodiv-z-1171r) [↑](#footnote-ref-6)
7. [Law of Ukraine "On the Indigenous Peoples of Ukraine"](https://zakon.rada.gov.ua/laws/show/1616-20#Text) [↑](#footnote-ref-7)