

Observations on the State of Indigenous Human Rights in Ukraine

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Summary

In 2007, Ukraine abstained from voting for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but endorsed it in May 2014. Coinciding with Russia's claims of annexation of Crimea, Ukraine officially recognized the Crimean Tatars as Indigenous Peoples as of February 2016. In a roundtable meeting at the Ministry of Information Policy of Ukraine in August 2016, the Crimean Tatars – as well as the Crimean Karaites and the Krymchaks – were identified as Indigenous Peoples.¹

The Crimean Tatars are currently deprived of exercising their own elected political representative body. Crimean Tatar, the language of the Crimean Tatars, is limited by the state – particularly with regards to media being accessible in Crimean Tatar. Crimean Tatar activists are subject to forced disappearances, unfounded detentions in police custody and acts of violence. Furthermore, many Crimean Tatars who were deported under Soviet rule and have returned home to Crimea still face discrimination based on unresolved land and housing issues. Complicating matters, many of the human rights violations suffered by Crimean Tatars are the result of Russian occupation of Crimea.

Ukraine participated in the first and second Universal Periodic Review (UPR) cycles within the United Nations, in 2008 and 2012 respectively.

II. Background

The Crimean Tatars comprise the largest group of Indigenous Peoples in Ukraine. They were officially recognized by the government of Ukraine, as well as the European Parliament as Indigenous Peoples in February 2016.² The Milli Mejlis, the Crimean Tatar People's Parliament, is the representative government of the Crimean Tatars.³ There are 33 members of the executive body that forms the Mejlis, and 220 members that are democratically elected to form the Kurultay, also within the Crimean Tatar government.⁴ In 1991, the Kurultay adopted a declaration on the Crimean Tatar's national sovereignty, claiming the Crimean Tatar's right to self-determination.⁵

¹ Ministry of Information Policy, Ukraine, The indigenous peoples of Ukraine (Aug. 11, 2016), <http://mip.gov.ua/en/news/1383.html>

² European Parliament resolution of 4 February 2016 on the human rights situation in Crimea, in particular the Crimean Tatars (2016/2556(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0043&language=EN&ring=P8-RC-2016-0173>.

³ Bakkalli, Ayla, From worse to unbearable for the Crimean Tatars (Apr. 11, 2016), <http://www.neweasterneurope.eu/interviews/1948-from-worse-to-unbearable-for-the-crimean-tatars>

⁴ Id.

⁵ Minority Rights Group International, A Window to Europe from Crimean Tatars (Feb. 11, 2016), <http://minorityrights.org/2016/02/11/a-window-to-europe-for-crimean-tatars/>

In early 2014, Russia claimed the annexation of Crimea in violation of international law.⁶ In a case brought before the European Court of Human Rights in August 2015, Ukraine alleged that Russia exercises effective control of Crimea by controlling separatists and armed groups in the region.⁷ Ukraine also lodged a complaint against Russia through the International Criminal Court in early 2016.⁸

As a result of the Crimean Tatars' opposition to Russia's occupation in Crimea, basic human rights of many Crimean Tatars' have been violated; including disappearances, limitations on political rights and harassment.⁹ In a 2016 report, Amnesty International noted that "...the Russian authorities have prosecuted and forced into exile virtually all dissenting voices, including key leaders and activists within the Crimean Tatar community."¹⁰

III. Past UPR recommendations and responses pertaining to Indigenous Peoples

A troika of countries reviewed Ukraine during the second UPR cycle on October 24, 2012. During the review, several countries made recommendations on issues that – while not solely focused on – pertain to Indigenous Peoples within Ukraine.

Disappearances

During the second UPR cycle, several countries including Spain and Argentina, recommended that Ukraine ratify the International Convention for the Protection of All Persons from Disappearance.¹¹ Other stakeholders' submissions noted that civil human rights activists were often subject to arrest, detention and violence.¹² In response, countries recommended Ukraine to adopt the UN Declaration on Human Rights Defenders.

Spain proposed: "Ratify the International Convention for the Protection of All Persons

⁶ Id.

⁷ Refworld, State of the World's Minorities and Indigenous Peoples 2016, Ukraine (Jul 12, 2016), <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=579608191e&skip=0&coi=UKR&querysi=indigenous&searchin=title&sort=date>

⁸ Nuridzhanyan, Gaiane, Ukraine vs. Russia in International Courts and Tribunals (Mar 9, 2016), <http://www.ejiltalk.org/ukraine-versus-russia-in-international-courts-and-tribunals/>.

⁹ Amnesty International, p. 4, http://www.amnestyusa.org/sites/default/files/crimean_briefing_the_final_and_formated.pdf.

¹⁰ Amnesty International, <http://www.amnestyusa.org/research/reports/crimea-in-the-dark-the-silencing-of-dissent>

¹¹ UPR, Recommendations & Pledges, Ukraine (May 22, 2013), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf, R – 97.1

¹² UN General Assembly, Human Rights Council, Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Ukraine (Jul. 20, 2012), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/ahrcwg.614ukr3e.pdf, p 7

from Enforced Disappearance....”¹³ Ukraine responded to this recommendation, however, with rejection.¹⁴

Discrimination

Emphasis in the recommendations was also focused on preventing discrimination; such as by adopting “a comprehensive anti-discrimination legislation that would include also a definition of direct and indirect discrimination and a comprehensive list of grounds for discrimination.”¹⁵ Some recommendations focused on racial and ethnic discrimination.¹⁶ Recommendations also suggested that Ukraine re-activate institutions aimed at combatting racial discrimination, such as the Inter-departmental Working Group against xenophobia and ethnic and racial intolerance.¹⁷

Human Rights First pointed out the large amount of racially-motivated violence against, in addition to several other groups, the Crimean Tatars.¹⁸ While Human Rights First noted that while there was a national plan to combat this racism including instruction for law enforcement, Ukraine had failed to implement the instruction. The second UPR cycle devoted further attention to the Crimean Tatars. Unrepresented Nations and Peoples Organisation (UNPO) recommended that Ukraine respect the religious rights of the Crimean Tatars.¹⁹ The UNPO recommended that Ukraine recognize the Crimean Tatars as Indigenous Peoples. In addition, UNPO and Council of Europe stressed the importance of the Crimean Tatar language during education, in official documents and also through the media.²⁰

Additionally, Portugal recommended Ukraine to ratify the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness

¹³ UPR, Recommendations & Pledges, Ukraine (May 22, 2013), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf, R - 97.1

¹⁴ https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf

¹⁵ UPR, Recommendations & Pledges, Ukraine (May 22, 2013), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf, R - 97.27 (also see A – 97.26

¹⁶ UPR, Recommendations & Pledges, Ukraine (May 22, 2013), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf, A - 97.30

¹⁷ UPR, Recommendations & Pledges, Ukraine (May 22, 2013), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf, A – 97.38 (and see A – 97.58, A – 97.60, A – 97.61, A – 97.62, A – 97.63).

¹⁸ UN General Assembly, Human Rights Council, Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Ukraine (Jul. 20, 2012), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/ahrcwg.614ukr3e.pdf, P 3

¹⁹ Id. p 7

²⁰ Id. p 9, p 10

and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.²¹ Recommendations made by several other countries during the second UPR cycle, and later accepted by Ukraine, are below:

“Adopt a comprehensive anti-discrimination law that addresses the worrying trend of incidents based on gender, sexual orientation, racial and ethnic discrimination.” (Portugal)²²

“Accelerate the adoption of a bill on preventing and combating discrimination.” (Thailand)²³

“Maintain its programmes aimed at preventing and combating racism, racial discrimination and xenophobia.” (Cuba)²⁴

“Continue its effort to combat discrimination and promote equality in accordance with international treaties establishing guarantees of fundamental human rights and freedoms, and equality in the enjoyment of such rights, without privileges or restrictions based on race, colour, political, religious or other belief, gender, sexual orientation, ethnic or social origin, property status, place of residence, language or other grounds” (Brazil)²⁵

“Take further measures against racism and extremism and encourage peaceful coexistence between different ethnic groups.” (China)²⁶

The UPR Coalition interim report submitted in 2015, however, mentioned that there is no effective anti-discrimination policy in Ukraine and that “the anti-discrimination law itself and other legislative acts require substantial revision...”²⁷

Council of Europe and UPO noted that land issues related to the Crimean Tatars remain unsolved, and that additionally there are no legal norms for restitution of

²¹ UPR, Recommendations & Pledges, Ukraine (May 22, 2013), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/recommendationsandpledgesukraine2012.pdf, R - 97.11

²² Id. at R – 97.30

²³ Id. at R – 97.28

²⁴ Id. at A – 97.58

²⁵ Id. at A – 97.59

²⁶ Id. at A – 97.62

²⁷ UPR Coalition, Report, Interim Stakeholders’ Report Within Universal Periodic Review (UPR) Mechanism (Third Cycle – Mid-Term) 2015, https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/upr_coalition_ukraine_mid-term_2015_eng.pdf, p 21

property to formerly deported Crimean Tatars.²⁸ In evaluating the implementation of recommendations made to Ukraine during the second UPR cycle, the report noted that Ukraine should “[t]ake further action in ensuring and preserving the political, economic, social and cultural rights of the Crimean Tatars.”²⁹

IV. Continuing Rights Violations

A. Crimean Tatar Language (UNDRIP Articles 8, 9, 11, 13, 14)

In January 2016, Ayla Bakkalli, the Crimean Tatar representative to the United States, reported that the use of Crimean Tatar language continues to be prohibited in Crimea.³⁰

However, Article 10 of the Constitution of the Republic of Crimea was adopted on April 11, 2014.³¹ Article 10 recognizes Crimean Tatar – in addition to Russian and Ukrainian – as an official language. Education was available in Crimean Tatar as of April 2015.³² Ukraine ratified the International Covenant on Economic, Social and Cultural Rights on November 12, 1973.

B. Freedom of Press and Assembly (Violation of UNDRIP Articles 16, 18, 20, ICCPR Articles 21, 25)

The Mejlis of the Crimean Tatar People (The Mejlis), is the representative political body of the Crimean Tatars.³³ Political leaders of the Mejlis, such as Refat Chubarov and Mustafa Dzhemiliev, were forcibly exiled from Crimea. In February 2016, the Prosecutor’s office in Crimea began investigating the Mejlis as an “extremist” organization.³⁴ After a hearing before the Supreme Court of Crimea, the government banned the Mejlis on April 26, 2016.³⁵ Because the Mejlis was ruled an extremist

²⁸ UN General Assembly, Human Rights Council, Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Ukraine (Jul. 20, 2012), https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/ahrcwg.614ukr3e.pdf, p 10

²⁹ UPR Coalition, Report, Interim Stakeholders’ Report Within Universal Periodic Review (UPR) Mechanism (Third Cycle – Mid-Term) 2015, https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/upr_coalition_ukraine_mid-term_2015_eng.pdf, p 93, 97.141

³⁰ Crimean News Agency, Ayla Bakkalli attended Expert Group Meeting on Indigenous Languages (Jan. 25, 2016), <http://qha.com.ua/en/politics/ayla-bakkalli-attended-expert-group-meeting-on-indigenous-languages/135784/>

³¹ Council of Europe, Information Documents, SG/INF(2016)15 rev (Apr. 11, 2016), <http://reliefweb.int/sites/reliefweb.int/files/resources/SG%20Inf%20%282016%2915%20rev%20EN%20-%20Expert%20report%20on%20Crimea.pdf.pdf>, p 19

³² Id. at 19.

³³ Amnesty International, http://www.amnestyusa.org/sites/default/files/crimean_briefing_the_final_and_formated.pdf, p 3

³⁴ Id.

³⁵ Id.

organization, members of the Mejlis may now possibly be prosecuted as extremists.³⁶ In January 2016, the Council of Europe reported that a decision that the Mejlis was an extremist group would “indicate a new level of repression targeting the Crimean Tatar community as a whole.”³⁷

Russian law required media organizations in Crimea were required to re-register by April 2015. The authorities in Crimea refused to re-register the leading Crimean Tatar media organizations.³⁸ The Crimean Tatar language ATR TV channel relocated from Crimea to mainland Ukraine. Following relocation, ATR still was prevented from reporting in Crimean, and from broadcasting into Crimea. Russian authorities took ATR TV off the air in April 2015³⁹, and ATR TV’s internet site was blocked on August 3, 2016.⁴⁰

NGOs were also required to re-register in 2015, and 331 NGOs were denied registration.⁴¹ The Council of Europe reported that restrictions on this freedom of assembly targeted opposition activists, including Crimean Tatar groups.⁴²

Furthermore, Ukraine ratified the International Covenant on Civil and Political Rights (ICCPR) on November 12, 1973.⁴³ Restrictions on peaceful assembly violate Article 21 of the ICCPR. Limitations on the Mejlis also violate ICCPR Article 25, as the ICCPR grants every citizen the right “[t]o take part in the conduct of public affairs, directly or through freely chosen representatives.”⁴⁴

C. Disappearances, detention of activists and violence against activists (Violation of UNDRIP Article 7, ICCPR Article 9, CEP Article 6)

Perhaps most troubling in the current situation is the detention and disappearance of Crimean Tatars, primarily activists vocal about independence from Russia. Forced

³⁶ Id.

³⁷ Id. at 4.

³⁸ Amnesty International,

http://www.amnestyusa.org/sites/default/files/crimean_briefing_the_final_and_formated.pdf, p 1

³⁹ Council of Europe, Information Documents, SG/INF(2016)15 rev (Apr. 11, 2016),

<http://reliefweb.int/sites/reliefweb.int/files/resources/SG%20Inf%20%282016%2915%20rev%20EN%20-%20Expert%20report%20on%20Crimea.pdf>, p 14

⁴⁰ Amnesty International,

http://www.amnestyusa.org/sites/default/files/crimean_briefing_the_final_and_formated.pdf, p 1

⁴¹ Council of Europe, Information Documents, SG/INF(2016)15 rev (Apr. 11, 2016),

<http://reliefweb.int/sites/reliefweb.int/files/resources/SG%20Inf%20%282016%2915%20rev%20EN%20-%20Expert%20report%20on%20Crimea.pdf>, p 17.

⁴² Council of Europe, Information Documents, SG/INF(2016)15 rev (Apr. 11, 2016),

<http://reliefweb.int/sites/reliefweb.int/files/resources/SG%20Inf%20%282016%2915%20rev%20EN%20-%20Expert%20report%20on%20Crimea.pdf>, p 18.

⁴³ UN Human Rights Office of the High Commissioner, Reporting Status for Ukraine,

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=UKR&Lang=EN

⁴⁴ ICCPR, Article 25(a) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

disappearances of – as well as violence against - Crimean Tatar activists have occurred within the past several years.

Ervin Ibragimov, a Crimean Tatar activist, has been missing since May 24, 2016.⁴⁵ Ibragimov is a member of the World Congress of Crimean Tatars, an organization created after annexation of Crimea in 2014, focused on promoting the culture and rights of Crimean Tatars. There is CCTV footage of Ibragimov's abduction on May 24th, as CCTV footage captured Ibragimov being forced into a van.⁴⁶ As of the writing of this report, Ibragimov remains missing.

Emir-Usein Kuku is an activist within the Crimean Tatar community. On April 20, 2015, Kuku was beaten by two men as he was walking to work.⁴⁷ Later in the day several vans full of masked men with automatic rifles surrounded Kuku's house. Local police produced a search warrant and seized articles of Kuku's property, including computers and a mobile phone. Kuku was questioned about extremist activities, including social media posts that he created about the Mejlis.⁴⁸

Detention of Crimean activists persists as a crucial human rights issue in the peninsula. On November 15, 2014, authorities arrested 60 people in a market in Simferopol, Crimea, and detained them for questioning in the police station.⁴⁹ Another mass detention of 15 people happened several days later. In the latter detention, authorities detained people who appeared to be “non-Slavic,” thus a majority of Crimean Tatars.⁵⁰

Violence and harassment against Crimean Tatar activists persists throughout Crimea. In some instances the violence has resulted in death and torture. Nadir Bekirov, a Crimean Tatar activist, was planning on attending the United Nations World Conference on Indigenous Peoples in New York. Prior to the event, he suffered a violent attack, rendering him so severely injured so as unable to attend the UN World Conference.

In addition to violating several UNDRIP Articles, the forced disappearances of Crimean Tatar activists also violates Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance (CED).⁵¹ Ukraine recognized accession to the

⁴⁵ Amnesty International, http://www.amnestyusa.org/sites/default/files/crimean_briefing_the_final_and_formated.pdf, p 5

⁴⁶ Id.

⁴⁷ Id. at p. 7

⁴⁸ Id.

⁴⁹ Minority Voices, SWM 2015: Ukraine/Russian Federation – Deteriorating rights for Crimean Tatars under Russian rule (July. 2, 2015), <http://minorityvoices.org/news.php/en/1795/swm-2015-ukrainerussian-federation-deteriorating-rights-for-crimean-tatars-under-russian-rule>

⁵⁰ Id.

⁵¹ UPR Coalition, Report, Interim Stakeholders' Report Within Universal Periodic Review (UPR) Mechanism (Third Cycle – Mid-Term) 2015, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

CED on August 14, 2015.⁵² Additionally, forced disappearances also violate Article 9 of the ICCPR.

D. Land, housing and water (Violation of UNDRIP Articles 10, 26, 28)

Many Crimean Tatars forcibly exiled from Crimea during Soviet occupation, returned to their land in 1989. Upon return, Crimean Tatars “found that they were denied citizenship rights, access to education, employment and housing.”⁵³ As of 2015, Ukraine had yet to resolve the issue of land or housing opportunities for Crimean Tatars returning to Ukraine.⁵⁴ Subsequently, while Russia initially made promises of addressing land and housing issues upon initial annexation of Crimea, Russia has yet to act upon those promises.⁵⁵

Additionally, Ukrainian authorities shut off the water supply into Crimea in May 2014, when they cut off the supply of water from the Dnieper River via the North Crimean Canal⁵⁶ In doing so, authorities caused water shortages in Crimea, affecting the Crimean Tatars.

V. Questions

1. How will the Government of Ukraine ensure that the Crimean Tatars have access to education in their Indigenous language?
2. What steps will the Government of Ukraine take to allow the Crimean Tatars to regain their political rights to a representative political body?
3. What action will the Government of Ukraine take to address restoration of Crimean Tatar land to the Crimean Tatars?

VI. Recommendations

Cultural Survival recommends that the government of Ukraine:

1. Take specific steps to implement the provisions of UNDRIP into domestic legislation.

⁵² UN Human Rights Office of the High Commissioner, Reporting Status for Ukraine, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=UKR&Lang=EN

⁵³ Minority Rights Group International, MRG condemns Russia’s decision to ban the representative body of Crimean Tatars (Apr. 20, 2016), <http://minorityrights.org/2016/0420/mrg-condemns-russias-decision-to-ban-the-representative-body-of-crimean-tatars/>

⁵⁴ Minority Voices, <http://minorityvoices.org/news/php/en/1795/swm-015-ukrainerussian-federation-deteriorating-rights-for-crimean-tatars-under-russian-rule>

⁵⁵ Id.

⁵⁶ Council of Europe, Information Documents, SG/INF(2016)15 rev (Apr. 11, 2016), <http://reliefweb.int/sites/reliefweb.int/files/resources/SG%20Inf%20%282016%2915%20rev%20EN%20-%20Expert%20report%20on%20Crimea.pdf.pdf>, p. 20.

2. Enforce the International Convention for the Protection of All Persons from Enforced Disappearance, specifically Article 6 – in holding individuals criminally responsible.
3. Take immediate action to ensure that the Crimean Tatars have access to an elected body of representatives in the Mejlis, to comport with ICCPR Article 25; including approving the Mejlis application for registration.
4. Obtain the Free, Prior and Informed Consent of Indigenous communities in all projects affecting them.
5. Ensure Indigenous participation in decision-making at all levels in all matters affecting them.
6. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Ukraine.
7. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.