

GASPRINSKI INSTITUTE FOR GEOSTRATEGY

8 Steps To Make The Legislation Work

Recommendations on rights guarantees
of the Crimean Tatar people as
indigenous people of Ukraine

In accordance with conceptual foundations of human rights, international and national law standards on protection of indigenous people rights, indigenous people should receive their rights in form of a gift of civilization that will bring these people to social progress.

In this context, a comprehensive and equitable functioning of an institute of representatives of indigenous people is very important. Otherwise, normal recognition and guarantee of rights of indigenous people will remain something external for them.

The importance of resolving issues regarding constitutional and legal status of the Crimean Tatar people requires a comprehensive study of Ukrainian legislation.

Proceeding from recognition by Ukraine of Crimean Tatar people as indigenous people of Ukraine and acknowledging the imperative of protection of rights and interests of Crimean Tatar people as indigenous people of Ukraine, it is important to take into consideration additional 8 steps to guarantee those rights and interests, which are listed below.

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1 Self-designation

Self-designation of the Crimean Tatar people (Qırımlı)

Crimean civil and political activist, enlightener and writer Ismail Gasprinski wrote: "The submission of Turks as Tatars is false; the word "Tatars" is not the name of any nation. This is a slander against the Turks, as it's an absolute alien to us an idol-worshiping people, leading a nomadic way of life."

The State called the Crimean Khanate existed from 1440 to 1783. Indeed, the Crimean Khanate and not a "Crimean Tatar Khanate"; so the indigenous people of the Crimean peninsula are Crimeans, or Qırımlı in Crimean Tatar language.

Later, in 1991, Mustafa Dzhemilev Qırımoğlu (now Member of the Parliament of Ukraine), then known only as a human rights defender and dissident, in an interview with the Avdet newspaper suggested the following: "For the first convocation of Kurultai, it would be enough to choose constantly acting Mejlis. To identify the areas of competence of this Mejlis and to make resolutions on some of the most important issues in life of the nation. For example, on the issues of transition to the Latin alphabet, nationhood, self-designation of the people, etc." ("Avdet", January 20, 1991).

Mustafa Dzhemilev Qırımoğlu also said that "recognizing the belonging of the indigenous people of Crimea to the united Turkic peoples, but willing to return to the original historical name of the indigenous people of Crimea, it is more efficient to call this people "Qırımlı" (Avdet No.19(30) dated 22.08.1991).

The question of self-designation of the Crimean Tatar people was repeatedly raised during the work of Kurultais of the Crimean Tatar people starting from 1991 to 2013, and it was discussed by scientists, practitioners and civil activists, mainly in support of using the term "Qırımlı". Therefore, it is important to use the self-designation "Qırımlı", or at least together with more usual, but imposed term "Crimean Tatars".

2 Diaspora

Diaspora of the Crimean Tatar people (Qırımlı)

As the former President of the World Congress of Ukrainians A. Lozynskyi correctly pointed out that "the old generation goes away, the new generation is indifferent to the Ukrainian cause, although English-speaking Ukrainians have maintained a mental connection with the land of their parents". This refers to the representatives of the Crimean Tatar people who are citizens of Turkey, Romania and many other States, where the multimillion Crimean Tatar Diaspora was formed from the time of the first seizure of Crimea by Russia in 1783. This also applies to the Crimean Tatar people who have not yet returned to their historical Homeland from the places of deportation in 1944, and are still predominantly in Central Asia.

Taking into consideration the importance of interaction between Ukrainian authorities and representative structures of the Crimean Tatar people with Diaspora of the Crimean Tatar people, it is necessary to create an effective mechanisms of interaction with the Crimean Tatar Diaspora which should be envisaged in Ukrainian legislation.

There should be conceptual framework for defining a national policy regarding the Crimean Tatar Diaspora in a form of a separate article in Ukrainian legislation.

Namely, "The Diaspora of the Crimean Tatar people / Qırımlı" and to define clearly:

"the Diaspora of the Crimean Tatar people / Qırımlı is a community of citizens of other States or stateless persons who have Crimean ethnic identity (in the sense of Crimean Tatar)."

It is necessary to clearly identify the State policy tools by establishing a Permanent Committee on Crimean Tatar People with participation of the representatives of the executive and legislative authorities of Ukraine, the Commissioner of the President of Ukraine for the Affairs of Crimean Tatars, the Mejlis of the Crimean Tatar people, the World Congress of the Crimean Tatar people and other organizations that are related to the consolidation of Crimean Tatar people, whose representatives live in their historical Homeland and abroad.

Such an approach will significantly increase participation of Diaspora in development of the Crimean Tatar people.

Otherwise, with the absence of legislative consolidation of relations with the Crimean Tatar Diaspora, determination of its status, rights and legitimate interests, the activity of the Diaspora can be interpreted by official Kyiv as an interference in the internal affairs of Ukraine.

3 Theory & Practice

International representation of the Crimean Tatar people (Qırımlı), (Article 16 of the below mentioned Draft Law)

The Draft Law "On the Status of the Crimean Tatar people in Ukraine" was registered in Verkhovna Rada of Ukraine (Parliament of Ukraine) on April 7, 2017 No 6315.

In a situation where development of indigenous people is ensured within the borders of the State where such people live, namely in the form of national and territorial autonomy (according to Article 7 of the Draft Law), it is natural that the indigenous people enter into a contractual relations with the official authority on the subject of constitutional and legal consolidation of the division of powers in economic, social and cultural spheres, as well as political status of indigenous people in accordance with the national legislation of the State.

The Draft Law "On the Status of the Crimean Tatar people in Ukraine" also proposes to distribute competences in matters of external relations, namely the provision of international representation of the Crimean Tatar people.

Thus, Article 16 of the Draft Law proposes the following:

"In order to ensure the international representation of the Crimean Tatar people as indigenous people of Ukraine, Ukraine includes representatives of the Crimean Tatar people in a staff of diplomatic missions of Ukraine in foreign states and international organizations and/or includes in Ukraine's delegations to the international organizations, by an agreement with the Mejlis of the Crimean Tatar people."

Taking into consideration the importance and sensitivity of this issue in theory and practice of international public law, as well as in order to avoid conflicts in national legislation, Article 16 of the Draft Law requires a clear formulation of the mechanism for practical implementation of provisions of this article.

That is, position of "attache on affairs of the Crimean Tatar people" might appear in the Embassies of Ukraine abroad and in the Representations of Ukraine in International Organizations.

However, such a position in foreign representation of the Ministry of Foreign Affairs of Ukraine is not a

form of "international representation of the Crimean Tatar people" (in accordance with Article 16 of the Draft Law), since citizens of Ukraine (regardless of nationality, with knowledge of Crimean Tatar language as well as English and/or other foreign languages) who will have a diplomatic rank and who will be assigned to work on the Crimean Tatar people issue.

At the same time, the restriction of the requirements for candidates for position of "attache on affairs of the Crimean Tatar people" on an ethnic basis will be a violation of the Constitution of Ukraine and international human rights law.

It is possible that the initiators of the Draft Law have meant the establishment of position of the Representative (of the Mejlis) of the Crimean Tatar people in /name of the country/ international organization/ as an independent structural subdivision of the Ministry of Foreign Affairs/ Mejlis. Thus, the Crimean Tatar people, as indigenous people of Ukraine, will acquire rights which are identical to the rights of peoples-subjects of State formation in international law.

In this context, the following is important: in accordance with international law, an authority that effectively manages the people, exercises control over the territory, as well as represents the people on international level, acquires international legal identity.

But traditionally it concerns exclusively the peoples who are fighting for their own independence.

At the same time, if a foreign State where an Embassy of Ukraine is accredited agrees on the Representation (of the Mejlis) of the Crimean Tatar people, then the foreign State, in accordance with the theory and practice of diplomacy, recognizes the Crimean Tatar people as a subject of international law, which fights its own independence. The same applies to the consent of the governing authorities of international organizations regarding the Representation (of the Mejlis) of the Crimean Tatar people as a part of the Missions of Ukraine to international organizations.

Therefore, we recommend that the article 16 of the Draft Law be finalized in terms of determining mechanism for its practical implementation

4 Culture

Holidays of the Crimean Tatar people (Qırımlı)

Since the beginning of time, Islam was the cornerstone upon which social, political and legal relations in Crimea have been traditionally built, thus the Crimean Tatar people was formed and which helped the Crimean Tatar people to survive during the genocide and be able to overcome its severe consequences.

We believe that speaking of the status of the Crimean Tatar people in Ukraine it is important to take into consideration religious and ideological discourses, namely to envisage in Ukrainian legislation provisions regarding holidays of the Crimean Tatar people, including Uraza Bayram (Ramadan) and Kurban Bayram, two main holidays of Islam.

Below, we propose the following text of a draft article:

"Holidays of the Crimean Tatar people

Holidays of the Crimean Tatar people are Uraza Bayram and Kurban Bayram, which are celebrated annually, according to the lunar calendar."

According to Article 11 of the Constitution of Ukraine, the State promotes consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

At the same time, the Constitutional Court of Ukraine in its Decision of March 5, 1998, No 15-u in the case concerning compliance of the Constitution of Ukraine with Paragraph 8 of Part one of Article 73 of the Code of Labor Law of Ukraine, noted that public holidays are established by the legislature, guided primarily by political discourses, in particular by a need to strengthen civil unity on Ukrainian land, ensuring political and ideological diversity, etc.

We are confident that the regulation of religious traditions of the Crimean Tatar people will be an unprecedented expression of respect to the indigenous people of Ukraine, as well as representatives of ethnic groups practicing Islam, and will contribute to the general strengthening of religious spirit and solidarity in Ukrainian society.

5 Remembrance

On establishment of the May 18th as the Day of Remembrance of the victims of the genocide of the Crimean Tatar people (Qırımlı) and the Day of Struggle for the rights of the Crimean Tatar people (Qırımlı)

To overcome the consequences of the genocide of the Crimean Tatar people, we propose to envisage in Ukrainian legislation following article:

"To establish May 18 as the Day of Remembrance of the Victims of the Genocide of the Crimean Tatar People and the Day of Struggle for the Rights of the Crimean Tatar People. "

As of today, the aforementioned is reflected in national legislation at the level of the:

1. Decree of the President of Ukraine dated May 16, 2014 No. 472/2014, which established the Day of Struggle for the rights of the Crimean Tatar people, which is celebrated every year on May 18;

2. Resolution of the Verkhovna Rada of Ukraine dated November 12, 2015, No. 792-VIII, recognizing the deportation of the Crimean Tatars in 1944 from Crimea as the genocide of the Crimean Tatar people and established May 18 as the Day of Remembrance of the victims of the

genocide of the Crimean Tatar people. However, these provisions on May 18 must be envisaged at the level of the Law of Ukraine, taking into consideration their importance for the historical memory of the Crimean Tatar people, civic and patriotic education of Crimean Tatar youth and further recognition of the genocide of the Crimean Tatar people by international community.

We believe that on yearly basis on May 18 appropriate measures should be taken to commemorate victims of the genocide of the Crimean Tatar people in Ukraine and its foreign diplomatic missions.

Along with the lowering of the State Flag of Ukraine, a nationwide minute of silence should be announced. It is also necessary to restrict entertainment activities and to make appropriate changes on radio and television programs etc.

6 Language

Transition of the Crimean Tatar (Qırımlı) language into Latin script

One of the tools for preserving national identity of the Crimean Tatar people and its integration into the humanitarian, economic, informational and communicative space is transition of the Crimean Tatar language into Latin script.

In 1991, Mustafa Dzhemilev, now a Member of the Parliament of Ukraine in an interview to the Avdet newspaper suggested the following: "For the first convocation of Kurultai, it would be enough to choose constantly acting Mejlis. To identify the areas of competence of this Mejlis and to make resolutions on some of the most important issues in the life of the nation. For example, on the issues of transition into Latin alphabet, nationhood, self-designation of the people, etc. ("Avdet", January 20, 1991).

Such transition into Latin script is also determined due to political motives, since the Cyrillic was imposed to the Crimean Tatar people in Soviet times.

In this regard, we propose to envisage in Ukrainian legislation the following provision:

"The Crimean Tatar (Qırımlı) language is based on the Latin script."

The introduction of Latin script will facilitate unification of the Crimean Tatar people, including Crimean Tatar people Diaspora, will positively affect the interaction with the Turkic world and promote integration into the European space.

In addition, usage of Latin script will create additional opportunities for Crimean Tatar youth in science and education etc.

7 Rights

Rights of the Crimean Tatar people (Qırımlı) as indigenous people on lands, territories and resources

Long years of genocide of the Crimean Tatar people had led to the loss of their right as the indigenous people on lands, territories and resources of Crimea.

It is referred to the following:

- violation of traditional patterns of possession and usage by indigenous people of their land;
- change of the settlement map of the Crimean Tatar people, which led to the loss of traditional lands;
- the deterioration of the Crimean land, the quantity and quality of natural resources;
- unfair distribution of lands and resources;
- lack of effective mechanisms for resolving land conflicts;
- inefficiency of land registers and difficulties encountered during the registration of ownership of land, etc.

Contemporary international law and existing international practice provide a number of alternatives for political and economic self-determination of indigenous peoples, including provision of various forms of autonomy, involvement in State management, recognition of indigenous peoples

rights on lands, territories and resources.

Collective rights of indigenous peoples on lands, territories and resources are recognized by such countries as Norway, New Zealand, France (French Guiana), Bolivia, Chile, Guyana, the Republic of the Congo.

After consultations with the expert community and civil society, it is necessary to clearly envisage in Ukrainian legislation effective and transparent mechanisms for restoring and ensuring practical realization of collective ownership of the Crimean Tatar people on their lands, participation of the Crimean Tatar people in development, investment, exploration and extraction of natural resources, obtaining reasonable incomes from this activities, running entrepreneurial activities related to lands and resources.

8 Interaction

On establishment of a permanent mechanism of interaction between the Crimean Tatar people (Qırımlı) and executive authorities of Ukraine

An effective tool which will ensure rights of the Crimean Tatar people is a mechanism of its interaction with the government of Ukraine.

Direct participation of representatives of the Crimean Tatar people will ensure a real participation of the indigenous people in the process of making decisions concerning Crimea, when the context concerns issues in the field of economics, finance, ecology and natural resources, mining, agriculture, education, culture, health care, social sphere, etc.

Taking into account the abovementioned, we propose to envisage in Ukrainian legislation the following provision:

"Permanent mechanism of interaction between the Crimean Tatar people (Qırımlı) and executive authorities is the Consultative Council of representatives of the Crimean Tatar people (Qırımlı) under the Cabinet of Ministers of Ukraine. The Consultative Council composes of the:

relevant Deputy Prime Minister of Ukraine;

relevant Deputies of Heads of Central Executive Bodies; experts of missions of international organizations accredited in Ukraine;

members of the Mejlis of the Crimean Tatar people; representatives of business circles, experts, human rights activists and other non-governmental organizations that are related with the interests of the Crimean Tatar people (Qırımlı). "

It should be emphasized that Ukraine has no prior practical experience in goals implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Therefore, it is necessary to create such a wide format that will enable: communication with the Crimean Tatar people (Qırımlı); involvement of indigenous people to expert and technical assessment of the impact of administrative decisions taken on Crimea; protection of collective rights of indigenous people at the corporate level, including in the context of practical benefits for the Crimean Tatar people as indigenous people of Ukraine.

We believe that such a mechanism will allow to:

avoid misunderstandings regarding certain decisions regarding Crimea;

independently evaluate practice of such consultations;

determine the range of responsible persons for adoption and implementation of such decisions;

provide recommendations to the executive authorities and the Mejlis of the Crimean Tatar people for further steps.

WHO WE ARE

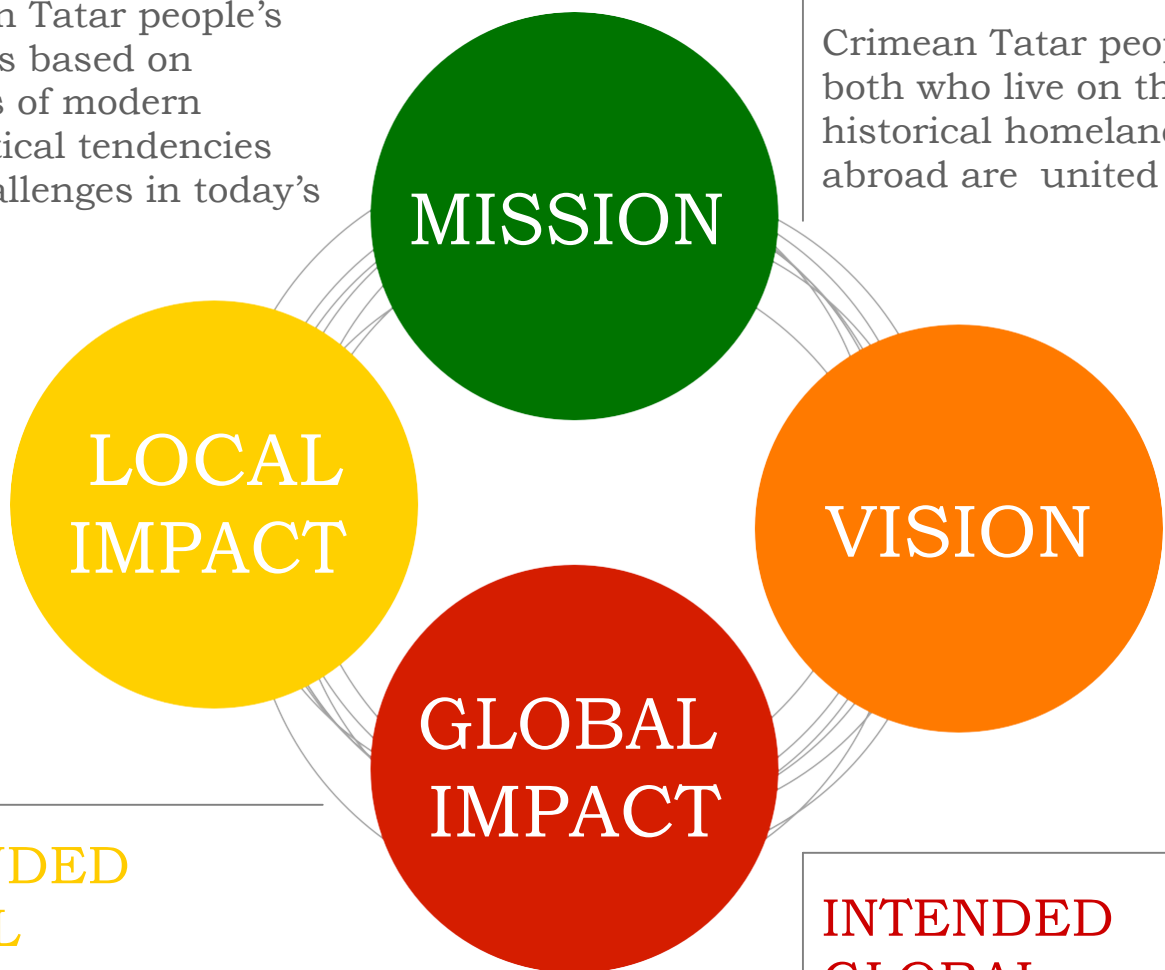
GASPRINSKI INSTITUTE FOR GEOSTRATEGY

OUR MISSION

Crimean Tatar people's progress based on realities of modern geopolitical tendencies and challenges in today's world

OUR VISION

Crimean Tatar people both who live on their historical homeland and abroad are united



INTENDED LOCAL IMPACT

Crimea as an inseparable component of Ukraine (based on the right of the Crimean Tatar people to self-determination as indigenous people of Ukraine)

INTENDED GLOBAL IMPACT

Peace, justice and strong institutions (No 16 of the UN Global Compact)

Partnership for the goals (No 17 of the UN Global Compact)