

Problems of ensuring the rights and freedoms of indigenous peoples: experience of Ukraine and foreign countries

Problemas de garantía de los derechos y libertades de los pueblos indígenas: experiencia de Ucrania y de otros países

Problemas de garantia dos direitos e liberdades dos povos indígenas: experiência da Ucrânia e de países estrangeiros

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Abstract

The purpose of this study is to provide a scientific analysis of the challenges in ensuring the rights and freedoms of indigenous peoples, drawing on the experiences of Ukraine and other countries, and to formulate well-founded conclusions and recommendations for addressing these issues. The study highlights several key points, including the lack of a universally accepted definition of "indigenous peoples" and a consistent approach to their rights, the prevailing perception of indigenous peoples as ethnic minorities without a state, the existence of diverse national policies regarding these communities, and the crucial importance of safeguarding their rights to preserve cultural identity. Research in this field primarily focuses on the participation of indigenous self-governments in the implementation of national policies, particularly those related to environmental impact; the protection of indigenous cultural identity, including intellectual property rights; and the enhancement of the legal status of indigenous peoples at both national and international levels. Moreover, Ukraine's experience provides valuable insights for other states in assessing the ability of governmental institutions to engage with indigenous representative bodies under special legal regimes. The study concludes that UN member states should prioritize the adoption of a standardized definition of "indigenous peoples" alongside a comprehensive framework for their rights and freedoms. Additionally, it underscores that Ukraine's experience is largely centered on protecting the rights of its indigenous groups—namely, the Crimean Tatars, Karaites, and Krymchaks—against human rights violations perpetrated by the occupying Russian authorities in Crimea and other temporarily occupied territories. Finally, it emphasizes the absence of effective international mechanisms for safeguarding these rights.

Keywords: rights and freedoms; indigenous peoples; international acts; legal instruments; state policy; public administration bodies; courts.

Resumen

El objetivo de este estudio es proporcionar una comprensión científica del problema de garantizar los derechos y libertades de los pueblos indígenas, teniendo en cuenta la experiencia de Ucrania y de países extranjeros; en segundo lugar, formular conclusiones y recomendaciones razonables para su solución. Se ha señalado: a) la ausencia de una definición unificada del concepto de "pueblo indígena" y un enfoque unificado del conjunto de derechos y libertades de dichos pueblos; b) la idea dominante de un pueblo indígena como una minoría étnica que no tiene su estado fuera del país de residencia; c) la existencia de diferentes políticas nacionales sobre pueblos indígenas; d) la importancia de garantizar los derechos y libertades de los pueblos indígenas para preservar su identidad. La investigación científica sobre la garantía de los derechos y libertades de los pueblos indígenas se centra principalmente en tres áreas: a) la participación de los autogobiernos indígenas en la implementación de políticas nacionales, en particular, en lo que respecta al impacto sobre el medio ambiente; b) la protección de la identidad cultural de los pueblos indígenas, que también incluye la protección de los derechos de propiedad intelectual; c) la solución de problemas y la mejora del estatus legal de los pueblos indígenas a nivel nacional e internacional. Además, la experiencia de Ucrania puede ser utilizada por otros Estados para evaluar la capacidad de las instituciones estatales para interactuar con los órganos representativos de los pueblos indígenas en el marco de regímenes jurídicos especiales. Se ha llegado a la conclusión de que las actividades de los Estados miembros de la ONU deben centrarse en la adopción de una definición consensuada de "pueblos indígenas", así como de un conjunto de sus derechos y libertades. Al mismo tiempo, la experiencia de Ucrania se relaciona principalmente con la protección de los derechos y libertades de la población indígena de Ucrania (tártaros de Crimea, caraitas y krymchaks) frente a las violaciones de los derechos humanos fundamentales cometidas por las autoridades rusas de ocupación en Crimea y otros territorios ocupados temporalmente. Se ha señalado la ausencia de instrumentos internacionales eficaces para la protección de los derechos y libertades de los pueblos indígenas.

Palabras clave: derechos y libertades; pueblos indígenas; actos internacionales; instrumentos jurídicos; política estatal; órganos de la administración pública; tribunales.

Resumo

O objetivo deste estudo é fornecer uma compreensão científica do problema de garantir os direitos e liberdades dos povos indígenas, levando em consideração a experiência da Ucrânia e de países estrangeiros; em segundo lugar, formular conclusões e recomendações razoáveis para sua solução. Foi declarado: a) a ausência de uma definição unificada do conceito de "povos indígenas" e uma abordagem unificada para o conjunto de direitos e liberdades de tais povos; b) a ideia dominante de um povo indígena como uma minoria étnica que não tem seu estado fora do país de residência; c) a existência de diferentes políticas nacionais sobre povos indígenas; d) a importância de garantir os direitos e liberdades dos povos indígenas para preservar sua identidade. A pesquisa científica sobre a garantia dos direitos e liberdades dos povos indígenas concentra-se principalmente em três áreas: a) participação de autogovernos indígenas na implementação de políticas nacionais, em particular, no que diz respeito ao impacto no meio ambiente; b) proteção da identidade cultural dos povos indígenas, que também inclui a proteção dos direitos de propriedade intelectual; c) resolução de problemas e melhoria do status legal dos povos indígenas nos níveis nacional e internacional. Além disso, a experiência da Ucrânia pode ser emprestada por outros estados para avaliar a capacidade das instituições estatais de interagir com órgãos representativos de povos indígenas sob regimes legais especiais. Concluiu-se que as atividades dos estados-membros da ONU devem se concentrar na adoção de uma definição acordada de "povos indígenas", bem como um conjunto de seus direitos e liberdades. Ao mesmo tempo, a experiência da Ucrânia está relacionada principalmente à proteção dos direitos e liberdades da população indígena da Ucrânia - tártaros da Crimeia, caraitas e krymchaks - de violações de direitos humanos fundamentais cometidas pelas autoridades russas ocupantes na Crimeia e outros territórios temporariamente ocupados. A ausência de instrumentos internacionais eficazes para a proteção dos direitos e liberdades dos povos indígenas foi apontada.

Palavras-chave: direitos e liberdades; povos indígenas; atos internacionais; instrumentos legais; política estatal; órgãos da administração pública; tribunais.

We are grateful to our international partners,
the Armed Forces of Ukraine, and the entire
Ukrainian people for their ability to unite
to restore a just peace on Ukrainian soil.

INTRODUCTION

The constitutions of many countries enshrine provisions on the priority of human and civil rights and freedoms as fundamental values. The legal consolidation and recognition of the fact that human rights and freedoms determine the content and direction of the state's activities reflects the advanced democratic principles embodied in the doctrine of human-centeredness - the priority of human rights and freedoms in the activities of the state and its institutions. On the other hand, real, not declarative,

ensuring of human rights and freedoms is a guideline for any democratic state. At the same time, everyone should have all rights and freedoms, regardless of race, color, sex, language, religion, political or other beliefs, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, legal or international status of the country or territory to which a person belongs, whether or not that territory is independent, trust, non-self-governing or otherwise limited in its sovereignty, as enshrined in Article 2 of the Universal Declaration of Human Rights of 1948. Of course, when speaking about ensuring the principle of equality of human rights and freedoms, national governments should, first of all, take care of non-discrimination of socially vulnerable groups: children, elderly people, LGBT+ people, large families, representatives of national minorities, indigenous peoples, etc.

Today, Ukraine, as a country with a clear political course to join the European Union (EU), is undergoing a comprehensive transformation of many components of public life, the ultimate goal of which is to bring national legislation in line with European democratic standards. In turn, the actual updating of national legislation is associated with difficulties due to the declarative nature of the adopted provisions. An example is the obvious discrepancy between the right to free medical care guaranteed by Article 49 of the Constitution of Ukraine (1996) and the financial guarantees of the provision of the medical services and medicines of proper quality required by patients, reimbursement of medicines and medical devices at the expense of the State Budget of Ukraine under the medical guarantees program (Law of Ukraine No. 2168-VIII of 19.10.2017). This leads to the fact that the model of healthcare financing adopted in Ukraine contradicts the national legislation in terms of free medical care and fragmentarily considers positive international experience (Lohvynenko et al., 2019).

Based on the foregoing, the development of Ukraine as a European democratic state is impossible without proper guarantee of the rights and freedoms of all citizens without exception. This circumstance is complicated by the fact that as a result of the armed aggression of the Russian Federation, part of the territory of Ukraine is under temporary occupation, where numerous harassments and violations of the rights and freedoms of the local population, including indigenous peoples living in such territory, are taking place. To a large extent, this concerns the repressive actions of the Russian occupation authorities against the Crimean Tatars and other indigenous peoples of Crimea.

The purpose of this article is to attempt a scientific comprehension of the problem of ensuring the rights and freedoms of indigenous peoples, considering the experience of Ukraine and foreign countries, and to formulate reasonable conclusions and recommendations for its solution.

MATERIALS AND METHODS

According to the statistical report of the Crimean Tatar Resource Center, during 2017-2023, 9006 human rights violations were recorded in the temporarily occupied Crimea, of which almost 6400 cases concerned representatives of the indigenous Crimean Tatar people (Crimean Tatar Resource Center, 2023). In turn, a systematic analysis of national Ukrainian legislation, media and academic publications, analytical materials, case law, and reference publications made it possible to identify the reasons that contribute to the existence of problems related to the rights and freedoms of indigenous peoples in Ukrainian legislation. The method of comparative jurisprudence was used to identify shortcomings and controversial provisions in Ukrainian legislation on ensuring the rights and freedoms of indigenous peoples in comparison with international legal acts and legislation of individual states. The formal and logical method contributed to the formulation of conclusions and recommendations based on the results of the study of scientific, regulatory and other sources.

RESULTS AND DISCUSSION

At the international level, the legal status of indigenous peoples is regulated by many documents. Thus, according to paragraph b) of part 1 of Article 1 of the International Labor Organization (hereinafter - ILO) Convention of 27.06.1989, No. 169, indigenous peoples are peoples in independent countries who are regarded as indigenous because they are descendants of those who inhabited the country or geographical area of which the country is a part at the time of its conquest or colonization or at the time of the establishment of the existing state borders, and who, regardless of their legal status, retain some or all of their social, economic, cultural and political institutions. Along with this, the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly (Resolution No. 61/295 of 13.09.2007), should be mentioned. This document does not give preferences to persons belonging to indigenous peoples, but only establishes legal safeguards and standards for the proper protection of their rights and freedoms, in particular, the right to be free from any discrimination in the exercise of their rights, especially discrimination based on their indigenous origin and identity.

Based on the results of the analysis of the UN Declaration on the Rights of Indigenous Peoples, Oldham and Frank (2008) note that its text is based on a double axiom: first, ensuring the right of indigenous peoples to participate in the life of the

state without being discriminated against, and, second, promoting the realization of the right of indigenous peoples to self-development.

On June 15, 2016, after decades of engagement with indigenous peoples, the Organization of American States (OAS), composed of 35 independent states, adopted the American Declaration on the Rights of Indigenous Peoples. Building on the foundation of the UN Declaration on the Rights of Indigenous Peoples (adopted in 2007), the negotiations for the American Declaration were guided by the principle that all adopted standards would align with those of the UN Declaration. In support of this, Article 41 (XLI) of the American Declaration states that the rights recognized in both declarations constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas. However, the American Declaration extends beyond the UN Declaration by including additional measures related to treaties, children's rights, and the rights of people in voluntary isolation. It is intended for use within the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, thereby reinforcing the existing body of decisions supporting indigenous rights. Furthermore, in the European Parliament Resolution of July 3, 2018 (2017/2206(INI)) concerning the violation of indigenous rights globally, including issues such as land grabs, the European Parliament called on the EU, its Member States, and international partners to take all necessary measures to fully recognize, protect, and promote the rights of indigenous peoples, including their rights to lands, territories, and resources.

Thus, at the international level, it should be noted that there is no unified approach to understanding the concept of "indigenous peoples", which complicates the formation of common criteria for the legal and organizational protection of their rights and freedoms at the level of individual states.

In this aspect, Samoilenko (2017) focuses on the definition of criteria that would allow a particular ethnic group to be considered indigenous. In practice, the rule of self-identification enshrined in ILO Convention 169 as a fundamental principle of recognizing a people as indigenous has proven to be ineffective. The scientist argues that to define a people as indigenous, it is necessary to use the following system of interrelated legally significant criteria: a) self-identification—self-awareness of representatives of a particular ethnic group as indigenous people; b) unique ethnocultural identity—a pronounced difference of an ethnic group in its national, cultural, religious traditions, language from the general mass of society; c) connection with the territory of ancestral residence—the presence of indigenous people in the territory of traditional residence of their ancestors in the absence of their state; d) non-dominance in the overall population structure of the state.

Commenting on the last criterion, namely the non-dominance of indigenous people in the population structure of the state, opposing positions can be cited. For example, Boiko (2024) Indigenous peoples are recognized for their unique cultural traditions centered on natural resources, and their lifestyles are often socially, culturally, and linguistically distinct from those of the dominant population. While they frequently constitute a minority in their respective countries, this is not universally true; in certain Latin American nations, indigenous populations form a significant majority. For instance, in Bolivia, indigenous peoples account for approximately half of the country's population.

Phillips (2015), in his study on the rights of indigenous peoples in international law, comes to an interesting conclusion that governments rarely provide an adequate replacement for the subsistence economy that supports indigenous populations. In addition, economic development often has a negative impact on human health due to the pollution of indigenous lands, rivers and other resources. Accordingly, international law prevents and minimizes violations of indigenous peoples' rights, and protecting indigenous peoples' rights also protects the global environment. In general, by supporting the Prykhodko (2016), it should be noted that the problems of reflecting and resolving the issue of the status of indigenous peoples and the role of UN mechanisms in determining, reflecting and protecting their status in international law are relevant.

At the level of Ukrainian legislation, the legal status of indigenous peoples was properly enshrined only in 2021 with the adoption of a legal act on indigenous peoples of Ukraine (Law of Ukraine of 01.07.2021 No. 1616-IX). At the same time, Orekhova (2011) notes that the term "indigenous peoples" was first used in the legislation of Ukraine in the Constitution of Ukraine (1996). Article 11 of the Constitution of Ukraine (1996) states that "the state shall promote the 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, national minorities of Ukraine".

According to Article 1 of the Law on Indigenous Peoples of Ukraine (Law of Ukraine No. 1616-IX of 01.07.2021), the indigenous peoples of Ukraine are defined as autochthonous ethnic communities that originated on Ukrainian territory. These communities are carriers of an original language and culture, possess traditional, social, cultural, or representative institutions, and self-identify as the indigenous peoples of Ukraine. They form ethnic minorities within the broader population and do not have their own independent state outside Ukraine. In the context of the Crimean Peninsula, the indigenous peoples of Ukraine include the Crimean Tatars, Karaites, and Krymchaks.

Almost 15 years have passed since the term “indigenous peoples” was legislated in Ukraine and their status was fully recognized at the level of a separate law. Thus, O. Husiev (2023) proposes to identify the stages of formation of legislation in the field of ensuring the rights of indigenous peoples of Ukraine:

1. determination of the general principles of legal regulation of relations involving ethnic communities, which was mostly declarative in nature (1991-1996);
2. consolidation of the constitutional and legal status of indigenous peoples of Ukraine (1996);
3. “stagnation”, when special legal acts were not adopted, and the effect of those that were adopted applied to all ethnic communities (1996-2014);
4. “revival”, when the process of legislative consolidation of the status of indigenous peoples of Ukraine began, culminating in the adoption of the Law of Ukraine “On Indigenous Peoples of Ukraine” (2014-2021);
5. “prosperity”, during which there is an increase in the number of legal acts in the field of ensuring the rights of indigenous peoples of Ukraine, specification and detailing of existing legal provisions (from 2022 to the present).

Legislation in the field of ensuring the rights of indigenous peoples of Ukraine has defined more than thirty special rights of persons belonging to indigenous peoples of Ukraine: language (in the areas of office work and document management, print media, book publishing and distribution, in the election process, etc.), information, educational, cultural, as well as certain mechanisms for their implementation. A significant portion of legal provisions is devoted to the language rights of indigenous peoples of Ukraine, while the author emphasizes the declarative nature of certain rights without distinguishing them.

Having studied international legal standards on the legal status of indigenous peoples, Ihnatova and Hrushko (2021) note that governments fear indigenous peoples and do not fully protect them. In many countries, indigenous peoples suffer from bullying due to prejudice and stereotypes. Employers try not to hire such people, considering them criminals. Due to unemployment, some of them are forced to engage in theft and robbery, which leads to imprisonment. Likewise, many indigenous peoples suffer from misappropriation of their cultural heritage, which manifests itself in various forms, including its commodification, and the use of indigenous images and symbols in marketing.

Fylypets (2022) emphasizes that in the current conditions of globalization of social order, minorities face an important question: to integrate into the majority society, but at the same time to preserve their national, linguistic and cultural identity and originality. In this case, the legal instrument capable of ensuring holistic limits of influence of the state on the existence of minorities and the realization of their opportunities is human rights, which can be exercised both by an individual and collectively – by a group of people (community). In fact, human rights are certain human capabilities that are necessary to meet the needs of human existence and development in specific historical conditions, are objectively determined by the level of development of society and are ensured by the obligations of other subjects.

On the one hand, there may be some similarities between indigenous peoples and national minorities, but there are also fundamental differences between them. For example, both groups usually occupy a non-dominant position, their culture, language or religious beliefs often differ from the majority, and they usually seek to preserve and promote their identity. In some cases, minorities also have strong and long-standing attachments to their lands. However, minorities do not necessarily have the long-standing hereditary, traditional and spiritual attachment to their lands that is commonly associated with indigenous peoples. Indigenous peoples are also associated with the experience of forced colonization, which distinguishes them from national minorities. Notably, national minority status and indigenous status can often overlap both between and within groups. Relevant minorities may exist within indigenous peoples, for example, among ethnic and linguistic subgroups (Minorities and Indigenous Peoples. Right to Education Initiative, 2023).

Based on the above positions, we can draw interim conclusions about the following: a) the absence of a unified definition of the concept of “indigenous people” and a unified approach to the set of rights and freedoms of such peoples; b) the dominant idea of an indigenous people as an ethnic minority that does not have its state outside the country of residence; c) the existence of different national policies on indigenous peoples; d) the importance of ensuring the rights and freedoms of indigenous peoples to preserve their identity.

When analyzing the experience of ensuring the rights and freedoms of indigenous peoples in Ukraine, it should be noted that the country is home to quite a few national minorities and only a few indigenous peoples. To be an indigenous people, an ethnic community must have formed as such on the territory of Ukraine, be a carrier of an original language and culture, and not have its state outside of Ukraine. The indigenous peoples in Ukraine are the Crimean Tatars, Karaites and Krymchaks. Their historical homeland is Crimea. International law and Ukrainian legislation protect

indigenous peoples, but in their historical homeland, occupied Crimea, indigenous peoples, especially Crimean Tatars, face the opposite reality. In this regard, Deputy Chairman of the Mejlis of the Crimean Tatar people Akhtem Chiygoz notes that the assimilation of indigenous peoples is an old tactic of the Russian Empire, which is continued by the current Russian regime, both in the country itself (the situation of the so-called federal republics and their peoples) and in the occupied territories. Those who oppose assimilation or avoid cooperation with the occupation authorities are persecuted. On the contrary, the protection of the rights of indigenous peoples is a sign of sustainable democracy and developed statehood (International Day of the World's Indigenous Peoples).

Emphasizing that the traditional lands of the indigenous peoples of Ukraine — Karaites, Krymchaks, Crimean Tatars — are under occupation, Kornat and Kornat (2021) emphasize that the protection of indigenous rights is limited. However, the fact of temporary occupation does not relieve Ukraine of its obligation to implement legislation in this area, to ensure the representation of indigenous peoples' interests in government and local self-government bodies at the national and international levels. Experts emphasize the importance of Ukraine's ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which is the only legally binding international instrument protecting the rights of indigenous peoples; adoption of a strategic document — the Concept of Ethno-National Policy of Ukraine, as well as relevant programs that would ensure the implementation of the law on measures to strengthen support for indigenous peoples, funding of representative bodies.

Similar conclusions are reached by Karapetian (2024), pointing out that:

1. the indigenous peoples of Ukraine —the Krymchaks, Karaites, Crimean Tatars— are the people of Ukraine, its constituent parts;
2. the indigenous peoples of Ukraine have the right to carry out their cultural and social development;
3. the right to education of children — representatives of the indigenous peoples of Ukraine— is a guarantee of the right to cultural and social development of the indigenous peoples of Ukraine and the subjective rights of each child - representative of the indigenous people of Ukraine;
4. the right to self-determination belongs to the Ukrainian people, and the indigenous peoples of Ukraine are its component, not a separate and distinct component, but a component that is integral to the people of Ukraine;

5. every state in the world must respect the right of the Ukrainian people and its integral component —the indigenous peoples of Ukraine— to realize their economic, social and cultural development.

Analyzing human rights violations in the occupied Crimea in 2023, Eskender Bariiev, Chairman of the Board of the Crimean Tatar Resource Center (CRC), Head of the Department of Legal Affairs and Foreign Affairs of the Mejlis of the Crimean Tatar People, pointed to the following statistics: detentions, 173 cases (119 of them were against Crimean Tatars). In 2022, 121 detentions; in 2021, 366; Searches, 65 cases (46 of them in the homes of Crimean Tatars). In 2022, 50; in 2021, 53; Arrests, 217 cases (including 142 against Crimean Tatars). In 2022, 193 arrests; in 2021, 210; Interrogations, 186 interrogations, surveys and “conversations” (including 131 against Crimean Tatars); Staging, 68 cases (including 59 against Crimean Tatars). In 2022, 26 stages; in 2021, 37; Missing persons, two cases (Server Aliiev and Farhad Soliiev since 03.11. 2023); Violations of the right to a fair trial, including the rejection of lawyers’ appeals and the imposition of fines, 280 cases (including 188 against Crimean Tatars); Violations of the right to health, at least 52 violations of the right to the highest attainable standard of physical and mental health (including 43 against Crimean Tatars). Two Crimean political prisoners were killed, Knstiantyn Shyrinh (07.02.2023 in colony No. 5 in Novotroitsk) and Dzhemil Gafarov (10.02.2023 in the pre-trial detention center in Novochoerkask) (Hlianko, 2024).

In addition, during the occupation of Crimea, many representatives of the indigenous peoples of Ukraine became victims of the occupation authorities. Detailed analysis of the situation with human rights violations is summarized by the Crimean Tatar Resource Center. In particular, during the period of occupation of Crimea, there were 371 political prisoners and those prosecuted in criminal “cases”, 229 of whom were representatives of the Crimean Tatar people. The victims of enforced disappearances during the occupation of Crimea were 24 people, 18 of whom were representatives of the Crimean Tatar people. The statistics of deaths and victims of human rights violations during the occupation of Crimea are shown in figure 1.

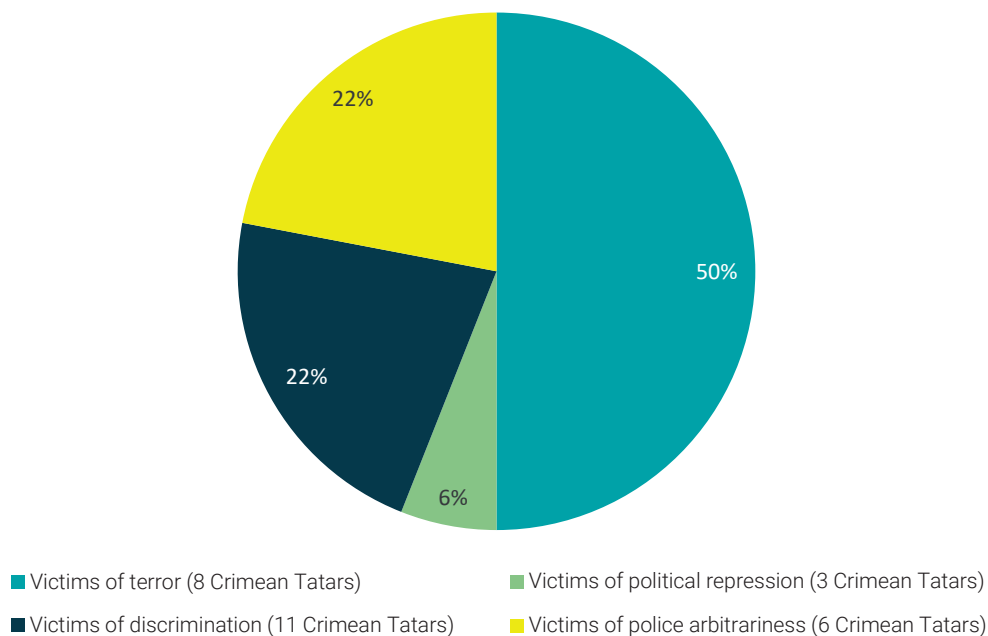


Figure 1. The statistics of deaths and victims of human rights violations during the occupation of Crimea

Note: 60 people killed during the occupation of Crimea, 28 of whom were representatives of the Crimean Tatar people. Source: Crimean Tatar Resource Center.

Regarding the prospects for improving the state of ensuring the rights and freedoms of indigenous peoples of Ukraine, we can point to the National Human Rights Strategy (Decree of the President of Ukraine of 24.03.2021 No. 119/2021). Paragraph § 12 of Section 4 of this Strategy defines "Ensuring the rights of indigenous peoples and national minorities" as one of the strategic directions. This strategic direction is aimed at solving the problems of improving and bringing Ukrainian legislation on the protection of the rights of national minorities in line with international standards, as well as preserving and developing the national identity of national minorities and indigenous peoples. The expected results include the following:

- a) Ukrainian legislation regulating the rights of indigenous peoples and national minorities is in line with international, including European, standards;
- b) conditions for equal participation of representatives of indigenous peoples and national minorities of Ukraine in public life are ensured. The main indicators of achievement of such results should be the level of tolerance, attitude to national minorities; the number of appeals to the Ukrainian Parliament Commissioner for Human Rights regarding cases of discrimination on the basis of national or ethnic origin and the number of violations in this area.

It is quite obvious that the adoption of the Law on the Indigenous Peoples of Ukraine (Law of Ukraine of 01.07.2021 No. 1616-IX) is not enough to solve the problems with ensuring the rights and freedoms of the indigenous peoples of Ukraine. The current state of affairs, which tends to deteriorate, can be explained by the forced occupation of the Crimean Peninsula by the Russian authorities. This makes it impossible to use Ukrainian legal mechanisms to improve the status of indigenous peoples and guarantee their rights and freedoms.

We consider it necessary to emphasize that ensuring the rights and freedoms of the indigenous peoples of Ukraine under temporary occupation should be focused on two key areas: firstly, the protection of their rights and freedoms through the activities of the diplomatic service of Ukraine, the Ukrainian Parliament Commissioner for Human Rights, as well as international judicial bodies, primarily the European Court of Human Rights; secondly, assistance in the realization of rights and freedoms for those indigenous peoples of Ukraine who are internally displaced persons.

Turning to foreign experience in addressing the problems of ensuring the rights and freedoms of indigenous peoples, it is advisable to focus on the scientific work on the issues under study.

First, it is worth supporting Göcke (2014) that international and national practice increasingly shows that states are aware of their historical responsibility to indigenous peoples. Modern national practice, as well as decisions of international courts and statements by the UN and other international organizations, indicate that the rights of indigenous peoples are now widely recognized at the national and international levels. It is fair to say that the right of indigenous peoples to self-determination cannot be viewed as a derivative right granted by national governments. On the contrary, it is an inherent right that they enjoy as people.

Having studied the rights of indigenous peoples in Asia from the human rights perspective in the context of national development and poverty reduction strategies, Errico (2017) notes that Asia is home to two-thirds of the world's indigenous peoples, who collectively represent 2000 different civilizations and languages. Differences in the positions and views on the concept of indigenous peoples did not prevent the states of this region from taking measures aimed at improving the specific situation of such population groups. Based on the results of the study, the author formulated several recommendations, namely:

1. promoting ownership of the concept of indigenous peoples and valuing their culture and contribution. Initiatives could include national and regional dialogues with stakeholders. It is particularly important to value indigenous

- peoples' culture, practices and knowledge as a contribution to the country's sustainable development and to recognize the need for differentiated and participatory approaches to address the underlying causes of their marginalization and de facto inequality;
2. seizing the opportunity of the 2030 Agenda for Sustainable Development and the Paris Climate Agreement to make indigenous peoples partners and agents of change;
 3. taking measures to ensure consultation and participation of indigenous peoples through appropriate mechanisms. The realization of indigenous peoples' rights, as well as the effective recognition and protection of their rights to land and natural resources, are fundamental to ensuring inclusive development that takes into account indigenous peoples' own priorities and aspirations;
 4. Ensuring indigenous peoples' rights to land and natural resources. Actions to ensure the effective recognition and protection of indigenous peoples' rights to land and natural resources will be crucial to their livelihoods, food security, and the preservation of cultural integrity and traditional knowledge;
 5. improving accessibility and relevance of public services. Most countries in the region have taken some measures to ensure the realization of the economic, social and cultural rights of indigenous peoples;
 6. focusing on indigenous women. Supporting the empowerment of indigenous women is necessary not only to ensure that their rights and gender equality are observed and respected, but also because their contribution is vital to achieving overall development goals;
 7. promoting the ratification of ILO Convention 169. Despite the fact that the UN Declaration enjoys wide support, as of 2017, only Nepal has ratified ILO Convention 169. At the same time, at the World Conference on Indigenous Peoples in 2014, all UN member states called for the ratification of the ILO Convention;
 8. building national capacity. Addressing gaps and challenges regarding the status of indigenous peoples at the national level, including governments, indigenous organizations and institutions, employers' and workers' organizations, national human rights institutions, parliament, judiciary, non-governmental organizations, education, and media.

The importance of protecting the rights of indigenous peoples in terms of maintaining biological diversity is emphasized by Reyes-García et al. (2022). The researchers

argue that transformative change requires bringing the rights of indigenous peoples and local communities to the forefront of biodiversity policy. They support this argument with four key points. First, indigenous peoples and local communities possess the knowledge necessary to set realistic and effective biodiversity targets that simultaneously improve local livelihoods. Secondly, indigenous peoples' conceptions of nature support the vision of the Global Biodiversity Framework 2050, "Life in Harmony with Nature." Thirdly, the participation of indigenous peoples and local communities in biodiversity policy contributes to the recognition of human and indigenous rights. And fourth, participation in biodiversity policy is essential for indigenous peoples and local communities to realize their rights to territories and resources.

Similarly, Toledo (1999) points out the important role of indigenous peoples in biodiversity conservation, as well as the recognition of the need to empower local communities. In many countries in Asia and Africa, the return of some control over lands and resources to local indigenous communities is also fundamental to slowing the loss of biodiversity in threatened regions. Similarly, new partnerships on resource management between local communities, the state, and other social institutions are essential for biodiversity conservation. Local governments, in cooperation with external governmental and non-governmental organizations are considered, perhaps, the best way to guarantee effective biodiversity protection worldwide, and especially in tropical countries.

On the other hand, Oguamanam (2014) points to the intersection of intellectual property rights and indigenous rights. The researcher points to the relationship between human resources and intellectual property, which is centered on traditional categories of human rights. The question of the extent to which these categories include indigenous rights remains under-researched. However, the search for links between human rights and intellectual property rights provides a unique opportunity to review the gaps in the protection of human rights in general and indigenous peoples' rights in particular. The author emphasizes the vulnerability of indigenous peoples to such violations and the impossibility of meaningful discourse on such issues without the involvement of indigenous peoples.

Hudson et al. (2023) emphasize that indigenous peoples are increasingly concerned about the misappropriation of their traditional knowledge and information. This is due to the rapid dissemination of information today, encouragement of data sharing, digitalization and commercialization of information, etc. Therefore, there is a need to ensure that the relevant information is handled in a way that is acceptable to indigenous peoples. Enshrining indigenous peoples' rights to information would serve

as a concrete step to ensure that indigenous peoples' management of data is consistent with their aspirations to control such information and their research activities.

Szpak (2018) focuses on the right of indigenous peoples to self-determination, noting forms of self-government such as the Sami parliaments in Scandinavian countries or the Greenland Self-Government in Denmark. Bodies representing indigenous peoples enjoy more or less power, but they are always subordinate to state bodies. This is a problem, as the idea of self-governance and development that is being implemented today largely reflects a Western or Eurocentric approach to its formation. The author believes that the situation can be improved by fully recognizing the sovereignty of indigenous peoples and their rights, especially to lands and natural resources important for their survival and preservation of identity and culture.

Having studied the role of indigenous peoples and local communities in effective and equitable conservation, Dawson et al. (2021) emphasize that protected area development plans threaten already marginalized indigenous peoples and may be ineffective for conservation. Scientists see the main way to effective biodiversity conservation in supporting environmental initiatives at the local level.

Mattos Vieira and Viaene (2024) critically approach the rights of indigenous peoples in the context of the UN. The researchers argue that the existing misunderstandings between national governments and indigenous peoples serve as a means of manipulation and threaten the full realization of rights by indigenous peoples. The researchers note that the "lack of communication" is not a by-product of intercultural interaction but exacerbates the disadvantage of indigenous people when language is the main barrier. Scientists also draw attention to the relationship between the degree of recognition of indigenous peoples by states and the degree to which such states respect, protect and facilitate the realization of indigenous rights. The higher the level of recognition, the deeper the realization of the relevant rights by indigenous peoples.

CONCLUSIONS

To summarize the study of the problem of ensuring the rights and freedoms of indigenous peoples, based on the experience of Ukraine and some foreign countries, we can recommend the following:

1. The problem of proper protection of the rights and freedoms of indigenous peoples is relevant for many countries of the world. The normative regulation of the rights of indigenous peoples at the international level is characterized by shortcomings related to the lack of a unified definition of

the concept of “indigenous people”, as well as a unified understanding of the set of rights and freedoms of such peoples at the level of national governments. Therefore, the activities of UN member states should be focused on the adoption of an agreed definition of “indigenous peoples” and a set of their rights and freedoms;

2. In many countries, at the national level, the rights and freedoms of indigenous peoples are focused on their relationship with the historical territory of residence (land), the use of traditional lifestyles, production, use of resources available on it, and the impact of technology on traditional ways of life and the environment. Instead, the Ukrainian experience is mainly related to the protection of the rights and freedoms of the indigenous population of Ukraine —Crimean Tatars, Karaites and Krymchaks— from violations of fundamental human rights committed by the occupying Russian authorities in Crimea and other temporarily occupied territories;
3. It should be noted that there are no effective international instruments to protect the rights and freedoms of indigenous peoples, which is due to the implementation of their own national policies by states, on the one hand, and, on the other hand, the unwillingness to ratify relevant international instruments (ECHR, International Criminal Court, International Court of Justice, etc.). Thus, effective means of law enforcement in cases of violations of the rights and freedoms of indigenous peoples at the national level need to be developed;
4. Scientific research on ensuring the rights and freedoms of indigenous peoples is focused mainly on three areas: a) participation of indigenous self-governments in the implementation of national policies, in particular, on the impact on the environment; b) protection of the cultural identity of indigenous peoples, which also includes the protection of intellectual property rights; c) solving problems and improving the legal status of indigenous peoples at the national and international levels. Ukraine’s experience can be used by other states to assess the ability of state institutions to interact with indigenous representative bodies under special legal regimes.

The prospects for further research will be focused on finding legal instruments to protect and restore the violated rights of indigenous peoples of Ukraine in the temporarily occupied territories and improving the legal status of indigenous peoples as internally displaced persons in Ukraine.

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