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OPINION ON THE DRAFT LAW OF UKRAINE ON THE STATUS OF THE CRIMEAN TATAR PEOPLE

UKRAINE

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Based on an unofficial translation of the Draft Law provided by the Verkhovna Rada of Ukraine.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

At the international level, Indigenous Peoples enjoy a unique status, developed in response to the inadequacy of traditional minority rights law and based on the recognition that special measures were required to protect their rights and maintain their distinct social, cultural, economic and political characteristics and way of life, as well as their special relationship to land, culture and heritage. Indigenous Peoples' historical legitimacy to exist within states as political, social and legal entities is recognized in international law, which also articulates the call for them to be represented through their own governance structures. Such status entitles them to a wide range of pre-existing collective rights, including the rights to self-determination, lands and resources, and free, prior and informed consent, as well as the relationship to tangible (land) and intangible (culture, customs) resources. At the same time, minority rights and the rights of Indigenous Peoples are mutually reinforcing and a strong and human rights-compliant legal framework on national minorities can form a crucial foundation for the successful realization of the rights of Indigenous Peoples.

ODIHR welcomes the request from the authorities of Ukraine to review the Draft Law on the Status of the Crimean Tatar People (Draft Law), which demonstrates Ukraine's willingness to enhance its efforts to protect and empower Indigenous Peoples, to comply with Ukraine's international law obligations. The passage of a specific law protecting a historically marginalized, disenfranchised Indigenous community such as the Crimean Tatars constitutes a significant step forward in the protection afforded to that group, providing that in parallel, legislative measures for other Indigenous and minority groups are also pursued to create a strong and comprehensive legal framework for minority and Indigenous rights.

The Draft Law is generally well-framed, although there remain some shortcomings and important aspects remain vague or undeveloped. This includes the right to land, natural resources and environmental rights. Some fundamental rights, such as the rights to life, physical and mental integrity, liberty and security of person, access to justice, access to health are not regulated. The provisions governing participation in public affairs would also require further elaboration to be effective.

Lastly, Indigenous women are particularly vulnerable and disproportionately impacted by a lack of access to education and employment opportunities, decision making and access to justice. The Draft Law does not include specific measures to ensure the full enjoyment of rights by Indigenous women and girls, taking into consideration their specific experiences, realities and needs, nor facilitates Indigenous women's participation in political life.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to improve the Draft Law's compliance with OSCE commitments and international obligations and standards:

A. With respect to the scope of the Draft Law:

1. To supplement the Draft Law to provide sufficient clarity and guidance on how beneficiaries of this Draft Law can be identified while ensuring a flexible approach based on self-identification of Crimean Tatars; [para. 29]

2. To broaden the material scope of the Draft Law to cover other rights that are enshrined in the UNDRIP, including the right to nationality, the rights to life, physical and mental integrity, liberty and security of person, access to justice and access to health, while further elaborating the provisions related to the right to land and to natural resources and environmental rights, with a view to ensure the Crimean Tatar people's full enjoyment of all fundamental rights and freedoms; [para. 32]
3. To provide for specific, targeted measures to ensure appropriate representation of Crimean Tatars, in all relevant structures of public administration, state institutions and decision-making bodies beyond the executive and legislative branches on various levels; [para. 33]
4. To consider introducing in the Draft Law and/or relevant legislation financial formula for budgetary allocation, thus clarifying its scope; [para. 34]

B. To supplement the Draft Law by integrating an intersectional gender perspective with a view to eliminate the risk of compounded discrimination on the basis of gender and indigeneity, and other personal characteristics, including by considering measures to promote more balanced representation and more meaningful, real and informed participation of Indigenous women in political and public life and at all levels; [para. 39]

C. With respect to land rights and natural resources and environment:
1. To regulate the right to natural resources in the Draft Law separately from the right to land, while considering including specific provisions on preferential access to natural resources; [para. 48]
2. To consider reflecting more broadly in the Draft Law that Crimean Tatars have the right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from the state for such conservation and protection in line with Article 19 (1) UNDRIP; [para. 49]

D. To clarify the relationship of the Draft Law with the State language law whilst ensuring that the promotion of bilingualism is not achieved at the cost of the endangered Crimean Tartar language; [para. 61]

E. To elaborate the provisions of the Draft Law with respect to the procedural aspects of the creation/closure of the relevant schools/classes, the rules governing the decision-making processes also including prior consultation with the Crimean Tatars, and the allocation of sufficient resources for ensuring the right to education of the Crimean Tatar people; [para. 65]

F. To ensure that the proposed changes to the electoral process ensure a fair balance with regards to the needs of Crimean Tatar people and other Indigenous Peoples and national minorities in Ukraine's diverse society, while considering a broader range of measures to promote the political participation of Crimean Tatar people, including of Crimean Tatar women, inter alia by facilitating the formation of regional political parties, reviewing electoral thresholds and design of electoral districts not to affect the chances of national minorities to be represented, considering further incentives for political parties to be more inclusive; [para. 80]

G. To continue consultation, as feasible in the given circumstances, especially with the wider inclusion of the Crimean Tatar people, but also of other Indigenous Peoples and national minorities, and to ensure that any reform process is subject to a transparent, inclusive and meaningful consultation

process, including with representatives of various political parties, lawyers' associations, academia, civil society organizations, which should enable equal opportunities for women and men to participate, while providing for a monitoring and evaluation system of the implementation of the Law and its impact. [para 96].

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE human dimension commitments and provides concrete recommendations for improvement of these laws.

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I. INTRODUCTION

1. On 4 August 2023, the Permanent Representative of Ukraine to the International Organizations in Vienna forwarded to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request from the Speaker of the Verkhovna Rada of Ukraine to review the Draft Law of Ukraine on the Status of the Crimean Tatar People (hereinafter "Draft Law").[1] In light of the subject-matter, ODIHR invited the Office of the OSCE High Commissioner on National Minorities to contribute to this legal review. On 18 September 2023, ODIHR responded to the request, confirming the Office's readiness to prepare a legal opinion on the Draft Law's compliance with international human rights standards and OSCE human dimension commitments.

2. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[2]

II. SCOPE OF THE OPINION

3. The scope of this Opinion covers only the Draft Law submitted for review, from the perspective of its compliance with international human rights standards and OSCE human dimension commitments, with particular focus on the rights of Indigenous Peoples and of persons belonging to national minorities, including the rights to self-determination, political and public participation, cultural rights, freedom of religion or belief, language, and education, amongst others. Thus limited, it does not constitute a full review of the legal and institutional framework governing the rights of national minorities and of Indigenous Peoples nor a detailed review of each and every provision of the Draft Law. The absence of comments on certain provisions of the Draft Law should not be interpreted as an endorsement of these provisions.

4. This Opinion does not deal with status-related issues.[3] Therefore, nothing in this Opinion should be interpreted nor construed as an infringement of the independence, sovereignty, and territorial integrity of Ukraine within its internationally recognized borders. The Opinion also does not aim to comment on or qualify historical events and current context, particularly the war caused by the Russian Federation's invasion of Ukraine nor address the Ukraine's residual human rights obligations towards displaced persons belonging to Indigenous Peoples, including Crimean Tatars. While these events and current context

1 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principles 7 and 17.

2 ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments. See especially, with respect to Indigenous populations, CSCE/OSCE Helsinki Document 1992, Decisions: VI. The Human Dimension, para. 29, which states: "*The participating States […] (29) Noting that persons belonging to indigenous populations may have special problems in exercising their rights, agree that their CSCE commitments regarding human rights and fundamental freedoms apply fully and without discrimination to such persons*"; and with respect to national minorities, see *OSCE Human Dimension Commitments: Volume 1, Thematic Compilation* (4th Edition, 2023), Specific Human Dimension Commitments, Sub-Section 4.1 on National Minorities, referring in particular to the protection of human rights and fundamental freedoms including equality and non-discrimination; effective participation in public and political life; cultural, linguistic and religious identity, and education; human contacts, free media and information; freedom of association; protection against hate-related crimes.

3 See UN General Assembly Resolution 68/262 of 27 March 2014, A/RES/68/262, which underscored that "the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol". ODIHR considers the so-called 'annexation' of territories under the Russian Federation occupation illegal and effecting no change to their status as Ukrainian territory under international law; see ODIHR, The legal framework applicable to the armed conflict in Ukraine, p. 2. Since 2014, the Russian Federation has been occupying the Autonomous Republic of Crimea and the City of Sevastopol to which the international humanitarian law of occupation applies; see in particular, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, in particular Article 43, which states that the occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

have undeniable far-reaching consequences for the situation of the Crimean Tatar people as reported by various international human rights organizations,[4] the aim of this Opinion is to provide a legal analysis of the Draft Law based on international and regional human rights standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion raises key issues and areas of concern. In the interest of conciseness, it focuses more on provisions that require amendments or improvements rather than on positive aspects of the Draft Law.

5. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)[5] and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[6] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

6. This Opinion is based on an unofficial English translation of the Draft Law, which is annexed to this document. Errors from translation may result. The Opinion is also available in the Ukrainian language. In case of discrepancies, the English version shall prevail.

7. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective subject matters in Ukraine in the future.

III. BACKGROUND AND NATIONAL CONTEXT

8. Article 24 of the Constitution recognizes that all citizens are equal before the law and that *"[t]here shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics."*.[7] According to Article 11 of the Constitution, the State promotes "*the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.*" The non-discrimination clause in Article 24 (2) of the Constitution forbids "*privileges or restrictions based on race, […] linguistic or other characteristics*." According to Article 92 (3) of the Constitution, the rights of Indigenous Peoples and national minorities of Ukraine are determined exclusively by the laws of Ukraine, as is the procedure for the use of languages (Article 92 (4)). According to Article 9 of the Constitution, international treaties that are in force, agreed to be binding by the *Verkhovna Rada* of Ukraine, are part of the national legislation of Ukraine. Article 119 (3) of the Constitution provides that local state administrations on their respective territory ensure the implementation of programmes for the national and cultural development of Indigenous Peoples and national minorities in "places of compact residence". Article 53 (5) guarantees to citizens belonging to national minorities "*the right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies in accordance with the law*".

4 See e.g., Council of Europe, Commissioner for Human Rights, *Report on Crimean Tatars' struggle for human rights*, 18 April 2023. See also: OHCHR, *Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation*, 24 February – 15 May 2022.

5 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), adopted by General Assembly resolution 34/180 on 18 December 1979. Moldova acceded to this Convention on 1 July 1994.

6 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

7 See the Constitution of Ukraine.

9. The Constitution also guarantees other fundamental rights and freedoms, including the rights to freedom of expression and access to information (Article 34), freedom of religion or belief (Article 35), freedom of association (Article 36), peaceful assembly (Article 39), the freedom of literary, artistic, scientific and technical creativity (Article 54).

10. On 20 March 2014, the *Verkhovna Rada* of Ukraine adopted a resolution "On the Guarantee of the Rights of the Crimean Tatar People within the State of Ukraine".[8] It proclaimed the Crimean Tatar people's right to internal self-determination,[9] as well as recognized the *Kurultai*[10] (or *Qurultai*) and the *Mejlis* as the highest self-governance bodies of the Crimean Tatars. The Resolution also references the development of a law to "*define and consolidate the status of the Crimean Tatar people as the indigenous people of Ukraine*". Since then, several efforts have been made to develop such a law.

11. On 1 July 2021, the Law on Indigenous Peoples of Ukraine[11] was adopted, which recognizes three ethnic communities (*Crimean Tatar*, *Karaim* and *Krymchak* minorities) as "indigenous peoples of Ukraine",[12] underlying the relationship between the communities in question and the territory of the Autonomous Republic of Crimea and the City of Sevastopol (Article 1(2)). The 2021 Law defines the legal status of these Indigenous Peoples and elaborates further the modalities of implementing the rights of Indigenous Peoples, especially in terms of internal self-determination and legal protection[13] and their cultural, educational, linguistic, information rights and right to sustainable development and to representation.

12. On 13 December 2022, the Law on National Minorities (Communities) of Ukraine was adopted and further amended in September and December 2023.[14] It defines a national minority (community) as a stable group of citizens of Ukraine who are not ethnic Ukrainians, live on the territory of Ukraine within its internationally recognized borders, are united by common ethnic, cultural, historical, linguistic, and/or religious features, are aware of their belonging to such community, and demonstrate a desire to preserve and develop their linguistic, cultural, and religious identity. From the content of the Law on National Minorities (Communities), it is not clear whether it applies to indigenous peoples. The amendments adopted in December 2023 also introduced new provisions into several laws that aim to expand the scope of rights afforded to national minorities, *inter alia*, in the areas of language, education, local self-governance and media[15] (see para. 25 below).

13. The Draft Law under review is designed to further regulate the status of the Crimean Tatar people in Ukraine and elaborate and operationalize some of the rights outlined in the 2021 Law on Indigenous Peoples of Ukraine with respect to the Crimean Tatar Indigenous People specifically. **In principle, if adopted, this would be a significant**

8 See the Resolution (in Ukrainian Language).
9 "Self-determination" in its external form is often associated with the right to secession and sovereignty, whereas in its internal form, it relates to aspects of self-organization in all spheres of life within the boundaries of an existing State.
10 This Opinion uses the word *Kurultai* although acknowledging the alternative spelling *Qurultai*.
11 See the *Law on the Indigenous Peoples of Ukraine* (1 July 2021, as amended 13 December 2022) (in Ukrainian language).
12 Article 1 of the Law defines an "indigenous people" as an "*autochthonous ethnic community formed on the territory of Ukraine which is the carrier of an original language and culture, has traditional, social, cultural or representative bodies, is self-aware of itself as an indigenous people of Ukraine, constitutes an ethnic minority within its population and does not have its own state formation outside of Ukraine.*"
13 Pursuant to Article 3(4) of the Law on the Indigenous Peoples of Ukraine (2021), they must be protected against "*any actions aimed at: 1) deprivation of signs of ethnicity and integrity as original peoples, deprivation of cultural values; 2) eviction or forced displacement from places of compact residence in any form; 3) forced assimilation or forced integration in any form; 4) encouraging or inciting racial, ethnic or religious hatred directed against them.*"
14 See the *Law on National Minorities (Communities) of Ukraine*, 13 December 2022, as amended by Law No. 3389-IX of 21 September 2023 and Law No. 3504-IX of 8 December 2023 (in Ukrainian). For the English version as adopted in December 2022, see here. See also Council of Europe, European Commission for Democracy through Law (Venice Commission), *Opinion on the Law on National Minorities (Communities) of Ukraine*, 12 June 2023.
15 See *Law No. 3504-IX* adopted on 8 December 2023.

step forward for the articulation of human rights of both individuals identifying as Crimean Tatar and the community as a whole, providing that in parallel, legislative measures for other Indigenous and minority groups are pursued to create a strong and comprehensive legal framework for minority and Indigenous rights.

III. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

14. At the outset, it is fundamental to underline that minority rights and the rights of Indigenous Peoples are two distinct categories under international law, underpinned by various mutually reinforcing legal documents. Globally, the rights of Indigenous Peoples developed in response to perceived inadequacy of traditional minority rights law to address the lived experiences and perceptions of "peoples" burdened with histories of colonialism, oppression, and injustice and based on the recognition that special measures were required to protect their rights and maintain their distinct social, cultural, economic and political characteristics and way of life, as well as their special relationship to land, culture and heritage. However, both categories and the relevant rights structures are mutually beneficial and deeply interrelated. Moreover, there were cases in the OSCE region when Indigenous Peoples opted for using both categories of rights for their benefit. Furthermore, key concepts in both sets of rights, such as self-determination and self-identification are part and parcel of international customary law.[16] It is of key importance to note that a strong and human rights-compliant legal framework on national minorities can form a crucial foundation for successful realization of the rights of Indigenous Peoples.[17]

15. The rights of persons belonging to national minorities and the rights of Indigenous Peoples are both entrenched in the broader equality and non-discrimination framework of international human rights law. Key obligations for the protection of the rights of persons belonging to minorities are embodied in United Nations (UN) human rights treaties, in particular the International Covenant on Civil and Political Rights (ICCPR),[18] the International Covenant on Economic, Social and Cultural Rights (ICESCR),[19] the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[20] the Convention on the Rights of the Child (CRC),[21]and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),[22] as interpreted and elaborated by relevant treaty-based and other international human rights monitoring bodies.

16. Article 27 of ICCPR states that "*[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in*

16 J Castellino, 'International Law & Self-Determination: Peoples, Indigenous Peoples & Minorities' in Self-Determination and Secession in International Law [C Walter, A von Ungern-Sternberg, & K Abushov eds.] (Oxford: Oxford University Press, 2014), pp. 27-44.

17 On Ukraine specifically, the Advisory Committee on the Framework Convention stated in their 2002 Report on Ukraine's implementation of the FCNM that "*the recognition of a group of persons as constituting an indigenous people does not exclude persons belonging to that group from benefiting from protection afforded by the Framework Convention*", para. 19.

18 See the *UN International Covenant on Civil and Political Rights* (ICCPR), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. Ukraine ratified the ICCPR on 12 November 1973.

19 See the *UN International Covenant on Economic, Social and Cultural Rights* (ICESCR), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. Ukraine ratified the ICESCR on 12 November 1973.

20 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine ratified the CEDAW on 12 March 1981.

21 See the *UN Convention on the Rights of the Child* (CRC), adopted by General Assembly resolution 44/24 on 20 November 1989. Ukraine ratified the UN CRC on 28 August 1991.

22 See the *UN International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), adopted by the UN General Assembly by Resolution 2106 (XX) on 21 December 1965. Ukraine ratified the ICERD on 7 March 1969.

community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." Article 30 of the CRC provides a similar standard for children belonging to religious or linguistic minorities or of Indigenous origin.[23] The General Recommendation No. 23 (1997) on Indigenous Peoples of the Committee on the Elimination of Racial Discrimination[24] and the General recommendation No. 39 (2022) on the rights of Indigenous women and girls[25] elaborate further guidance on the effective enjoyment of their individual and collective rights.

17. In international law, the general principle is that self-identification remains an important component to an individual's determination of her/his membership of the group.[26] As to the right of self-determination, Article 1 of the ICCPR and Article 1 of the ICESCR, provide that the right to self-determination is a fundamental right, which includes the right of all peoples to freely determine their political status and pursue their economic, social and cultural development.[27] The phrase "all peoples" – instead of "everyone"- indicates that the right to self-determination is a collective right; that is, only a "people" and not an individual, can exercise the right. Claims of self-determination generally imply demands for rights to be exercised within the boundaries of an existing state (or "internal self-determination"), relating to aspects of self-organization in all spheres of life within the state.[28]

18. Within the Council of Europe (CoE), minority rights are protected under the Framework Convention for the Protection of National Minorities (Framework Convention).[29] Its Article 1 provides that *"[t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation*". Article 3 further states that "*[p]ersons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others*." In addition, the European Convention on Human Rights and Fundamental

23 Article 30 of the CRC provides: "*In those States in which religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language*." See also UN Committee on the Rights of the Child (CRC), *General Comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child]*, 12 February 2009, CRC/C/GC/11.

24 Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples* (1997).

25 Committee on the Elimination of Discrimination against Women, *General recommendation No.39 (2022) on the rights of Indigenous Women and Girls*, 26 October 2022, CEDAW/C/GC/39.

26 CERD Committee, *General Recommendation VIII Concerning the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention* (Identification with a Particular Racial or Ethnic Group), adopted at the Thirty-eighth session of the Committee on the Elimination of Racial Discrimination, on 22 August 1990. See also Article 3(1) of the Framework Convention, which provides that "*Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."* See also 1990 Copenhagen Document, which specifies that "*To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice*" (para. 32).

27 See Article 1(2) of the Charter of the United Nations (1945), Article 1 of the ICCPR and Article 1 of the ICESCR, which state that *"[a]ll peoples have the right of self-determination"* and *"[b]y virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*". See also CSCE/OSCE, Helsinki Final Act (1975), Article VIII, where OSCE participating States committed to "*respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States*". See also UNSC Resolution 1513,*Resolution 1513*, UN Doc. S/RES/1513 (2003), 28 October 2003; UNGA Resolution 2625 (XXV), *Friendly Relations Declaration*, 24 October 1970.

28 As opposed to "self-determination" in its external form, which is often associated with the right to secession and sovereignty. In this respect, as noted by the UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *"[t]he principle of equal rights and self-determination, as laid down in the Charter of the United Nations, does not grant an unlimited right of secession to populations living in the territory of an independent sovereign State […] The right of secession unquestionably exists, however, it is in a special, but important circumstances: that of peoples, territories and entities subjugated in violation of international law*"; see UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The right to self-determination: historical and current development on the basis of United Nations instruments* (1981), E/CN.4/Sub.2/404/Rev. 1, para. 173. See also UN General Assembly *Resolution 2625 (XXV)*, which provides that the right of peoples to self-determination cannot be construed "*as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States*".

29 See Council of Europe, *Framework Convention for the Protection of National Minorities* (Framework Convention) (ETS No. 157). Ukraine ratified the Framework Convention on 26 January 1998 and it entered into force on 1 May 1998.

Freedoms (ECHR) and developed case law of the European Court of Human Rights (ECtHR) are also relevant to the protection of fundamental rights of national minorities.[30]

19. The fulfilment of international obligations to protect the rights of persons belonging to national minorities is monitored by specific supervisory bodies of the CoE – the Advisory Committee on the Framework Convention and Committee of Experts of the European Charter for Regional or Minority Languages, the European Commission against Racism and Intolerance (ECRI) and the Council of Europe Commissioner for Human Rights. This has led to the adoption of specific recommendations by those bodies and the Committee of Ministers of the CoE.[31]

20. At the OSCE level, key OSCE human dimension commitments relating to minority rights date back to the 1975 Helsinki Declaration, which provides that *"[t]he participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere*". Principle VIII of the Helsinki Final Act of 1975 also specifically refers to the principle of equal rights and self-determination of peoples.[32] The 1990 OSCE Copenhagen Document notes that "*questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary*".[33] OSCE participating States also committed to ensure "*equal protection of the law*" and "*equal and effective protection against discrimination on any ground*".[34] Within the OSCE, the OSCE High Commissioner on National Minorities (HCNM) also plays an important role as an instrument of conflict prevention at the earliest possible stage in regard to tensions involving national minority issues. The HCNM has also published a number of thematic Recommendations and Guidelines to address recurrent issues pertaining to national minorities, which are also of relevance for the present Opinion.[35]

21. Indigenous Peoples enjoy a unique status under international law, with specific international instruments distinct from those dealing with the rights of persons belonging to minorities. These include the Indigenous and Tribal Peoples Convention 1989 (No. 169) of the International Labour Organization (ILO Convention No. 169),[36] not signed nor ratified by Ukraine, and the UN Declaration on the Rights of Indigenous Peoples

30 See Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which entered into force on 3 September 1953. Ukraine ratified the ECHR on 11 September 1997. See also a selection of judgments and decisions of the European Court of Human Rights (ECtHR) relevant for the protection of national minorities here.

31 See the Council of Europe – the Advisory Committee on the Framework Convention for the Protection of National Minorities.

32 See CSCE/OSCE, Helsinki Final Act (1975), Principle VIII, which provides: "The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle."

33 See *OSCE Human Dimension Commitments: Volume 1, Thematic Compilation* (4th Edition, 2023), especially CSCE/OSCE, Madrid 1983 (Questions Relating to Security in Europe: Principles); Vienna 1989 (Questions Relating to Security in Europe: Principles); Paris 1990 (A New Era of Democracy, Peace and Unity); Budapest 1994 (Decisions: VIII. The Human Dimension); Lisbon 1996 (Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century); Istanbul 1999 (Summit Declaration).

34 See CSCE/OSCE, 1990 Copenhagen Document, para. 5.9; see also paras. 25.3 and 25.4: "*measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation*" and "*will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority*"; and OSCE, *Decision no. 10/05 Tolerance and Non-discrimination: Promoting Mutual Respect and Understanding*, MC.DEC/10/05, adopted at the Ministerial Council in Ljubljana, 6 December 2005, paras. 4, 5 and 5.1; *Decision no. 13/06 Combating intolerance and Discrimination and Promoting Mutual Respect and Understanding*, MC.DEC/13/06, adopted at the Ministerial Council in Brussels of 5 December 2006, paras 2, 5, 6 and 10; and *Decision no. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect*, MC.DEC/10/07, adopted at the Ministerial Council in Madrid of 30 November 2007, paras. 7, 9 and 10.

35 Available at <Thematic Recommendations and Guidelines | OSCE>.

36 See International Labour Organization, *Indigenous and Tribal Peoples Convention*, 1989 (No. 169), also known as ILO Convention No. 169. Ukraine is not a signatory to this Convention.

(UNDRIP)[37] as well as international jurisprudence in which their rights are defined. The UNDRIP, although not legally binding, elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous Peoples and on a range of collective rights to which they are entitled, including the rights to self-determination, lands and resources, and free, prior and informed consent as well as the relationship to tangible (land) and intangible (culture, customs) resources.[38]

22. At the OSCE level, the specific situation of Indigenous Peoples was initially acknowledged in 1991 in the Cracow Symposium on the Cultural Heritage where OSCE participating States committed to "*accord due attention to strengthening the heritage of popular culture of the past, including indigenous* […] *cultures*, […] *within the framework of their overall efforts for the preservation, study, protection and promotion of mutual awareness of their cultural heritage*."[39] The Helsinki 1992 Document provides that "*…persons belonging to indigenous populations may have special problems in exercising their rights, [participating States] agree that their CSCE commitments regarding human rights and fundamental freedoms apply fully and without discrimination to such persons*." In the Vienna 1989 Document, the participating States also confirmed that "*by virtue of the principle of equal rights and self-determination of peoples and in conformity with the relevant provisions of the Final Act, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development*."

IV. LEGAL ANALYSIS AND RECOMMENDATIONS

1. GENERAL CONSIDERATIONS

23. The Draft Law seeks to only regulate the status of the Crimean Tatar people in Ukraine, thus leaving outside of its scope the two other Indigenous communities recognized by the Law on Indigenous Peoples of Ukraine, i.e., the Karaim and Krymchak peoples. In this regard, the Framework Convention does not impose an obligation on State authorities to grant identical protection to every minority group.[40] **The Draft Law, if adopted, would constitute a significant step forward in the protection afforded to the Crimean Tatars At the same time, the preferential treatment of this group compared to other Indigenous groups, needs to be duly justified and accompanied in parallel by the development and implementation of measures addressing the specific needs and priorities for other Indigenous and minority groups**. Otherwise, following this dualistic approach runs the risk of creating distinctions and disenfranchising those Indigenous communities and potentially other national communities that do not benefit from the provisions of the Draft Law.

24. Article 1 of the Draft Law notes that "*the Crimean Tatars are the largest indigenous people of Ukraine; developing its distinctiveness and ensuring observance of their rights is a priority of the State's ethno-national policy*." This could potentially justify a preferential treatment, although some of the concerns faced by the other Indigenous

37 See the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP), adopted by the General Assembly on 13 September 2007 with 143 votes of member States in favour. Ukraine abstained.

38 See the UNDRIP. Article 38 also provides for a mandate to States to enact legislation by noting that "*States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.*"

39 CSCE, Document of the Cracow Symposium on the Cultural Heritage of the CSCE Participating States, Cracow 1991, in: OSCE Human Dimension Commitments, Volume 2, *Chronological Compilation*, 4th Edition, OSCE/ODIHR, 2023.

40 See e.g., Venice Commission, CDL-AD(2019)038, *Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language*, para. 41.

groups regarding the risk of extinction of their culture and language are similar. From this perspective, Ukraine should assess whether the general framework provided by the Law on Indigenous Peoples is sufficient to address the specific challenges faced by the other Indigenous groups or whether some additional legislative measures should be adopted, aimed at securing the minimum standards for the survival, dignity and well-being of the other Indigenous Peoples in line with Article 43 of UNDRIP.

25. As mentioned above, from the content of the Law on National Minorities (Communities), it is not clear whether it, in full or in part, also applies to Indigenous Peoples and would also continue to apply to Crimean Tatars if the Draft Law is adopted. The recent amendments to the legal framework the rights of national minorities should not result in a cleavage between the rights of persons belonging to national minorities and those of Indigenous Peoples as both sets of rights are mutually beneficial. In this regard, to ensure legal clarity and to avoid an unjustified disbalance in the treatment of different minority groups, it is recommended that **the legal framework on the status and rights of Indigenous Peoples, including the present Draft Law, be supplemented with a provision explicitly clarifying that the rights granted to national minorities, should continue to be applicable to Indigenous Peoples, including the Crimean Tatars, after the adoption of this Draft Law, specifying that the provisions of the Draft Law should take precedence in case of contradiction.**

26. The UNDRIP also requires States "*to consult and co-operate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them*" (Article 19).[41] Such consultations should be guided by the HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999) and the HCNM Ljubljana Guidelines on Integration of Diverse Societies (2012). For that purpose, **a process of obtaining such consent through clear procedures and relevant bodies determined by the Crimean Tatar communities themselves should be in place.**[42] From this perspective, while acknowledging the ongoing war and overall security situation as serious factors affecting developments, this may not in itself render such consent impossible to obtain as far as the Crimean Tatars self-governance bodies remain operational. It goes beyond the scope of this Opinion to assess whether such bodies are representative of the Crimean Tatars communities' plurality.

27. More generally, it is also fundamental that meaningful and inclusive consultations with representatives of all Indigenous Peoples and of other national minorities, and the public in general are carried out throughout the lawmaking process so that their needs and expectations are addressed.[43] This would also contribute to better acceptance and ownership of adopted legislation. While recognizing that in current circumstances, the possibility for wider, inclusive public consultations may significantly be limited, in case when important legislative reforms are initiated, even during states of emergency, public authorities should seek to apply ordinary legislative processes to the extent possible, with inclusive public hearings and consultations as feasible in the given circumstances, including through the use of online platforms if necessary.[44] In case if due to the specific context, it may not be practically possible to organize inclusive and meaningful consultations, the impact of the legislation adopted in this period should be reviewed as

41 See for more information: *OHCHR Brief on Free, Prior and Informed Consent of Indigenous Peoples* (2013) (ohchr.org).
42 See e.g., UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights - Working Group on Indigenous Populations, *Standard-Setting Legal Commentary on the Concept of Free, Prior and Informed Consent* (2005), para. 56.
43 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 7, para. 25.
44 See, e.g., ODIHR, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic* (2020), pp. 65-74.

soon as the situation so permits,[45] in particular to assess whether it had a disproportionate impact on certain groups of population (see also Sub-Section 6 *infra*).

28. In light of the foregoing, developing a law exclusively focusing on Crimean Tatars would be in line with Ukraine's international law obligations. This should be done in parallel with **the implementation of plans to institute specific measures for other Indigenous and minority groups is carried out to address the distinct challenges they face. It is also essential that a proper process is in place for obtaining the free, prior and informed consent of representative institutions of Crimean Tatars communities before adoption of the Draft Law and more generally, that other Indigenous and minority communities are meaningfully involved in and consulted throughout the lawmaking process.**

2. SCOPE OF THE DRAFT LAW AND SELF-IDENTIFICATION

29. The Draft Law's main purpose is the regulation of collective rights of the Crimean Tatar people but some provisions also grant specific rights to individual persons belonging to the Crimean Tatar people. Neither the Draft Law nor the Law on Indigenous Peoples[46] provide clear guidance for determining whether an individual may be deemed to fall within the category of 'Crimean Tatars' for the purposes of this Draft Law. For example, it is unclear whether access to individual rights (such as preferential land rights) are tied to self-identification or an individual's (formal) relationship with the institutions of the Crimean Tatar people as recognized in the Draft Law (such as the Kurultai or Mejlis). In addition, there may be individuals who are Crimean Tatars but may not be willing to be recognized as such for various reasons, especially in the current context. In order to avoid potentially over-restrictive implementation of the Draft Law, it is advisable **to supplement it by providing sufficient clarity and guidance on how the beneficiaries of this Draft Law can be identified**. In particular, the Draft Law has **to be flexible enough to allow individuals to opt out of collective provisions made on the basis of their perceived membership of a group and therefore the self-identification approach may be preferable**.

30. In terms of the scope and reach of the Draft Law, another element that is unclear is whether the construction of a special regime for Crimean Tatars would envisage a right of return for other Crimean Tatars who may not yet have sought to resettle to the Crimean Peninsula, and whether they may be able to avail of the protection and promotion of the rights embedded in the Draft Law. The Draft Law as it stands implies that the Crimean Tatars are a relatively homogenous group who are territorially present within the Crimean Peninsula. **It is unclear whether and to what extent the Crimean Tatars may be able to avail of the general provisions of the Draft Law outside of the Crimean Peninsula, for instance in terms of their promotion of culture and language through education.**

31. Further, it is important to distinguish between specific, distinct rights of certain categories of person or communities, such as indigenous peoples, which are of a permanent nature as they stem from the community's indigeneity (e.g., preferential rights to ancestral domain or concerning the promotion of culture and language), and special measures that

45 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (January 2024), Principle 11 and para. 30.

46 While there is no internationally-recognized definition of "Indigenous People", the UNDRIP, by way of its preamble and provisions, generates a framework of elements that are of key importance to Indigenous peoples, such as self-identification, historical continuity, special relationship with ancestral lands, distinctiveness, non-dominance and perpetuation – although none of these elements can be "*considered as absolutely indispensable to qualify a group as an 'Indigenous people'*"; see also CERD Committee, General Recommendation VIII Concerning the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention Identification with a Particular Racial or Ethnic Group, adopted at the Thirty-eighth session of the Committee on the Elimination of Racial Discrimination, on 22 August 1990. See also similar elements in: International Labour Organization, *Convention C169 - Indigenous and Tribal Peoples Convention* (No. 169) (1989).

are of a remedial nature, for instance regarding political representation.[47] With respect to the latter, it remains important to assess the extent to which some of the special measures contemplated in the Draft Law remain necessary over time so that they do not become a permanent unjustified privilege of Crimean Tatars compared to other Indigenous or minority groups or even the majority/other Ukrainian citizens, rather than a remedial measure. At some point, some of these special measures may be considered to no longer be needed, for instance when a proportional representation of the Crimean Tatars in elected public office has been sustainably achieved, and should therefore be adjusted or even discontinued/. The mechanism usually used is to regularly review and evaluate special measures to determine whether the objective for which they were taken has been sustainably achieved, and whether such measures should therefore be adjusted or even discontinued.[48] It is therefore recommended **to provide for a periodic evaluation of the impact of the Draft Law once adopted,**[49] **ensuring inclusive consultation, including with other Indigenous Peoples, national minorities and the general public.**

32. While the Draft Law acknowledges that Crimean Tatar people enjoy certain distinct rights and freedoms recognized by international law, it is also selective in its approach. As such, certain aspects of the rights envisaged by the Draft Law are vague or undeveloped. This includes in particular the right to land and to natural resources and environmental rights (see also Sub-Section 4.2 below). Bearing in mind the history of discriminatory treatment, mass deportations and arrests of Crimean Tatars, as also recognized in this Draft Law, it is advisable to also specifically elaborate on other rights such as the right to nationality (Article 6 of the UNDRIP), the rights to life, physical and mental integrity, liberty and security of person (Article 7 of the UNDRIP), access to justice (Article 40 of the UNDRIP), and access to health (Article 24 of the UNDRIP) in consideration of the specific challenges that Crimean Tatar people may face in the enjoyment of such rights. The Draft Law also does not include specific measures to ensure the full enjoyment of rights by Indigenous women and girls, taking into consideration their specific experiences, realities and needs in the area of human rights protection compared to Indigenous men and boys[50] (see also Sub-Section IV.3 below). As provided by OSCE human dimension commitments, participating States committed "*to respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere*."[51] **It is recommended that the material scope of the Draft Law is broadened to cover other rights that are enshrined in the UNDRIP, also from a gender and diversity perspective to ensure an intersectional approach, thereby ensuring the Crimean Tatar people's full enjoyment of all fundamental rights and freedoms.**

33. The Draft Law provides detailed provisions on political participation of Crimean Tatar communities in the executive and legislative branches on various levels (see also Sub-Section 4.7 below). This is welcome. However, other aspects of the right to participation in public life are not addressed in the Draft Law. In particular, questions of representation

47 See e.g., CERD Committee, *General Recommendation No. 32 on the Meaning and Scope of Special Measures in the ICERD* (2009), para. 15.

48 See e.g., in the context of special measures established specifically to counter racial discrimination, the ICERD articulates this in the language of Article 1 (4), which states: "*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved*."

49 See e.g., OECD, International Practices on Ex Post Evaluation (2010). See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 5 on evidence-based lawmaking.

50 See Committee on the Elimination of Discrimination against Women, *General recommendation No.39 (2022) on the rights of Indigenous women and girls*, 26 October 2022, CEDAW/C/GC/39.

51 See, for example, Declaration on Principles Guiding Relations between Participating States – Principle VII, Helsinki 1975.

of Crimean Tatars individuals in sectors that provide essential services, including the judiciary, law-enforcement bodies, social welfare and healthcare institutions, and education institutions[52] are not covered. This could potentially fall under the State Principle concerning full participation enunciated in Article 2 of the Draft Law, but more explicitly defined provisions and arrangements would more effectively contribute to the elimination of structural discrimination that the community may face. The Draft Law should **provide for specific, targeted measures to ensure appropriate representation[53] of Crimean Tatars in all relevant structures of public administration, state institutions and decision-making bodies. Such measures should take into account or refer to any similar provisions, where they exist, made for national minorities or other under-represented groups.**

34. Further, the organizational and financial support also lies with the state and the Draft Law does not envisage the involvement of the Crimean Tatars' representatives in formulating the budget, nor does it establish a separate budget line for representative bodies. However, according to Article 3 (5) of the Draft Law, the *"[s]tate shall ensure the allocation of part of the revenues by budgets of all levels from the use of land and other natural resources located on the territory of the Autonomous Republic of Crimea and the city of Sevastopol*" for the needs of the Crimean Tatars. **For clarity and more effective implementation, it is advisable to specify the formula for determining such amount, such as by providing a percentage of the state budget, to be allotted instead of the vague wording "part of the revenues" while specifying the consultative role of the Crimean Tatars' representatives in formulating the budget. This would better ensure that adequate resources are allocated on a yearly basis**.

35. Lastly, while it is clear that the present Draft Law serves as a *lex specialis*, the references to other laws of Ukraine (see e.g., Articles 1 (5), 3 (1)) in several of the provisions of the Draft Law contributes to the lack of clarity as to its hierarchy in the wider framework on Indigenous Peoples' rights and rights of minorities, but also specific areas such as education and language as these are also governed by the Law on Education and the Law on State Language.

RECOMMENDATION A.1

To supplement the Draft Law to provide sufficient clarity and guidance on how beneficiaries of this Draft Law can be identified while ensuring a flexible approach based on self-identification of Crimean Tatars.

RECOMMENDATION A.2

To broaden the material scope of the Draft Law to cover other rights that are enshrined in the UNDRIP, including the right to nationality, the rights to life, physical and mental integrity, liberty and security of person, access to justice and access to health, while further elaborating the provisions related to the right to land and to natural resources and environmental rights, with a view to ensure the Crimean Tatar people's full enjoyment of all fundamental rights and freedoms.

RECOMMENDATION A.3

To provide for specific, targeted measures to ensure appropriate representation of Crimean Tatars, in all relevant structures of public administration, state

52 See e.g., OSCE HCNM, *Ljubljana Guidelines on Integration of Diverse Societies* (2012), Principle 26, p. 34.

53 The representation need not be mathematically proportional, but should aim to reflect the composition of society, see OSCE HCNM, *Ljubljana Guidelines on Integration of Diverse Societies* (2012), Principle 39, p. 46.

institutions and decision-making bodies beyond the executive and legislative branches on various levels.

RECOMMENDATION A.4

To consider introducing in the Draft Law and/or relevant legislation financial formula for budgetary allocation, thus clarifying its scope.

3. INDIGENOUS WOMEN AND GENDER CONSIDERATIONS

36. As mentioned above, the Draft Law does not include specific provisions to ensure the full enjoyment of rights and freedoms by Indigenous women and girls, taking into consideration their specific experiences, realities and needs compared to Indigenous men and boys.

37. Indigenous women are generally disproportionately impacted by a lack of access to education and employment opportunities, to decision making and to justice, and particularly vulnerable to or target of violence.[54] Their capacity to exercise the fundamental social, economic, cultural, and political rights guaranteed in international instruments is inextricably tied to their right to self-determination in their territories. As reported by the UN Special Rapporteur on the rights of Indigenous Peoples, *"[d]iscrimination against indigenous women hinders equal access to lands and resources, limits development opportunities and restricts women's participation in decision-making processes. The imposition of male-dominated colonial structures on indigenous women has often undermined and marginalized their status as bearers of unique knowledge and custodians of biodiversity. The Special Rapporteur focuses on women because their role in developing, transmitting, producing and applying knowledge continues to be hindered by racism, gender discrimination and violence*".[55]

38. While CEDAW does not make specific reference to Indigenous women, the CEDAW Committee's General Recommendation No. 39 (2022) on the rights of Indigenous women and girls provides a number of recommendations to enhance the legal framework in this respect. These include measures to promote the meaningful, real and informed participation of Indigenous women and girls in political and public life and at all levels, amendments to prevent, prohibit and respond to gender-based violence, the recognition of Indigenous Peoples' land rights, among others. The Recommendation further recommends State parties to "*recognize legally the right to self-determination and the existence and rights of indigenous Peoples to their lands, territories, and natural resources in treaties, constitutions, and laws at the national level*."[56] It further notes that *"[t]he prohibition of discrimination should also be implemented to ensure their rights to effective and equal participation in decision-making and to consultation, in and through their own representative institutions, in order to obtain their free, prior and informed consent before the adoption and implementation of legislative or administrative measures that may affect them. This set of rights lays the foundation for a holistic understanding of the individual and collective rights of Indigenous women. The violation*

54 See OSCE, *Ministerial Council's Decision No. 15/05 on Preventing and Combating Violence Against Women*: "*particular targeting or vulnerability to violence and hence the need for protection of girls and some groups of women, such as […] indigenous women*," urging participating States to take all measures to "*promote and protect the full enjoyment of the human rights of women and to prevent and combat all forms of gender-based violence against women and girls.*"

55 See Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, 9 August 2022, para. 12. It further provides that *"[w]omen's knowledge is critical to maintaining cultural identity; creating solutions to conflict through indigenous justice; managing the risks and impacts of climate change; protecting biodiversity; achieving sustainable development; and building resilience in the face of pandemics and other extreme events"* (para. 28).

56 See CEDAW, *General Recommendation No.39 (2022) on the Rights of Indigenous Women and Girls*, 26 October 2022, para. 57.

of any of these or related rights constitutes discrimination against indigenous women and girls."[57]

39. **It is recommended to supplement the Draft Law by integrating an intersectional gender perspective with a view to eliminate the compounded discrimination on the basis of gender and indigeneity, and other personal characteristics, including by considering measures to promote more balanced representation and more meaningful, real and informed participation of Indigenous women in political and public life and at all levels** (see also Sub-Section 4.7 below). **A proper, inclusive and participative assessment of the specific experiences, realities and needs of Crimean Tatar women and girls should be made to inform the introduction of specific provisions to ensure the full enjoyment of rights and freedoms by Indigenous women and girls in all their diversity.**

RECOMMENDATION B.

To supplement the Draft Law by integrating an intersectional gender perspective with a view to eliminate the risk of compounded discrimination on the basis of gender and indigeneity, and other personal characteristics, including by considering measures to promote more balanced representation and more meaningful, real and informed participation of Indigenous women in political and public life and at all levels.

4. Specific Rights and Freedoms

40. While the Draft Law provides specificity in a number of areas, in particular political participation, it remains rather general in key areas that pertain to Indigenous Peoples' rights – in particular on land, natural resources, environmental rights, and access to services, especially health services. Also, as noted above, the Draft Law is silent with respect to a number of other fundamental rights, including right to nationality, the rights to life, physical and mental integrity, liberty and security of person, and access to justice.

4.1. Right to Self-determination

41. Article 1 (2) of the Draft Law provides that "the Crimean Tatar people have the right to self-determination within Ukraine, the right to establish its political status within the limits of the Constitution and laws of Ukraine, to freely carry its economic, social and cultural development." This wording is overall in line with Article 3 of the UNDRIP, which provides that "[b]y virtue of that right [indigenous people] freely determine their political status and freely pursue their economic, social and cultural development."

42. The Draft Law acknowledges the existence of the symbols and institutions of the Crimean Tatar people, also providing legal recognition of the relevant rules and regulations. At the same time, it tends to elaborate in a more detailed manner various issues that pertain to the inner functioning of institutions and definition of identity of some Crimean Tatar communities. For instance, the organizational structure and working of the Mejlis and the Kurultai are laid out in Articles 11 and 12. These provisions define the self-government structure, and address how representatives can obtain and lose rights, the competencies of community self-government and the role and procedures pertaining to the Kurultai. Other examples of the prescriptive nature of the Draft Law can be found in Article 13 which determines, amongst others, the matters that should be determined

57 *Ibid.*, para. 6.

by the regulation on self-government of the Crimean Tatar people, and Article 14 concerning the Mejlis that provides, amongst others, how this body's Chair should be elected, and its accountability to the Kurultai. There are benefits to cementing these issues in Ukrainian legislation for the sake of legal certainty, and it is understood that many of the provisions in question were made that detailed as a result of advocacy by individual representatives of the Mejlis of the Crimean Tatars themselves. At the same time, this runs the risk of rendering future amendments and changes more difficult as they will be dependent on the Ukrainian legislator rather than on the Crimean Tatars communities or their representative institutions, thereby potentially limiting the right to internal self-determination to an unnecessary degree. This risk could be mitigated by recognizing in the Draft Law the existence of the national symbols and various institutions of the Crimean Tatars, and of the rules and regulations they issue, while leaving the determination of the details in terms of organizational structure and inner functioning to these institutions themselves.

43. As further elaborated below, it is also important that the right to self-determination is fully respected in conjunction with the exercise of other fundamental rights as well as processes and decisions that affect the Crimean Tatar people.

4.2. Right to Land and Resources and Environmental Rights

44. One key element that distinguishes Indigenous Peoples from minorities is a claim to an ancestral domain, which may take the form of collective title over a territory or encompass individual or collectively held land titles to plots of land. The UNDRIP, provides that Indigenous rights include property rights to the lands and territories which they have traditionally owned, occupied or otherwise used or acquired and the right to use and manage their natural resources. Self-determination is also crucial in this respect because of its links with land rights and the right to participate in processes and decisions affecting them, such as the establishment and management of protected areas.[58] Human rights treaty bodies, notably the Human Rights Committee, the Committee on Economic, Social and Cultural Rights (CESCR) and the CERD Committee, have all affirmed, in analogous terms, that States must recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands and to participate in the management and conservation of the associated natural resources.[59]

45. Article 7 of the Draft Law regulates the right of the Crimean Tatar people to land and provides that "*Crimean Tatar individuals shall be guaranteed the priority right to obtain the ownership and use of land plots [on the territory] of the Autonomous Republic of Crimea*." It further notes that such procedure will be established by the Cabinet of Ministers (after adoption of the Law) in consultation with the *Mejlis* of the Crimean Tatar People.

46. First, Article 7, in general terms, envisions preferential treatment for individuals belonging to the Crimean Tatar people in the form of a so-called "priority right" to obtain a land. It is not clear what a "priority right" implies and how it is determined, unless it is defined in Ukrainian legislation. The authority vested in the Cabinet of Ministers for making decisions concerning the reservation of agricultural and other land determinations, albeit in consultation with the *Mejlis*, appears controversial, and may lead to arbitrary interpretation, especially if the term "priority right" is not better defined. **It is recommended to define what the term "priority right" would entail or include a**

58 See Rights of Indigenous Peoples – Note to the Secretary General, 29 July 2016, para. 22. See also ODIHR, Factsheet "Anti-Indigenous Hate Crime", p. 3 available at: 549520.pdf (osce.org).

59 See Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples* (1997), para. 5; Concluding Observations for Sri Lanka, in A/56/18(SUPP), para. 335.

cross-reference to applicable legislation to increase legal certainty and reduce the risk of arbitrary interpretation.

47. The provision is also silent on issues of the price that may need to be paid in compensation to current leaseholders, with the wording 'obtain' suggesting a process that may not involve a formal transfer of title deeds in exchange for financial compensation. While restitution of land is a key demand for Indigenous Peoples in Ukraine and around the globe, it remains imperative that title holders of the designated land who may have obtained the title through means they understood to be legitimate are not arbitrarily dispossessed without due process and adequate compensation. **The Draft Law should be supplemented in this respect.**

48. In addition, the Draft Law only marginally addresses the right to natural resources of the Crimean Tatars, which they possessed by reason of traditional ownership as well as those which they have otherwise acquired. **In this respect, it is important that the Draft Law regulate the right to natural resources separately from the right to land as the former goes beyond land ownership and often aims to regulate (preferential) access.**

49. Lastly, the Draft Law does not make any reference to environmental rights which are deeply intertwined with the rights to land and resources. As provided by Article 29 of the UNDRIP, *"[i]ndigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination*." This should also be read together with other international environmental treaties that regulate the management of lands, including the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. **It is recommended that the Draft Law be amended to more broadly reflect that Crimean Tatars have the right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from the state for such conservation and protection in line with Article 19 (1) UNDRIP.**

50. More generally, **the right of Crimean Tatar people to participate in processes and decisions affecting them, such as the establishment and management of protected areas and the management and conservation of natural resources should be explicitly spelled out in the Draft Law**.

51. Finally, it is observed that **the provision of economic and social rights, other than land rights, are not guaranteed in the Draft Law and it should be supplemented in this respect**.

RECOMMENDATION C.1

To regulate the right to natural resources in the Draft Law separately from the right to land, while considering including specific provisions on preferential access to natural resources.

RECOMMENDATION C.2

To consider reflecting more broadly in the Draft Law that Crimean Tatars have the right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from the state for such conservation and protection in line with Article 19 (1) UNDRIP.

4.3. Right to Language

52. The protection of language related rights of persons belonging to national minorities is mainly guaranteed by the Law on National Minorities (Communities) (see Articles 10 and 11), the Law of 15 May 2003 No. 802-IV on Ratification of the European Charter for Regional or Minority Languages and the Law No. 5029-VI of 3 July 2012 on Principles of the State Language Policy.

53. Various international documents prohibit the discrimination on the basis of language, including Article 26 of the ICCPR and Article 2 (2) of the ICSCER. In addition, Article 27 of the ICCPR and Article 30 of the CRC require that in States in which ethnic or linguistic minorities exist, a person or a child belonging to such a minority shall not be denied the right, in community with other members of their group, to enjoy their own culture or to use their own language.[60]

54. By ratifying the Framework Convention, Ukraine has undertaken language protection in education to recognise that every person belonging to a national minority has the right to learn his or her minority language (Article 14 (1)) and, in areas traditionally or substantially inhabited by national minorities, if there is sufficient demand, to make efforts "*to ensure, as far as possible and within the framework of [its] education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language*" (Article 14 (2)). Article 14 (3) further provides that such support measures "*shall be implemented without prejudice to the learning of the official language or the teaching in this language*." The promotion of the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity including their language (Article 5) constitutes a further important obligation deriving from the Framework Convention for Ukraine.

55. The Crimean Tatar language is considered severely endangered by UNESCO.[61] The use of the Crimean Tatar language would therefore be considered a vital part of the preservation and promotion of the identity of the community. According to the Draft Law, the state should "*guarantee the preservation, use, development, studies of the Crimean Tatar language*" (Article 8 (1)). This also includes possibility for the publication of acts on the territory of the Autonomous Republic of Crimea and the City of Sevastopol (Article 8 (4)), organising cultural, artistic, entertainment events or organizing the translation on such events (Article 8 (5)), creating mass media outlets (Article 8 (6) and 8 (8)) and print media Article 8 (7) and 8 (9)), encouraging publishing activities, budgeted from state and local budgets (Article 8 (10)), creating national films (Article 8 (11)) and public events concerning Crimean Tatar people (Article 8 (12)), allowing the translation of official names of local self-governing bodies, along with the state language (Article 8 (13)), distribution of electoral materials (Article 8 (14)), and promoting linguistic, national cultural and educational needs of Crimean Tatar people living abroad (Article 8 (15)). A number of these provisions could be further enhanced.

56. Article 8 (1) and (3) guarantees the right to the preservation of the Crimean Tatar language and to be taught in that language in communal education institutions. Article 8 (2) notes that the Draft Law establishes a procedure for the use of the Crimean Tatar language in "relevant spheres" of social life also referring to other pieces of legislation. However, such a procedure is not further elaborated in this Draft Law. It is also unclear

60 See also Article 28 of the ILO Convention No. 169, which provides that "*Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.*"
61 See: Crimean Tatar | UNESCO WAL.

as to what the "relevant spheres of social life" may represent. **It is recommended to clarify the scope of use of Crimean Tatar language in the Draft Law.**

57. Article 8 (4) provides that some administrative documents "may" be published in Crimean Tatar language, presumably "in addition to" Ukrainian. **Consideration could be given to require publication of acts in the Crimean Tatar language in areas that are inhabited by persons belonging to the Crimean Tatar people traditionally or in substantial number**. Such a provision would enhance Ukraine's efforts to ensure preservation, use and survival and development of the Crimean Tatar language, as stipulated in the Article 8 (1) of the Draft Law.

58. Article 8 (5) relates to some entertainment events for which the organizer "*shall ensure simultaneous and consecutive interpretation*" into the state language. The Venice Commission previously noted regarding a similar provision in the Law on National Minorities that it pursued a legitimate aim, more specifically to prevent segregation and promote integration, yet that its effects may be disproportionate to the aim pursued.[62] Whereas the Draft Law does not, in contrast to the Law on National Minorities, provide that visitors of these events can request for such interpretation services, the "*imposing on the organisers the financial and practical burden of interpretation, …, would go against Article 5 and 10 (1) FCNM. It would also go against the letter and spirit of the [European Charter for Regional or Minority Languages], and in particular, Article 7(1)(d) concerning 'the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life'*".[63] In its Opinion on the State Language Act, the Venice Commission stated that "*the law should regulate only the language of events organised by the public authorities and/or through public funds and leave it to the organisers to decide freely the language of private events without any obligations for them to provide interpretation from or into the State Language*".[64] **It is recommended to amend the Draft Law respectively.**

59. Article 8 (14) allows the distribution – understood by candidates or political parties –of election campaign materials in the State language and replicated in the Crimean Tatar language in the areas populated by the Crimean Tatar people. This is welcomed in principle as this acknowledges the right to use minority language in campaign materials in line with international and regional caselaw and recommendations.[65] However, the requirement to have such material also in Ukrainian may impose an excessive financial burden for some political parties and candidates, which may be especially difficult to meet for smaller parties or candidates representing minority groups. The European Court of Human Rights has acknowledged that "*in principle States have the right to regulate the use of languages, in certain forms or taking into account the circumstances linked to public communication, by candidates and other persons during electoral campaigns and, where appropriate, to impose certain restrictions or conditions that correspond to a*

62 Venice Commission, *Opinion on the Law on National Minorities (Communities) of Ukraine*, 12 June 2023, para. 43.
63 See Venice Commission, *Opinion on the Law on National Minorities (Communities) of Ukraine*, 12 June 2023, para. 43.
64 See Venice Commission, CDL-AD(2019)038, *Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language*, para. 84.
65 See ECtHR, *Mestan v. Bulgaria*, no.24108/15, 2 May 2023; UN Human Rights Committee, *General Comment no. 25 on Article 25 of the ICCPR* (1996), CCPR/C/21/Rev.1/Add.7, para. 12, which states that "*information and materials about voting should be available in minority languages*. Paragraph 32.5 of the 1990 OSCE Copenhagen Document states that "*persons belonging to national minorities have the right […] to disseminate, have access to and exchange information in their mother tongue*"; and the Council of Europe's Framework Convention on National Minorities, states that "*the Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language*". See also ODIHR and the Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), para. 187; OSCE HCNM-ODIHR, *Handbook On Observing and Promoting the Participation of National Minorities in Electoral Processes* (2014) and *Guidelines to Assist National Minority Participation in the Electoral Process* (2001). See also e.g., *ODIHR Final Report on 2022 Parliamentary Elections in Latvia*, Recommendation 7: "*The electoral legislation should ensure and contain safeguards to protect the freedom of expression in election campaigns, including the right to campaign in minority languages, in line with international standards and OSCE commitments*".

'pressing social need"".[66] Requiring that election campaign materials be available both in the Crimean Tatar language and in Ukrainian allegedly aims at ensuring that all voters would be able to understand the content of the political programs of the candidates (even if they come from a national minority), to allow the electorate to make an informed choice. At the same time, in order for the requirement not to constitute an undue burden on smaller political parties, the authorities should consider providing adequate financial support for the Ukrainian translation of campaign materials available in minority languages.[67] This obligation could also be limited to requiring the translation into Ukrainian of a number, but not all, key election campaign materials necessary to inform all voters, including those who would not speak the minority language. Moreover, it is not justified to restrict the possibility to distribute their electoral campaign materials only to areas of compact residence of Crimean Tatars; this should be possible in the whole country.[68] Therefore, **it is advisable that the requirement to have election campaign materials necessarily translated in the State language is more strictly circumscribed, while ensuring that public funding will provided for that purpose and not limiting the area for distribution of such materials only to the areas populated by the Crimean Tatar people.**

60. As underlined by the UN Human Rights Committee in its General Comment 25 on Article 25 of the ICCPR, *"[i]nformation and materials about voting should be available in minority languages.*"[69] The Draft Law does not envisage the publication of election information or any other civic and voter education materials in the Crimean Tatar language by public authorities.[70] **To further the equal participation of Crimean Tatar people in the electoral process, the requirement to have information and materials about the elections and voting,** including information for prospective candidates, pre-election information for voters and election-day information for voters, **published and accessible in minority languages, including the Crimean Tatar language, should also be embedded in the Draft Law or relevant electoral legislation.**

61. The Draft Law does not envisage any measures to provide opportunities for Crimean Tatar people to attain fluency in the state language and should be supplemented in this respect or refer to the relevant provisions in other legislation, such as Article 21 (2) of the State Language Law. As provided by international instruments, "*[a]dequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country*."[71] Also, access to services are only regulated regarding the use of language, but other aspects, such as health-related services, are not foreseen in the Draft Law.

66 See ECtHR, *Mestan v. Bulgaria*, no.24108/15, 2 May 2023, para. 60.
67 See e.g., Venice Commission, *Opinion on the Law on National Minorities (Communities) of Ukraine*, 12 June 2023, para. 56.
68 See Venice Commission, *Opinion on the Law on National Minorities (Communities) of Ukraine*, 12 June 2023, para. 56; and CDL-AD(2019)038, *Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language*, para. 66.
69 UN Human Rights Committee, *General Comment no. 25 on Article 25 of the ICCPR* (1996), CCPR/C/21/Rev.1/Add.7, para. 12.
70 See OSCE HCNM-ODIHR, *Guidelines to Assist National Minority Participation in the Electoral Process* (2001), p. 61, which recommends that "Any voter education undertaken should also be in the languages of national minorities", including information for prospective candidates, pre-election information for voters and election-day information for voters. See also paragraph 31 of the OSCE 1990 Copenhagen Document, were the participating States agreed to take "*necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms*." See also the OSCE HCNM, *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).
71 See Article 28 of the ILO Convention No. 169.

RECOMMENDATION D.

To clarify the relationship of the Draft Law with the State Language Law whilst ensuring that the promotion of bilingualism is not achieved at the cost of the endangered Crimean Tartar language.

4.4. Right to Education

62. Article 14 of UNDRIP provides that Indigenous Peoples have the right to establish and control their education systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Under Article 12 of the Framework Convention, appropriate measures should be taken to promote equal opportunities for access to all levels of education and to foster knowledge of both minorities and the majority's history, culture, and religion, including by ensuring adequate teacher training, availability of pedagogical material and promoting intercultural interaction. Ukraine should also recognize minorities' right to set up and to manage their own private educational and training establishments in accordance with Article 13 of the Framework Convention.

63. Article 10 of the Draft Law provides for the right of the Crimean Tatar People to create their own educational institutions as well as to study in communal educational institutions "*in the state language but also in the Crimean Tatar language*" in pre-school and secondary education, which is welcome in principle.[72] For higher education, upon request, educational institutions must create opportunity to study the Crimean Tatar language as a separate subject (Article 10 (2)). From the wording, it is unclear if there would be separate classes along with the official language in the same subjects or if this will be complementary.

64. As underlined by the Venice Commission in its Opinion on the Law on Education of Ukraine, according to Article 14 (2) of the Framework Convention, "*the system put in place by the Law requires a certain degree of specification with the most important aspects involved by this protection. These include: the communities, the territorial areas and the educational institutions where teaching in/learning of the minority languages will have to be provided (and the criteria/thresholds to determine the areas concerned); the procedural aspects of the creation/closure of the relevant schools/classes, and the rules governing the decision making processes […]; the deciding authorities; the important step of prior consultation with the minority*".[73] To support this, the European Charter for Regional or Minority Languages calls for obligations to be applied "*according to the situation*" of each language and "*within the territory in which such languages are used*" and state should "*take into consideration the needs and wishes expressed by the groups which use such languages*" when designing their language-related policy.[74]

65. There are no such considerations envisaged under the Draft Law nor are there any resources envisaged by the Draft Law to accommodate the educational structure to ensure learning in Crimean Tatar language at all levels of the schooling. The only reference is made in Article 8 (3) of the Draft Law with regard to resources in communal education

72 See Venice Commission, *Opinion on the Provisions of the Law on Education of Ukraine*, 11 December 2017, para. 41, where the Venice Commission underlined: "*Indigenous peoples of Ukraine […] have the right to study in their language along with Ukrainian at the pre-school, primary, basic secondary and upper secondary levels (primary, basic secondary and upper secondary education is described as "general secondary education")".*

73 *Ibid.*, para. 60. Article 27 of the ILO Convention No. 169 also provides that *" Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations."*

74 See the European Charter for Minority Languages, Article 7.4.

institutions to obtain preschool and general secondary education. Strengthening education in the Crimean Tatar language is crucial as it supports the intergenerational transmission of knowledge and culture. **It is recommended that the provisions of the Draft Law be further elaborated, especially with respect to the procedural aspects of the creation/closure of the relevant schools/classes, the rules governing the decision-making processes also including prior consultation with the Crimean Tatars, and the allocation of sufficient resources for ensuring the right to education of the Crimean Tatar people.**

66. In the Opinion on the Law on Education of Ukraine, the Venice Commission also noted that "*without appropriate guidance in the national legislation, the domestic implementation of Ukraine's obligations in terms of minority languages in education may hardly be ensured. In Ukraine, international treaties ratified by Parliament are in force and are part of the national legislation. Yet, both the Framework Convention and the Language Charter are made up of programmatic provisions stating principles, which cannot be directly applied and implemented without the interposition of national legislation*".[75]

RECOMMENDATION E.

To elaborate the provisions of the Draft Law with respect to the procedural aspects of the creation/closure of the relevant schools/classes, the rules governing the decision-making processes also including prior consultation with the Crimean Tatars, and the allocation of sufficient resources for ensuring the right to education of the Crimean Tatar people.

4.5. Cultural Rights

67. Article 27 of the ICCPR provides that where "*religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language*." Similarly, Article 15 of the ICESCR recognizes everyone's cultural life. The Committee on ICESCR has underlined the importance of the provision of land titles on ancestral lands by linking the right to self-determination with cultural rights. Article 31 of the UNDRIP recognizes the rights of Indigenous Peoples to maintain, control, develop and protect traditional knowledge and traditional cultural expressions as well as manifestations of their sciences, technologies and cultures, including seeds, medicines and knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing art.

68. The cultural protection envisaged for the Crimean Tatars in Article 9 of the Draft Law is wide, encompassing holidays, religious practice and places of worship, heritage-oriented monuments as well as broadcast and publication. While the list can be commended for its broad scope, from a recognition orientation in terms for holidays, religious practice, and cultural heritage, the nature of the state obligation reflected in paragraphs 4 and 5 of this provision appears to vary, with a more direct provision orientation through which the state 'guarantees support' or 'ensures the creation and distribution' of publishing and broadcast respectively. The latter provisions appear to imply that financial support may be available, though it is unclear whether this is expected to be achieved through the more general grants that would flow through the regional governance mechanism, or through

75 See Venice Commission, *Opinion on the Provisions of the Law on Education of Ukraine*, 11 December 2017, para. 64.

bespoke funding earmarked for publishing and broadcast media more specifically. **The Draft Law should be clarified in this respect.**

4.6. Right to Freedom of Thought, Conscience, Religion or Belief

69. There is no specific article guaranteeing the right to freedom of thought, conscience, religion or belief[76] in the Draft Law. However, such a right is sporadically protected under various articles. Article 3 (7) prohibits the deprivation of cultural values, forced integration and incitement of ethnic, linguistic, religious or other hatred. Article 9 (2) refers to the right to practice religion, to have religious buildings and property and to visit places and objects of religious significance. Article 12 of the UNDRIP provides that "*Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains*". **The Draft law would benefit from having a dedicated article on the right to freedom of religion or belief reflecting these aspects and incorporating others based on Article 9 of the ECHR and Article 18 of the ICCPR as interpreted by UN Human Rights Committee's General Comment No. 22, unless covered by separate legislation that should itself be compliant with international human rights standards and OSCE commitments.**

4.7. Right to Political Participation and Representation

70. The right to political participation and participation in public affairs is enshrined in Article 25 of the ICCPR. OSCE participating States have also committed to "*respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination*" and to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities*".[77]

71. The Draft Law proposes two versions of Article 17. The first version provides for stronger language in terms of the *"guaranteed representation"* of the Crimean Tatar people in the *Verkhovna Rada* of Ukraine, in the Parliament of the Autonomous Republic of Crimea and in the local self-governance bodies in the Autonomous Republic of Crimea and city of Sevastopol. Since the structure and composition of the *Verkhovna Rada* are enshrined in Article 76 of the Constitution of Ukraine, which does not provide for the possibility of introducing a reserved-seat mechanism,[78] the proposal would require constitutional amendments, which is not possible during the period of martial law and may generally be difficult to achieve. However, reserved-seat mechanism is only one of the ways to establish effective participation of persons belonging to national minorities (see below).

72. The second version stipulates that "*the State shall promote the representation of the Crimean Tatar People to the Verkhovna Rada of Ukraine, the Verkhovna Rada of the*

76 As provided in Article 18 ICCPR, Article 9 ECHR and in, amongst others, OSCE 1989 Vienna Concluding Document.
77 See OSCE 1990 Copenhagen Document, paras. 7.5 and 7.6.
78 The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 National Deputies of Ukraine who are elected for a four-year term on the basis of universal, equal and direct suffrage, by secret ballot. A citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right to vote, and has resided on the territory of Ukraine for the past five years, may be a National Deputy of Ukraine. A citizen who has a criminal record for committing an intentional crime shall not be elected to the Verkhovna Rada of Ukraine if the record is not cancelled and erased by the procedure established by law. The authority of National Deputies of Ukraine is determined by the Constitution and the laws of Ukraine.

Autonomous Republic of Crimea and the local self-government bodies of the Autonomous Republic of Crimea and the city of Sevastopol", which echoes respective provisions of the Framework Convention, other international treaties and Ukraine's Law on the Indigenous Peoples. The provision is based on a quota principle and rank-order rule. It contains requirements for political parties to allocate a certain number of places on their electoral lists to persons belonging to the Crimean Tatar people, ensuring that (1) the number of Crimean Tatars included on national and regional electoral lists is not smaller than the number proportionally reflecting the share, in the total number of votes of the Crimean Tatars having the right to vote and (2) there is at least one Crimean Tatar in each triplet (places one to three, four to six and so on) of each electoral list in territorial electoral lists (Article 17 (2) and 17 (3)). A similar formula is used for local, city, village and rayon elections (Article 17 (4)). Article 17 (5) further grants the Central Election Commission the mandate to determine, on the basis of the data from the State Voter Register, the minimum number of Crimean Tatars that must be included in the electoral lists of parties. Similarly, the responsibility to gather the data from the Voter Register of the Crimean Tatar people is vested with the Election Commission of the *Kurultai* of the Crimean Tatar People. In the transitional provisions of the Draft Law, the respective changes are also proposed for the Electoral Code of Ukraine, Law on Political Parties in Ukraine, the Law on the Central Electoral Commission and the Law on the State Voter Register.

73. Representation of national minorities or Indigenous Peoples is interlinked with the existing electoral system in a given country. It should be noted that ODIHR does not recommend any specific electoral system. The choice of an electoral system is a sovereign decision of a state through its political system, provided that international obligations, guaranteeing, in particular, universal, equal, free and secret suffrage, are respected. The perception that the chosen system works well in one state does not necessarily mean that it can be successfully replicated in another. Rather, the chosen electoral system must be seen in the context of the constitutional, legal and political traditions of the state, the party system, and territorial structure. Similarly, there are no international standards recommending a specific method or degree of proportionality regarding the representation or distribution of seats. It is recognized that States enjoy a broad margin of appreciation as long as the process of revision of such a fundamental element of electoral legislation, as well as the methods of seat allocation, ensure equality and inclusiveness in the voting process.[79]

74. There are a variety of mechanisms to implement the right to effective political participation of underrepresented groups. In some cases, representation in elected bodies is ensured by applying the general rules of electoral law with a view (or the effect) of ensuring proper minority representation. In other cases, States apply specific rules providing for the representation of minorities or facilitating it. The Code of Good Practice in Electoral Matters provides that special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.[80] The Code also provides some other basic principles for developing electoral affirmative action rules, such as facilitating the establishment of parties representing national minorities, review of electoral thresholds not to affect the chances of national minorities to be represented, design of electoral districts (their number, size, form, and magnitude) with the purpose of enhancing

79 See Venice Commission, *Report on Electoral Systems: Overview of Available Solutions and Selection Criteria* adopted by the Venice Commission at its 57th Plenary Session (12-13 December 2003); particularly Section 4.

80 See Venice Commission, *Code of Good Practice in Electoral Matters*, para. 2.4.

minority participation in decision-making processes,[81] among others. At the same time, ODIHR and the Venice Commission have acknowledged in several of their opinions that some concerns may potentially arise when a State introduces an affirmative action mechanism in the electoral legislation; for instance, there may be circumstances when voters do not vote for a sufficient number of candidates with a minority background to occupy all of the reserved seats, or the requirement for the candidates to disclose their belonging to a minority group irrespective of their preference.[82]

75. The delimitation of boundaries can be of critical importance to how an electoral system results in representing national minorities, or limiting or enhancing their representation. Among other measures, it is advisable that constituencies established in areas with concentrated minority population do not merge with other territorial units or parts of the country in order not to dilute the representation of minorities.[83]

76. While requiring Crimean Tatar candidates in party electoral lists could be welcomed with respect to efforts to facilitate their participation and subsequently, election in legislative and other bodies, the responsibility to fill the required number of candidates, as provided in Article 17 vests solely with a political party. Such provisions may have discriminatory effects against small parties which may not be able to secure the required number of candidates. Therefore, careful consideration should be given to the severity of such requirement in a way that it does not discriminate certain parties, while at the same time ensuring the participation and representation of Crimean Tatars.

77. As part of their obligation to facilitate and protect the right to associate of all persons, States should ensure that the representation of minority groups through political parties based on ethnicity, gender or religion, amongst others, is not impeded by electoral rules. For example, legislation requiring a certain regional representation for the establishment of political parties, or imposing a high vote threshold to get public support or a minimum percentage of votes for entering the parliament, generally undermine the principle of fair representation.[84] Some alternatives could be considered, such as financial incentives tying the inclusion of such candidates in party lists or other inclusivity measures (e.g., electoral materials in minority languages) to the provision of additional public financing, or introducing specific exceptions to minimum thresholds for the provision of public support for these parties.

78. The Draft Law is silent as to potential **measures to pursue more balanced representation in elected office of Indigenous women**, including through temporary special measures (e.g., such as quotas, targets, incentives and efforts to ensure parity in representation), measures to prevent, investigate and punish all forms of political violence against Indigenous women (politicians, candidates, human rights defenders and activists); measures to create, promote and ensure the access of Indigenous women to political office through campaign financing; skills training; incentives; awareness-raising activities for political parties to nominate them as candidates, etc.[85] **The Draft Law should be supplemented in this respect**.

79. The Draft Law does not address the formation of political parties by Crimean Tatars, whereas the ability to set up political parties representing them is key to participate in

81 See Venice Commission, *Code of Good Practice in Electoral Matters*, para. I 1.1.a.iii.

82 ` See, for example, ODIHR and Venice Commission, *Republic of Moldova -Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)*, CDL-AD(2017)012; *Joint opinion on amendments to the Election Code of Georgia as of 8 January 2016*.

83 See the OSCE HCNM, 1999 *Lund Recommendations on the Effective Participation of National Minorities in Public Life*, Chapter II.

84 See ODIHR and the Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), paras. 138 and 179. See also para. 239, stating "*It is in the interest of political pluralism to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament".*

85 Committee on the Elimination of Discrimination against Women, *General recommendation No.39 (2022) on the rights of Indigenous Women and Girls*, 26 October 2022, CEDAW/C/GC/39, para. 46.

and influence the governing of the public life of a country, inter alia, through the presentation of candidates in elections. Although the issue may be falling outside the scope of this Draft Law and could be addressed by relevant legislation, ODIHR noted in the past some concerns regarding existing political party legislation that limits the formation of regional political parties, and as a consequence may prevent minority groups concentrated in the specific geographic area to set up a political party.[86] The ODIHR and Venice Commission Guidelines on Political Party Regulation call upon States to remove provisions regarding the limitation of political parties purely on the grounds that they represent a limited geographic area from relevant legislation, stressing the discriminatory nature of such provisions and potential discriminatory effects against small parties and those representing national minorities.[87] International instruments guarantee minority groups the right to form their own political parties, and to base their admission policy on specific criteria in order to maintain the cohesion of their membership and political aims.[88] ODIHR has previously noted that it is essential that national or ethnic minorities are allowed to set up political parties.[89] It is important that this issue is addressed in the Draft Law or in the Law on Political Parties.

80. To conclude, whichever version is chosen, the reform process should result from an open, inclusive and transparent process that involves a wide array of electoral stakeholders, including both parliamentary and non-parliamentary parties, as well as civil society and primarily the Crimean Tatar people as well as other Indigenous Peoples and national minorities.[90] **As a result, the proposed changes must ensure a fair balance with regards to the needs of Crimean Tatar people and other Indigenous Peoples and national minorities in Ukraine's diverse society. This should also take into consideration international obligations, guaranteeing, in particular, universal, equal, free and secret suffrage. To further promote the political participation of Crimean Tatar people, including of Crimean Tatar women, the legal drafters should consider a broader range of measures, with a view to facilitate the formation of regional political parties, reviewing electoral thresholds and design of electoral districts not to affect the chances of national minorities to be represented, considering further incentives for political parties to be more inclusive.**

RECOMMENDATION F.

To ensure that the proposed changes to the electoral process ensure a fair balance with regards to the needs of Crimean Tatar people and other Indigenous

86 . See the recommendation in ODIHR's Final Report on the 2020 Local Elections in Ukraine: "[t]o ensure access to the ballot, including the participation of national minorities at all levels of local elections, the law on political *parties should be amended to allow the formation of regional political parties.*" See also ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Ukraine on Political Parties* (2021), para. 62, which noted in particular that "*The burdens of registration in multiple different geographic areas could have a serious negative effect on the political rights of certain minorities who are geographically concentrated in particular areas. Such small/regional parties might be the only option or mechanism of entry for minority groups and ethnic groups, and thus requiring registration in at least five electoral regions can prevent minority groups to register effectively*". See also para 120: "*Provisions regarding the limitation of political parties purely on the grounds that they represent a limited geographic area should generally be removed from relevant legislation. Requirements barring contestation for parties with only regional support potentially discriminate against parties that enjoy a strong public following only in a particular area of the country. Such provisions may also have discriminatory effects against small parties and parties representing national minorities*."

87 See ODIHR and the Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), paras. 102-103.

88 See, for example, Article 7 of the Framework Convention which requires that "*State parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression*." See also Article 3(1) of the UNDRIP.

89 See ODIHR and Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Mongolia*, 20 June 2022, para .32.

90 Paragraph 5.8 of the 1990 OSCE Copenhagen Document provides that legislation should be "adopted at the end of a public procedure". Paragraph 8 of the 1996 United Nations Committee on Human Rights General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights states that "citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association" ILO Convention No. 169 also sets out the duty of States to consult Indigenous Peoples through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly (Article 6).

Peoples and national minorities in Ukraine's diverse society, while considering a broader range of measures to promote the political participation of Crimean Tatar people, including of Crimean Tatar women, *inter alia* by facilitating the formation of regional political parties, reviewing electoral thresholds and design of electoral districts not to affect the chances of national minorities to be represented, considering further incentives for political parties to be more inclusive.

4.8. Other Mechanisms for Inclusion

81. A number of other efforts envisaged by the Draft Law aims to suit the interests of the Crimean Tatar people on the state level. Article 18 provides for a direct representative of the Crimean Tatar people to the Verkhovna Rada, in the form of an individual mandate-holder appointed for seven years by the Chair of the Parliament on the basis of a submission from the *Mejlis*. The scope of the activities of this individual would be determined by a Parliamentary resolution, which according to the Draft Law is expected to include attending and speaking at the meetings and participating in an advisory capacity in permanent and temporary commissions under the auspices of that body. Without a clear articulation of the role of what such an office entails, it is difficult to comment on its potential efficacy. Other questions may also need to be considered including their relationship with the Mejlis and the *Kurultai*, whether there is scope for conflict and how such conflict may be resolved.

82. Article 20 further notes that for the purpose of effective formation and implementation of State policy in ensuring the rights of the Crimean Tatar people, positions of Deputy Ministers (including in relation to education, culture, science, regional politics and local self-government) and Deputy Heads of central executive bodies for the Crimean Tatar people "can be established" within the system of executive bodies. Article 20(2) further sets out Ministries, for which the establishment of positions of Deputy Ministers for the Crimean Tatar people is mandatory.[91] **This is welcome as this should contribute to ensuring inclusion, although the provision is silent as to gender balance representation for such publicly appointed offices.**

83. According to Article 23 of the Draft Law, Crimean Tatars should be included in the delegation of Ukraine to international organisations and negotiations on issues related to the rights of Indigenous Peoples. While this is positive, such inclusion should also be extended to other issues, not limited to Indigenous matters. The "integration of society" is a key concept that means "*all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides*".[92] In addition, Article 5 (2) of the Framework Convention does not preclude states from taking measures in pursuance of their general integration policy. It thus acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society.[93] **Consideration could be given to including more effective**

91 These include: "…*Ministries in charge of the formation and implementation of state policy in the fields of foreign relations, education and science, culture, interethnic relations, regional politics, development of local self-government, territorial organization of power and administrative-territorial system, as well as in Ministries addressing issues related to the territory of Ukraine temporarily occupied by the Russian Federation".*

92 See the Thematic Commentary No 4 to the Framework Convention.

93 See also Article 20 and 21 of the Framework Convention.

efforts for inclusion that would go beyond issues pertaining to Indigenous Peoples. This would further strengthen the integration process.

5. PROVISIONS PERTAINING TO SELF-GOVERNANCE

84. Article 6 (1) of the Draft Law protects the right to self-governance by *"[independently resolving] issues of preservation of identity, protection of historical memory, its own cultural and social development, as well as its other internal issues*." Pursuant to Article 6 (2), such a right is exercised by the Crimean Tatars directly and through the "activities of the representative and self-government bodies of the Crimean Tatar people" in accordance with the Ukrainian legislation.

85. By far the most detailed part of the Draft Law, Sections III and IV outline the system of self-government for the Crimean Tatars, which consist of twelve substantive articles, (including one alternative framing). Section III identifies the types of bodies and how they may be constituted, the regulations that would guide their work, the relationships of those bodies with sub-regional and national bodies and how they would be funded, while Section IV consisting of seven articles (including the alternative framing) addresses how individual political representation of the Crimean Tatars would work both within and beyond the autonomous region, but also at local levels. Self-governing bodies consist of a *Kurultai*, a *Mejlis* and local *Mejlises*, with the first two, operating at the level of the autonomous region, who would act on behalf of the entire Crimean Tatar population taking decisions on its behalf, while the local Mejlises would form part of the local administrative governance of the region (Article 11). The source of the powers of the representative bodies would be derived from the Draft Law, with the Cabinet of Ministers of Ukraine retaining the power to authorise or deprive them of their positions in accordance with applicable Ukrainian legislation. The two representative bodies have the mandate to determine the appropriate regulations (within the articulation of Article 13) of their own functioning but also that of the local *Mejlises*. Provision is made for the process to function within the laws of Ukraine but also the customary laws of the Crimean Tatars, in accordance with democratic principles.

86. Unless the prerogatives of the Cabinet of Ministers are accompanied by adequate safeguards to limit the potential discretionary use of the power to authorise members of representative bodies of their positions, this power may endanger the principle of self-governance.

5.1. Structure

87. As provided by the Law on Indigenous People, according to Article 11, *Kurultai* of the Crimean Tatar People, the *Mejlis* of the Crimean Tatar People and local *Mejlises* constitute self-governing bodies of the Crimean Tatar people. The *Kurultai* and *Mejlis* of the Crimean Tatar people are the representative bodies of all people while local *Mejlises* serve their own communities.

88. Autonomy and independence of self-government bodies is to some extent guaranteed, as are procedures for forming and electing representatives, as well as the principles of activities, powers and decision-making, which should be determined by the Regulations on Self-Government of the Crimean Tatar People, as long they do not contravene laws of Ukraine (Article 11 (5)). A regulation on Self-Government of the Crimean Tatar People itself is the founding document, adopted by *Kurultai* of the Crimean Tatar People (Article 13). The structure and scope appear to be in line with good practice, which provides that local authorities "*have full discretion to exercise their initiative with regard*

to any matter which is not excluded from their competence nor assigned to any other authority".[94]

5.2. Financial Support

89. According to Article 4 of UNDRIP *"[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions"*. This is particularly relevant if read in conjunction with Article 3 (5) of the Draft Law which provides that "*[s]tate shall ensure the allocation of part of the revenues by budgets of all levels from the use of land and other natural resources located on the territory of the Autonomous Republic of Crimea and the city of Sevastopol" for the needs of the Crimean Tatars*."

90. While the needs of the Crimean Tatar people may be taken into account according to this provision, this does not give full autonomy nor guarantee self-governance as the budget is defined by the state. Human rights treaty bodies have consistently affirmed the principle of free, prior and informed consent of Indigenous Peoples in matters relating to their rights and interests and specifically in relation to their ancestral lands and conservation.[95] **It is recommended that Article 6 be amended to ensure greater autonomy, including financial autonomy, with respect to internal and local affairs.**

91. Articles 16 (3) and 16 (5) regulate financial support for the Crimean Tatar people from Ukraine's State budget. The allocation is based on the number of voters in the last election of delegates to the *Kurultai*, amounting to at least one-tenth of the minimum wage. While such specificity is welcome, the selected methodology may introduce a high degree of uncertainty due to the difficulty of voting for the *Kurultai* for many potential voters, which would decrease the amount of financial support**. In this respect, consideration could be given to reconsider the formula to ensure that adequate financial support is provided.**

92. According to the same article, the financial needs that feeds a separate budget program is determined on the basis of a motivated request of the *Mejlis* of the Crimean Tatar people. However, it is not clear how "motivated" or "grounded" such a request should be and whether the State can refuse financial resources if it deems the "motivation" ungrounded. This may lead to arbitrary and inconsistent application. It is recommended that instead of a "motivated" request the Draft Law should envisage a consultation process for such a request.

6. Recommendations Related to the Process of Developing the Draft Law

93. OSCE participating States committed to ensuring that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*" (1990 Copenhagen Document, paragraph 5.8).[96] Moreover, these commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" (1991 Moscow Document, paragraph 18.1).[97] The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a

94 See, for example, European Charter of Local Self-Government.
95 See UN Human Rights Committee, *Ángela Poma v. Peru*, Communication No. 1457/2006; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples* (1997). See also Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012.
96 See 1990 OSCE Copenhagen Document.
97 See 1991 OSCE Moscow Document.

meaningful opportunity to provide input.[98] Article 19 of UNDRIP requires that "*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them*." As underlined in Sub-Section IV.1 above, it is also fundamental to ensure that meaningful and inclusive consultations with representatives of all Indigenous Peoples and of other national minorities, and the public in general are carried out throughout the lawmaking process so that their needs and expectations are heard and addressed and to ensure broad support on the Draft Law by society.[99]

94. Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted. Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation.[100] To guarantee effective participation, consultation mechanisms should allow for input at an early stage and throughout the process, meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament. It is also important that the Draft Law and modalities for consultation take into account the needs and expectations of, and proactively reach out to the target audience, including Indigenous and minority groups, while enduring the accessibility of all relevant information pertaining to the Draft Law, including availability in minority languages.[101] This also means engaging meaningfully with individuals or entities that represent persons belonging to Indigenous and minority groups.

95. When participation happens through regular discussions or institutionalized frameworks, such as consultative bodies (e.g., public councils), working groups or appointed government bodies, this participation should be organized through a public, transparent, open and competitive selection process, based on clear and predefined criteria. It should allow associations to choose their representatives and should be transparent. In parallel, public consultation mechanisms should be opened, making it possible for all interested associations, including smaller civil society groups that are not involved via regular discussions or institutionalized frameworks, to take part. It is understood that consultations have taken place, and it is important that these consultations are not perceived as being a top-down process driven by a political agenda which would undermine its legitimacy. As underlined above, it is also important that Indigenous women and girls are able to meaningfully contribute to this process.

96. In light of the above, **the authorities are encouraged to continue consultation, as feasible in the given circumstances, with the wider inclusion of the Crimean Tatar people, but also of other Indigenous Peoples and national minorities, and to ensure that any reform process is subject to a transparent, inclusive and meaningful consultation process, including with representatives of various political parties, lawyers' associations, academia, civil society organizations, which should enable equal opportunities for women and men to participate. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once**

98 See Venice Commission, Rule of Law Checklist, Part II.A.5.

99 See OSCE HCNM, *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999); and *Ljubljana Guidelines on Integration of Diverse Societies* (2012).

100 According to recommendations issued by international and regional bodies and good practices within the OSCE area, public consultations generally last from a minimum of 15 days to two or three months, although this should be extended as necessary, taking into account, inter alia, the nature, complexity and size of the proposed draft act and supporting data/information.

101 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principles 7 and 17.

adopted.[102] **In case it is impossible to organize inclusive and meaningful consultations due to the current martial law, the Draft Law (if adopted), should be revisited later, evaluating its impacts as soon as the situation so permits**.

RECOMMENDATION G.

To continue consultation, as feasible in the given circumstances, especially with the wider inclusion of the Crimean Tatar people, but also of other Indigenous Peoples and national minorities, and to ensure that any reform process is subject to a transparent, inclusive and meaningful consultation process, including with representatives of various political parties, lawyers' associations, academia, civil society organizations, which should enable equal opportunities for women and men to participate, while providing for a monitoring and evaluation system of the implementation of the Law and its impact.

[END OF TEXT]

102 See OECD, *International Practices on Ex Post Evaluation (2010)*.