

REPORT

Human Rights in the Context of Automatic Naturalization in Crimea

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This report by lawyers of the Open Society Justice Initiative examines in depth the implications for the population of the Crimean peninsula of the imposition of Russian citizenship that followed Russia's seizure of the territory from Ukraine in 2014.

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I. INTRODUCTION

1. The Open Society Justice Initiative conducts litigation, advocacy, legal empowerment and research globally in the service of individuals and communities who find themselves cast on the wrong side of a defining legal and ideological threshold between inclusion and exclusion in many societies today: citizenship law.¹
2. The Open Society Justice Initiative has made written submissions on the international and comparative legal standards on the right to a nationality and the avoidance of statelessness before international and regional bodies including the U.N. Committee on the Elimination of Racial Discrimination, the Offices of the U.N. High Commissioners for Refugees and for Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. Examples of these include:
 - *Yean and Bosico v. Dominican Republic*, Inter-American Court of Human Rights (IACtHR), judgment of 8 September 2005 (discriminatory denial of the right to nationality), acting as intervenor.
 - *Sejdić and Finci v. Bosnia and Herzegovina*, European Court of Human Rights (ECtHR), Grand Chamber judgment of 22 December 2009 (denial of voting rights to ethnic minorities), acting as intervenor.
 - *Kurić and Others v. Slovenia*, ECtHR, Grand Chamber judgment of 26 July 2012 (arbitrary denial of legal status in violation of private life), acting as intervenor.
 - *Institute on Human Rights and Development in Africa and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v. Kenya*, African Committee of Experts on the Rights and Welfare of the Child (ACERWC), decision of 22 March 2011 (discriminatory denial of children's right to nationality), acting as co-counsel for applicant.
 - *Nubian Community in Kenya v. Kenya*, African Commission on Human and Peoples' Rights (ACmHPR), decision of 28 February 2015 (discriminatory denial of citizenship), acting as co-counsel for applicants.
 - *People v. Cote d'Ivoire*, ACmHPR, decision of 28 February 2015 (discriminatory denial of citizenship), acting as co-counsel for applicants.
 - *Bueno v. Dominican Republic*, Inter-American Commission on Human Rights (IACmHR), pending (discriminatory denial of citizenship), acting as co-counsel for applicants.
 - *Anudo v. Tanzania*, African Court on Human and Peoples' Rights (ACtHPR), judgment of 22 March 2018 (arbitrary deprivation of nationality without due process leading to statelessness), acting as intervenor.
 - *Huseynov v. Azerbaijan*, ECtHR, pending (arbitrary deprivation of nationality), acting as counsel.

¹ Rogers Brubaker, in his seminal work *Citizenship and Nationhood in France and Germany* (1992), memorably described citizenship as "internally inclusive" and "externally exclusive" (p. 21). Unless otherwise specified in this document, the terms "citizenship" and "nationality" are generally used as legal terms that are considered interchangeable in international law. For more information on the Open Society Justice Initiative's mission and activities, see back cover.

3. In a global reality where more than 15 million people are believed to be stateless² – having no nationality – with perhaps a billion more lacking in any means of proving their legal existence at all,³ the deprivation and denial of nationality as a means of exclusion is a paramount concern.⁴ This concern is reflected in international law, which prohibits arbitrary deprivation of nationality and imposes a duty on states to avoid statelessness.
4. Minority groups make up approximately 75% of the world’s known stateless population.⁵ Most of these groups are stateless in the country of their birth and neither they nor their children have a pathway to citizenship – they are permanent outsiders. That citizenship law has been consistently instrumentalized by the powerful as a means of ethnically discriminatory statecraft is simply beyond question.
5. This report examines in depth the *imposition* of Russian citizenship (“automatic naturalization”) by Russian authorities and their agents in the occupied territory of the Crimean peninsula since 2014.⁶ Because of its potent legal and ideological properties, citizenship is a multifaceted political tool, as history readily illustrates. In other words, as this report argues, citizenship is not only a tool of legal and social exclusion but also a powerful, coercive instrument of containment and assimilation.⁷
6. Here, we analyze the factual and legal background of the 18 March 2014, *Treaty on Accession*’s⁸ citizenship provisions and their subsequent implementation in Crimea as an abuse of citizenship law in furtherance of a project rooted in ethnic discrimination, the rejection of territorial sovereignty and a prevailing disrespect for human dignity. A central claim of this report is that the arbitrary imposition of citizenship in the Crimean context requires examination as a deeply problematic and worrisome human rights violation. The aim is to provide a human rights framework for addressing this violation.
7. The *mass* nature of automatic naturalization in Crimea complicates any effort to articulate in full the many intersecting humanitarian and human rights law violations that flow from or are abetted by this action. For some, the devastating effects of their inability to acquire a residence permit may be more acutely felt than the wider discriminatory effort to redefine an entire population as “Russian.” Others face persecution, arrest, or imprisonment as “extremists” based on their actual or perceived religious or political beliefs, both of which are closely bound up in the construction of ethnicity in Crimea’s past and present. Those who were able to reject Russian citizenship and “retain” Ukrainian citizenship, and those without residence registration in Crimea at the time of occupation, became “foreigners” in their own country and have been at risk of unlawful expulsion ever since. The facts and analysis presented here do illustrate an overarching narrative, however: the abuse of human rights under a spurious color of law, all in the name of banishing “non-Russian” people and ideas from the territory.

² Institute on Statelessness and Inclusion, *The World’s Stateless* 35 (2014), available at: <http://www.institutesi.org/worldsstateless.pdf>.

³ See World Bank, Identification for Development (ID4D) Global Dataset, available at: <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset>.

⁴ See James Goldston, *Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens*, 20 *Ethics & International Affairs* 321-347 (2006).

⁵ United Nations High Commissioner for Refugees (UNHCR), *Stateless Minorities and their Search for Citizenship* (2017), available at: <http://www.unhcr.org/ibelong/stateless-minorities/>.

⁶ Throughout this report, we will refer to the territory of the Autonomous Republic of Crimea and the city of Sevastopol, collectively, as “Crimea.”

⁷ See Marc Morjé Howard, *The Politics of Citizenship In Europe* 50 (2009) (“The historical experience of individual countries in terms of both their past experiences as colonial power and onset of democracies correspond quite closely to their historical citizenship policies.”).

⁸ See paras. 72-83 below for a detailed description of relevant provisions.

8. Following this Introduction, the report provides an overview of comparative case studies in which citizenship law has been mobilized to exclude or forcibly suppress groups on the basis of race, ethnicity, religion or, oftentimes, a combination of these factors.⁹ As is the case in Crimea, many of these cases reflect a pattern whereby citizenship law is used to exclude or erase a group's ethnic identity, even as the targeted group is redefined in the public imagination as a threat to society, completing a narrative of "otherness" that has in some chilling historical and contemporary cases been linked to genocidal processes.
9. The report then provides a legal analysis of automatic naturalization in Crimea in three dimensions:
 - *A. The ethnically discriminatory character of automatic naturalization in Crimea.* Russia's campaign in Crimea seeks to reinstate an ethnic-based allegiance to Russia, entailing elimination of the indigenous Crimean Tatars, the idea of a separate Ukrainian "people" and the idea of a civic Ukrainian national identity.
 - *B. Automatic naturalization in Crimea as a violation of the right to a nationality.* Automatic naturalization is discriminatory, involuntary, fails to respect due process, lacks a legitimate aim and is disproportionate to the harm it causes.
 - *C. The collateral consequences of automatic naturalization in furtherance of ethnic cleansing in Crimea.* The operation of anti-extremism laws, population transfers and cultural erasure works in tandem with forced naturalization.
10. The report provides this analysis to help ensure that the human rights of those impacted, individually and collectively, are restored and the violations redressed.

II. FACTUAL BACKGROUND

A. Historical and comparative case studies

11. International legal scholars widely acknowledge that states retain considerable discretion in the establishment and administration of citizenship law, subject to the constraints imposed by international law.¹⁰ Increasingly, international human rights law has become more influential in this sphere, however, and the below examples illustrate why. Without meaningful constraints on the definition and operation of domestic citizenship laws, efforts to combat human rights abuses would be severely compromised.
12. Importantly, citizenship law has long been used as an efficient and effective means of institutionalizing an exclusionary ideology against ethnic groups – establishing their psychological extermination from the "universe of moral obligation."¹¹ As noted in the

⁹ The notion that different grounds of discrimination combine and overlap in various ways to produce a compound form of discrimination has been recognized as a component of international law. *See, e.g.* Committee on the Rights of Persons with Disabilities, General Comment No. 3 Article 6: Women and girls with disabilities (2016); Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 the Core Obligations of States Parties under Article 2, (2010); Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 article 4 paragraph 1 - Temporary special measures, para. X (2004); and Committee on the Elimination of Racial Discrimination, General Recommendation No. 25 on gender related dimensions of racial discrimination (2000).

¹⁰ *See, e.g.*, Laura van Waas, *Fighting Statelessness and Discriminatory Nationality Laws in Europe*, 14 *European Journal of Migration and Law* 243, 244 (2010) ("At both global and regional levels, [] international standards have come to impose significant restrictions on the freedom of states to regulate access to nationality in accordance with their own sovereign interests."); Peter J. Spiro, *New International Law of Citizenship*, 105 *American Journal of International Law* 694, 697-98 (2011) (States are not free to disregard the otherwise lawful establishment of the bond of nationality between an individual and a state, as Russia has done with respect to Ukrainian nationality within occupied Crimea).

¹¹ Hannah Arendt, *The Origins of Totalitarianism* 460-81 (1951).

Introduction, particularly when adopting a human rights approach, the coercive imposition of citizenship as part of a project of “cultural erasure”¹² cannot be meaningfully distinguished from racially discriminatory deprivation of citizenship. Many of the examples below also show how other forms of attacks on ethnic groups (e.g. the closure of schools and religious institutions or banning of languages), incitement and restrictions on free movement work in concert with the deployment of citizenship law.¹³

Jewish communities under Reich Citizenship Law in the 1930s and 1940s

13. The 1935 Reich Citizenship Law (one of two laws adopted at the September 1935 Nazi party national convention in Nuremberg, collectively known as the Nuremberg Laws) and Regulations denied all Jewish people of the rights deriving from German Reich citizenship.¹⁴ The law formally defined a Reich citizen as “a subject of the state who is of German or related blood, and proves by his conduct that he is willing and fit to faithfully serve the German people and Reich.”¹⁵ The Nazis used this legal maneuver to facilitate further ostracism and marginalization of Jewish people, including barring access to a number of professions, occupations, and programs of study reserved for Reich citizens.¹⁶
14. The Regulations also defined “Jewishness” in meticulous detail on the basis of bloodlines, for the purposes of the Reich Citizenship Law and, consequently, for the purposes of implementing the Nazi party’s program.¹⁷

“This legal definition of a Jew in Germany covered tens of thousands of people who did not think of themselves as Jews or who had neither religious nor cultural ties to the Jewish community. For example, it defined people who had converted to Christianity from Judaism as Jews. It also defined as Jews people born to parents or grandparents who had converted to Christianity. The law stripped them all of their German citizenship and deprived them of basic rights.”¹⁸

Kenyan Asians

¹² Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*), para. 5 (16 January 2017), available at <http://www.icj-cij.org/files/case-related/166/19314.pdf>.

¹³ Agnia Grigas, *Beyond Crimea: The New Russian Empire* (2016), describes a seven-stage “reimperialization policy” enacted by Russia, within which Russia’s citizenship policies toward a widening population of “compatriots” in other states including Ukraine, figures prominently as a tool among several used to reassert territorial domination in the post-Soviet space. (“Some of the seven stages of this reimperialization trajectory can overlap, occur simultaneously, or occur in a slightly different order. The general trajectory, however, moves from co-optation of ethnic Russians and Russian speakers to territorial expansion under the guise of compatriot or minority protection, all under the veil of a blitz of information warfare.”).

¹⁴ See The Reich Citizenship Law (15 September 1935) and the First Regulation to the Reich Citizenship Law (14 November 1935), *German History in Documents and Images*, available at [http://www.refworld.org/cases/ICTY_40276c634.html](http://ghdi.ghi-dc.org/sub_document.cfm?document_id=1523; Case No. 11, U.S. v. Ernst von Weizsäcker (the Ministries Case), U.S. Military Tribunal IV, N.M.T., Vol. XIV, p. 471 (1948-1949) (“The Jews of Germany were first deprived of the rights of citizenship. They were then deprived of the right to teach, to practice professions, to obtain education, to engage in business enterprises; they were forbidden to marry except among themselves and those of their own religion; they were subject to arrest and confinement in concentration camps, to beatings, mutilation and torture; their property was confiscated; they were herded into ghettos; they were forced to emigrate and to buy leave to do so; they were deported to the East, where they worked to exhaustion and death; they became slave labourers; and finally over six million were murdered.”), cited in International Criminal Tribunal for the former Yugoslavia (ICTY), <i>Prosecutor v. Kupreskic et al.</i> (Trial Judgement), IT-95-16-T (14 January 2000), available at <a href=).

¹⁵ Reich Citizenship Law of 15 September 1935, Article 2, *U.S. Holocaust Memorial Museum*, available at <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007903>.

¹⁶ See The Reich Citizenship Law (15 September 1935) and the First Regulation to the Reich Citizenship Law (14 November 1935), *German History in Documents and Images*, available at http://ghdi.ghi-dc.org/sub_document.cfm?document_id=1523.

¹⁷ See Reich Citizenship Law, First Regulation, 14 November 1935, Articles 2 and 5, *Jewish Virtual Library*, available at <http://www.jewishvirtuallibrary.org/the-reich-citizenship-law-first-regulation>.

¹⁸ See United States Holocaust Memorial Museum, *Holocaust Encyclopedia: Nuremberg Laws*, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007902>.

15. In Kenya, after independence, residents of African origin were automatically granted Kenyan citizenship, while most people of Asian origin were given two years to apply for citizenship, and dual nationality was not allowed.¹⁹ Most people did not apply for citizenship and those who attempted to exercise the option often met serious obstacles and delays in obtaining Kenyan nationality. The Kenyan Immigration Act of 1967 required all those without Kenyan citizenship to acquire work permits. The 1967 Trade Union Act limited the terms under which non-citizens could engage in trade. In the same period, most Kenyan Asians in public administration positions were replaced with Kenyans of African descent.²⁰ Trading was restricted to limited areas and determined commodities, and exchange of certain products was restricted exclusively to citizens.²¹ These measures touched off an exodus of Kenyan Asians to the United Kingdom. In 1968, there were 344,000 Asians resident in five countries in East and Central Africa; by 1984 the estimated number had fallen to about 85,000 of whom 40,000 were in Kenya.²²

Saddam Hussein's Decree 666 strips Feyli Kurds of nationality in 1980

16. On 7 May 1980, Saddam Hussein stripped the Feyli Kurds of Iraqi citizenship through Decree 666. The decree provided that "Iraqi citizenship be revoked from all those of foreign origin 'whose disloyalty to the nation, people and the higher social and political principles of the revolution had been revealed' and authorized the Minister of the Interior to expel all those whose nationality had been revoked."²³ By 1988, at least 300,000 Feyli Kurds had been deported to Iran.²⁴ Estimates of the total number of Feyli Kurds who were denationalized and deported range from 150,000 to 500,000. Decree No. 666 remained in place for 24 years, along with approximately 30 other decrees issued by the Revolutionary Command Council against the Feyli Kurds. Decree 666 was repealed by the 2006 Iraqi Nationality Law, reinstating Iraqi nationality to all persons that had been denaturalized by the former government.²⁵

Myanmar's 1982 Citizenship Law, stripping ethnic groups of nationality

17. The 1982 Burma Citizenship Law granted full citizenship to those who could trace their origins in Myanmar back to 1823. This reflects the date of the first British military campaign on Myanmar, which catalyzed a wave of immigration from India and China. This proved problematic because transnational ties were common for many families of various ethnicities. But the legal distinctions had the effect of hardening ethnic identities following the law's adoption:

"[The law] establishes group differences through legal and bureaucratic means, and these in turn constitute an affirmation of what cultural differentiations between groups are supposed to be in reality. Such a prescriptive enterprise may be distant from facts,

¹⁹ See Randall Hansen, *Citizenship and Immigration in Postwar Britain* 158 (2000); see also Immigration and Refugee Board of Canada, *Information on the treatment of the Asian community in Kenya* (1 June 1991), available at <http://www.refworld.org/docid/3ae6ab1518.html>.

²⁰ See Randall Hansen, *Citizenship and Immigration in Postwar Britain* 158 (2000).

²¹ See Minority Rights Group International, *World Directory of Minorities, Sub-Saharan Africa, Asians of East and Central Africa*, p. 222-225 (1989).

²² *Ibid.*

²³ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Iraq: Faili Kurds* (October 2014), available at <http://www.refworld.org/docid/5a056c397.html>.

²⁴ Refugees International, *The Faili Kurds of Iraq: Thirty Years Without Nationality* (2 April 2010), available at <https://reliefweb.int/report/iraq/faili-kurds-iraq-thirty-years-without-nationality>.

²⁵ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Iraq: Faili Kurds* (October 2014), available at <http://www.refworld.org/docid/5a056c397.html>.

but the distance between myths and reality gets lost once a legal understanding of groups becomes widely accepted.”²⁶

18. The 1982 law created different classes of citizens on the basis of ethnicity.²⁷ The recent Advisory Commission on Rakhine State report describes the 1982 law and its implementing regulations:

“The 1982 law and the accompanying 1983 procedures define a hierarchy of different categories of citizenship, where the most important distinction is that between “citizens” or “citizens by birth” on the one side, and “naturalised citizens” on the other. “Citizenship by birth” is limited to members of “national ethnic races”, defined as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan and ethnic groups which have been permanently settled in the territory of what is now Myanmar since before 1823 (in 1990, an official list of 135 ‘ethnic races’ was made public).”²⁸

19. Among other groups, the Muslim Rohingya fit none of these categories and were rendered stateless.²⁹ As a consequence, Rohingya in Myanmar suffer severe restrictions on “their freedom of movement and right to a family life, difficulty in gaining access to civil services, violations of their right to health and education, land confiscations, and are subject to forced labour and arbitrary taxes. These deprivations have resulted in many Rohingya fleeing as refugees to neighbouring and other countries.”³⁰

Black Mauritians, denationalization and Arabization in the 1980s and early 1990s

20. Between 1986 and 1992, amidst rising ethnic and racial tensions, the government of Mauritania engaged in a campaign of forced expulsion of at least 65,000 Black Mauritians to Senegal.³¹ In 1989, Mauritania’s Arab-dominated government, pursuing its brutal policy of “Arabization,” expelled an estimated 60,000-100,000 black Mauritians, denying that they were Mauritanian citizens.³² The African Commission of Human and People’s Rights ultimately condemned the expulsions as a violation of Article 12(1) of the African Charter on Human and Peoples’ Rights.³³

Dominicans of Haitian descent in the Dominican Republic

21. On 23 September 2013, the Dominican Constitutional Court issued a decision stripping over 200,000 people of Dominican nationality, targeting Dominicans of Haitian

²⁶ Jose Maria Arraiza and Olivier Vonk, *Report on Citizenship Law: Myanmar*, EUDO Citizenship, p. 6-11 (October 2017), available at <http://cadmus.eui.eu/handle/1814/48284>.

²⁷ See Human Rights Watch, *Burmese Refugees in Bangladesh: Still No Durable Solution* (May 2000), available at <https://www.hrw.org/reports/2000/burma/burmo05-02.htm>.

²⁸ Advisory Commission on Rakhine State, *Final Report: Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine*, p. 29 (August 2017), available at http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf.

²⁹ See UN Human Rights Council, *Report of the independent expert on minority issues, Gay McDougall*, para. 59, UN Doc. A/HRC/7/23 (28 February 2008).

³⁰ *Ibid.*

³¹ UNHCR, *Refugee Status, Arbitrary Deprivation of Nationality, and Statelessness within the Context of Article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees*, p. 23-24 (October 2014) available at <http://www.refworld.org/docid/543525834.html>.

³² See Laura M. Bingham and Julia Harrington, *Never-Ending Story: The African Commission Evolving Through Practice in Malawi Africa Association et al. v. Mauritania*, 1 HR&ILD 7 (2013); Open Society Foundations, *IHRDA v. Mauritania*, <https://www.opensocietyfoundations.org/litigation/ihrda-v-mauritania> (updated 1 April 2009).

³³ African Commission on Human and Peoples’ Rights, *Malawi African Association and Others v. Mauritania Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98* (2000), para. 125, available at http://www.achpr.org/files/sessions/27th/comunications/54.91-61.91-96.93-98.93-164.97-196.97-210.98/achpr27_54.91_61.91_96.93_98.93_164.97_196.97_210.98_eng.pdf; See also Open Society Foundations (OSF), *Citizenship Law in Africa: A Comparative Study* (January 2016), available at <https://www.opensocietyfoundations.org/sites/default/files/citizenship-law-africa-third-edition-20160129.pdf>.

descent.³⁴ The decision and an implementing law effectively made retention of legal status in the country contingent on past access to civil registration. As the IACmHR described in a report on the decision,

“In the Dominican Republic, Haitians are identified on the basis of ethnic and phenotypical characteristics. In practice, the decision as to which children would be registered and granted Dominican nationality and, which children would not... was often based on the parents’ national origin or migratory situation, skin color (especially those with a dark-colored skin), command of the Spanish language, or surname.”

22. The Constitutional Court’s decision marked a new phase “in a denationalization process underway in the Dominican Republic” for decades:

“Since the 1990s, thousands of people have been refused national ID cards, necessary to work, register children, get married, open bank accounts, attend public universities and participate in many other civil activities.”³⁵

23. One year later, the Inter-American Court of Human Rights held that the decision and an implementing law adopted in its wake violated regional and international human rights laws safeguarding the right to nationality. The Court noted that the criteria for Dominican nationality established through the Constitutional Court’s decision were retroactively applied,³⁶ and were discriminatory *per se* against Dominicans of Haitian descent who as a group are “disproportionately affected by the introduction of this differentiated criteria [for nationality].”³⁷

Imposed citizenship and forced assimilation

Indigenous peoples in the United States

24. In 1924, the United States Congress unilaterally imposed U.S. nationality on all indigenous peoples through the Indian Citizenship Act. U.S expansion was ensured through forced inclusion, and attempts to assimilate indigenous communities.³⁸ At least one scholar argues that not only did this continue the U.S.’s longstanding policy of forced assimilation, but also it constituted a genocidal act, meeting the requirements under the Genocide Convention.³⁹ In a 2015 opinion declining to extend *jus soli* U.S. citizenship to the “unincorporated territory” of American Samoa, a U.S. appellate circuit

³⁴ Inter-American Commission on Human Rights, *Preliminary observations on the IACHR’s visit to the Dominican Republic: December 2 to 6, 2013*, p. 6-11 (6 December 2013), available at <http://www.oas.org/es/cidh/actividades/visitas/2013RD/Preliminary-Observations-DR-2013.pdf>; Refugee Studies Centre, *Forced Migration Review No. 32 - No legal identity. Few rights. Hidden from society. Forgotten. Stateless*, p. 25 (April 2010), available at: <http://www.refworld.org/docid/4c6cefbo2.html>.

³⁵ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in the Dominican Republic*, para 76 (31 December 2015), available at <http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>; see also Inter-American Court of Human Rights, *Case of the Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*, Judgment of 28 August 2014.

³⁶ *Ibid.* at para. 298.

³⁷ *Ibid.* at para. 318.

³⁸ See Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (1999) cited in J. Kēhaulani Kauanui, *Hawaiian Blood* 18 (2008); see also Rogers Brubaker, *Ethnicity without Groups* 125 (2004); Lauren Berlant, *The Queen of America Goes to Washington: Essays on Sex and Citizenship*, (1997) cited in Audra Simpson, *Mohawk interruptus: Political life across the borders of settler states* 18 (2014); “Assimilation of Native Americans most clearly began with the Carlisle Indian School which was established in 1879. From this point on, Indians began to be formed in the image of the ‘white American citizen,’ largely because, as Stacy Camp argues, a group’s ability to be granted citizenship depended almost completely upon their ability to dissolve into Anglo-American culture.” “How Assimilation Can Lead to Citizenship,” *History 90.01: Topics in Digital History, Dartmouth* (31 October 2016), available at <https://journeys.dartmouth.edu/censushistory/2016/10/31/rough-draft-assimilation-and-citizenship-among-native-americans/> (internal citations omitted).

³⁹ Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples*, 15 *Harvard Blackletter Law Journal* 107 (1999).

judge for the District of Columbia, Justine Janice Rogers Brown, reasoned that granting such a request would require “that we forcibly impose a compact of citizenship—with its concomitant rights, obligations, and implications for cultural identity—on a distinct and unincorporated territory of people.” The opinion deems “forcibly impos[ing]” citizenship as incompatible with “modern standards.”⁴⁰

Minority groups in interwar Europe

25. As the protection of minorities was one of Woodrow Wilson’s Fourteen Points, a number of states signed so-called “Minority Treaties” at the Paris Peace Conference which aimed for the protection of minorities “under the guarantee of the League of Nations.”⁴¹ Hannah Arendt argued that these treaties were actually enacted with the intent, in some cases open, of their authors to assimilate rather than to protect minorities, through the imposition of legal nationality, depoliticization of the concept of a “minority,” and by creating the fiction of equality.⁴²

Germanization in Nazi occupied territory

26. A policy under the Nazi occupation of territories in Europe included the imposition of German nationality to the population of occupied territories, and through it subject the population to forced conscription and forced labor.⁴³

“Individuals who were forced to accept such citizenship or upon whom such citizenship was conferred by decree became amenable to military conscription, service in the armed forces, and other obligations of citizenship. Failure to fulfil these obligations resulted in imprisonment or death; the forced Germanization constituted the basis for such punishment. Those classes of persons deemed ineligible and those individuals who refused Germanization were deported to forced labor, confined in concentration camps, and in many instances liquidated.”⁴⁴

27. The Permanent Military Tribunal at Strasbourg and the U.S. Military Tribunal at Nuremberg sentenced Robert Wagner⁴⁵ and Gottlob Berger⁴⁶ for actions related to Germanization of the population in the occupied territories. These cases included the imposition of nationality as an objective element of crimes against humanity.⁴⁷

⁴⁰ *Tuaua v. United States*, 788 F.3d 300, 311 (D.C. Cir. 2015), cert. denied 136 S. Ct. 2461 (2016). The *Tuaua* decision relies on U.S. case law on citizenship in U.S. territories that employs racialized classifications and has therefore been sharply criticized.

⁴¹ Anna Mejknecht, “Minority Protection System Between World War I and World War II,” *Oxford Public International Law*, para. 19 (October 2010), <http://opil.ouplaw.com/view/10.1093/oxil/9780199231690/law-9780199231690-e848>; Harris Mylonas, *The Politics of Nation Building 7* (2012); Alexander Orakhelashvili (Ed.), *Research Handbook on the Theory and History of International Law 487* (2011).

⁴² Hannah Arendt, *The Origins of Totalitarianism* 272 n. 10 (1968).

⁴³ See *Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, United States Military Tribunal at Nuremberg, paras. 44, 50 (October 1946-April 1949), available at https://archive.org/stream/TrialsOfWarCriminalsBeforeTheNurembergMilitaryTribunalsUnderControlCouncil/Trials%20of%20war%20criminals%20before%20the%20Nuremberg%20Military%20Tribunals%20under%20Control%20Council%20law%20no.%2010.%20-%20Nuremberg.%20October%201946-%20April.%201949%20Volume%2012_djvu.txt; see Rogers Brubaker, *Ethnicity without Groups* 118 (2004); Rogers Brubaker, *Citizenship and Nationhood in France and Germany* 165-168 (1992).

⁴⁴ *Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, United States Military Tribunal at Nuremberg, paras. 40 (October 1946-April 1949).

⁴⁵ *Trial of Robert Wagner, Gauleiter and Head of the Civil Government to Alsace during the Occupation, and Six Others*, Permanent Military Tribunal at Strasbourg (23 April-3 May 1946) and Court of Appeal (24 July 1946).

⁴⁶ *Weizsaecker and Other (Ministries Trial)*, United States Military Tribunal at Nuremberg, p. 357-358 (14 April 1949).

⁴⁷ See Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 45, 18 October 1907, 36 Stat. 2277 (1907).

Ethnic Koreans in Japan

28. The presence of ethnic Koreans in Japan is directly related to Japan's occupation of Korea (1910 to 1945). Koreans were brought to Japan throughout the 1930s and 1940s; during the occupation period Koreans were citizens of Japan, but they subsequently "lost Japanese citizenship after the Second World War."⁴⁸ At the end of World War II, roughly 2.4 million ethnic Koreans lived in Japan.

"Many found themselves left stateless by the 1950s, with their Japanese nationality annulled but unable or unwilling to leave. In 1965, Koreans who came before and during the war were finally given the opportunity to naturalize, and in 1991 their descendants were granted status as 'special permanent residents' and the right to vote in local government elections."⁴⁹

29. While most returned shortly thereafter, from 1950 to present their numbers have stayed around roughly 600,000.⁵⁰ Currently, "Zainichi Koreans" (from the Japanese word meaning "staying in Japan") are permanent residents of Japan of Korean ethnicity.⁵¹ Zainichi Koreans face a range of discrimination, including employment discrimination. Many are pressured into adopting Japanese nationality to avoid discrimination.⁵²

Western Sahara

30. The history of Western Sahara showcases the complexities associated with assigning nationality in regions where statehood itself has fueled decades of conflict. Sahrawi means "people of the desert" in Arabic, and the term that refers to various groups living on or originating from the territory of Western Sahara. Western Sahara, bordered by Morocco, Mauritania and Algeria, was administered by Spain until 1976. Both Morocco and Mauritania claim the territory, and both claims are opposed by the *Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro* (Polisario Front). The United Nations considers Western Sahara an occupied territory, and until today

"the people of Western Sahara continue to be trapped by the lack of a definition of their citizenship status.... According to Moroccan law, those Saharans living in the area under Moroccan control are Moroccan nationals, thus eligible for passports and other official Moroccan documents.... Another group (of unknown size) of Western Saharans obtained Mauritanian nationality, and the remainder (notably those living in refugee camps and the territories under [Sahrawi Arab Democratic Republic (SADR)]) obtained identity documents from the authorities of the SADR, which permit them to travel to few countries recognizing the self-proclaimed Sahrawi Republic (which include Mauritania). Finally, and in special situations, the Algerian authorities issue short term travel documents to Saharan refugees needing to travel to countries that do not recognize the SADR."⁵³

⁴⁸ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Japan: Koreans* (2008), available at <http://www.refworld.org/docid/49749cfd41.html>.

⁴⁹ Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2014 - Case study: The disturbing rise of hate speech against Koreans in Japan* (3 July 2014), available at <http://www.refworld.org/docid/53ba8db85.html>.

⁵⁰ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Japan: Koreans* (2008), available at <http://www.refworld.org/docid/49749cfd41.html>.

⁵¹ *Ibid.*

⁵² UN Human Rights Council, *Summary: Universal Periodic Review, Japan*, para. 43, U.N. Doc. A/HRC/WG.6/14/JPN/3 (20 July 2012); Kanako Takahara, "Koreans Here Inclined to Assimilate to Dodge Racism," *Japan Times* (6 August 2005), <https://www.japantimes.co.jp/news/2005/08/06/national/koreans-here-inclined-to-assimilate-to-dodge-racism/>.

⁵³ Elspeth Guild, Cristina Gortázar Rotaèche and Dora Kostakopoulou, *The Reconceptualization of European Union Citizenship* 160-161 (2014) cited in European Asylum Support Office (EASO), *Sahrawi citizenship/nationality in Western Sahara, Morocco and Algeria*, p. 4 (16 November 2015), available at <http://www.refworld.org/docid/577cc8684.html>; see also

31. International law dictates that Morocco cannot impose nationality on the Sahrawis because it does not exert sovereignty over Western Sahara.⁵⁴

B. The Crimean context and 2014 automatic naturalization

32. Mass protests in Ukraine began in 2013, spurred by the political context in Ukraine and in particular the Ukrainian government's 21 November 2013 decision not to sign an Association Agreement with EU. Ultimately, what became known as the "Maidan" protest movement, after Kyiv's Independence Square where protesters gathered, led to violent clashes as unrest spread and the protest movement "diversified."⁵⁵ On 22 February 2014, the Ukrainian parliament removed President Yanukovich from office. In late February 2014, in the eastern part of Ukraine including in Simferopol, the capital of the Autonomous Republic of Ukraine, protests erupted against the new Ukrainian government. With participation of Russian Federation military personnel, "mostly uniformed individuals wearing no identifying insignia seized control of government buildings in Simferopol, including the Crimean parliament building."⁵⁶ On 16 March 2014 a referendum was held purportedly approving the annexation of Crimea by the Russian Federation.

Imposition of the Russian Federation's legal system

33. On 18 March 2014, two days after the referendum on annexation, the Russian Federation and the "Republic of Crimea" signed a *Treaty on the Accession of the Republic of Crimea to the Russian Federation* ("*Treaty on Accession*") in Moscow, annexing the peninsula into the Russian Federation.⁵⁷ The *Treaty on Accession* stated that the Russian legal framework must be fully implemented in Crimea by 1 January 015.⁵⁸
34. As emphasized throughout this report, these actions contravene international humanitarian law. Article 43 of the Hague Regulations (1907) provides that an "occupying power must respect the laws in force in the occupied territory respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the Fourth Geneva Convention."⁵⁹ Article 27 of the Fourth Geneva Convention (1949), moreover, explicitly prohibits discrimination by an occupying power:

"Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion."⁶⁰

Elena Fiddian-Qasmiyeh, *Protracted Sahrawi displacement: Challenges and opportunities beyond encampment*, Refugee Studies Centre (May 2011), available at <http://www.refworld.org/docid/4e03287b2.html>.

⁵⁴ See UNHCR, *Expert Meeting: The Concept of Statelessness under International Law, Summary Conclusions, Prato, Italy*, para. 25 (27-28 May 2010), available at <http://www.unhcr.org/en-us/protection/statelessness/4cb2fe326/expert-meeting-concept-stateless-persons-under-international-law-summary.html> (raising the obligations of third states where purported statehood may come about through violations of jus cogens norms, including the prohibition on the use of force).

⁵⁵ Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 84 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

⁵⁶ *Ibid.* at para. 86.

⁵⁷ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, paras. 5, 26, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

⁵⁸ *Ibid.* at para. 73.

⁵⁹ *Ibid.* at para. 43.

⁶⁰ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Articles 4, 27, 12 August 1949, 75 U.N.T.S. 287 (1949); see also *Prosecutor v. Aleksovski*, Case No. IT-95-14/1, Judgment, paras. 151-52 (Mar. 24, 2000) (construing the nationality of a civilian population under the Convention so as to afford broad protection, as opposed to applying a strict reading of nationality laws at play).

35. In practice, the supplanting of Ukrainian law with the Russian Federation’s legal system meant that both frameworks coexisted, “causing confusion for legal practitioners as well as legal uncertainty for rights-holders.”⁶¹
36. Since March 2014, 1,557 new laws have been imposed.⁶² According to human rights monitoring conducted by the Council of Europe “the general perception in the society [is] that legislation became more restrictive and had an impact on fundamental rights and freedoms.”⁶³
37. Russian laws have also been retroactively applied to acts and events that took place in Crimea prior to occupation and the application of Russian law. As reported by OHCHR, individuals have been charged and several convicted “in disregard of the principle of non-retroactive application of criminal law enshrined in international human rights and humanitarian law treaties.”⁶⁴ For instance, the deputy chair of the Mejlis,⁶⁵ Akhtem Chygoz, was convicted under Russian law for organizing mass protests on 26 February 2014 and was sentenced to an eight-year prison term.⁶⁶ Crimean Tatar activist Eskender Kantemirov was arrested on the same charges.⁶⁷ These actions have been widely condemned as contrary to international law.

Specific groups subject to targeted abuse under occupation

38. This report will focus on the treatment of two specific ethnic groups: Crimean Tatars and ethnic Ukrainians. These are the two largest non-Russian ethnic groups in the occupied peninsula.⁶⁸ In both cases, a clear pattern of coercive and occasionally violent suppression of ethnic identity has emerged under Russian occupation.
39. The rights of these two ethnic groups are also a particular focus of a pending case before the International Court of Justice (ICJ), taken by Ukraine against the Russian Federation, covering alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). In its application, Ukraine described automatic naturalization as a component in a broader campaign of “cultural erasure” of non-Russian identity in Ukraine:

“The result has been a campaign to erase the distinct cultures of ethnic Ukrainian and Tatar people in Crimea, carried out through a broad-based pattern of discriminatory acts. The leaders and institutions of these communities have been persecuted and many of their leaders have been forced into exile outside Crimea. These communities have faced abductions, murders, and arbitrary searches and detentions. Their languages have come under assault. *Those who remained in Crimea have had automatic Russian*

⁶¹ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 73, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

⁶² See Council of Europe, Parliamentary Assembly, *Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea*, para. 16 (11 April 2016), available at <https://rm.coe.int/16806421f>.

⁶³ *Ibid.* at para. 17.

⁶⁴ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 77, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (Articles 64, 65, 67, and 70 of the Geneva Convention IV and Article 15 of the International Covenant on Civil and Political Rights).

⁶⁵ See paras. 50-52. The Mejlis is a self-governing, “representative and executive body of the Crimean Tatar people.” Official Website of the Crimean Tatar People, *General information about Mejlis*, <http://qtmm.org/en/general-information-about-mejlis>.

⁶⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 77, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

⁶⁷ *Written statement submitted by the Society for Threatened Peoples*, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

⁶⁸ Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 7 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).

citizenship forced upon them. This deliberate campaign of cultural erasure, beginning with the invasion and referendum and continuing to this day, violates the International Convention on the Elimination of All Forms of Racial Discrimination.”⁶⁹

40. In this section, we briefly outline the history and characteristics of each group as relevant to the discussion that follows. These descriptions are provided with the understanding that there are innumerable approaches, cutting across different academic disciplines, to describing, measuring and studying groups in any political space, and acute challenges associated with any study of group identity in societies engulfed in military conflict. The aim of the descriptions is not to provide a definitive thesis of group identity in terms of self-identification, for example, but rather to trace relevant factors associated with group identities for analyzing the *Russian authorities’ actions* as violations of international human rights laws.

Crimean Tatars

41. Crimean Tatars comprise only 0.5% of the population living in Ukraine, but are “concentrated geographically with 98% living in the Crimean peninsula, which is viewed as their ethnic homeland.”⁷⁰ According to the last credible census, in 2001, Crimean Tatars make up about 12 percent of the Crimean population.⁷¹
42. A paper published by the European Parliament’s Committee on Human Rights reported: “Crimean Tatars have found themselves in an unsafe position because, in addition to being a vulnerable ethnic minority, they are indigenous people of Crimea, with no kin-state to seek protection from. They have strong memories of the forcible deportation by the Soviet Union and of the earlier Russian colonization of Crimea....The Russian annexation of Crimea has evoked fears among Crimean Tatars of new persecutions, forced assimilation, or forced emigration.”⁷²
43. As a recent report by the Unrepresented Nations and Peoples Organization (UNPO) highlights, a generalized sense has emerged that the past horrors visited upon the Crimean Tatars may be resurfacing: “Many people are drawing parallels between the current Russian regime in Crimea and the Soviet Union under Stalin with regards to its treatment of and tactics used against Crimean Tatars. Enforced disappearances, abduction, forced exile and systematic intimidation have been used against Tatars in a bid to destabilise their position on the Peninsula.”⁷³
44. The following paragraphs provide a brief account of these historical events.
45. On 8 April 1783, imperial Russia annexed the Crimean Khanate, “which resulted in the emigration and deportation of the local populations of Crimean Tatars and Greeks, while the peninsula was colonized mainly by Russians.”⁷⁴

⁶⁹ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*), para. 5 (16 January 2017), available at <http://www.icj-cij.org/files/case-related/166/19314.pdf>.

⁷⁰ Holley E. Hansen and Vicki L. Hesli, *National Identity: Civic, Ethnic, Hybrid, and Atomised Individuals*, 61 *Europe-Asia Studies* 1, 4-5 (2010).

⁷¹ See All-Ukrainian Population Census 2001, *National Structure of Population in the Autonomous Republic of Crimea*, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/>.

⁷² Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 7 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).

⁷³ The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 10 (October 2017), available at <http://unpo.org/downloads/2380.pdf>.

⁷⁴ Agnia Grigas, *Beyond Crimea: The New Russian Empire* 101 (2016).

46. In October 1921, the Crimean Autonomous Soviet Socialist Republic (ASSR) was established by Vladimir Lenin, but just a few years later, in 1927, Crimean leaders were arrested and executed as “Bourgeois nationalists.”⁷⁵ Mass deportations followed, resulting in many deaths.⁷⁶
47. In the first half of 1944, Crimean Tatars again came under brutal attack, when Soviet leader Joseph Stalin accused the population of approximately 200,000 Crimean Tatars of collaboration with Germany during World War II.⁷⁷ The NKVD (Soviet Secret Police) published an order “On Measures to Clean the Territory of the Crimean Autonomous Republic of Anti-Soviet Elements” in May 1944 that paved the way for mass deportations.⁷⁸
- “In 1944, on the night of 18 May Stalin deported the remaining Crimean Tatars to Uzbekistan, other Central Asian republics, and Siberia. Herded to railway stations and packed into cattle cars, many of the Tatars died during the journey, while starvation and disease also took their toll in the resettlement camps. As noted by Lilia Muslimova, aide to the Crimean Tatar leader Mustafa Jemilev, ‘this tragic event resulted in the deaths of 46% of the Crimean Tatar population and achieved what many historians consider to be the Russian desired final solution— a Crimea without Crimean Tatars.’ Muslimova adds that ‘in the twenty-first century Crimean Tatars are once again struggling for their dignity and homeland because of the Crimea’s brutal and illegal occupation by the Russian Federation.’”⁷⁹
48. The ASSR was officially dissolved in 1945.⁸⁰
49. In 1956, under Nikita Khrushchev’s de-Stalinization program, Crimean Tatars regained civil rights, “but they were not allowed to return to Crimea, which had been incorporated into the Ukrainian S.S.R. in 1954. It was not until the early 1990s that many Crimean Tatars, taking advantage of the breakup of the Soviet central government’s authority, began returning to settle in Crimea after nearly five decades of internal exile. In the early 21st century, they numbered about 250,000.”⁸¹
50. On 26 June 1991, in Simferopol, the Crimean Tatar Qurultay (Parliament) was convened for the first time since 1917.⁸² The Crimean Tatar National Mejlis, an executive body, was formed.⁸³
51. Under the 2014 occupation following annexation, Crimean Tatars have been particularly targeted, “especially those with links to the Mejlis, which boycotted the March 2014 referendum on annexation and initiated public protests in favor of Crimea remaining a part of Ukraine.”⁸⁴

⁷⁵ The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 5 (October 2017), available at <http://unpo.org/downloads/2380.pdf>.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Agnia Grigas, *Beyond Crimea: The New Russian Empire* 101 (2016) (internal citations omitted).

⁸⁰ Encyclopedia Britannica, *Tatar People*, <https://www.britannica.com/topic/Tatar>.

⁸¹ *Ibid.*

⁸² The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 7 (October 2017), available at <http://unpo.org/downloads/2380.pdf>.

⁸³ *Ibid.*

⁸⁴ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 12, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

52. On 29 September 2016, Russia banned the Mejlis in Crimea, depriving the Crimean Tatars of political representation and stigmatizing the institution as an extremist organization.⁸⁵ Some representatives have been prosecuted as terrorists for continuing activities, as discussed below (paras. 149-154).

Ethnic Ukrainians and Ukrainian national identity in Crimea

53. Ukrainians are not generally described as a visible ethnic group in Crimea, but the Ukrainian national identity is, as argued below (paras. 182-184), a primary motivating factor in Russia's criminal, humanitarian and human rights violations in Crimea since 2014. *Presumed* ethnic or national identity is relatively easily ascribed in Crimea: the Ukrainian language is easily distinguishable from Russian, first and last names are easily identifiable as non-Russian, and Ukrainians attend different churches than Russians.
54. Ukrainian "national identity" encompasses both ethnic and political or civic dimensions, which cannot be neatly separated in terms of the role each dimension plays in propelling Russia's actions in Crimea. The ethnic and civic dimensions of Ukrainian national identity are particularly fluid for those born in Crimea after the fall of the Soviet Union, and even more intertwined today *because of* the ethno-political character of forced naturalization itself.⁸⁶
55. "In the wake of the collapse of the USSR, the Crimea has been confronted with a multi-tiered crisis in its identity. Politically, the Crimean population is struggling to determine how its new political community is to be defined, whether in civic or ethnic terms."⁸⁷
56. Many of the actions taken by modern Russian actors in Crimea have deep historical antecedents. Imperial Russia drew a reputation as "the prison house of nations" – a reference to "subtle and not so subtle pressures to Russify" applied to Ukrainians and other peoples "aspir[ing] to collective freedom."⁸⁸ Hallmarks of the Russian Empire's long-running Russification project were the banning of languages in public spaces, attacks on religious institutions and violent suppression of national liberation movements.⁸⁹
57. In the Soviet era, Ukrainians comprised a "significant national minority" within the polyethnic USSR. Writing in 1975, Richard Pipes described Ukrainian national identity:
- "Ukrainians...are racially and linguistically close to Great Russians, and share with them the same religion. If nevertheless they are regarded as distinct nationalities, it is because for a period of five centuries (c. 1300 to c. 1800) they lived under Lithuanian and Polish rule, during which time they came under strong Western influence channelled through Poland and its Catholic church."⁹⁰

⁸⁵ See The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 8 (October 2017), available at <http://unpo.org/downloads/2380.pdf>.

⁸⁶ Mykola Riabchuk, *Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?* in *Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

⁸⁷ Jane I. Dawson, "Ethnicity, Ideology and Geopolitics in Crimea," 30(4) *Communist and Post-Communist Studies* 427-444 (1997).

⁸⁸ Azar Gat with Alexander Yakobson, *Nations: The Long History and Deep Roots of Political Ethnicity and Nationalism* 179 (2013).

⁸⁹ "In the nineteenth century the Ukrainian nation faced aggressive Russification policies from Moscow, including closure of its main institution of higher learning, the Kiev-Mohyla Academy, suppression of its culture, prohibition from publishing books and teaching in Ukrainian, and even banning of building churches in the Ukrainian Baroque style." Agnia Grigas, *Beyond Crimea: The New Russian Empire* 101 (2016).

⁹⁰ Richard Pipes, "Reflections on the Nationality Problems in the Soviet Union," in Nathan Glazer and Daniel P. Moynihan (eds.), *Ethnicity: Theory and Experience* 457 (1975).

58. During this period, the Ukrainian national identity within the USSR was consistently asserted and resistant to assimilation, often eliciting violent suppression:

“The Ukrainians have been especially active in demanding by means of underground publications full rights for themselves and the other ethnic groups inhabiting the Soviet Union. In response, Soviet security organs have carried out in the past decade massive arrests and deportations of Ukrainian intellectuals. Because of the greater interest of Western media in Russian and Jewish dissidents, the facts bearing on these repressions have not been adequately reported.”⁹¹

59. Cultural and political struggles after Ukraine’s absorption within imperial Russia hinged on dueling interpretations of Ukrainian national identity in relation to Russia’s mythological past, often drawing on (or rejecting) tropes of ethnic similarities (“sameness”).⁹² Vladimir Putin, for example, famously remarked to then U.S. President George W. Bush at a 2008 NATO summit that Ukrainians are “not a people,” expressing the Russian nationalist view that Ukraine and Ukrainians are part of – and have always been part of – a Russian-dominated Eurasia.⁹³

60. *Ethnic* Ukrainian identity in present-day Crimea is, in short, part of a “multi-tiered” process of self-definition that is inextricably welded to civic/political allegiances, bound up in the politics of control over a hotly contested geostrategic space.⁹⁴

“The [ongoing] war, as a Russophone scholar from the border city of Kharkiv aptly remarks, ‘catalysed the creation of a political nation. Ukrainian identity, which for so long had been associated with ethnicity, language and historical memory, suddenly has become territorial and political and thus inclusive [...]’ (citing Zhurzhenko, 2014).”⁹⁵

61. Attacks on ethnic Ukrainians, flowing from the official Russian position which denies altogether that Ukrainians are “a people,” cannot, in turn, be fully disaggregated from the Russian project of eliminating a more inclusive, civic Ukrainian national identity, and reincorporating Crimea within the Russian state. In this way, Russia’s campaign in Crimea – combining all its political, military and propagandist tactics – seeks to reinstate a nostalgic, ethnic-based sense of allegiance to Russia, entailing the elimination of *both* the idea of a separate Ukrainian “people” and the idea of a civic Ukrainian national identity.

“The remarkable development of an overarching, civic identity in Ukraine, based primarily on common values rather than ethnic or linguistic markers, poses a puzzle for Russian propagandists who still promote [the] “*Russkii mir*” [Russian world] in terms of a common history and religion, language and culture, blood and soil, and still strive to ‘protect Russian-speaking compatriots’ in Ukraine and elsewhere.”⁹⁶

62. In the course of Russia’s campaign, when ethnic Russian compatriotism (see para. 120-124, below) proved insufficient as a tool to galvanize support for territorial unification of

⁹¹ *Ibid.* at p. 461.

⁹² Mykola Riabchuk, *Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?* in *Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

⁹³ *Ibid.* (“the 2008 Bucharest NATO summit where Putin told then President George W. Bush that Ukrainians are not a ‘people’ and when he made his first territorial claims on what he later termed ‘NewRussia’, or *Novorossia* (southern and eastern Ukraine).”)

⁹⁴ Jane I. Dawson, “Ethnicity, Ideology and Geopolitics in Crimea,” 30(4) *Communist and Post-Communist Studies* 427-444 (1997).

⁹⁵ Mykola Riabchuk, *Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?* in *Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

⁹⁶ Mykola Riabchuk, *Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?* in *Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

Crimea with Russia, full and automatic Russian citizenship was deployed alongside forcible territorial occupation.

63. **Specific infringements.** The automatic citizenship regime is addressed in the following section of the report, after brief descriptions of the actions taken by Russia since 2014 that directly target traditional aspects of Ukrainian ethnic identity: language rights, religious institutions and cultural institutions and symbols.
64. *Language rights.* Ukrainians have turned into a de facto minority in Crimea and their rights, especially linguistic, were immediately affected. The number of students receiving education in the Ukrainian language has drastically decreased by 97 percent since the occupation.⁹⁷ The CERD Committee expressed concern and recommended that Russia “take effective measures to ensure that the Ukrainian language is used and studied without interference.”⁹⁸ The Russian Federation is currently subject to a preliminary measures order by the International Court of Justice directing it to “[e]nsure the availability of education in the Ukrainian language.”⁹⁹
65. *Religious institutions and Ukrainian national identity.* It is important to explain the historical and cultural implications of restrictions on the operation of the Ukrainian Orthodox Church. Ukrainian ethnicity has a complex historical, political and cultural character, as explained above. Similarly, appearances may deceive when it comes to suppression of the Ukrainian Orthodox Church, which from a universalist religious perspective may seem only superficially distinct from the Russian Orthodox Church. From medieval times until today, however, national identities in Eastern Europe have been “complemented and reinforced” by religious identities:
- “Most of the people of Eastern Europe achieved a sense of identity and some political expression of that identity in medieval times, long before the Age of Nationalism . . . Religion in Eastern Europe served a nation-building role and it acted as a surrogate state for people who had lost political independence . . . The Church has been literally militantly involved in movements for ethnic survival and wars for national independence in Eastern Europe from medieval times to the present.”¹⁰⁰
66. The Ukrainian Orthodox Church, in keeping with this tradition of interconnectedness of religious and national identity, supports independent Ukraine and took a public stance against occupation.
67. As noted by OHCHR, since occupation “freedom of religion or belief in Crimea has been jeopardized by a series of incidents targeting representatives of minority confessions and religious facilities belonging to them.”¹⁰¹
68. After annexation, the Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) elected not to re-register the Russian Federation and therefore lacks legal recognition under Russian law.¹⁰² According to OHCHR, “[s]ince 2014, five UOC-KP churches have been either seized by paramilitary groups or closed due to non-renewal of their property

⁹⁷ OHCHR, *Report on the human rights situation in Ukraine*, para. 13, UN Doc. A/HRC/37/CRP.1 (March 15, 2018).

⁹⁸ Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 20, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

⁹⁹ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of racial discrimination (*Ukraine v. Russian Federation*) (Request for the Indication of Provisional Measures Order), para. 106(1)(b) (19 April 2017), available at <http://www.icj-cij.org/files/case-related/166/19394.pdf>.

¹⁰⁰ Azar Gat, *Nations: The Long History and Deep Roots of Political Ethnicity and Nationalism* 222 (2013).

¹⁰¹ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 137, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁰² *Ibid.* at para 145.

leases.”¹⁰³ Another UOC-KP church was stormed by officials in August 2017 and ordered the vacancy of the office space and shop of the church’s premises pursuant to a Russian court judgment.¹⁰⁴ As of September 2017, church services continued but with fewer attendees.¹⁰⁵

69. The UN Human Rights Committee expressed concern regarding “[r]eports of violations of freedom of religion and belief on the territory of Crimea, such as intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church...”¹⁰⁶
70. *Cultural institutions and symbols.* Room for public expression of Ukrainian culture and identity has contracted significantly under occupation. Those celebrating Ukrainian symbols, dates or historic figures receive court sanctions or warnings for violating public order or conducting unauthorized rallies.¹⁰⁷ For instance, in March 2015, four pro-Ukrainian activists were sentenced to corrective labor for displaying a Ukrainian flag with the inscription “Crimea is Ukraine” at a rally commemorating a national poet of Ukraine.¹⁰⁸
71. Institutions celebrating Ukrainian culture and traditions have been closed. In February 2015, for example, the Museum of Ukrainian *Vyshyvanka*, a traditional Ukrainian embroidery was shut down, and books by Ukrainians were removed from the Simferopol Franko Library.¹⁰⁹ Since 2014, the Ukrainian Cultural Centre in Simferopol has been under surveillance.¹¹⁰ Crimean authorities routinely call members for so-called “informal talks” and the Centre’s activities—which include “paying tribute to Ukrainian literary, political or historic figures” are disrupted and some prohibited.¹¹¹ Unable to pay rent, the Centre closed in May 2017, and following threats and information that he would be arrested by the FSB, the director fled to mainland Ukraine.¹¹²

Automatic naturalization and its implementation

72. The following sections explain the mechanics of automatic naturalization and its purported legal underpinnings, enacted in the context of unlawful military occupation of Crimea. In order to undertake a complete analysis of the human rights implications of automatic naturalization in Crimea, we examine its application and individual human rights impacts in practice. Nothing in the description should be interpreted to suggest that the actions recounted are recognized as lawful under applicable international law, including most importantly the law of occupation. Throughout this section, for the purposes of context, we also highlight specific actions that are regarded to be in violation of international humanitarian law. This commentary should be understood as illustrative rather than exhaustive in its analysis of the application of international humanitarian law, which is not the main focus of this report.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23(f), U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

¹⁰⁷ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 17, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁰⁸ *Ibid.* at para 184.

¹⁰⁹ *Ibid.* at para 185.

¹¹⁰ *Ibid.* at para 169.

¹¹¹ *Ibid.* at 169.

¹¹² *Ibid.*

73. The 18 March 2014 *Treaty on Accession* “had an immediate consequence for the status of residents of Crimea and rights attached to it.”¹¹³ The “treaty” automatically recognized all permanent residents in Crimea as Russian citizens.¹¹⁴ The only way to “exempt” oneself (and one’s minor child) was to affirmatively inform the *de facto* authorities, by 18 April 2014, of the intention to *opt out* of Russian citizenship.¹¹⁵
74. The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM) reported:
- “Under Article 5 of the Russian ‘treaty’ on incorporating Crimea into the Russian Federation, Ukrainian nationals permanently living in Crimea and Sevastopol are to be considered Russian nationals as of the date when the treaty enters in force, which under Article 1 is the date of the signature of the treaty, effectively 18 March 2014. The same Article gives the residents of Crimea and Sevastopol one month to ‘choose’ between Russian and other citizenships. This ‘choice’ appears to reflect the ‘right of optation’ enshrined in Article 17 of the Russian Citizenship Law, which provides that: ‘When a change occurs in the State Border of the Russian Federation under an international treaty of the Russian Federation, the persons residing in the territory which switched its state shall have a right to choose citizenship (right of optation) in the manner and within the term established by a relevant international treaty of the Russian Federation.’”¹¹⁶
75. Russian citizenship or Crimean permanent residence were only open to established permanent residents in Crimea as of 18 March 2014, which automatically excluded those without proof of Crimean permanent residence—i.e., a residence registration stamp in the passport or a court’s decision proving residence (see paras. 105-108 for further information on residence registration).¹¹⁷
76. On 21 March 2014, Russia enacted Federal Constitutional Law No. 6-FKZ “On Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol” which, like the *Treaty on Accession*, implies that automatic citizenship effectively “replaces” Ukrainian citizenship unless residents affirmatively take steps to “retain” their “previous” citizenship. In effect, law 6-FKZ and the provisions on dual nationality in existing Russian citizenship law, meant that for those acquiring Russian citizenship automatically under the *Treaty on Accession*, dual Russian-Ukrainian citizenship was not presented as a legally viable option in Crimea.
77. Automatic naturalization, in other words, also entailed the practical invalidation of Ukrainian citizenship under occupation. The law came into force on 1 April 2014,

¹¹³ *Ibid.* at para 55.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*; The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 37 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹¹⁶ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Human Rights Assessment Mission in Ukraine: Human Rights and Minority Rights Situation*, p. 117 (May 12, 2014), available at <https://www.osce.org/odihr/u8476?download=true>.

¹¹⁷ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 37 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>; OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 55, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

leaving those who “chose” to opt out of Russian citizenship and “retain” Ukrainian citizenship just 18 days to do so.¹¹⁸

The “opt out” process

78. Article 4 of Law 6-FKZ states:

“[F]rom the date of the admitting to the Russian Federation the Republic of Crimea [18 March 2014] and establishing within the Russian Federation the new constituent entities, Ukrainian nationals and stateless persons who had been permanently residing in the Republic of Crimea and the City of Federal Importance Sevastopol were recognized as nationals of the Russian Federation, except for persons who within one month thereafter declared their willingness to retain their and (or) their minor children’s other nationality or remain stateless.”

79. In order to exercise the option to “opt out” of Russian citizenship, residents who were Ukrainian citizens before occupation had to take proactive steps to confirm such citizenship within the prescribed period (effectively 18 days) or remain Russian citizens by default.¹¹⁹

80. The process available to Ukrainian citizens who wished to retain their citizenship was fraught with defects.¹²⁰ Some could not exercise their “right to retain” Ukrainian citizenship and Russian citizenship was imposed upon them.¹²¹ Some endure harassment and intimidation for not wanting Russian citizenship.¹²² In this environment, the imposition of Russian citizenship was deemed “coercive” by human rights groups.¹²³

“Deficiencies in implementation “made it impossible to make an informed choice about whether to accept Russian citizenship. NGOs working on these issues observed that the majority of Crimeans did not even attempt to make a choice and acquired the status of Russian citizens ‘by default’ at the end of the 18-day period.”¹²⁴

81. The Russian Federal Migration Service (FMS) reported that after 18 April 2014, 3,427 permanent residents of Crimea successfully opted out of automatic Russian citizenship.¹²⁵ As of May 2015, the High Commissioner for Human Rights of the Russian Federation (Ombudsperson) reported that that approximately 100,000 persons living in Crimea (4 percent of the population) did not hold Russian citizenship.¹²⁶

82. Groups monitoring the situation in Crimea, including the UN Office of the High Commissioner for Human Rights (OHCHR) and Human Rights Watch, have cited

¹¹⁸ See Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

¹¹⁹ See Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 29 (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russian14web.pdf.

¹²⁰ *Ibid.* at p. 27.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at <http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf> (“RCHR data indicates a large number of people in Crimea, and those who left the peninsula, did not submit declarations of their intention not to acquire Russian citizenship and did not apply for Russian passports. According to Russian law, they are also regarded as citizens of the Russian Federation despite their lack of documents.” *Ibid.* at n. 5),

¹²⁵ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 59, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹²⁶ *Ibid.* at para. 56.

multiple obstacles in the practical exercise of the opt out process, including the limited time period during which the option applied, the limited information available about the procedure and the limited number of locations where individuals could declare their intention to opt out:

- The procedure was only effectively available for 18 days. The FMS did not provide instructions on the refusal procedure until 1 April 2014.¹²⁷
- Information regarding FMS locations for opting out was not available until 4 April 2014.¹²⁸
- From 4 through 9 April 2014, only two locations in Crimea were available to formally apply to renounce Russian citizenship, and a total of nine from 10 through 18 April.¹²⁹ Since these sites were also dually designated for those seeking to acquire Russian passports, queues of thousands of individuals resulted and those applying to reject Russian citizenship were intimidated and harassed.¹³⁰
- These long lines surpassed the daily capacity of these offices and left some people unable to reach to the front of the line before the deadline expired.¹³¹
- Offices were difficult to access for Crimean residents living in the countryside.¹³²
- On the other hand, Crimean residents who wished to receive *Russian* passports could do so either by mail or in-person at 160 designated offices around Crimea or any Russian consulate or embassy.¹³³
- Those who were outside Crimea “during [the] one-month period had no clear recourse for declaring Ukrainian citizenship within the deadline due to conflicting information provided by the authorities on whether Russian embassies and consulates around the

¹²⁷ OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014), available at <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf>; The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹²⁸ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 58, UN Doc. A/HRC/36/CRP.3 (25 September 2017); The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹²⁹ See The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>; see also OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014), available at <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf>.

¹³⁰ See The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 39 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>; see also Council of Europe, Commissioner for Human Rights, *Report of Nils Muiznieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014*, para. 48 (27 October 2014), available at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/102_muiznieksreport_/102_muiznieksreport_en.pdf.

¹³¹ Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 29–30 (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russia1114web.pdf.

¹³² *Ibid.* at p. 29.

¹³³ *Ibid.* at p. 30.

world accepted such applications.”¹³⁴ Several cases were reported in which Ukrainian citizens who were abroad were unable to retain their Ukrainian citizenship because Russian consulates would not applications, “citing lack of clear instructions and absence of forms to process the requests.”¹³⁵

- Several of the requirements in the procedure for refusing Russian citizenship evolved over a short period of time, such as the requirement to make the application in person, whither both parents needed to be present to apply/reject on behalf of minors.¹³⁶

83. In an environment of intense legal uncertainty, political upheaval, and physical insecurity, the circumstances were extremely dissuasive for anyone wishing to “opt out” of Russian citizenship. The Commissioner for Human Rights of the Republic of Crimea noted that an “ordinary person is lost” in the web of new rules and procedures, not to mention the coercive nature of the choice itself in terms of its legal implications. According to Ukrainian human rights monitoring groups:

“[A]ny option of choice, which had to be made by the Crimeans, led to a deterioration in their situation: they had to choose between a significant restriction of rights (up to a complete loss of legal personality) and the oath of allegiance to the aggressor state.”¹³⁷

Categories of legal status created by the automatic naturalization laws

84. The imposition of Russian Federation citizenship had a particularly harsh impact on three groups: (1) those who formally rejected citizenship and became “foreigners”; (2) Crimean habitual residents who did not meet the legal criteria for Russian citizenship (lack of proof of residence registration) and became “foreigners”; and (3) civil servants who had to renounce their Ukrainian citizenship or lose their jobs.¹³⁸
85. A fourth (4) vulnerable group includes those who were unable to reject Russian citizenship on account of particular circumstances, including being abroad during March and April 2014, held in places of detention, legal minors, persons with disabilities, or in social care institutions.
86. In addition to these categories, the collective application of automatic citizenship rules uniformly across the entire territory – making the entire population of Crimea “Russian” in an instant – figures centrally in establishing its unlawful character.

Those who formally rejected Russian citizenship and became “foreigners”

¹³⁴ *Ibid* (“On April 11, Russia’s Federal Migration Service in Crimea officially confirmed on its Facebook page that Crimea residents with Ukrainian citizenship could declare their wish to retain Ukrainian citizenship at Russia’s consulates and embassies worldwide. However, the same statement also acknowledged problems with applications possibly not arriving to the FMS due to postal services’ glitches and encouraged people to apply in person in Crimea.”)

¹³⁵ *Ibid*.

¹³⁶ OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014), available at <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf>; The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹³⁷ Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 46-7 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

¹³⁸ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 56, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

87. Crimean residents “who opted out of Russian Federation citizenship became foreigners.”¹³⁹
88. Crimean residents could technically apply for residence permits, giving them access to some rights for which Russian citizenship is not required (e.g., pension, free health insurance). However, overall, as discussed further below (paras. 105-108), “persons holding a residence permit and no Russian Federation citizenship do not enjoy equality before the law and are deprived of important rights.”¹⁴⁰ The Russian Federation prohibits the employment of Ukrainian citizens who lack Crimean residence registration.¹⁴¹ They are also barred from accessing public hospitals and free health insurance.¹⁴²
89. Most importantly, for individuals in this category, their “further stay on the peninsula became entirely dependent on the discretion of the occupation authorities as to permission to stay”¹⁴³ and/or grant residence permits.¹⁴⁴
90. Crimean residents who opted out of Russian citizenship did not automatically obtain permanent residence status. Instead, they were required to provide multiple documents, including proof that they had been residing in Crimea prior to the annexation. Proof was evidenced by a Crimean residence registration stamp in the passport or court decision.¹⁴⁵ However, getting a residence stamp is mostly voluntary and as such, many residing in Crimea lacked a stamp in their passport or were officially registered in mainland Ukraine.¹⁴⁶
91. In short, successfully opting out of Russian citizenship, thus not having a Russian passport, “makes it impossible to enjoy almost all of the rights and freedoms laid down in the Constitution.”¹⁴⁷ As a foreigner, “these individuals are subjected to migration control, and a ban on participating in political activity or the management of community affairs,” rendering Crimeans without Russian passport “foreign nationals in their home country.”¹⁴⁸

Crimean residents who did not meet the legal criteria for citizenship and became “foreigners”

¹³⁹ *Ibid.* at para. 61.

¹⁴⁰ *Ibid.* at para. 62.

¹⁴¹ *Ibid.* at para. 68.

¹⁴² *Ibid.* at para. 70.

¹⁴³ Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 40 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

¹⁴⁴ Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at <http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf>.

¹⁴⁵ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 55, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁴⁶ Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 31 (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russian14web.pdf.

¹⁴⁷ Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at <http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf>.

¹⁴⁸ *Ibid.*

92. Citizens of Ukraine “living in Crimea whose passport stamps indicated they were registered in mainland Ukraine could not become citizens of the Russian Federation.”¹⁴⁹ These individuals became “foreigners” under the automatic naturalization scheme.¹⁵⁰
93. According to Russian law applicable to foreigners, individuals in this category could not remain in Crimea for longer than 90 days per 180 days any time they entered the peninsula.¹⁵¹ Non-compliance with Russian immigration rules can lead to court-ordered deportations.¹⁵²
94. Those unable to “prove” Crimean residence—as evidenced by a Crimean residence stamp in one’s passports or court decision—were unable to obtain Russian citizenship or permanent residence status in Crimea.¹⁵³
95. According to the Russian Ombudsperson, in the year after annexation at least 100,000 Crimean residents were unable to obtain Russian Federation citizenship—many of whom were longtime residents of Crimea, but never formally re-registered as Crimean after moving from other parts of Ukraine.¹⁵⁴
96. According to the Ukrainian Center for Independent Political Research, many Crimean Tatars encountered similar complications proving residence, having returned to Crimea only recently after deportation. The Center reports that for these individuals they had missed registration in Crimea and “it was impossible to prove their place of residence in court (because courts decide [] applications for Russian citizenship or residence permits from people applying on the basis of long residence).¹⁵⁵
97. OHCHR reported that “rules regulating stay were not consistently applied, sometimes favoring individuals who supported Crimea’s accession to the Russian Federation.”¹⁵⁶
- Civil servants and other employees forced to renounce Ukrainian citizenship or lose their jobs*
98. Although the provisions of the *Treaty on Accession* and Law 6-FKZ imply that Russian citizenship supplants any previous citizenship (see paras. 72-77), Crimean residents who, before the referendum on annexation, held government and municipal positions (including members of the judiciary) and wished to keep these posts, were required by Russian law to surrender Ukrainian citizenship (or other citizenship/permanent residence status) and obtain a Russian passport. The Parliament of Crimea adopted a law that also required that they possess “a copy of the document confirming denial of existing citizenship of another State and the surrender of a passport of another State.”¹⁵⁷

¹⁴⁹ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 64, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.* at para. 65.

¹⁵³ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015)*, para. 37 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹⁵⁴ *Ibid.* at para. 42.

¹⁵⁵ Ukrainian Center for Independent Political Research (UCIPR), *Citizenship, Land and Nationalization of Property in Occupied Crimea: Rights Deficit*, p. 5-6 (3 June 3, 2015), available at <http://dhrp.org.ua/en/blog-publications/794-20150702-en-publication>.

¹⁵⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 67, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁵⁷ *Ibid.* at para. 71 (citing Article 11 of the Law of the Republic of Crimea “On State Civil Service of the Republic of Crimea” (29 May 2014)).

99. Before occupation, over 20,000 civil servants were employed in Crimea. It is assumed that of the 19,000 Crimean residents who by May 2015 had applied to renounce Ukrainian citizenship, the majority were civil servants.¹⁵⁸ Such a policy contravenes Article 54 of the Geneva Convention IV, that “[t]he Occupying Power may not alter the status of public officials or judges in the occupied territories.”¹⁵⁹
100. To keep their jobs, many employees outside the civil service may have similarly been compelled to renounce their Ukrainian citizenship due to widespread discrimination.¹⁶⁰
- Groups who due to specific personal circumstances were unable to reject Russian citizenship*
101. Individuals held in closed institutions, such as jails, prisons, psychiatric facilities, geriatric housing, orphanages, experienced difficulties expressing their desire to reject Russian citizenships, including never been presented with an opportunity to reject.¹⁶¹ The following examples are illustrative and not exhaustive.
102. **Prisoners.** The State Penitentiary Service of Ukraine reported that at the time of annexation, there were over 2,000 prisoners in Crimea who were local residents.¹⁶²
- Oleksandr Kolchenko filed a complaint to the European Court of Human Rights regarding “the compulsory imposition of the Russian nationality.”¹⁶³
 - Russian authorities claimed that Oleh Sentsov, a prominent Ukrainian filmmaker, was Russian. They detained him in Crimea and he was sent to a Moscow.¹⁶⁴
 - Claiming that Kolchenko and Sentsov had acquired Russian nationality, Russian authorities deprived both of consular protection and their right under the Convention on the Transfer of Sentenced Persons (1983) to be transferred to the Ukraine to serve their sentences.¹⁶⁵ According to Ukrainian human rights experts, “this problem actually concerns hundreds of Ukrainian prisoners who as of today are being transferred from Crimea to the territory of the Russian Federation.”¹⁶⁶

¹⁵⁸ *Ibid.* at para. 72.

¹⁵⁹ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 54, 12 August 1949, 75 U.N.T.S. 287 (1949).

¹⁶⁰ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 202 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹⁶¹ *Ibid.* at para. 41; Council of Europe, Commissioner for Human Rights, *Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014*, para. 41 (27 October 2014), available at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/102_muiznieksreport_/102_muiznieksreport_en.pdf.

¹⁶² Public Statement by Serhiy Starenkyi, “There are conditions for the inmates transfer from the Crimea. But the sentenced persons are held there on the legal grounds,” *State Penitentiary Service of Ukraine* (April 3, 2014), <http://www.kvs.gov.ua/peniten/control/main/en/publish/article/715893>.

¹⁶³ Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 34 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_3_en-fin.pdf.

¹⁶⁴ *Written statement submitted by the Society for Threatened Peoples*, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

¹⁶⁵ Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 45-6 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_3_en-fin.pdf.

¹⁶⁶ *Ibid.* at. Para 46.

- According to the Ombudsperson of the Russian Federation, “only 18 [convicts] rejected Russian citizenship in writing; 22 convicts filed in petitions asking to be extradited to Ukraine.”¹⁶⁷
103. OHCHR reported that “pressure was exerted on detainees who refused to accept automatic Russian Federation citizenship.”¹⁶⁸
- A female detainee who rejected Russian citizenship claimed that she was subjected to various forms of harassment, including the denial of family visits regularly having sunflower oil poured over her belongings.¹⁶⁹
 - Many detainees who refused Russian citizenship were transferred into smaller cells or placed in solitary confinement.¹⁷⁰
 - According to Ukrainian human rights organizations, “[t]here is also evidence of convicts who were tortured for refusing Russian citizenship; they were sent to a punishment cell or are put under pressure through other prisoners.”¹⁷¹
104. **Children.** At the time of annexation, over 4,300 children in Crimea were without parental care and lived in social care institutions.¹⁷² These institutions were brought under the control of the Russian Federation at the beginning of the occupation. Not a single declaration “of intent to retain their existing...citizenship”¹⁷³ was submitted on their behalf.¹⁷⁴

Residence registration and residence permits for “foreigners”

105. Residence registration in Russia, the successor to the rigid Soviet “propiska” system, continues to restrict access to services, exercise of human rights and mobility. In 2006 and 2007, the European Court of Human Rights held that the system interferes with a number of human rights.¹⁷⁵ Although the policy may have liberalized since Soviet times, discrimination, corruption and lack of transparency continue to define it. In September 2017, the Committee on the Elimination of Racial Discrimination recommended specific changes to Russia’s internal registration practices in its Concluding Observations on Russia’s periodic report:

¹⁶⁷ Ombudsperson of the Russian Federation, *Report of the Commissioner for Human Rights in the Russian Federation in 2014*, at 95-96 (7 May 2015) available at

http://eng.ombudsmanrf.org/www/upload/files/prezent/doklad_eng_Sample_view.pdf.

¹⁶⁸ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 115, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 13 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

¹⁷² According to Ukraine’s Ministry of Social Policy, there were 4,323 children with parental care. The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015)*, para. 41 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹⁷³ Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at <http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf>.

¹⁷⁴ Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 33 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

¹⁷⁵ See, e.g., *Bolat v. Russia*, ECtHR, Judgment of 5 October 2006, at paras. 64-70; *Tatishvili v. Russia*, ECtHR, Judgment of 22 February 2007, at paras 44-54.

“[T]he Committee recommends that the State party take urgent measures to expedite the registration of all those seeking registration in a transparent manner. The Committee also recommends that the State party take measures to bring to an end any discriminatory or arbitrary behaviour by officials involved in registration activities. Moreover, the State party is requested to guarantee that the enjoyment of rights by all individuals in the Russian Federation is not dependent on residence registration.”¹⁷⁶

106. The sudden importation of the Russian Federation’s residence registration system alongside Russian citizenship and immigration laws in Crimea ushered in a host of idiosyncratic obstacles to enjoyment of human rights that may be lost on observers unfamiliar with the devastating effects the registration system continues to have, in particular on ethnic minorities.
107. In July 2014, moreover, the Russian Federation established annual caps on the number of temporary residence permits issued, allowing at most 5,000 permits in Crimea and 400 permits in Sevastopol.¹⁷⁷ Such limits were “widely viewed as insufficient to cover even those foreigners (non-Ukrainians) already residing in Crimea at the time of the occupation, let alone anyone who wished to secure permanent residence status in the framework of the automatic Russian citizenship laws.”¹⁷⁸
108. It is likely, given the more liberal registration policies in Ukraine, that many people living in Crimea at the time of occupation would not have had residence registration, leaving them at the mercy of de facto authorities.¹⁷⁹ As noted above, these rules disproportionately impact individuals with registration in mainland Ukraine and many Crimean Tatars who recently returned to the peninsula and rules have been applied in favor of those who support annexation (see paras. 90, 96).

Widespread condemnation of automatic citizenship

109. Many intergovernmental and civil society actors have condemned the imposition of Russian citizenship in Crimea, both as an unlawful act in itself and in the manner in which it was implemented.
110. The UN General Assembly, in its resolution 72/190, included an operational clause:
- “Condemning...the imposition of automatic Russian Federation citizenship on protected persons in Crimea, which is contrary to international humanitarian law, including the Geneva Conventions and customary international law, and the regressive effects on the enjoyment of human rights of those who have rejected that citizenship.”**¹⁸⁰

¹⁷⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 30, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017). See also Council of Europe, Parliamentary Assembly Resolution 1277 (2002) on honouring of obligations and commitments by the Russian Federation, para. 8(xii), 23 April 2002.

¹⁷⁷ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 44 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹⁷⁸ *Ibid.*

¹⁷⁹ See Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 14 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf (“In Russia, residence registration is far more important than in Ukraine. The absence of such registration at the place of actual residence generates a number of significant difficulties for citizens.”).

¹⁸⁰ UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190, p. 2 (19 December 2017).

111. The UN OHCHR warned that:

“The human rights situation in Crimea has significantly deteriorated since the beginning of its occupation by the Russian Federation. **The imposition of a new citizenship and legal framework and the resulting administration of justice have significantly limited the enjoyment of human rights for the residents of Crimea.** The Russian Federation has extended its laws to Crimea in violation of international humanitarian law. In many cases, they have been applied arbitrarily.”¹⁸¹

112. In the same report, OHCHR states that:

“Imposing citizenship on the inhabitants of an occupied territory can be equated to compelling them to **swear allegiance** to a power they may consider as hostile, which is forbidden under the Fourth Geneva Convention. In addition to being in violation of international humanitarian law, the automatic citizenship rule raises a number of important concerns under international human rights law.”¹⁸²

113. The UN Human Rights Committee (UNHRC), in its 2015 review of Russia, while recognizing the enduring territorial integrity of Ukraine,¹⁸³ expressed its concern regarding “**the possibility for Crimean residents to make an informed decision on the free choice of their citizenship** owing to the very short period granted to them to refuse Russian citizenship. This disproportionately affected those individuals who could not apply in person at the designated locations to refuse citizenship, in particular persons in places of detention and other closed institutions, such as hospitals and orphanages. It also resulted in serious implications on the ability of Crimean residents who retained Ukrainian nationality to enjoy their rights under the Covenant...”¹⁸⁴

114. The UN Committee on the Elimination of Racial Discrimination also urged the Russian Federation “to repeal any administrative or legislative measures adopted since the State party started to exercise effective control over Crimea that have the purpose or effect of discriminating against any ethnic group or indigenous peoples on grounds prohibited under the Convention, **including in relation to nationality and citizenship rights...**”¹⁸⁵

115. The Council of Europe Commissioner for Human Rights stated:

“The **consent of the person concerned should be the paramount consideration** in this regard, and this consent should be active and clearly stated.”¹⁸⁶ “Otherwise this could be qualified as an interference with the person’s private and family life, since the acquisition of citizenship may also entail certain obligations, such as military service.”¹⁸⁷

¹⁸¹ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 220, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

¹⁸² *Ibid.* at para. 57.

¹⁸³ See Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23, U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015) (“The Committee, having due regard for General Assembly resolution 68/262 on the territorial integrity of Ukraine, is concerned about reported violations of the Covenant in the Autonomous Republic of Crimea and the city of Sevastopol, which are under the effective control of the State party.”).

¹⁸⁴ *Ibid.* at para. 23(c).

¹⁸⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 20, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

¹⁸⁶ Council of Europe, Commissioner for Human Rights, *Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014*, para. 47 (27 October 2014), available at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/102_muiznieksreport_/102_muiznieksreport_en.pdf.

¹⁸⁷ *Ibid.* at para. 47 n. 40.

Ukrainian and Russian current positions on dual nationality and the legal effect of automatic naturalization

116. Ukraine does not recognize the validity of the referendum of 16 March 2014. Ukraine has subsequently, however, adopted legislation in light of the temporary occupation of Crimea that is relevant to understanding the impact of automatic naturalization following the referendum and subsequent annexation treaty between the Russian Federation and the “Republic of Crimea,” signed on 18 March 2014.
117. Ukraine does not recognize dual-citizenship. Article 25 of Ukraine’s Constitution provides that a citizen cannot be deprived of either their citizenship or their right to change it.¹⁸⁸ However, a recently passed law specifies that the forced automatic acquisition of Russian citizenship in Crimea is not recognized by Ukraine and is not accepted as a ground for loss of nationality of Ukraine.¹⁸⁹ In early 2017, Ukraine’s President, Petro Poroshenko, tabled an urgent draft law (Draft law No. 6175) “which would automatically strip Ukrainians of their citizenship if they voluntarily took on citizenship of another country.”¹⁹⁰ It is argued however, that those in Crimea who acquired Russian citizenship should not be affected by this draft law, as they cannot be considered to have *voluntarily* taken Russian citizenship.¹⁹¹
118. Russian law does allow for dual citizenship in limited circumstances, however, as noted above (paras. 72-77), the Russian federal constitutional law 6-FKZ “On Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimean and the City of Federal Importance Sevastopol” of 21 March 2014, creates automatic Russian citizenship that is imposed as a binary choice between passive acceptance or acting to reject Russian citizenship and “retain” another citizenship that would otherwise be displaced.¹⁹²
119. In June 2014, the Russian Federation amended federal law 62-FZ of 31 May 2002 “On citizenship of the Russian Federation,” criminalizing failure to disclose a second citizenship (in force since 1 January 2016 for Crimean residents).¹⁹³
120. **Compatriot policy.** Russia’s position on dual citizenship has evolved alongside the decades-long implementation of Russia’s Compatriot policy,¹⁹⁴ by which Russia extends

¹⁸⁸ Halya Coynash, “Poroshenko law could strip huge numbers of Ukrainians of their citizenship,” *Kharkiv Human Rights Protection Group* (16 March 2017), <http://khp.org/en/index.php?id=1489593082>.

¹⁸⁹ Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 21 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-_3_en-fin.pdf (citing Article 5 of the Law of Ukraine “On guaranteeing the rights and freedoms of nationals and on the legal regime in the temporarily occupied territory of Ukraine”).

¹⁹⁰ Halya Coynash, “Poroshenko law could strip huge numbers of Ukrainians of their citizenship,” *Kharkiv Human Rights Protection Group* (16 March 2017), <http://khp.org/en/index.php?id=1489593082>.

¹⁹¹ *Ibid.*

¹⁹² Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 22 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-_3_en-fin.pdf.

¹⁹³ See Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 25 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf); see also The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 44 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

¹⁹⁴ Knott dates the first policy to 1999, but Grigas discusses how the idea of compatriot outreach is much older. See Eleanor Knott, *Quasi-citizenship as a Category of Practice: Analyzing engagement with Russia’s Compatriot policy in Crimea*, 21 *Citizenship Studies* 116, 118 (2016).

rights and benefits to those considered compatriots “across states with Russian populations both within and beyond the post-Soviet space.”¹⁹⁵ Academic researchers have described the Compatriot policy, particularly as practiced under Vladimir Putin, as a tool of “extraterritorial nation-building,”¹⁹⁶ that has been increasingly used to foment separatist movements within kin-states, notably Ukraine, Georgia and Moldova.¹⁹⁷

121. At first applicable to “ethnic Russians,” understood as those with linguistic and/or family ties to Russia, the Compatriot policy has gradually expanded to accommodate a wider set of Russian speakers and others with vaguely constructed links to Russia:

“Russia’s definition of who is a Compatriot is fuzzy and deliberately open to multiple interpretations to provide the policy with a degree of flexibility. Russia has a very loose concept of ‘compatriots’ due to an amorphous conglomerate that the policy refers to, including former Soviet citizens speaking Russian and retaining some emotional links to Russia.”¹⁹⁸

122. In Crimea, particularly under Vladimir Putin, “the Compatriot policy was reserved for a minority [] who were the most pro-kin-state (i.e. pro-Russian and pro-Russia) and were politicized, in a pro-Russian way, based on their associations with pro-Russian organizations.”¹⁹⁹

123. Simultaneously, Russia has shifted away from tolerance of dual nationality for Compatriots, choosing more formal means of asserting political control, which aligns with the unprecedented imposition of “full citizenship” in Crimea and effective criminalization of Ukrainian citizenship.²⁰⁰

124. Since annexation, neither the Russian Federation nor Ukraine recognizes documentation issued by the other in relation to Crimea, leaving residents “caught between two overlapping and conflicting legal and regulatory systems.”²⁰¹ As a result, many Crimean residents retain both Russian and Ukrainian passports, despite neither country recognizing dual citizenship of the other.²⁰²

Legal and human consequences of imposition of nationality, the opt out procedure and residence status

125. The following section presents several categories of human rights violations that trace their justifications and alleged legitimacy back to, or are otherwise applied in combination with, the imposition of Russian nationality in Crimea immediately following annexation. These are: (1) restrictions on free movement and forcible demographic shifts; (2) military conscription; and (3) application of Russian anti-extremism laws resulting in stigmatization, harassment and ill-treatment. Automatic naturalization is a prominent but not an exclusive enabling factor behind these abuses.

¹⁹⁵ *Ibid.* at p. 118.

¹⁹⁶ *Ibid.* at p. 119.

¹⁹⁷ Agnia Grigas, *Beyond Crimea: The New Russian Empire* 77 et seq. (2016).

¹⁹⁸ Eleanor Knott, *Quasi-citizenship as a Category of Practice: Analyzing engagement with Russia’s Compatriot policy in Crimea*, 21 *Citizenship Studies* 116, 120 (2016).

¹⁹⁹ *Ibid.* at p. 117.

²⁰⁰ Agnia Grigas, *Beyond Crimea: The New Russian Empire* 91-92 (2016).

²⁰¹ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 14 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

²⁰² *Ibid.*

Infringement of freedom of movement and forcible demographic shifts in Crimea

126. The Russian Federation's occupation of Crimea has severely hampered free movement, including the denial of access, and the denial to leave, the territory of Crimea, both which are permission-based.²⁰³ Documents needed to access or leave Crimea have also been seized.²⁰⁴ As noted above (paras. 105-108), residence registration controls access to rights and severely restricts free movement under Russian law.
127. The 2001 Population Census in Crimea identified over 125 nationalities in the population of approximately two million people, with the following breakdown: Russians (58.5%); Ukrainians (24.4%); Crimean Tatars (12.1 %); Belarusians (1.5%); Tatars (0.5%); Armenians (0.4%); Jews, Poles, Moldovans, Azeris (0.2% each), and other ethnic groups.²⁰⁵
128. In September 2014, the Russian Federation conducted a census on the peninsula, which was not recognized by the Government of Ukraine. According to its results, the population of Crimea and Sevastopol had decreased by 4.8 per cent since 2001.²⁰⁶ The number of persons of Russian nationality increased to 1,492,078 (65.31 per cent), the Ukrainians dropped to 344,515 (15.08 per cent) and the Crimean Tatars decreased to 232,340 (10.17 per cent).²⁰⁷
129. A survey involving 2,000 face-to-face interviews with residents of Crimea conducted in March to May 2017 by the Centre for East European and International Studies (ZOiS) showed a “comprehensive reorientation of the social and political linkages of the Crimean population” since 2014.²⁰⁸ Although the conditions in Crimea are not conducive for conducting field research, the results of the survey provide valuable insight into the restriction of free movement that coincides with occupation and the imposition of Russian law including automatic Russian citizenship in Crimea:
- “The survey clearly spells out the severe disruption of links to the rest of Ukraine, limited travel to [] Russia, the absence of personal international reference points, and a near-complete integration into the Russian media sphere.”
130. **Forced deportation of non-Russians.** The Russian Federation has deported Ukrainian citizens from Crimea for violating Russian immigration regulations, despite UN General Assembly resolution 68/262, which provides that such regulations should not apply to the territory of Crimea.²⁰⁹ Under international humanitarian law, transfer or deportation “of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of the motive.”²¹⁰

²⁰³ Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 22 (2017), available at https://www.upr-info.org/sites/default/files/document/russia_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

²⁰⁴ *Ibid.*

²⁰⁵ All-Ukrainian Population Census 2001, *National Structure of Population in the Autonomous Republic of Crimea*, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/>.

²⁰⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 48, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²⁰⁷ *Ibid.* at 49 (In 2001, there were as an additional 13,602 Tatars. In the Russian census, “the Tatars - a group culturally affiliated with the Volga Tatars and the Crimean Tatars - whose numbers rose from 13,602 to 44,996.”).

²⁰⁸ Gwendolyn Sasse, “What is the public mood like in Crimea?” *Carnegie Europe* (6 November 2017), <http://carnegieeurope.eu/strategieurope/74635>.

²⁰⁹ See OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 126, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²¹⁰ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 46, 12 August 1949, 75 U.N.T.S. 287 (1949)

131. Below are several examples, gathered from monitoring reports, of deportations linked to the rejection or inability to acquire Russian citizenship under occupation:

- In November 2016, two courts ordered the deportation to mainland Ukraine of Ukrainian citizens—one deportee owned property in Sevastopol, and the other had a wife and children in Crimea.²¹¹
- In 2012, the passport registration of a Crimean-born chairman of a legal aid NGO was cancelled on procedural grounds, which under Russian law, prevented him from obtaining Russian citizenship.²¹² In 2017, a court “found him to be a foreigner” and ordered his deportation for his “illegal stay” in Crimea. Following the ruling, he was transferred into Russian territory where he was detained for 27 days, and thereafter deported to mainland Ukraine.²¹³ Despite the fact that his wife and child live in Crimea, he is prohibited from entering until December 2021.²¹⁴
- In route to Turkey for medical treatment, Sinaver Kadyrov, a Crimean Tatar activist and founder of the Committee for the Protection of Rights of Crimean Tatars, was detained at a checkpoint and thereafter ordered deported from Crimea for overstaying Russia’s 90-day limit for foreigners. Kadyrov took no action regarding Russian citizenship, and retained his Ukrainian passport.²¹⁵
- Russian immigration rules are at times arbitrarily applied, at times favoring those who support Crimea’s accession.²¹⁶ For example, a Ukrainian citizen who claimed to be “an active participant of the Russian Spring in Sevastopol” claimed that his family was in Crimea and therefore deportation would “interfere with his private and family life.”²¹⁷ Unlike those above, the Supreme Court of Crimea accepted his argument, preventing deportation.²¹⁸

132. **Prisoner Transfers.** The de facto authorities have also reportedly transferred prisoners, including pre-trial detainees, from Crimea to prisons located in the Russian Federation.²¹⁹

- Since annexation, the Russian Federation integrated all Crimean penitentiary institutions into its own system, resulting in the transfer and deportation of persons into the territory of the Russian Federation, in strict prohibition of international humanitarian law.²²⁰ Article 49 of Geneva Convention IV, cited above, applies. Moreover, Article 76 notes that “[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences

²¹¹ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 65, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²¹² *Ibid.* at para. 126.

²¹³ *Ibid.*

²¹⁴ *Ibid.*

²¹⁵ *Written statement submitted by the Society for Threatened Peoples*, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

²¹⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 67, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²¹⁷ *Ibid.* (citing the Judgment of the Supreme court of the Republic of Crimea, No. 12-401/2016, 17 November 2016, available at <http://sudact.ru/regular/doc/Q9mwesiQfjb/>).

²¹⁸ *Ibid.*

²¹⁹ Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 101 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

²²⁰ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, paras. 14, 118 UN Doc. A/HRC/36/CRP.3 (25 September 2017); see also Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

therein.” Article 8(2) (a) (vii) of the Rome Statute of the International Criminal Court lists “[u]nlawful deportation or transfer” as a war crime.²²¹

- A significant number of Crimea’s detained population (prisoners and pre-trial detainees) have been transferred to the Russian Federation.²²² According to human rights organizations, “more than 4,700 civilian prisoners, Ukrainian citizens kept in places of detention, were transferred by the Russian authorities from Crimea” to penal colonies across the Russian Federation.²²³
 - Crimea does not have prisons designated for women. Between 18 March 2014 and 15 June 2016, nearly 300 female detainees convicted by Crimean courts were sent to serve their sentences in the Russian Federation.²²⁴
133. OHCHR reported that Ukrainian filmmaker, Oleh Sientsov (Oleg Sentsov), was relocated to Moscow’s Lefortovo prison on 23 May 2014, later moved to remand detention in Rostov-on-Don, Russian Federation, and ultimately sent to a high security penal colony in Siberia after his conviction on 25 August 2015.²²⁵ The UN Human Rights Committee voiced concern over the “allegations that Oleg Sentsov has been deprived against his will of his Ukrainian nationality, tried in Moscow as a citizen of the Russian Federation and subject to legal proceedings that fail to meet the requirements of articles 9 and 14 of the Covenant.”²²⁶ (Sentsov was charged under Russian anti-extremism laws. For more on extremism definition and laws, see paras. 147-161).
134. **Inflow of Russian Citizens.** The Russian Federation has also engaged in increasing migration of its own civilian population into Crimea, thereby shifting the demographic composition of the population.²²⁷ Such tactics also violate Article 49, which prohibits the transfer of an occupying power’s “civilian population into the territory it occupies.”
135. The Russian Federation has facilitated the migration and settlement of a sizable number of Russian citizens into Crimea—the majority of whom are elderly, public servants and servicepersons with their families—which has markedly changed the demographic structure of Crimea since the 2014 referendum.²²⁸
136. Many reporting agencies and NGOs have identified and condemned these practices as an effort to ethnically manipulate the population of Crimea to physically eliminate, chiefly, ethnic Ukrainians and Crimean Tatars.
- “OHCHR recommended that the Russian Federation refrain from forcibly deporting and/or transferring Ukrainian citizens who did not have Russian Federation passports

²²¹ Rome Statute of the International Criminal Court, Article 8(2) (a) (vii), 17 July 1998, 2187 U.N.T.S. 90 (1998).

²²² OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 116-17, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (according to OHCHR, “one Ukrainian NGO claimed on 31 May 2016 that 2,200 prisoners had been transferred from Crimea to the Russian Federation.”).

²²³ Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 26 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

²²⁴ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 116, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²²⁵ *Ibid.* at para 117.

²²⁶ Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23(d), U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

²²⁷ See e.g., Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

²²⁸ Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 79 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf; OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 52, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

from Crimea, enable unimpeded freedom of movement to and from Crimea, and end deportations of Crimean residents pursuant to Russian Federation immigration rules.”²²⁹

- UN General Assembly resolution 72/190 urged the Russian Federation “[t]o immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice, as well as those transferred or deported across internationally recognized borders from Crimea to the Russian Federation.”²³⁰
- Parliamentary Assembly of the Council of Europe resolution 2198 “strongly condemns the Russian policy of shifting the demographic composition of the population of illegally annexed Crimea by forcing the pro-Ukrainian population and, in particular, the Crimean Tatars to leave their homeland, while at the same time increasing migration of the Russian population to the peninsula, and calls on the Russian Federation to put an end to this repression. The Parliamentary Assembly stresses that this Russian policy should be viewed as a violation of Article 49 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, according to which individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motivation.”²³¹ The resolution goes on to urge the Russian Federation to “cease the policy of shifting the demographic composition of the population of annexed Crimea by moving its own population from Russian territory to the peninsula.”²³²

Military conscription

137. Forced conscription of newly minted Russian citizens in occupied Crimea into the Russian military is a direct consequence of forced naturalization and also leads to instances of forcible transfers and flight from the territory of Crimea, discussed in the preceding section.
138. The Russian Federation’s conscription of Crimean residents into its armed forces is a violation of both Article 45 of the Hague Regulation (1907) and Article 51 of the Fourth Geneva Convention IV.²³³ Article 8(2)(a)(v) of the Rome Statute of the International Criminal Court lists “compelling a...protected person to serve in the forces of a hostile Power” as a war crime.²³⁴

²²⁹ OHCHR, *Compilation on the Russian Federation for Universal Periodic Review*, para. 83, UN Doc. A/HRC/WG.6/30/RUS/2 (19 March 2018).

²³⁰ UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190, para. 3(e) (19 December 2017); UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 71/205, para. 2(c) (1 February 2016).

²³¹ Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

²³² *Ibid.* at para. 10.8.

²³³ Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 45, 18 October 1907, 36 Stat. 2277 (1907) (“It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.”); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 51, 12 August 1949, 75 U.N.T.S. 287 (1949) (“The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.”).

²³⁴ Rome Statute of the International Criminal Court, Article 8(2) (a)(vii), 17 July 1998, 2187 U.N.T.S. 90 (1998).

139. Since occupation, the Russian Federation has conscripted Crimean residents into its own armed forces.²³⁵ In 2017, at least 4,800 Crimean residents were conscripted in two campaigns that year.²³⁶
140. Prosecutions under Russian criminal law for draft evasion have taken place in Crimea. As of February 2018, OHCHR reported that at least two Crimean residents had been convicted and sentenced.²³⁷ Conviction of military draft evasion under Russian criminal law, carries a maximum sentence of two-years' incarceration.²³⁸
141. Men have fled Crimea to escape conscription or criminal prosecution.²³⁹ Several Crimean Tatars have reportedly left Crimea in order to avoid serving in the Russian armed forces, stating that they cannot return as they could be prosecuted draft evasion.²⁴⁰
142. According to Article 7 of the *Treaty on Accession*, those conscripted in Crimea will serve on the territory of Crimea until 31 December 2016.²⁴¹
143. Prior to 2017, those conscripted could only serve on the territory of the Crimean Peninsula. Since then, those conscripted may be transferred to serve on the territory the Russian Federation.²⁴²
144. On 10 April 2017, Anatoly Maloletko, the de facto military commissioner of Crimea, stated that approximately 20 Crimean residents would serve in the Russian Federation.²⁴³ Maloletko and Vadim Meshalkin, another military official of Crimea “confirmed that Crimean citizens that were called for the military service have Ukrainian citizenship.”²⁴⁴
145. On 25 May 2017, 30 residents of Sevastopol were conscripted and transferred to the Russian Federation.²⁴⁵
146. Since 25 April 2014, the situation in Ukraine has been under preliminary examination by the Office of the Prosecutor (OTP) of the International Criminal Court.²⁴⁶ According to the OTP, it is monitoring the alleged crime of “compelled military service.”²⁴⁷ The OTP

²³⁵ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 120, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²³⁶ *Ibid.* Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 99 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

²³⁷ OHCHR, *Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018*, para. 129 (19 March 2018), available at http://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_EN.pdf (according to OHCHR, each received a criminal fine of 25,000 RUB each (approximately 430 USD)).

²³⁸ *Ibid.*

²³⁹ Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 99 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

²⁴⁰ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 121, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²⁴¹ Treaty on the Accession of the Republic of Crimea to Russia (unofficial translation), https://en.wikisource.org/wiki/Treaty_on_the_Accession_of_the_Republic_of_Crimea_to_Russia.

²⁴² See OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 120, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (according to Article 7 of the Treaty of Accession between the Republic of Crimea and the Russian Federation (18 March 2014)).

²⁴³ Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 55 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

²⁴⁴ *Ibid.*

²⁴⁵ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 120, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²⁴⁶ Office of the Prosecutor, *Report on Preliminary Examination Activities 2016*, International Criminal Court, para. 146 (14 November 2016), available at https://www.icc-cpi.int/iccdocs/otp/16114-otp-rep-PE_ENG.pdf.

²⁴⁷ *Ibid.* at para. 176.

noted that, “As a consequence of the imposed change of citizenship, men of conscription age residing in Crimea became subject to mandatory Russian military service requirements. There were reports of a number of young men leaving for mainland Ukraine to escape forced conscription notices from *de facto* authorities.”²⁴⁸

Application of Russia’s anti-extremism laws

147. This section provides a brief overview of the wide range of measures that constitutes the Russian anti-extremism legal framework, as well as illustrative examples that demonstrate the discriminatory manner in which that framework has been applied in occupied Crimea. The Russian Federation uses this framework to stigmatize those *identifying or identified* as pro-Ukrainian, including ethnic Ukrainians and Crimean Tatars, and their *perceived or actual* political and cultural institutions, labeling them instead as public enemies. Implementation of anti-extremism laws in Crimea has been facilitated – and offered a façade of legitimacy – through the imposition of Russian citizenship throughout the region.
148. **Legal framework.** The Russian Federation has imposed its framework of anti-extremist legislation in occupied Crimea, which includes the 2002 Federal Law No. 114-FZ “On Countering Extremist Activity” (“**Anti-extremism Law**”), provisions of the **Code of Administrative Violations of the Russian Federation**, the **Russian Criminal Code**, as well as relevant rules in other laws such as those regulating expression, religious activities, public associations and assemblies and the media.

- “Anti-extremism Law”

Article 1.1. of the Anti-extremism Law lists a range of vaguely-defined actions deemed “extremist.”²⁴⁹ In its opinion on the law, the Venice Commission stressed that several of the actions listed in Article 1.1. were “too broad,” “lack clarity” and risk violating rights and freedoms enshrined in international treaties, the ECHR and customary law binding the Russian Federation.²⁵⁰ In the Commission’s view, such “broad and imprecise wording... [gave] too wide discretion in its interpretation and application, thus leading to arbitrariness.”²⁵¹ Furthermore, several of the actions listed in the law do not “require an element of violence” in order for the activity to be deemed extremist—contrary to state practice and the Shanghai Convention,²⁵² to which Russia is a party.²⁵³ Many human rights monitoring institutions have reiterated these concerns,²⁵⁴ including the Russian Federations’ Ombudsperson who stated that in

²⁴⁸ *Ibid.*

²⁴⁹ E.g., The “stirring up of social, racial, ethnic or religious discord;” “propaganda of...superiority...of persons on the basis of their...ethnic, religious or linguistic affiliation;” and “violation of...lawful interests in connection with a person’s social, racial, ethnic, religious or linguistic affiliation or attitude to religion.”

See Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 29 (20 June 2012); see generally SOVA Center for Information and Analysis, *The Structure of Russian Anti-Extremist Legislation* (November 2010), available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201011/20101129_3_10sova_en.pdf.

²⁵⁰ Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, paras. 11, 31-45 (20 June 2012).

²⁵¹ *Ibid.* at para. 74.

²⁵² “Extremism’ is an act aimed at seizing or keeping power through the *use of violence* or changing *violently* the constitutional regime of a State, as well as a *violent* encroachment upon public security...” (emphasis added) Shanghai Convention on Combating Terrorism, Separatism and Extremism, Article 1.1.3., 15 June 2001.

²⁵³ Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 31 (20 June 2012).

²⁵⁴ E.g., Human Rights Committee: “The Committee remains concerned that the vague and open-ended definition of ‘extremist activity’ in the Federal Law on Combating Extremist Activity does not require any element of violence or hatred to be present and that no clear and precise criteria on how materials may be classified as extremist are provided in the law.” Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 20, U.N.

relation to Crimea, officials should adopt “a well-balanced approach that rules out any arbitrary, excessively broad interpretation of the notion of ‘extremism.’”²⁵⁵ Reportedly, the Foreign Ministry of Russia admitted that the definition of extremism is “too broad.”²⁵⁶

Article 6 of the Act criminalizes “preparatory acts with characteristics of extremism” empowering the Prosecutor-General to send written warnings to suspected transgressors to correct or cease such actions it deemed extremist. Failure to obey the warning²⁵⁷ can result in the imposition of such punitive measures as the liquidation of an association or closure of a media outlet, among others.²⁵⁸ The Venice Commission criticized this provision²⁵⁹ noting that “written warnings and notices - and the related punitive measures...raise problems in the light of the freedom of association and the freedom of expression as protected by the ECHR...”²⁶⁰

Article 13 of the Act obliges the Ministry of Justice to publish online a “*Federal List of Extremist Materials*.”²⁶¹ Enforcement agencies can “take administrative measures to restrict the distribution of extremist materials” on this list under Article 20.29 of the Code of Administrative Violations, which prohibits these items production and distribution.²⁶² The Venice Commission expressed concern regarding “the absence of any criteria and any indication in the Law on how documents may be classified as

Doc. CCPR/C/RUS/CO/7 (28 April 2015); The United Nations High Commissioner for Human Rights was concerned that the Federal Law on Combatting Extremist Activity might have been arbitrarily used to curb freedom of expression, including political dissent, as well as freedom of religion, due to a vague and open-ended definition of extremist activity. See OHCHR, “Item 2: Annual Report and Oral Update to the 34th session of the Human Rights Council” (8 March 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21316&LangID=E>.

²⁵⁵ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 106, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (citing the Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, Moscow p. 99 (2015)).

²⁵⁶ Peter Roudik, “Legal Provisions on Fighting Extremism: Russia,” *Library of Congress* (30 November 2015), <https://www.loc.gov/law/help/fighting-extremism/russia.php>.

²⁵⁷ Under Article 17.7 of the Code of Administrative Offenses of the Russian Federation.

²⁵⁸ “[W]illful failure to satisfy the demands of the prosecutor” which results in the imposition of administrative fines for “citizens” and legal entities. Organizations are issued warnings by the Federal Registration Service and media outlets are issued warnings by the Federal Supervision Agency for Information Technologies and Communications (*Roskomnadzor*). The local prosecutor’s offices can issue warnings to both. See Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 53 (20 June 2012); see also Peter Roudik, “Legal Provisions on Fighting Extremism: Russia,” *Library of Congress* (30 November 2015), <https://www.loc.gov/law/help/fighting-extremism/russia.php>.

²⁵⁹ Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 55 (20 June 2012) (stating that “Article 6 of the Extremism Law lacks clarity and it does appear that an administrative offence is committed where a warning is not obeyed even though no extremist activity has been engaged in. It thus recommends to reformulate the Law to make it clear that prosecution will only be brought...if that person has engaged in extremist activity and has committed a criminal act and not for the mere failure to comply with the warning.”)

²⁶⁰ Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 76 (20 June 2012).

²⁶¹ Article 13: “The dissemination of extremist materials and also the production or storage of such materials with the aim of dissemination shall be prohibited on the territory of the Russian Federation...A federal list of extremist materials shall be posted on the “Internet” worldwide computer network on the site of the federal state registration authority.” Federal Law No. 114-FZ of 25 July 2002 “On combating extremist activity” (as amended on 27 July 2006, 10 May and 24 July 2007 and 29 April 2008) (unofficial translation), *Council of Europe*, available at http://www.legislationline.org/download/action/download/id/3707/file/RF_law_combating_extremist_activity_2002_am2008_en.pdf.

²⁶² Peter Roudik, “Legal Provisions on Fighting Extremism: Russia,” *Library of Congress* (30 November 2015), <https://www.loc.gov/law/help/fighting-extremism/russia.php>.

extremist and believes that this has the potential to open the way to arbitrariness and abuse.”²⁶³

- Code of Administration Offenses

Article 20.29 of the Code of Administrative Offenses empowers authorities to prohibit “the production and distribution of extremist material.”²⁶⁴ The list currently includes over 4400 items, including books, audio, video, images and online resources.²⁶⁵ The list is difficult to navigate and monitor, leaving individuals and organizations unaware that they may be distributing or storing listed items.²⁶⁶ Moreover, there is no formal removal procedure when items are no longer classified as extremist.²⁶⁷

- Russian Federation Criminal Code

Article 280.1 of the Russian Criminal Code criminalizes public “calls for separatism” or the “implementation of actions aimed at violation of the territorial integrity of the Russian Federation.”²⁶⁸ The law was amended in July 2014 adding harsher penalties along with a new ban on expressing certain opinions, such as “publicly acknowledging that ‘Crimea is Ukraine’ or calling the de facto authorities in Crimea ‘occupying authorities’ may lead to four to five years in jail.”²⁶⁹ In a recent review of Russia’s state report, the Human Rights Committee recommended that “The State party...ensure that article 280.1...is not used to silence individuals critical of the State party’s foreign policy, including with regard to Crimea.”²⁷⁰

Article 282 “defines extremist crimes as those motivated by ideological, political, racial, national, or religious enmity, as well as hatred or enmity towards a social group” and covers incitement to hatred or hostility, and humiliation of human dignity.²⁷¹ Article 282.2-bis criminalizes leading or participating in an extremist organization. Punishments for these crimes range from fines to corrective labor to imprisonment.²⁷²

- Other anti-extremism and related laws

²⁶³ Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 49 (20 June 2012). The Commission further noted that it “is aware from official sources that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure.”

²⁶⁴ Peter Roudik, “Legal Provisions on Fighting Extremism: Russia,” *Library of Congress* (30 November 2015), <https://www.loc.gov/law/help/fighting-extremism/russia.php>.

²⁶⁵ Федеральный Список Экстремистских Материалов (“Federal List of Extremist Materials”), *Ministry of Justice of the Russian Federation*, <http://minjust.ru/ru/extremist-materials> (last accessed 31 May 2018).

²⁶⁶ U.S. Commission on International Religious Freedom (USCIRF), *Inventing Extremists: The Impact of Russian Anti-Extremism Policies on Freedom of Religion or Belief*, p. 4 (January 2018), available at <https://www.uscirf.gov/sites/default/files/Inventing%20Extremists.pdf>.

²⁶⁷ Bureau of Democracy, Human Rights and Labor, *Russia 2013 International Religious Freedom Report*, U.S. State Department (28 July 2014), available at <https://www.state.gov/documents/organization/222473.pdf>.

²⁶⁸ Уголовный кодекс Российской Федерации (“Criminal Code of the Russian Federation”), World Intellectual Property Organization (WIPO), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=467352.

²⁶⁹ Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 28 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).

²⁷⁰ Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 21, U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

²⁷¹ Peter Roudik, “Legal Provisions on Fighting Extremism: Russia,” *Library of Congress* (30 November 2015), <https://www.loc.gov/law/help/fighting-extremism/russia.php>.

²⁷² *Ibid.*

Criminal and administrative provisions used to target ‘extremists’, including by searches and raids at religious sites such as mosques. For example Federal Law No. 375-FZ (2016) on tightening punishments for terrorist activities and expanding the powers of investigative bodies,²⁷³ and Federal Law No. 433-FZ (2013) regarding the prohibition of “public calls for actions aimed at violating the territorial integrity of the Russian Federation.”

Internet filtering legislation for “extremist content.” Federal Law No. 369-FZ (2013) on Internet Watching; No. 139-FZ on blacklisting of websites; and No. 374-FZ on Additional Anti-Terror Measures

149. **Implementation.** The application of anti-extremism laws is also frequently the legal predicate for discriminatory treatment, population transfers (discussed in the preceding section), and the suppression of fundamental freedoms of these groups in Crimea.
150. *Federal List of Extremist Materials.* Muslim groups have been particularly targeted by the *Federal List*, as several Islamic texts, including quotations from the Koran, have been deemed to be “extremist.”²⁷⁴ According to the Director of the Russian NGO SOVA Center, approximately one-fourth of the items on the list relate to Islamic literature, are widely used by the community and do not contain extremist content.²⁷⁵
151. *Banning of Mejlis as an extremist organization.* Numerous Mejlis serving in Crimea’s local government and the Qurultay, the Crimean Tatars’ national congress, have been banned from the region.²⁷⁶ The Vice Prime Minister of Crimea has instructed local governments to report any public activity by Mejlis members to the prosecutor.²⁷⁷ The ban implies that all members (approximately 2,500) are criminally liable for belonging to “an organization recognized as extremist,” which carries a prison sentence of up to eight years.²⁷⁸ Both the current and former chairpersons of the Mejlis, Refat Chubarov and Mustafa Dzhemilev (Jemilev) were banned from Crimea, and deputy head, Ilmi Umerov, was transferred to a psychiatric ward, before he was sentenced to two years in a colony settlement.²⁷⁹
152. According to the Unrepresented Nations and Peoples Organization (UNPO), the ban renders all Crimean Tatars “more vulnerable” as they now lack representation, and has

²⁷³ It significantly expands the scope of Russian criminal procedure law, tightens penalties for crimes related to terrorism and extremism, reduces the age of criminal responsibility for these crimes, expands the rights of investigative bodies by limiting the role of courts and the rights of accused, and introduces new crimes into the Criminal Code.

²⁷⁴ Resulting in individuals found guilty of committing extremism-related criminal and administrative offenses due to publication and distribution. Peter Roudik, “Legal Provisions on Fighting Extremism: Russia,” *Library of Congress* (30 November 2015), <https://www.loc.gov/law/help/fighting-extremism/russia.php> (citing Geraldine Fagan, “Russia: Muslims Rush to Challenge Koran “Extremism” Ruling,” *Forum 18* (27 September 2013), http://www.forum18.org/archive.php?article_id=1879).

²⁷⁵ Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 28 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf); Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russia114web.pdf.

²⁷⁶ SOVA Center (COBA), CrimeaSOS, International Federation for Human Rights (FIDH), ADC Memorial, *Racism, Discrimination and flight against “extremism” in contemporary Russia. Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination*, p. 12 (2017), available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_NGO_RUS_28206_E.pdf.

²⁷⁷ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 188, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²⁷⁸ *Ibid.* at para. 190.

²⁷⁹ ARTICLE 19, Mass Media Defence Centre, OVD-Info, PEN International, Roskomsvoboda, and the SOVA Center, *Joint submission to the Universal Periodic Review of the Russian Federation*, p. 13 (9 April 2018), available at <https://www.article19.org/wp-content/uploads/2017/10/Russia-3rd-UPR-Updated-Submission-090418-FINAL.pdf>. (In September 2016, Ilmi Umerov was convicted under Article 280.1 of the Criminal Code.)

enabled “repressive measures, such as massive identity checks [of] ‘non-Slavic’-looking people” allowing the stigmatization of the group as “extremists,” “suggesting that they might be a threat” to Crimea.²⁸⁰

153. Despite the Russian Federation’s claim that its “decision to ban the Mejlis was taken on security grounds and... bore no relation to the ethnicity of its members,”²⁸¹ the International Court of Justice adopted a provisional order in April 2017 directing the Russian Federation to “refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis.”²⁸²
154. The UN General Assembly urged the Russian Federation to “revoke immediately the decision declaring the Mejlis... an extremist organization and banning its activities” and to “repeal the decision banning leaders of the Mejlis from entering Crimea.”²⁸³ The CERD Committee and the PACE expressed similar concern regarding the ban and the strict limitations imposed on the Mejlis and other Crimean Tatar institutions.²⁸⁴
155. *Limitations on free press, expression and association.* Warnings pursuant to the Anti-extremism Law have preceded the shutdown of Crimean Tatar media outlets, claiming that the views, articles or programs contained content considered extremist—including the use of the words “annexation,” “temporary occupation” or discussing ethnic repression.²⁸⁵
156. Ethnic Ukrainians and Crimean Tatars experience severe limitations on their right to association and expression on account of the anti-extremism framework. For instance, five Crimean Tatars were committed to a psychiatric facility for weeks, based on suspicion that they were members of a banned organization in the Russian Federation (though it is not banned in Ukraine).²⁸⁶ Several individuals have been convicted and sentenced to prison terms for statements made, and articles posted or reposted, on their

²⁸⁰ The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 8 (October 2017), available at <http://unpo.org/downloads/2380.pdf>.

²⁸¹ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of racial discrimination (Ukraine v. Russian Federation) (Request for the Indication of Provisional Measures Order), paras. 36, 93 (19 April 2017), available at <http://www.icj-cij.org/files/case-related/166/19394.pdf>.

²⁸² *Ibid.* at para. 106(1) (a).

²⁸³ UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190, para. 3(j) (19 December 2017); UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 71/205, para. 2(g) (1 February 2016).

²⁸⁴ Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 19, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017); Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 10.4, 23 January 2018.

²⁸⁵ For instance, the editor of *Avdet*, the Mejlis’ newspaper, received several warnings that materials contained extremist content, “such as use of the terms ‘annexation’, and ‘temporary occupation’ of Crimea.” Likewise, *ATR*, the Crimean Tatars’ television channel was warned “against disseminating false rumours about repression on ethnic and religious grounds and promoting extremism.” Both media outlets were denied re-registration by the Russian Federation, shutting down their operations in Crimea. OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 156, UN Doc. A/HRC/36/CRP.3 (25 September 2017); see also Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 66 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

²⁸⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 92, UN Doc. A/HRC/36/CRP.3 (25 September 2017);

social media accounts, referring to such things as the “oppression of the Tatars” or stating that Crimea being “occupied” or “annexed.”²⁸⁷

157. *Harassment, ill-treatment, surveillance and intimidation.* Evidence from human rights monitoring since 2014 suggests that the authorities regularly abuse the criminal system itself to harass and mistreat Crimean Tatars and those identified as pro-Ukrainian.
158. Law enforcement raids of mosques, madrassas and private homes of Muslims, usually Crimean Tatars, are frequent, with officials stating they are conducting searches for prohibited extremist literature or “proof of connections with extremist and terrorist groups.”²⁸⁸ Searches of mosques often interrupt prayers, many worshippers have been detained, and reportedly video cameras have been installed to track those who attend services.²⁸⁹ Subjects of raids and searches state that such materials have been planted, false testimonies have been signed that declare possession of such items, and religious literature has been confiscated.²⁹⁰
159. In 2016, two pro-Ukrainian supporters were forced to confess to terrorism-related charges “through torture with elements of sexual violence,” and “were kept *incommunicado*, tied, blindfolded, beaten up, subjected to forced nudity, electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and wooden stick.”²⁹¹
160. Nine Ukrainian citizens were detained in Crimea, subjected to torture which resulted in a forced admission that they were so-called “members of the terror sabotage group of Defense of Ukraine,” without any evidence. As of 2017, three had received prison sentences.²⁹²
161. OHCHR has noted that for those tried for extremism and separatism-related crimes, “prosecutions often seemed to be tainted by bias and a political agenda.”²⁹³

III. HUMAN RIGHTS VIOLATIONS REQUIRING REDRESS

²⁸⁷ OHCHR, *Report on the human rights situation in Ukraine 16 May to 15 August 2017*, para. 139 (12 September 2017), available at http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf. In 2017, A Crimean Tatar was sentenced to prison for a year and three months for statements he had posted on Facebook in 2016 “mentioning the ‘oppression’ of the Crimean Tatars” and “referring to Crimea being ‘occupied’ and ‘annexed.’” For instance, Emil Kurbedinov, one of the lawyers of the two deputy chairpersons of the Mejlis who were arrested for organizing protests, found guilty in 2017 of “public distribution of extremist materials,” for reposting an article on social media about a 2013 public meeting of supporters of a banned and sentenced to 10 days in prison. Human Rights Watch, “Crimea: Defense Lawyers Harassed” (30 January 2017), <https://www.hrw.org/news/2017/01/30/crimea-defense-lawyers-harassed>.

²⁸⁸ Council of Europe, Parliamentary Assembly, *Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea*, para. 44 (11 April 2016), available at <https://rm.coe.int/16806421uf>; OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 140, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²⁸⁹ SOVA Center (COBA), CrimeaSOS, International Federation for Human Rights (FIDH), ADC Memorial, *Racism, Discrimination and fight against “extremism” in contemporary Russia. Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination*, p. 16-18 (2017), available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_NGO_RUS_28206_E.pdf.

²⁹⁰ See OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 107, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

²⁹¹ *Ibid.* at para. 92.

²⁹² Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 9 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

²⁹³ OHCHR, *Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018*, para. 202 (19 March 2018), available at http://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_EN.pdf.

Introduction

162. This report argues that the imposition of Russian citizenship in Crimea violates international human rights law, and in particular the right to a nationality and the prohibition on racial and ethnic discrimination. The report provides a legal analysis of automatic naturalization in Crimea in three dimensions:

- *A. The ethnically discriminatory character of automatic naturalization in Crimea.* Russia’s campaign in Crimea seeks to reinstate an ethnic-based allegiance to Russia, entailing the elimination of indigenous Crimean Tatars, the idea of a separate Ukrainian “people” and the idea of a civic Ukrainian national identity.
- *B. Automatic naturalization in Crimea as a violation of the right to a nationality.* Automatic naturalization is discriminatory, involuntary, fails to respect due process, lacks a legitimate aim and is disproportionate to the harm it causes.
- *C. The collateral consequences of automatic naturalization in furtherance of ethnic cleansing in Crimea.* The operation of anti-extremism laws, population transfers and cultural erasure works in tandem with forced naturalization.

163. The practice of state-sponsored ethnic discrimination and the instrumentalization of individuals in pursuit of territorial acquisition may arguably be described as so taboo in contemporary international relations that human rights law does not provide a ready remedy. In the drafting process of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), for example, delegates expressly questioned whether institutionalized racism would outlive colonialism, at Patrick Thornberry points out in his commentary on the CERD:

“Statements in the *travaux* suggesting that discriminatory action by States was ‘unthinkable’ are best understood as relating to the view that State-sponsored discrimination was a colonial aberration and not the global phenomenon discerned in Committee practice.”²⁹⁴

164. Nevertheless, human rights law is capable of assigning and addressing state responsibility for actions so transgressive that they defy such assumptions about lines that would somehow no longer be crossed in our time. The following sections will demonstrate how human rights law can address forced naturalization.

International humanitarian law

165. As we have emphasized, automatic naturalization in Crimea is a gross violation of international humanitarian law. Forcing citizenship on Crimean residents effectively compels allegiance to the occupying power—the Russian Federation—which is forbidden under Article 45 of the Hague Regulations (1907).²⁹⁵

166. As noted by OHCHR, “the imposition of Russian Federation citizenship to residents of an occupied territory does not alter their status as protected persons”²⁹⁶—which includes civilians, including those detained.

167. International humanitarian law applies alongside human rights law, including the right to nationality, which must be respected by the Russian Federation as an occupying power.

²⁹⁴ Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* 180 (2016).

²⁹⁵ “It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.” Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 45, 18 October 1907, 36 Stat. 2277 (1907).

²⁹⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 118, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

It is the human rights dimensions of the Russian Federation's obligations that the following sections scrutinize in detail, but these obligations must be read in concert with international humanitarian law. Nothing in the following analysis is intended to impugn the enduring territorial integrity of Ukraine. Crimea is considered for these purposes a temporarily occupied territory where the Russian Federation, at the time of writing, the occupying power.²⁹⁷ As such, the Russian Federation must respect its international legal obligations over the territory.²⁹⁸

A. The ethnically discriminatory character of automatic naturalization in Crimea

168. The following section highlights several important concepts within the general framework of prohibition of race discrimination for application to the Crimean occupation and automatic naturalization in particular.

Different meanings of the term “national” under international law

169. It is widely recognized that the international legal norm prohibiting discrimination based on race covers other dimensions of discrimination based on innate characteristics such as ethnic or national identity.

170. The ECtHR has, for example, described the legal taxonomy of race discrimination for the purposes of the European Convention on Human Rights:

“Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies on the basis of morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked in particular by common nationality, religious faith, shared language, or cultural and traditional origins and backgrounds. Discrimination on account of a person’s ethnic origin is a form of racial discrimination.”²⁹⁹

171. This report addresses both discrimination on account of *national identity* and violations of the *right to nationality* in Crimea. Thus, the term “national” is not used interchangeably throughout the legal analysis.

172. In the case of Crimea, *because of* the imposition of Russian nationality, Ukrainian nationality and Ukrainian national identity have become more closely connected. The impact of legal categorizations in Crimea therefore mirrors other examples, such as Myanmar’s 1982 citizenship law, where “prescriptive” racial classifications have ossified into real-life ethnic divisions,³⁰⁰ or “Arabization” in Mauritania, where ethnic classifications overwrote more fluid population dynamics that likely existed in pre-colonial times.³⁰¹ We maintain that the Russian Federation, through annexation and

²⁹⁷ Charter of the United Nations and Statute of the International Court of Justice, Article 2(4), 26 June 1945, 59 Stat. 1031 (1945) (setting out the fundamental principle of respect for territorial integrity in international relations); Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. Doc. A/8028 (1970); UN General Assembly, Territorial integrity of Ukraine, G.A. Res. 68/262 (1 April 2014); UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 71/205 (1 February 2016). The Russian Federation is party to the 1907 Hague Regulations, the Fourth Geneva Convention of 1949 and the 1977 Additional Protocol I to the 1949 Geneva Conventions. In 2016, the Office of the Prosecutor of the International Criminal Court determined that Crimea was under the occupation of the Russian Federation. See Office of the Prosecutor, *Report on Preliminary Examination Activities 2016*, International Criminal Court, para. 155-58 (14 November 2016), available at https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

²⁹⁸ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 38, U.N. Doc. A/HRC/36/CRP.3 (25 September 2017);

²⁹⁹ European Court of Human Rights, *Sejdic and Finci v. Bosnia and Herzegovina*, Judgment of 22 December 2009, at para. 43.

³⁰⁰ See above, “Myanmar’s 1982 Citizenship Law,” paras. 17-19.

³⁰¹ See above, “Black Mauritians, denationalization and Arabization,” para. 20.

automatic naturalization, causes the suppression of both Ukrainian nationality (in a legal sense) and the rights of people not to be discriminated against based on their actual, attributed, or perceived Ukrainian national identity.

The right to exist

173. Non-discrimination law complements and is complemented by another body of norms safeguarding minority rights. For the purposes of the present report, we emphasize a key principle within the minority rights framework, which is the minority's right to exist.

“Physical existence is the core claim demanded by ethnic groups; turning the right to life and the right to existence into the most basic human rights. The most relevant international norms to the protections of minorities' existence is the right to be protected against genocide.”³⁰²

174. The CERD incorporates minority rights protection in part through inclusion of “national origin” as a ground of discrimination, which has been interpreted to refer to “politically organized” nations within a state, which continue to exist culturally and socially.³⁰³ During the drafting process, for example, Poland supported inclusion of “national origin” “refer[ing] to a situation in which a politically organized nation had been included within a different State but ‘continued to exist as a nation in the social and cultural senses even though it had no government of its own’; members of such a nation within a State might thus be discriminated against, ‘not as members of a particular race or as individuals, but as members of a nation which existed in its former political form.’”

175. Other international norms that guarantee minorities' right to exist include Article 20 ICCPR and Article 1 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (“Minority Declaration”), which requires that states “protect the existence of national or ethnic, cultural, religious, and linguistic minorities.”

176. “Ethnic cleansing,” is considered to “entail[] deportations and forcible mass removal or expulsion of persons from their homes in flagrant violation of their human rights, and which is aimed at the dislocation or destruction of national, ethnic, racial or religious groups.” Ethnic cleansing, and its component acts, represent the antithesis of a minority group's right to exist.

177. In 2005, the CERD Committee elaborated a set of “indicators of patterns of systematic and massive racial discrimination,” in line with its adoption of a declaration on the prevention of genocide. “Key indicators” of systematic discrimination capable of leading to violent conflict and genocide include the “compulsory identification against the will of members of particular groups, including the use of identity cards indicating ethnicity” and “systematic official denial of the existence of particular distinct groups.”³⁰⁴

Discrimination and group membership

178. The discriminatory character of collective imposition of citizenship is potentially obscured due to the wide scale of its application – across the entire population of occupied Crimea – and the lack of detailed information about its application in practice. Opting out of Russian citizenship is by no means a reliable measure of those who suffered as a result of imposition of Russian citizenship and the effective nullification of

³⁰² Tina Kempin Reuter, *Dealing with Claims of Ethnic Minorities in International Law*, 24 Connecticut Journal of International Law 201, 206 (2009).

³⁰³ Nathan Lerner, *The UN Convention on the Elimination of all Forms of Racial Discrimination* 29 (1980) (referencing Av.C.3v.SR.1304, p. 2v.3).

³⁰⁴ Committee on the Elimination of Racial Discrimination, *Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination*, paras. 2, 4, U.N. Doc. CERD/C/67/1 (2005).

Ukrainian citizenship, for example, as we know that in practice many would have been prevented from exercising this option.

179. A further question that requires clarification is: who may be a victim of discrimination against a group based on a protected ground, in this case ethnicity or national origin. What degree of identification with the group discriminated *against* is required? The victim's subjective self-identification with the protected group is an important factor, but the discriminator's own generalized motivations and/or the disparate impacts of impugned actions carry important weight as well, particularly for actions of collective or blanket nature, in determining whether an unlawful act of discrimination has occurred. One need look no further than the Reich Citizenship Law's regulations to find a devastating example of a deeply discriminatory definition of the Jewish "race" that covered many people who would not have previously fallen within the scope of "Jewishness."³⁰⁵
180. In *Nikolova v. CEZ*, Case C-83/14, for example, the Court of Justice of the European Union addressed whether a non-Roma, ethnic Bulgarian resident of a predominantly Roma district suffered discrimination under the EU Race Equality Directive due to the electricity company CEZ's practice of placing meters at a physically inaccessible height in Roma-majority districts, including Ms. Nikolova's. The Court answered that for the purposes of applying the equal treatment principles in EU law, Ms. Nikolova's particular ethnic origin did not exclude her as a victim of ethnic discrimination: "the fact remains that it is indeed Roma origin, in this instance that of most of the other inhabitants of the district in which she carries on her business, which constitutes the factor on the basis of which she considers that she has suffered less favourable treatment or a particular disadvantage."³⁰⁶ The aim of the directive is to eliminate discrimination *on grounds of* race or ethnicity, with the emphasis properly placed, for the purposes of a geographically-based policy, on the actions of the discriminator, rather than the individual membership of victims in targeted groups.³⁰⁷
181. The Committee on the Elimination of Racial Discrimination has also clarified that "a distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States parties by article 2, paragraph 1(c), *to nullify any law or practice which has the effect of creating or perpetuating racial discrimination.*"³⁰⁸

Application to the situation in Crimea

182. The suppression of non-Russian national identity in Crimea entails systematic discrimination that unfolds across multiple dimensions:
- The 2014 occupation creates a class, consisting of the population of Crimea, who are targeted based on their actual, attributed or perceived Ukrainian ***national identity***. Discriminatory treatment extends across many aspects of daily life, including: forced naturalization, restrictions of free movement (especially for those without residence registration), involuntary exposure to military conscription, restrictions on access to judicial institutions, and restrictions on freedom of expression and political participation. As noted above (paras. 53-62), Ukrainian "national identity" has inseparable ethnic and political dimensions, particularly after annexation.

³⁰⁵ See above, "Jewish communities under Reich Citizenship Law," paras. 13-14.

³⁰⁶ Court of Justice of the European Union, *CHEZ v. Nikolova*, Case C-83/14, Judgment, para. 59.

³⁰⁷ *Ibid.* para. 56.

³⁰⁸ Committee on the Elimination of Racial Discrimination, General Recommendation No. 14, on article 1, paragraph 1, of the Convention, para. 114 (1993).

- Within this group, more bounded and cognizable *ethnic minorities*, specifically ethnic Ukrainians and Crimean Tatars, suffer compound discrimination, including: disappearances, unlawful searches, restrictions on freedom of expression, attacks on cultural institutions, and denial of language rights.
183. The discriminatory character of the Russian Federation’s actions toward the population of Crimea is, first, in relation to the elimination of a Ukrainian national identity. Legally and practically extinguishing Ukrainian citizenship through the imposition of Russian citizenship created a web of legal and ideological influence that enveloped the entire population. Self-identification of impacted individuals and the operation of individual choice in how to respond to Russia’s actions are, for these purposes, secondary to the systematically discriminatory character of those actions.
184. The suggestion that ethnic Ukrainians and Crimean Tatars make up a minority of the ethnic groups in Crimea as of 18 March 2014, when automatic naturalization took effect, does not absolve Russia’s actions of their essentially discriminatory character. The prohibition of race discrimination would be a blunt instrument indeed if it could not be rigorously applied to the misappropriation of citizenship law to so efficiently undermine national identity and abuse ethnic minorities.

B. Automatic naturalization in Crimea is a violation of the right to a nationality

185. Automatic naturalization violates international norms that safeguard various aspects of the human right to nationality, chiefly: (1) nationality laws must not discriminate, directly or indirectly, based on race or ethnicity; (2) any change in nationality must be voluntary; (3) measures that impact one’s enjoyment of the right to nationality must respect due process; (4) measures that interfere with the enjoyment of the right to nationality must have a legitimate aim; and (5) such measures must also be proportionate in their impact on individual rights balanced against a legitimate aim.
186. The UN General Assembly’s resolution 72/190 condemned automatic naturalization and called its effects “regressive”³⁰⁹ – an apt term especially considering the undeniable similarities to policies like “Germanization” in Nazi occupied territories in the 1940s. These are actions that today’s humanitarian and human rights laws were responding to and designed to stamp out.
187. “I wish to protest against attempts to deprive me of Ukrainian citizenship since I have been and I remain a citizen of Ukraine. *I am not a serf to be flung, together with land, into citizenship.* I did not write any applications to receive Russian citizenship and reject Ukrainian. I do not accept the Russian Federation’s annexation and military seizure of the Crimea and consider any agreements which the illegitimate Crimean government makes with Russian to be invalid”³¹⁰
188. Once considered a reserved domain of state sovereignty, nationality law has, particularly as a result of the progressive development of human rights law, increasingly come within the realm of international law.³¹¹ Russia must comply with applicable international law in defining and applying its nationality laws, including in the context of occupation. The

³⁰⁹ UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190 (19 December 2017).

³¹⁰ Halya Coynash, “Russian Farce,” *Kharkiv Human Rights Protection Group* (11 July 2014), <http://khp.org/en/index.php?id=1405030257> (emphasis added).

³¹¹ See, e.g., Laura van Waas, *Fighting Statelessness and Discriminatory Nationality Laws in Europe*, 14 *European Journal of Migration and Law* 243, 244 (2012) (“At both global and regional levels, [] international standards have come to impose significant restrictions on the freedom of states to regulate access to nationality in accordance with their own sovereign interests.”); Peter J. Spiro, *New International Law of Citizenship*, 105 *American Journal of International Law* 694, 697-98 (2011) (States are not free to disregard the otherwise lawful establishment of the bond of nationality between an individual and a state, as Russia has done with respect to Ukrainian nationality within occupied Crimea.).

right to nationality and the prohibition against arbitrary deprivation of nationality have been increasingly incorporated into international human rights law, beginning with Article 15 of the Universal Declaration of Human Rights (UDHR), which prohibits arbitrary deprivation of nationality and arbitrary deprivation of the right to change nationality, and protects an individual's right to a nationality.³¹²

189. In the *Nottebohm* case, the International Court of Justice (ICJ) described naturalization as a “translation into juridical terms of the individual’s connection with the State which has made him its national.” The ICJ, even in this 1955 case that predates many critical developments in human rights law, recognized that nationality concerns the individual “personally” and naturalization “may have far reaching consequences and involve profound changes in the destiny of the individual who obtains it.”

190. Arbitrary deprivation of nationality is prohibited under many international human rights instruments.³¹³ “Deprivation of nationality” covers situations where individuals who have previously been recognized as citizens of a state are subsequently stripped of recognition of that nationality, whether this is by invocation of formal procedures provided under the law, or in violation of that law.³¹⁴

Discriminatory

191. The prohibition on discrimination is the strongest legal constraint on state action in the realm of nationality law.

192. **Legal principles.** The UN Human Rights Council and its predecessor have both affirmed that the “arbitrary deprivation of nationality on racial, national, ethnic, religious, political or gender grounds is a violation of human rights and fundamental freedoms.”³¹⁵ Article 9 of the 1961 U.N. Convention on the Reduction of Statelessness (the “1961 Convention”) obliges States not to “deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”³¹⁶ Specific protection against arbitrary deprivation of nationality resulting from discrimination is dealt with in various other human rights treaties, including Article 5(d) (iii) of the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).

³¹² Universal Declaration of Human Rights, Article 15, 8 December 1948, G.A. Res. 217A (III) (1948) (That provision states that “everyone has the right to a nationality” and (Article 15(2)) “deprived of his nationality nor denied the right to change his nationality.”); see also International Covenant on Civil and Political Rights, Article 24, 16 December 1966, 99 U.N.T.S. 171 (1967); International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d)(iii), 7 March 1966, 660 U.N.T.S. 195 (1996); Convention on the Elimination of All Forms of Discrimination Against Women, Article 9, 18 December 1979, 1249 U.N.T.S. 13 (1980); Convention on the Rights of the Child, Articles 7 and 8, 20 November 1989, 1577 U.N.T.S. 3 (1989); American Convention on Human Rights, Article 20, 22 November 1969, 1144 U.N.T.S.123 (1970); African Charter on the Rights and Welfare of the Child, Article 6, 27 June 1981, 1520 U.N.T.S. 217 (1982). See generally Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, U.N. Doc. A/HRC/13/34 (14 December 2009); UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (“Tunis Conclusions”)* (March 2014), available at <http://www.refworld.org/docid/533a754b4.html>.

³¹³ See generally Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, U.N. Doc. A/HRC/13/34 (14 December 2009); UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (“Tunis Conclusions”)* (March 2014), available at <http://www.refworld.org/docid/533a754b4.html>.

³¹⁴ See, e.g., Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, Open Society Foundations (OSF), 43 (January 2016), available at <https://www.opensocietyfoundations.org/sites/default/files/citizenship-law-africa-third-edition-20160129.pdf> (“[A] retrospective finding that a person was not a national and was issued nationality documents in error, or arbitrary application of rules relating to loss by operation of law, are equally subject to rules prohibiting arbitrary deprivation of nationality”).

³¹⁵ See UN Commission on Human Rights, *Human Rights and Arbitrary Denial of Nationality*, para. 1, UN Doc. E/CN.4/1997/36 (11 April 1997); UN Human Rights Council Res. 13/2, *Human rights and arbitrary deprivation of nationality*, at para. 2, U.N. Doc. A/HRC/RES/13/2 (14 April 2010).

³¹⁶ Convention on the Reduction of Statelessness, Article 9, 30 August 1961, 989 U.N.T.S. 175 (1961).

193. These legal principles must be read together with Russia’s obligations as an occupying power under international humanitarian law, which imposes a duty not to discriminate on the basis of race, religion or political opinion.³¹⁷
194. **Violations.** The CERD Committee recognized the discriminatory character of automatic naturalization in urging the Russian Federation to repeal administrative and legislative measures enacted since occupation of Crimea that discriminate against ethnic and indigenous groups “in relation to nationality and citizenship rights.”³¹⁸
195. As discussed in the factual background section above (paras. 72-108), the automatic naturalization law created different categories of effects depending on individual circumstances, but in the first instance the covered group should be understood as *all those to whom the laws are applicable* on the ground of Ukrainian national identity. The purpose of the law is to legally erase not only the notion of ethnic Ukrainians as a separate “people” but also to subjugate Crimean Tatars in Ukraine and to undermine the Ukrainian character of the population overall. Individuals may variously identify with different dimensions of Ukrainian national identity, but, as was the case in *Nikolova v. CEZ*, discussed above (para. 180) the essentially discriminatory legal framework applied to the entire geographic area, disadvantaging all affected persons in respect of enjoyment of the right to nationality.
196. The case of Nazi “Germanization” policy in occupied territories is instructive. Whereas different classes of the population were created with varying additional individualized or collective consequences, the overall scheme was held to be a grave criminal enterprise.³¹⁹ Similarly, the binary character of the automatic naturalization scheme – the implication that one must “choose” to be Russian or “retain” Ukrainian nationality – has the intended effect of hardening these identities. One can look to the Compatriot Policy as evidence that the Russian Federation is keenly aware of the linkage between ethnic affinity and nationality law. The fact that, under Vladimir Putin, the Compatriot Policy has been increasingly deployed to stoke nationalistic sentiments in the post-Soviet space likewise evidences a conscious effort to use nationality law to forge an ethnically and politically Russian populace.³²⁰
197. The automatic citizenship law is also *indiscriminate* – it applies to all residents uniformly regardless of their ethnicity, ability, statelessness, nationality, residence status, age, or presence in the territory during the critical month of March-April 2014. In this sense the law is discriminatory for failing to treat substantially differently situated individuals appropriately.³²¹ A parallel can be drawn here to the example of the Dominican Republic’s Law 169-14, which appeared to create avenues for rehabilitation of nationality after the devastating 2013 Constitutional Court decision, but in reality the law enhanced the exclusionary effects of years of denial of birth registration and access to national identity cards, which disproportionately impacted Dominicans of Haitian descent.³²²

³¹⁷ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 27, 12 August 1949, 75 U.N.T.S. 287 (1949).

³¹⁸ Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 20, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

³¹⁹ See above, paras. 26-27.

³²⁰ See paras. 120-124, above, and accompanying notes.

³²¹ See European Court of Human Rights, *Thlimmenos v. Greece*, Application No. 34369/97, Judgment of 6 April 2000, at para. 47.

³²² See above, “Dominicans of Haitian descent in the Dominican Republic,” paras. 21-23.

198. The CERD Committee’s General Recommendation 32 reflects this principle of non-discrimination law:

“To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same” (para. 8).

199. Given the extraordinarily compressed timeline for opting out of automatic naturalization, the disproportionate negative impacts of lack of residency registration on Crimean Tatars and Ukrainians with registration outside of Crimea, and the hasty adoption of the framework itself, it appears no attempt was made to account for hardships that would be suffered by some of the vulnerable groups mentioned. On the contrary, those vulnerabilities left these groups liable to further involuntary measures like prisoner and detainee transfers, ejection from Crimea, harsh penalties under anti-extremism laws and military conscription, all of which furthered the aim of psychologically redefining the Crimean population as “Russian” and physically altering its demographics.

Involuntary

200. A critical indicia that the automatic citizenship law transgresses the norm guaranteeing the right to nationality is the involuntary nature of its application.

201. **Legal principles.** The right to nationality in international human rights law includes the right to freely change nationality. Naturalization, as the ICJ has recognized, assumes individual choice or a “volitional predicate.”³²³ The *Nottebohm* case anchored the notion that *overextending* nationality – bending the rules to sweep more people within a state’s political membership – was a nuisance to inter-state relations. “Historically, the only limits on state nationality practices involved over-claiming.”³²⁴ The 1930 Hague Convention, a foundational instrument in modern nationality law, Article 6, includes “the right of a person to renounce one of two nationalities if this nationality was acquired without any voluntary act on his part.”

202. In the context of interstate arbitration claims brought on behalf of nationals in expropriation cases, tribunals have also rejected attempts to “over-claim” by imposing nationality involuntarily:

“[T]he acquisition of a new nationality must contain an element of voluntariness on the part of the individual acquiring it, that it must not be conferred against the will of the individual.”³²⁵

203. The ECtHR, in *D.H. and others v. Czech Republic* concerning segregation of Roma students in Czech schools, stressed that voluntariness requires an unfettered choice, not a false one. In *D.H.*, parents could not make decisions in respect of their children’s schooling “without constraint” where they were presented with two equally harmful alternatives, leaving them with an “impossible dilemma.”³²⁶

204. The Inter-American Commission has also stressed the importance of voluntariness in regulation of nationality:

“... this right [to nationality] is properly considered to be one of the most important rights of man, after the right to life itself, because all the prerogatives, guarantees and

³²³ Peter J. Spiro, *Citizenship Overreach*, 38 Michigan Journal of International Law 167, 172 (2017).

³²⁴ *Ibid.* at 173.

³²⁵ Paul Weis, *Nationality and Statelessness in International Law* 110 (2d ed. 1979).

³²⁶ *D.H. and others v. Czech Republic*, ECtHR [GC], Grand Chamber Judgment of 13 November 2007, at paras. 202-03 (parents of Roma children required to choose between denying consent to special schooling and ordinary schools where their children would be ostracized).

benefits man derives from his membership in a political and social community – the State – stem from or are supported by this right.[...] It is generally considered that since nationality of origin is an inherent attribute of man, his natural right, and is not a gift or favour bestowed through the generosity or benevolence of the State, **the State may neither impose it on anyone by force, nor withdraw it as punishment or reprisal.**

“The deprivation of nationality ... always has the effect of leaving a citizen without a land or home of his own, forcing him to take refuge in an alien country. That is, it inevitably impinges on another jurisdiction, and no state may take upon itself the power to adopt measures of this sort. ... [T]he Commission believes that this penalty -- anachronistic, outlandish and legally unjustifiable in any part of the world -- is a thousand times more odious and reprehensible when applied in our own Americas, and should forever be banned from being applied by governments everywhere.”³²⁷

205. Thus even traditional international legal instruments and norms prohibit the imposition of nationality as a nuisance in international relations, whereas the subsequent development of human rights law has crystallized separate considerations addressed to the harmful human impact of arbitrary, discriminatory and involuntary imposition of citizenship.
206. International humanitarian law also reflects the importance of free will by prohibiting the imposition of loyalty. Article 45 of the Hague Convention (IV) of 1907 forbids states from compelling inhabitants of occupied territory to swear allegiance to a hostile power.³²⁸ Furthermore, under international humanitarian law, “allegiance to the displaced sovereign cannot be severed under duress.”³²⁹
207. **Violations.** The Russian automatic naturalization approach in Crimea contradicts every principle set out in international law to protect the individual’s free choice in acquisition, renunciation and change of nationality.
208. As noted above, multiple human rights monitoring mechanisms have condemned automatic citizenship, including the UN Human Rights Committee which specifically expressed concern regarding the inability of residents to make informed choices about how to respond to this measure.³³⁰
209. The language of the *Treaty on Accession* and Law 6-FKZ implies that residents must choose to be either Russian or Ukrainian, which is misleading at best given that Russian citizenship law permits dual nationality (see paras. 116-119). The framework was adopted in a time of upheaval and generalized legal uncertainty, undermining considerably any individual’s ability to make informed choices based on full understanding of “the benefits and drawbacks” of either options. The facts reveal that the drawbacks of either option – military conscription resulting in transfer to Russian territory, for example, or the aggressive application of Russian anti-extremism laws to

³²⁷ Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Chile*, p. 80-1, OEA/Ser/L/V/II.40 Doc 10 (11 February 1977).

³²⁸ Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-_3_en-fin.pdf.

³²⁹ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 34 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>.

³³⁰ Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23(c), U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

shutter cultural institutions – were unforeseeable at the time the automatic naturalization took effect.

210. The right of option, in addition to failing to provide for informed decision-making, was accompanied by a farcically inadequate infrastructure for those who wished to reject Russian citizenship and “retain” Ukrainian citizenship. Indeed, those who managed to locate the appropriate facilities to make their declaration faced intimidation and threats. Based on the criteria set out in international legal materials and jurisprudence, the “right of option” in the Crimean occupation is a misnomer, as the procedure would not meet the basic criteria of providing for a voluntary choice and respecting individual will.
211. In practice, residents of Crimea had 18 days to decide whether to make a declaration that they were rejecting Russian citizenship. Even assuming all of the above deficiencies were corrected, the time period is too short to afford a reasonable chance to make such a consequential decision.

Lack of due process

212. Even where international law allows states to withdraw or deny access to citizenship, such action must be accompanied by procedural and substantive safeguards.
213. **Legal principles.** Article 8(4) of the 1961 Convention provides that “Contracting States shall not exercise a power of deprivation . . . except in accordance with the law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.”³³¹ Article 17 of the International Law Commission’s draft articles on nationality of natural persons state that the “minimum safeguards” should entail that decisions related to the acquisition, retention, loss or deprivation of nationality should be issued in writing and subject to effective review.³³²
214. The 1961 Convention sets out minimum standards for ensuring that processes of loss or deprivation of nationality respect international law. Article 8(4) obliges States, even in exercising the limited deprivation power in this area to do so “in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.”
215. This requirement is illustrative of a wider principle that laws, policies and practices restricting the right to nationality must accord with due process in order to “prevent abuse of the law” and ensure that “decisions on nationality matters do not contain any element of arbitrariness.”³³³
216. Provision of due process in nationality matters also safeguards against coercion or duress. In the United States, for example, Japanese Americans interned at a “relocation center” during World War II were given the “option” to renounce their American nationality through an amendment to the Nationality Act.³³⁴ Ultimately, the renunciation

³³¹ *Ibid.* Article 8(4). See also Human Rights Committee, General Comment No. 16 Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation) (1988) and Human Rights Committee, General Comment No. 27 Freedom of movement (Art.12) (1999) (the prohibition on arbitrary interference requires all state actions to be reasonable under the particular circumstances and respect the principle of proportionality); Council of Europe, European Convention on Nationality, Articles 5, 7(3), 12, Explanatory Report, 6 November 1997, 2135 U.N.T.S. 213 (1997); Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, paras. 25-27, 43, U.N. Doc. A/HRC/13/34 (14 December 2009).

³³² See Yearbook of the International Law Commission, Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, p. 31, U.N. Doc. A/CN.4/SER.A/1999/Add.1 (Part 2) (1999).

³³³ UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (“Tunis Conclusions”)*, paras. 25-26 (March 2014), available at: <http://www.refworld.org/docid/533a754b4.html>.

³³⁴ See Eric L. Muller, *Japanese American Cases—A Bigger Disaster Than We Realized*, 49 *Howard Law Journal* 417, 455 (2006).

requests were challenged on the ground that they were issued in a context of intense coercion. In his opinion in *Abo v. Clark*, Judge Louis E. Goodman observed:

“[It was] shocking to the conscience that an American citizen be confined without authority and then, while so under duress and restraint, for his Government to accept from him a surrender of his constitutional heritage.”³³⁵

217. **Violations.** Minimum due process in nationality determinations requires individualized treatment with fair hearings, written decisions and opportunity for review, Mass conferral of nationality necessarily fails to provide such basic protections.
218. The process of imposing Russian citizenship was also neither transparent nor equitable, providing an inadequate timeframe and insufficient locations for all those wishing to reject Russian citizenship to do so. After the deadline to reject automatic naturalization, Russian authorities also enacted criminal penalties for failure to disclose a second citizenship as well as caps on temporary residence permits for foreigners in Crimea. These inadequacies have negatively impacted non-Russian groups and those who oppose annexation. Historical examples like the situation of Kenyan Asians and ethnic groups excluded from nationality under the 1982 Burma Citizenship Law demonstrate how burdensome procedural requirements and unfair processes introduced in a context of sweeping nationality reforms leads to extensive violations of human rights of excluded groups.
219. As a result of the automatic citizenship law, those who opted out of Russian nationality and those who were unable to prove permanent residence or to acquire Russian passports would face hurdles in accessing justice for a wide variety of human rights violations. These burdens disproportionately impact ethnic Ukrainians and Crimean Tatars.
220. There is no remedy for the forced naturalization itself, which is exacerbated in cases where the individual opted out and therefore must pursue claims as a foreigner in a hostile judicial system.
- No legitimate purpose and disproportionate
221. The blanket grant of nationality in the context of hostile occupation should be understood as *per se* unlawful and therefore illegitimate. In light of the negative impact that the action has had, in general and for specific groups, it cannot be justified.
222. **Legal principles.** A growing body of human rights decisions from international and regional tribunals have recognized the harmful impact that interference with the right to nationality can have. Most often, the nature of the harm is articulated as damaging to human dignity, in recognition of the quality of citizenship as a means of isolating, disarming and objectifying individuals.
223. In the case of *Kuric v. Slovenia* the ECtHR addressed the situation of Slovenia’s “erased” people – a group of nearly 20,000 individual’s, many of whom were members of ethnic minorities, whose names were erased from Slovenia’s registry of permanent residents in the aftermath of independence and the inauguration of new citizenship laws. In a separate opinion, Judge Vucinic addressed the importance of respect for legal personality as a facet of private life:

³³⁵ *Abo v. Clark*, 77 F. Supp. 806, 812 (N.D. Cal. 1948), *rev’d in part on other grounds*, *McGrath v. Abo*, 186 F.2d 766, 770 (9th Cir. 1951). Nearly all renunciations were ultimately invalidated. See Eric L. Muller, *Japanese American Cases—A Bigger Disaster Than We Realized*, 49 Howard Law Journal 417, 457 (2006) (92% of the 5409 applications for restoration of citizenship were successful). The total number of renunciations at Tule Lake was around 6,000. *Ibid.* at 454.

“[T]he right to legal personality is a normal, natural and logical consequence of human personality and inherent human dignity; it is a natural and inherent part of every human being and his or her personality.”³³⁶

224. In a case involving the denial of nationality to two school-girls in the Dominican Republic, the Inter-American Court of Human Rights recognized the importance of the right nationality in relation to the recognition of juridical personality and human dignity:
- “the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual’s condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals.”³³⁷
225. **Violations.** The structure of the automatic naturalization law and its sweeping application belie a legitimate aim to offer the voluntary option – already available in any case – to acquire Russian nationality (or remain stateless).
226. In light of the analysis provided in preceding sections concerning, in particular, the paramount importance of free will and the longstanding restriction against compelling occupied peoples to swear allegiance to a foreign power, at an individual level the most offensive aspect of Russia’s actions is their affront to human dignity. The population of Crimea was literally and figuratively subjugated through this act.
227. In short, the process, substance and effects of automatic naturalization violate Russia’s international legal obligations and cannot be justified as proportionate in light of the negative impact that the measure has upon individual rights.

C. Collateral consequences of automatic naturalization

228. Although the impacts of automatic naturalization are too wide-ranging and unpredictable to be captured in full in this report, the examples researched and included in the factual background section are briefly analyzed below as the more direct and interrelated collateral consequences of automatic naturalization in Crimea.
229. As discussed in earlier sections these factors work in tandem with forced naturalization in an effort to achieve the fundamental reshaping of the ethnic make-up of occupied Crimea, both physically and psychologically.

Denial of freedom of movement and forcible transfers as a result of occupation and automatic naturalization

230. The construction and application of citizenship laws have the well-recognized quality of influencing, disrupting and hardening political borders, which is a fact that Russia has exploited in Crimea and elsewhere.³³⁸ This section will analyze the legitimacy of using citizenship law and practice in order to contain and shift populations for the purposes of manipulating political boundaries, focusing on the right to free movement and human rights protections against arbitrary expulsions.
231. **Legal principles.** With respect to freedom of movement, the CERD Committee has criticized states concerning efforts to use planning laws to achieve “demographic balance,” in particular with respect to Israel and Occupied Territories, as well as the

³³⁶ *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić.

³³⁷ Inter-American Court of Human Rights, *Case of the Yean and Bosico Girls v. Dominican Republic*, Judgment of 8 September 2005, para 180.

³³⁸ See, e.g., Walter Kemp, “Where are the borders? National identity and national security,” in *Blood and Borders*, Kemp et al., eds. (2011).

Russian system of residence registration and denial of such registration on ethnically discriminatory grounds.³³⁹ As noted above, the ECtHR has also found that the residence registration system violates an array of rights particularly for vulnerable populations (see para. 105).

232. The CERD Committee has also confronted states' efforts to "sedentarize" populations (nomadic groups) in order to extinguish their culture.³⁴⁰

"Forced sedentarization and allied expulsionist policies inevitably involve violation of a spectrum of undifferentiated and differentiated (group-specific) human rights, civil and political, economic, social and cultural, individual and collective."³⁴¹

233. The UN General Assembly called the forcible actions to shift population demographics contrary to international humanitarian law:

"The Assembly stresses that this Russian policy should be viewed as a violation of Article 49 of Geneva Convention IV, according to which individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motivation."³⁴²

234. UN General Assembly Resolution 68/262 also stressed that immigration regulations of the Russian Federation should not apply in occupied Crimea.³⁴³

235. Art 51 of the Fourth Geneva Convention states that "[t]he Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted."

236. Article 76 notes that "[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein."

237. These actions also violate human rights norms – applicable to Russia as an occupying power – which prohibit the deprivation of nationality for the purposes of expulsion. Russia's automatic citizenship law has permitted the constructive expulsion of nationals from occupied Crimea, and in the case of prisoner transfers, these movements were across the political border between Ukraine and Russia.

238. The International Law Commission's *Draft Articles on expulsion of aliens* state:

"A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her."³⁴⁴

239. Article 12(4) of the ICCPR,³⁴⁵ prohibits arbitrary deprivation of an individual's right to enter his "own country," a provision that is not subject to derogation. In its General Comment No. 27 on Freedom of Movement, the Human Rights Committee (UNHRC)

³³⁹ See Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* 337-38 (2016).

³⁴⁰ *Ibid.* at 338.

³⁴¹ *Ibid.* at 338-39.

³⁴² Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

³⁴³ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 126, UN Doc. A/HRC/36/CRP.3 (25 September 2017);

³⁴⁴ UN General Assembly, *Expulsion of aliens: Texts and titles of the draft articles adopted by the Drafting Committee on second reading*, International Law Commission Sixty-sixth Session, A/CN.4/L.797 (24 May 2012).

³⁴⁵ International Covenant on Civil and Political Rights, Article 12(4), 16 December 1966, 99 U.N.T.S. 171 (1967).

explained that Article 12(4) severely restricts contracting states' ability to engage in denationalization leading to expulsion:

“The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.”³⁴⁶

240. A chief concern underlying Article 12 is the reality that states can, simply by declaring an individual a non-national, expel him or her and deny international responsibility, in circumvention of the entire framework of human rights protection.
241. The UNHRC in *Stewart v. Canada*, in relation to the protection granted by Article 12(4), established that the principle of non-expulsion of nationals should be understood broadly, maintaining that “his own country” is a concept that applies to individuals who are nationals as well as to certain categories of individuals, who while not nationals in a formal sense, are also not “aliens” within the meaning of Article 13. This would depend on “special ties to or claims in relation to a given country.”³⁴⁷
242. **Violations.** Automatic naturalization has facilitated several modes of constraints on free movement and population shifts in Crimea since 2014.
243. First, contrary to CERD's express criticism of such practices, Russia has used citizenship law in order to effectively sedentarize the population, imposing both citizenship and residence registration requirements under Russian law in a discriminatory fashion that disadvantages those with registration in mainland Ukraine and Crimean Tatars and favors those who supported annexation (para. 108). At the same time, Russian immigration laws, which should not be applicable in Crimea at all, have instead been applied selectively to favor those who support annexation.³⁴⁸
244. Second, imposition of citizenship has facilitated forcible transfers of prisoners and detainees to Russian territory and military postings of forcibly conscripted Crimeans within Russian territory in violation of humanitarian law (paras. 130-146). More than 4,700 pretrial detainees and prisoners have been unlawfully transferred from Crimea to the Russian Federation. Human rights monitoring, individual complaints and reports of higher profile cases furnish reliable evidence to suggest that affected detainees were forced to acquire Russian nationality against their will.³⁴⁹ Coupled with the integration of penal systems, the fact that these individuals were “Russian citizens” facilitated the unlawful transfers.
245. Finally, expulsions from the territory of Crimea not only violate directly applicable humanitarian laws, but also contravene human rights protections safeguarding against the manipulation of nationality law in order to expel nationals from their “own country.” Interpretive bodies have chosen to ascribe a broad meaning to the concept of one's own country. The relevant provisions of humanitarian law cited above contain hard prohibitions that support the prerogative on the part of states not to recognize unlawful actions. Human rights norms safeguard individuals and human dignity universally. Non-recognition is not enough to provide redress. Thus, whatever the legal cover, actions that have the effect of interfering with enjoyment of human rights must be brought within the

³⁴⁶ Human Rights Committee, General Comment No. 27 Freedom of movement (Art.12) (1999).

³⁴⁷ UN Human Rights Committee, *Stewart v Canada*, Merits, Communication No 538/1993, 1 November 1996, para 12.3-12.5.

³⁴⁸ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 67, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

³⁴⁹ See paras. 102-103 (prisoners unable to reject Russian citizenship).

sweep of human rights law. In this case, in effect, the Russian Federation has turned Ukrainian nationals into “foreigners” and expelled them from their own country.

246. As demonstrated above (paras. 127-128) in aggregate these actions have altered, physically, the population of Crimea in line with the clear intent behind imposition of Russian nationality there: to impose an ethnic Russian identity and supplant, physically and ideologically, the indigenous Crimean Tatars as well as both the Ukrainian “people” and Ukrainian civic nationalism.

Anti-extremism laws resulting in stigmatization, harassment and ill-treatment

247. The imposition of Russia’s entire legal framework to the territory of Crimea in only a few months in 2014 caused tremendous upheaval and, on its own, violates international humanitarian law. The imposition of Russian citizenship, in particular, legitimized the use of Russia’s extensive anti-extremism laws to stigmatize opposition to occupation as “separatist” and “extremism.” Intimidation, harassment and threats permeate the atmosphere, restricting safety in public spaces and raids and surveillance in households, newsrooms, cultural institutions and businesses. Following the institution of criminal charges or administrative actions, ill-treatment and harsh punishments for pro-Ukrainians (actual or perceived) and Crimean Tatars are common. Pretrial detainees and prisoners are often transferred to Russian territory.
248. **Legal principles.** Many of the laws imposed on Crimean residents purportedly seek to combat extremism and separatism. Respecting human rights while countering terrorism is a challenge for many states. International legal guidance has underscored that states must respect peremptory human rights law prohibiting racial discrimination in efforts to fight terrorism. This includes the use of ethnic profiling and stereotypes. It also covers the use of overly broad anti-extremism laws to stigmatize cultural institutions, minority language press, religious institutions and peaceful public protests in Crimea as subversive or criminal.
249. On 5 October 2010, the Parliamentary Assembly of the Council of Europe (PACE) pressed states to ensure that in their quest to combat extremism, “the strictest respect for human rights and the rule of law” should be ensured.³⁵⁰
250. The CERD Committee has issued guidance on the application of Article 5(a) in the context of the fight against terrorism, emphasizing that measures cannot involve racial or ethnic profiling or stereotyping. In a 2002 Statement on racial discrimination and measures to combat terrorism the CERD Committee underscored that measures taken in the name of fighting terrorism must not discriminate “in purpose or effect,” that anti-terrorism measures are only legitimate if they respect human rights and humanitarian law, and that racial discrimination is a peremptory norm from which no derogation is permitted.³⁵¹
251. CERD’s General Recommendation XXX (2004) calls on states to ensure “that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law.”³⁵²

³⁵⁰ Council of Europe, Parliamentary Assembly Resolution 1754 (2010) on the fight against extremism: achievements, deficiencies and failures, para. 13.2, 5 October 2010.

³⁵¹ CERD Committee, Report of the Committee on the Elimination of Racial Discrimination, U.N. Doc. A/57/18, 2002, at p. 106.

³⁵² Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on discrimination against non-citizens, para. 20 (2004).

252. “Loosely drafted” anti-terror statutes have also been criticized in CERD Committee concluding observations.³⁵³
253. It is important to underscore that targeted prosecutions under Russian criminal law contravene both human rights law and international humanitarian law.³⁵⁴ Key provisions of international humanitarian law include Article 58 of the Fourth Geneva Convention, which provides that an “Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.” Rule 104 of customary international humanitarian law similarly holds that the “convictions and religious practices of civilians...must be respected.”³⁵⁵
254. **Violations.** The imposition of Russian nationality in Crimea legitimized claims that opposition to occupation, for example, or participating in the activities of the Mejlis, are “separatist” – defined against the Russian state and “Russian” citizenry. Russian authorities in Crimea have aggressively and widely used, including with retroactive effect,³⁵⁶ anti-extremism laws “to prosecute those who oppose the annexation, including the Crimean Tatar community and pro-Ukraine activists.”³⁵⁷
255. The Russian Federation’s overly broad and ill-defined anti-extremism legislation has been used “to silence the dissent of Crimeans who opposed its annexation and to target non-Russian religious and ethnic groups, especially Crimean Muslims, most of whom are Crimean Tatars.”³⁵⁸
256. The CERD Committee expressed particular concern that “such broad definitions can be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens.”³⁵⁹
257. The use of these laws to facilitate prisoner and detainee transfers is addressed above (para. 244).
258. The Russian Federation has also prosecuted and convicted Crimean civilians for actions that occurred prior to occupation and application of Russian Federation legislation in contravention of international humanitarian law and international human rights law, which prohibit retroactive application of criminal law.³⁶⁰
259. Regardless of the consequences of prosecutions, however, the stigmatizing effect of anti-extremism laws in Crimea is deeply concerning, particularly given that the balance of

³⁵³ Committee on the Elimination of Racial Discrimination, *Concluding observations on Chile regarding the application of anti-terrorism legislation to members of the Mapuche community engaged in protests*, para. 15, U.N. Doc. CERD/C/CHL/CO/15-18 (7 September 2009).

³⁵⁴ The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 177 (17 September 2015), available at <https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true> (referencing Articles 64, 67 and 70 of the Geneva Convention (IV))

³⁵⁵ Rule 104. Respect for Convictions and Religious Practices, *ICRC Database Customary IHL*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule104.

³⁵⁶ OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol*, para. 77, UN Doc. A/HRC/36/CRP.3 (25 September 2017);

Written statement submitted by the Society for Threatened Peoples, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

³⁵⁷ Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 27 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).

³⁵⁸ *Ibid.* at 4.

³⁵⁹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 11, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

³⁶⁰ See Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Articles 64, 65, 67 and 70, 12 August 1949, 75 U.N.T.S. 287 (1949); International Covenant on Civil and Political Rights, Article 15, 16 December 1966, 99 U.N.T.S. 171 (1967).

documented cases in human rights reporting involve Crimean Tatars. Human rights groups estimate that at least a quarter of the items on the Federal List of Extremist Materials relate to Islamic literature.³⁶¹ UNPO highlighted the stigmatizing impact of banning the Mejlis as an “extremist” organization. This trend suggests that the application of anti-extremism laws carries an ulterior motive of stigmatizing this group, with the potential to incite further violence against them.

260. The same concern extends to attacks on religious institutions, including Islamic groups but also the Ukrainian Orthodox Church, and journalists. Crimean Tatar leaders have been particularly affected and officials have impeded the free practice of the Muslim faith, in violation of Article 48 of the Fourth Geneva Convention and customary international humanitarian law.
261. These actions have perpetuated a clear propagandist narrative of separatism and extremism to shut down opposition to annexation and stamp out dimensions of individual identity that do not conform to a Russified vision of Crimea.

V. CONCLUSION

262. This report joins many other efforts to support accountability for international law violations committed in the context of the Crimean occupation. Our aim is to offer a sustained examination of automatic naturalization as an element in a defiant campaign to subjugate, repossess and redefine the Crimean population. Looking to history as a guide, unmistakable patterns emerge – of the misappropriation of citizenship and its bureaucratic administration leading to cruelty at massive scale. Human rights law has evolved to provide protections against the success and spread of harmful state projects of this nature and, where violations have occurred, to help define and create space for redress.

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³⁶¹ Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation*, p. 28 (2016), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU\(2016\)578003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).