

THE RIGHT TO TRUTHFUL INFORMATION ON HUMAN RIGHTS VIOLATIONS IN UNRECOGNIZED TERRITORIES

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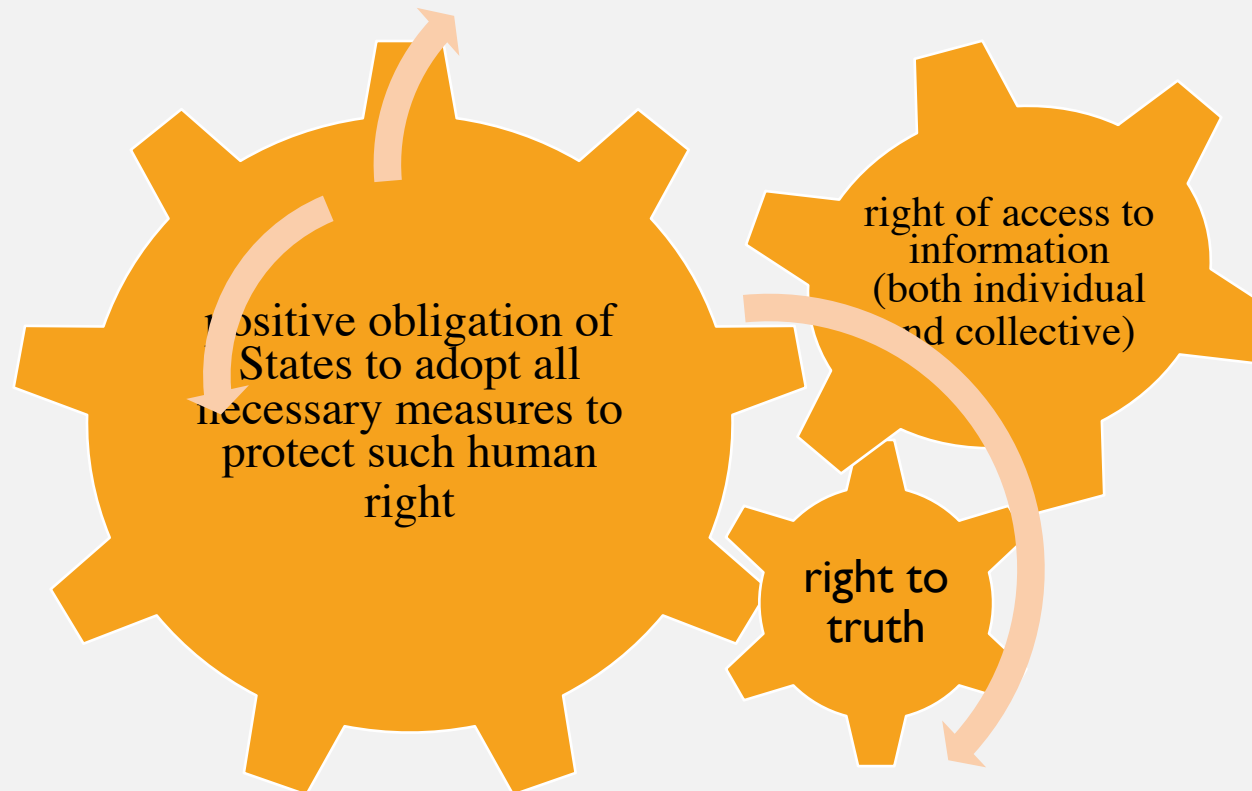
Human Rights in Unrecognized and Partially Recognized States

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ISSUES AT STAKE

- Synergistic relationship between the systems of enforcement of human rights and repression of crimes (Oriolo, 2016)
- Specificity of fact-finding on human rights violations in unrecognized Crimea
- The right to the truth on historical human rights violations – which authority is obligated to provide it?
- The permanent or continuous nature of the crime of enforced disappearance, thus making them not subject of amnesty, statutory limitations and immunity.

‘RIGHT TO TRUTH’, ‘ACCESS TO TRUTH’ (ORIOLO, 2016)



EXAMPLES OF HUMAN RIGHTS VIOLATIONS IN CRIMEA

- Intimidation and enforced disappearances, extrajudicial killings, torture and ill-treatment of pro-Ukrainian activists and journalists, and members of the Tatar community.
- Journalists have reportedly been subjected to physical attacks, as well as other forms of harassment, threats and intimidation, which contributed to an atmosphere detrimental to the freedom of the media.
- Instances of hate speech towards ethnic and religious groups have been widespread.

SPECIFICITY OF FACT-FINDING ON HUMAN RIGHTS VIOLATIONS IN UNRECOGNIZED CRIMEA

1) International/independent inspectors were forced to leave (after being detained and besieged):

- UN Special Envoy Robert Serry (March 2014);
- OSCE Representative on Freedom of the Media Dunja Mijatovic (March 2014)

2) International inspectors are discouraged to visit:

- OSCE Human Rights Assessment Mission on Crimea (July 2015)
- OHCHR's Human Rights Monitoring Mission in Ukraine (HRMMU)

3) Intergovernmental organizations struggle to interact with the *de facto* authorities and courts, and/or attribute the cases to Ukraine or Russia.

4) Local activists and journalists who had recorded the facts of human rights violation were deprived of liberty.

5) The occupying power uses expulsion mechanisms and bans entry to the peninsula in order to restrict the activities of specific journalists.

6) Activities of the Orthodox Church of Ukraine, other independent of Moscow confessions in Crimea are effectively curbed.

7) Russian FOIA (2011) is ineffective, and civil society and media there are paralyzed and state-controlled.

INTERNATIONAL INSPECTORS FORCED TO LEAVE IN 2014



PATTERN OF ATTACKERS

- Perpetrators - “unidentified armed men, in some cases wearing a uniform but without insignia or any other identification” (mercenary support agents of various groups, or members of so-called “self-defence” groups), as well as the “military units in uniform without insignia” (OSCE, 2014).

PATTERN OF “OFFICIAL TOLERANCE”

- The police have shown bias against pro-Ukrainian groups on the one hand, and a complacent, if not permissive, attitude towards members of opposing groups, on the other (OSCE, 2014).
- Any steps taken by law enforcement and prosecutorial bodies to investigate enforced disappearances and related acts appear to have been ineffective (OSCE, 2014).
- There appear to have been neither proactive investigations nor any prosecutions of pro-Russian “self-defence” groups accused of committing serious human rights abuses at the start of and since the occupation of Crimea (OSCE, 2015).

PATTERN OF CREDIBLE INFORMATION DENIED BY THE AUTHORITIES

- The media environment in Crimea has significantly deteriorated since the inception of the Russian Federation's armed attack against Ukraine, with numerous previously accessible outlets now blocked, restricting access to only state-controlled media (UNESCO-OHCHR, 2023).
- CoE notes criminal prosecution, fines and other types of harassment against journalists and media outlets from Crimea, Ukraine, the majority being Crimean Tatar "citizen journalists" (CoE 2022).
- The occupying power uses expulsion mechanisms and bans entry to the peninsula in order to restrict the activities of specific journalists. (UNESCO, 2021)
- Observes 'intensification of biased information, disinformation and propaganda' (OSCE, 2014).

DEMANDS OF INTERGOVERNMENTAL BODIES

- The Russian Federation has obligations under international human rights law and international humanitarian law, per its role as an occupying power in effective control of the Crimean peninsula. (OSCE 2015)
- “To ensure that any allegations of abductions or enforced disappearances, including allegations of complicity by agents of the state in abductions by non-state actors, and any allegations of causing death, torture and other ill-treatment in custody, are effectively, promptly, thoroughly and impartially investigated with a view to clarifying the fate and whereabouts of the disappeared and bringing those responsible to justice” (OSCE 2014)
- Immediately grant unimpeded access to Crimea for international agencies, institutions, special procedures and independent experts of the OSCE, the United Nations and the Council of Europe, as well as for any human rights NGOs or news media that wish to visit, assess and report on the situation in Crimea. (OSCE 2015)

IAC_{THR} ON ACCESS TO THE TRUTH

Recognized the “right of the next of kin to know the fate of the victims, and where possible, the location of their remains” (Velásquez Rodríguez v. Honduras (1988))

The Commission called for ‘an investigation of an enforced disappearance to be conducted effectively and with due diligence’ while ‘ensuring the rights of access to justice and to the truth.’ (Rivera v. Peru (2011))

(ascribing such right to the right to a fair trial and the right to judicial protection)

[A]ll persons, including the next of kin of the victims of gross human rights violations, have the right to know the truth. As a consequence, the next of kin of the victims and society must be informed of all that occurred in regard to said violations. (Gomes Lund v. Brazil (2010))

(ascribing such right to the right to seek and receive information)

SCOPE OF THE RIGHT TO TRUTH

(Deduced from the conventional obligation to protect human rights) the right to the truth concerns the right to know:

- 1) the circumstances of the enforced disappearance,
- 2) the progress and results of the investigations, and
- 3) the fate of the disappeared person.

[International Convention for the Protection of All Persons from Enforced Disappearance](#) (2006, entered into force in 2010)

ECTHR EXPANDS THE SCOPE OF THE RIGHT

- [Kurt v Turkey](#) (1998), *Cyprus v. Turkey* (2001), *Varnava and Others v. Turkey* (2009)
(ascribing such right to the prohibition of torture and the right to effective remedy)
- [Kenedi v. Hungary](#) (2009)
(ascribing such right to the right to effective remedy and to freedom of expression)
- [Association “21 December 1989” and others v. Romania](#) (2011),
(ascribing such right to the right to an effective investigation and the right to a remedy)
- [El-Masri v. the former Yugoslav Republic of Macedonia](#) (2012)
(ascribing it to the right of effective investigation and effective remedy, as well as to the interference in the applicant’s private and family life)

CONCLUSIONS

- The right to truth on human rights violations is typically invoked in countries with authoritarian and transition regimes.
- The case of an unrecognized territory diminishes the possibilities of fact-finding by local and international observers.
- The outcome of the war in Ukraine will also decide the fate of the practice of gross human rights violations in Crimea.
- The courts effective in the post-Putin Russia will benefit from the use of relevant case law of both the ECtHR and IACtHR.
- The right to truth should be promoted and expanded to all information that an individual or an organization may lawfully request from the public authorities.