

**To V.O. Zelensky
President of Ukraine**

**May 26, 2021
Berehovo, Ukraine**

Esteemed Mr. President:

For several years, the Hungarian Teachers Association of Subcarpathia has appealed to various forums to encourage adoption of Ukraine's draft Law on Indigenous Peoples. Until now, the definition of "indigenous peoples" has never been codified, even though Ukraine's Law on Education, already in force, categorizes Ukrainian citizens based on this concept.

In several laws adopted in recent years by the Verkhovna Rada (for example the laws "On Education," "Supporting the Functioning of the Ukrainian Language as the State Language", and "About General Secondary Education"), the prescriptive legal texts that regulate language use cite the concept of "indigenous peoples", without however defining the concept.

Ukrainian legislation first mentions "indigenous peoples" in Article XI of our Constitution: "The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine."

International law considers indigenous peoples to be a separate category of indigenous minorities. The concept of "indigenous population" is defined in the international conventions of the International Labor Organization (ILO), an agency of the United Nations. Among other stipulations, the ILO Convention 169 (1989) contains the following definition:

"peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

The current Ukrainian draft Law on Indigenous Peoples considers the Crimean Tatars, the Karaites, and the Krymchaks to be indigenous peoples. The draft law considers these three peoples as a distinct category from other indigenous national minorities living on the present-day territory of Ukraine. The draft law justifies this distinction with the explanation that these peoples do not have an outside co-national state ("kin state") to support their cultural development.

In contrast, the Venice Commission, in its opinions on the above-mentioned Ukrainian laws, emphasizes the importance of respecting constitutional norms regarding the equal treatment of all indigenous peoples and national minorities. This is specifically emphasized in the Venice Commission's opinion, which also states that it is unacceptable to establish different levels and degrees of the rights of persons belonging to national minorities versus indigenous peoples based on whether the group has a kin state, and/or whether the kin state is a member of particular international alliances.

Thus, in its opinion (902/2017) on the Law on Education, the Venice Commission states in paragraph 110:

“the reason invoked by the Ukrainian authorities - the absence of kin-states - is generally not considered to be acceptable under applicable European standards; any differentiation must be based on other grounds such as, e.g., different degrees of vulnerability or need of state support.”

In its opinion (960/2019) on the law “Supporting the Functioning of the Ukrainian Language as the State Language”, the Venice Commission provides a specific recommendation in paragraph 139, point 3:

“to repeal the provisions of the Law providing for a differential treatment between the languages of indigenous peoples, the languages of national minorities which are official languages of the EU and the languages of national minorities which are not official languages of the EU to the extent that the distinction between those languages is not based on an objective and reasonable justification (see §§39-44, 69-82, 87, 89, 93, 94, 99-102, 110, and 111).”

Thus, the Venice Commission has found that this legislation is discriminatory, and recommends that it be repealed.

Ukraine’s draft Law on Indigenous Peoples would successfully comply with the Venice Commission’s recommendations regarding the Education Law.

Based on the above, we respectfully request that Ukraine’s draft Law on Indigenous Peoples define this concept in conformity with the ILO Convention 169 (1989), that is, to extend the definition of “Ukraine’s indigenous peoples” to include the Hungarian minority in Ukraine, who have lived in this territory for more than 1000 years.

Sincerely,

Ildikó Orosz

President,
Hungarian Teachers Association of Subcarpathia