AN INDIGENOUS PARLIAMENT?

REALITIES AND PERSPECTIVES IN RUSSIA AND THE CIRCUMPOLAR NORTH

The indigenous peoples of the Arctic have achieved some of the most comprehensive self-government arrangements in the world. These are reflected upon in this collection of articles, based on discussions between indigenous peoples in Russia and other parts of the Circumpolar North.

Decision-making and political participation are of major concern for indigenous peoples in all parts of the Circumpolar North. There are many positive examples of indigenous political institutions, land claims and self-government agreements in the region, and indigenous peoples have recognised that they can learn from each other.

Over the past decade, indigenous peoples in Russia have attempted to gain rights and influence over political decisions concerning their lands and lives. In some provinces of the Russian Federation, they have achieved a certain level of influence over - and an advisory role in - political institutions. And yet in others, they remain voiceless.

This volume includes a number of articles on the legal situation of indigenous peoples in Russia and on their political participation at federal and provincial level, along with case studies from Alaska, northern Canada, Greenland and Sápmi.

This book was first published jointly by RAIPON and IWGIA in Russian in 2003.

RUSSIAN ASSOCIATION OF INDIGENOUS PEOPLES OF THE NORTH (RAIPON)

IWGIA
INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

ISBN 87-91563-10-0

IWGIA — AN INDIGENOUS PARLIAMENT?

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IWGIA
Document No. 116 - Copenhagen 2005

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AND THE CIRCUMPOLAR NORTH

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Cover, maps and layout: Jorge Monrás

Translation: Michael Jones, Sveta Yamin, Anna Belikovich, TGK Consult

Proofreading: Elaine Bolton

Prepress and Print: Eks-Skolens Trykkeri, Copenhagen, Denmark

ISSN: 0105-4503
ISBN: 87-91563-10-0

Distribution in North America:
Transaction Publishers
390 Campus Drive / Somerset, New Jersey 08873
www.transactionpub.com

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This book has been produced with financial support from the Danish Ministry of Foreign Affairs

CONTENT

INTRODUCTION

Kathrin Wessendorf

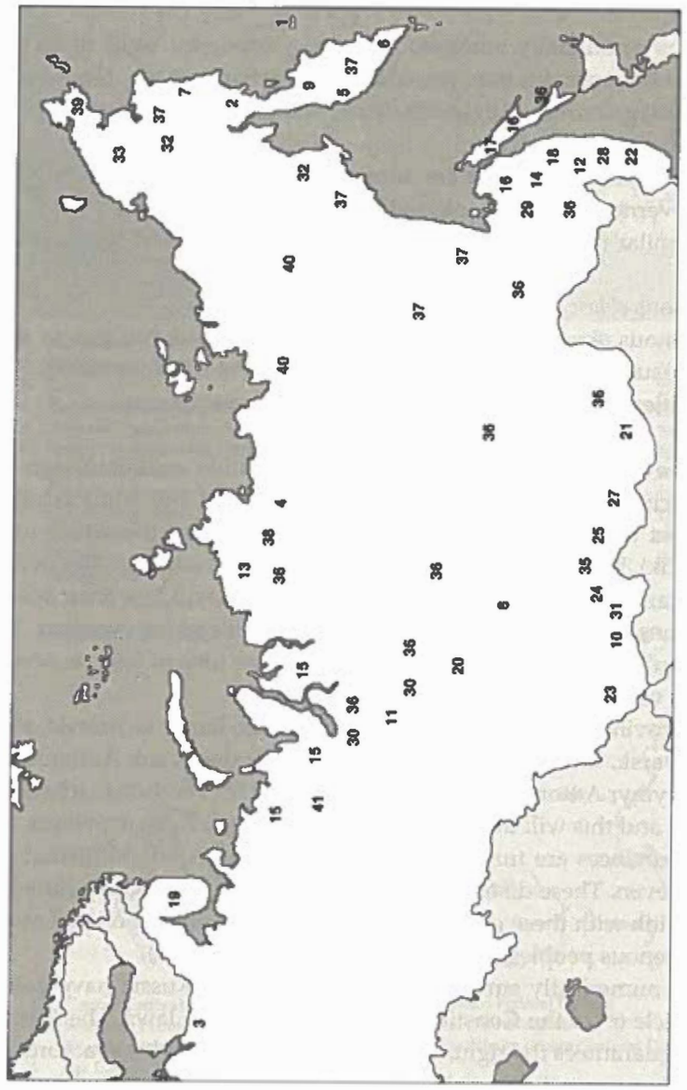
The Arctic region is inhabited by a number of indigenous peoples with distinct cultures, histories and ways of life. These peoples live in 7 nation states (USA, Canada, Denmark, Norway, Sweden, Finland and Russia) and come under their respective political systems and jurisdictions. In Russia, the indigenous peoples are designated "numerically small indigenous peoples". In order to be officially recognised as such by the Russian Federation, a people cannot number more than 50,000 individuals. To date, there are 45 peoples recognised in this way in Russia, 41 of which are peoples living in the Russian North, Siberia and the Far East.

Every indigenous people in the Arctic has experience of negotiating its position and rights within a particular nation state, ruled by a set of cultural, historical and legal rules and patterns usually differing from the traditional customs and institutions of the indigenous peoples. Over time, indigenous peoples have gained immensely diverse experiences in dealing with their respective nation states. Their reactions to political systems and strategies vary, and depend on many factors. Comparisons, exchanges of ideas and information can lead to new understanding, visions and motivation to continue dialogue with the states in which indigenous peoples live, and to continue the struggle for protection of their rights. This book is the outcome of a Round Table meeting in Moscow in March 2003 at which indigenous peoples from Russia discussed and exchanged experiences with people from Alaska, Canada, Sápmi and Greenland. This is further dealt with in the article by Olga Murashko. Before taking up key points from the discussion in Moscow, a short overview of the administrative structure of the Russian Federation should help the reader not familiar with Russian indigenous politics.

Administration in the Russian North, Siberia and Far East

The indigenous peoples living in the Russian Federation fall within a number of administrative rules and legislations, depending on the province in which they

Numerically Small Indigenous Peoples



1 Aleut
2 Alyutor
3 Vepsians
4 Dolgan
5 Itelmen
6 Kamchadal
7 Kerek
8 Ket
9 Koryak
10 Kumandin
11 Mansi
12 Nanai
13 Nganasan
14 Negidal
15 Nenets
16 Nivkh
17 Orok
18 Orochi
19 Saami
20 Sel'kup
21 Soyot
22 Tazy
23 Telengit
24 Teleut
25 Tofalar
26 Tuba
27 Tuva-Todzhins
28 Udege
29 Ulchi
30 Khant
31 Chelkan
32 Chuvan
33 Chukchi
34 Chulym
35 Shor
36 Evenk
37 Even
38 Enets
39 Siberian Yup'ik
40 Yukagir
41 Izhma-Komi

live. Administratively, the Russian Federation consists of 89 units, which in Russian are called *subjekty* (subjects). They include 21 republics, 6 *krays*, 50 *oblasts*, 2 capitals (Moscow and St. Petersburg), 1 autonomous *oblast* and 10 autonomous *okrugs* (or "autonomous districts"). In this book, we use the term province for the *oblasts*, *krays*, etc. The provinces have 2 representatives each in the Federation Council (the upper house of parliament). The following gives an overview of the regions and their level of autonomy.

1. 21 republics - nominally autonomous with a supposed right to secede, each has its own constitution, president and parliament; it is represented by the federal government in international affairs and is supposedly home to a specific ethnic minority.
2. 49 *oblasts* - most common, regular administrative unit with a federally appointed governor and locally elected legislature.
3. 6 *krays* - similar to oblasts but usually more peripheral and less populated.
4. 1 autonomous *oblast*
5. 10 autonomous *okrugs* - more autonomous than oblasts but less so than republics; usually with a substantial or predominant ethnic minority.
6. 2 federal cities - major cities that function as separate regions.[1]

Some regions have a fairly progressive indigenous legislation and some degree of guaranteed participation. In other regions, politicians and the administration completely neglect the rights of indigenous peoples (see also the article by V. Turaev in this book). With the general trend being towards centralization in Russia, the question arises as to whether indigenous peoples will lose their special rights in the regions or gain stronger legislation due to federal intervention. This remains to be seen but the articles in this book give some idea of what is needed and what visions would be useful for indigenous peoples.

Some of the provinces are expected to be merged into larger territories, starting with Krasnoyarsk, which is likely to be joined with the Evenk Autonomous Okrug and the Taymyr Autonomous Okrug.[2] A regional referendum is scheduled for April 17, 2005 and this will decide on the merging of the three provinces.

The federal provinces are further divided into so-called federal districts, of which there are seven. These districts are governed by a governor, appointed by the president. A link with these governors may be crucial for the political movement of the indigenous peoples (see also the article by Todishev).

The so-called numerically small indigenous peoples in Russia have gained rights under Article 69 of the Constitution and three federal laws. The Russian Federation also guarantees the rights of small indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation. Specific rights include the pos-

1. Murmansk
2. Nenets Autonomous Okrug
3. Komi
4. Yamalo-Nenets Autonomous Okrug
5. Khanty-Mansi Autonomous Okrug
6. Taymyr Autonomous Okrug
7. Sakha (Yakutia)
8. Chukchi Autonomous Okrug
9. Koryak Autonomous Okrug
10. Kamchatka
11. Magadan
12. Khabarovsk
13. Primorye
14. Sakhalin
15. Jewish Autonomous Oblast
16. Amur
17. Chita
18. Buryatia
19. Irkutsk
20. Evenk Autonomous Okrug
21. Altay (Kray)
22. Krasnoyarsk
23. Altay (Republic)
24. Tuva
25. Khakassia
26. Kemerovo
27. Novosibirsk
28. Tomsk
29. Omsk
30. Tyumen
31. Sverdlovsk
32. Moskow
33. Saint-Petersburg
34. Arkhangelsk
35. Karelia

Federal Districts

1. Central Federal District
2. Southern Federal District
3. Northwestern Federal District
4. Far Eastern Federal District
5. Siberian Federal District
6. Urals Federal District
7. Privolzhsky (Volga) Federal District

sibility of being exempted from land and income taxes; a supposed priority right to certain natural resources; the right to substitute military service for alternative civil service; and the right to collect retirement benefits at an earlier age. However, the implementation or practical application of these laws is not ensured and a concrete mechanism is lacking. Furthermore, the three existing laws that protect the rights of indigenous peoples in Russia (and which will be described further in the following articles) have been revised, and important articles removed. Since the Round Table meeting in March 2003, many developments have taken place that have changed the situation of indigenous peoples. Many of the articles were written before these major changes. However, they are still of relevance in order to document what was in existence, as well as what the authors thought were crucial factors for the further development of the rights of indigenous peoples. The book concludes with an article analysing the new situation since September 2004.

Nation-states and indigenous peoples

Nation-states express themselves via very many different political systems, both in their principles as well as in their practice. But all Arctic states nowadays declare themselves to be democratic, with a multiparty, or at least a two-party, system. The actual practice of democratic politics, however, depends very much on the government of the particular nation-state. The Scandinavian countries, for example, are famous the world over for their humanistic approach, their multiethnic policies and their emphasis on the equal rights of every citizen. And yet indigenous peoples find themselves confronted with a surprising attitude of reluctance and opposition when it comes to discussing collective rights and land rights.

In a so-called modern democracy, representativity through political parties and elections are the main principles of governance. A majority wins over a minority and the majority then decides the further actions of the state. An adult franchise gives every individual over a certain age an equal vote. Every vote carries the same value. In some nation-states, the participation and actual influence in politics of minority groups is secured by, for example, quota regulations - some interesting examples can be found in the first article by V. Kryashkov in this book - but indigenous issues must compete with other issues that may be of more interest to the majority population, as Eva Josefsen very rightly puts it in her case study on the Saami parliaments. The fact that indigenous peoples are peoples with collective rights further challenges a political system based on a majority vote. Indigenous peoples' participation in electoral processes and in party politics has, in many places, not been able to halt the process of their dispossession

and marginalisation. Indigenous organisations and peoples have sought different solutions, however, some of which are described in this book.

Decision-making and participation

There are many reasons for people's participation or not in political systems around the world. The most simple are probably the person's political consciousness, their interest in the issues raised during the election, and a "feeling of being able to influence the results". But the level of electoral participation is also often connected to promises, such as community support or socio-economic development, made by (non-indigenous or indigenous) politicians. Some parties and candidates take up subjects that relate to indigenous issues and promote the indigenous peoples' agenda and concerns such as, for example, recognition of their identity as indigenous people, of rights to land and resources, the promise of democratic participation in development programs etc. Another motivation for going to the ballot box can be a relationship to or affinity with one of the candidates. In that case, the relationship may be more important than the goals and aims of the respective candidate.

Indigenous peoples have chosen many ways of participating in politics:

- Joining and/or standing as candidates for mainstream political parties, in which case the candidates follow the party line but can also have an influence over party policies regarding indigenous issues and can put issues on their agenda. Indigenous party candidates are, however, not directly representing an indigenous people or community. In a conference on indigenous peoples' participation in political parties in Iqaluit in 2000, the former first Inuk Member of Parliament in Canada, Peter Ittinuar, explained that he decided to defect from the New Democratic Party to the Liberal Party in order to be able to gain more advantages for the Inuit by being a member of the ruling party. Inuit in Nunavut have commented several times that the interests and concerns of the Inuit people are more important to Inuit politicians than the agendas of the parties they join. The ultimate aim of being a party member is to achieve rights for their people. In Sápmi, participation in national political parties has taken very different forms in the three countries: while in Finland Saami run for election as members of national political parties, the Swedish Saami have rejected mainstream party politics. In Norway, on the other hand, the Saami run for election by putting forward their own Saami lists. Running for a mainstream party can, however, lead to individualism, opportunism and cooptation into the system, which can result in the marginalisation and disempowerment of indigenous peoples. It can also lead to divisions within the communities,

for example, if several members of the same community run for different parties and therefore divide their supporters.

- Indigenous peoples have sometimes formed their own political parties, as in the case of Greenland and Sápmi. Indigenous parties are often weak at national level but have more influence at municipal, community or regional level. In Greenland, indigenous parties were formed through the indigenous movement in the 1970s and constitute the political realm of Home Rule. The Saami in Sweden established their own political parties, and these are represented in the Saami parliament. The Saami in Finland, on the other hand, have not established indigenous political parties but decided to vote for individual candidates. In Norway, again, the Saami parliament comprises representatives of Saami organisations, local lists but also Norwegian political parties. In the case of Nunavut, Inuit have not yet formed political parties through which to run their new government but have retained the old system of electing the members of the Legislative Assembly as individuals unaffiliated to political parties. The designers of the Nunavut political system took care to ensure that the rules governing Nunavut's legislature could operate equally well with or without political parties.[3] Greenland has a self-contained political structure whereby all parties are entirely Greenlandic.

- Participation in electoral systems can also simply take the form of voting for candidates that have indigenous issues on their agenda. Some indigenous people run as individual candidates in elections and, in some cases, seek a political career outside the indigenous movement. Many Alaska Natives have had very successful mainstream political careers, as Gordon Pullar emphases in his paper. In 2002, the first Alaska Native was elected to a state-wide position, as lieutenant governor; in the Northwest Territories and Nunavut in Northern Canada, the Premiers are both indigenous. The past premier of the Northwest Territories, Stephen Kakfwi, was previously President of the Dene Nation and moved from a position as head of an indigenous organisation to head of a public government (and, as such, representing both indigenous and non-indigenous residents). The actual input of these individuals is highly dependent upon their respective situations and agendas, and is often contested. They can make an important difference to indigenous communities and to regional politics. In many cases, however, they are not representing a particular community or indigenous group and are thus not accountable to their communities. Consequently they do not necessarily have to follow the agendas of indigenous organisations or support the aims of their indigenous communities. There is a constant risk that they may be more interested in personal gain and

influence. But it must also be stressed that participation is not an individual decision everywhere. In some indigenous communities, the group decides on the degree of participation and selects candidates in a traditional way, who then represent the group in the national political system. The crucial factor here is to find ways of making individuals accountable. Participating in national politics can also be a venue for limited autonomy or representation within the framework of the wider state.

- Some nation states provide for partial representation by means of a quota system. Denmark, for example, provides space in the national parliament for two persons elected by the Greenlandic population and two by the Faroe Island population. These members of parliament represent their specific interests and lobby particularly in discussions concerning their territories. In Russia, some provincial governments have developed advisory bodies to the provincial parliaments, quotas for candidates from indigenous peoples to the parliaments, and advisory council mechanisms for communities and organisations. Some of these mechanisms function quite well, others look good on paper but are not implemented in practice. Many of the following articles will describe these bodies and their functions within the provincial administration. However, there is no national mechanism for indigenous representativity in Russia and, unfortunately, no indigenous person was elected to the national parliament (the State Duma) at the last elections.

Finding old/new ways

Many indigenous politicians and leaders (in the Arctic and elsewhere) refer to traditional custom whereby decisions are taken by consensus after consultations and long discussions. The emphasis is on decisions being made collectively and the opinion of elders is given special respect and regard because of their wisdom and experience, or else it is the chiefs who make the decisions following consultation with their advisors. The question of minority and majority vote is not relevant in the same way as in a Western democracy. Indeed, as Daryn Leas mentions in his paper, elections and votes are often seen by the communities as counterproductive because of the constituents' inability to be actively involved in the political decision–making, because winners and losers are created, and because a short-term view of governance is fostered – i.e. to the end of the term in office only. Some Yukon First Nations hence see the voting process as being a competitive and divisive way of reaching decisions.

The differences between the two systems of governance can marginalize indigenous peoples, who do not participate due to a lack of understanding. Remote

communities, in particular, confronted with a lack of mainstream education and communication, are generally failing to take part in the activities of wider society. However, in some regions, new and old forms of governance, constituting a mix of traditional and Western styles of governance, can be found.

What is apparent in many forms of traditional governance is its specific relevance to a particular community or group of peoples, and therefore the very local importance and emphasis. As we can see in the case study on the Yukon territory, the First Nations in the Yukon have included a formula in their self-government negotiations that gives the individual indigenous peoples (or First Nations as they are called in Canada) and communities the possibility of choosing their own particular way of "electing" representatives and leaders. The consequence of this community-based choice is a variety of political systems in different communities that are designed to suit the people directly on the ground.

In such regions as Nunavut and Greenland, where the indigenous people form a majority in a particular geographic and political territory, the electoral process serves to promote the indigenous peoples' agenda, concerns and issues and leads to indigenous representation. Being a majority in a regional government allows for a public government that represents the interests of the indigenous peoples without excluding the other inhabitants of the area (i.e. everybody can vote independent of their ethnic affiliation).

In other regions, indigenous institutions, such as the Saami parliaments, secure a certain level of involvement in national politics while being clearly separate from the national political institutions.

Indigenous peoples can challenge the state system by offering more viable decision-making processes and introducing self-governance that is appropriate to their particular circumstances. The positive aspects of indigenous peoples' systems must therefore be strengthened. Consensus-building, mechanisms of accountability, representation based on the people's collective decision, the role of elders in decision-making based on their wisdom and experience should all be taken into account. Likewise, raising awareness of the wider civil society, mass education and unity-building can be an ongoing way of dealing with the electoral process and strengthening the indigenous peoples' movement for self-governance.

Challenges for indigenous politics

The importance of alternatives to national political systems and of indigenous peoples' right to choose their own form of political participation is clear and also brings with it a number of challenges for indigenous governments, leaders and organisations.

A very basic component of negotiating and discussing self-government, which is mentioned often in this book, is community and grassroots involvement and

Baikit, Evenkia. Photo: Thomas Kahler

Nenets reindeer herding. Photo: Nina Meshtyb

the importance of the legitimacy of leaders and negotiators. The **feeling of local ownership** of a process and of an agreement or institution is seen in many examples as a central basis for a legitimate mandate for negotiation and representation.

In Canada, for example, both the Yukon negotiating team and the Nunavut negotiators experienced their constituencies' rejection of a first proposal as the people did not feel they were sufficiently consulted during the process. The leaders began a process of intensive community consultations and redrafted the proposal, which was then accepted. The lessons learned were important for the consistency and wide respect and acceptance of the now existing final agreements exists. As Daryn Leas states in his paper: "Based on the experiences of the Yukon First Nations, a community will only embrace a constitution if the citizens of that community were involved directly or had the opportunity to participate in the development of that constitution." In Nunavut, as well as in Greenland, the final agreements were put to a vote and were approved by an overwhelming majority, which gave them additional legitimacy. In Canada, all land claims go through a ratification process on the part of the indigenous people whose rights would be affected by the claim settlement.

Land claims and self-government negotiations or agreements can also lead to factions within the indigenous movement. The *Alaska Native Claims Settlement Act* led to a discussion about "who is native". Later, the legitimacy of Alaska Native tribes became an issue within the indigenous population in Alaska when tribes that were organised under the *Indian Reorganization Act* (IRA), formed pursuant to an act of the US Congress, and the villages that never adopted IRA constitutions and formed "traditional councils", started to argue about the true legitimacy of the one or the other. One of the principle reasons for this development is certainly that the US government has tried to control indigenous peoples' self-organisation. However, as Gordon Pullar states in his paper: "Many if not most traditional people living in remote communities not only were not involved but also may not have even been aware that the settlement negotiations on their behalf were taking place."

In the Northwest Territories (NWT) in Canada, indigenous peoples are now negotiating regional land claims and self-government agreements after an attempt to reach a single land claim agreement for all Aboriginal groups in the Territory (with the exception of the Inuvialuit) broke down in 1990, due to different ideas and visions. The individual First Nations are different, and separate agreements may reflect their wishes and particular relations to the territorial government more accurately. It has to be stressed that indigenous regional organisations in the NWT and Alaska (as well as in the Yukon) represent different indigenous peoples - as compared to Nunavut and Greenland, with an almost entirely Inuit population, and Sápmi with the Saami people as one indigenous people -

and to reach consensus and a proposal that everybody can agree on can be more difficult.

In Greenland, the legitimacy of those negotiating self-government was never seriously disputed. The reason for this is largely that the elected leaders have a strong mandate to negotiate on behalf of the Greenlandic people. The historical development of the island made Greenland fairly homogenous and nobody nowadays disputes that the Greenlanders belong to one people. Their spokespeople therefore speak for a nation and are part of a political system that is widely accepted as the legitimate system among Greenlanders. It is the system that has the legitimacy and gives a mandate to its representatives.

Saami parliaments exist in Norway, Sweden and Finland. Saami elect their representatives to the parliament and the parliaments have the mandate and the obligation to represent their constituency in the respective nation-state. The forms of elections and representativity are different and have been described above.

Another challenge is **capacity building** at the local level in order for the indigenous constituency to understand the political negotiations and processes. The capacity-building component is not only important during the negotiation process, however, but a requirement for the functioning of any indigenous political body or institution following its creation. Problems of a lack of indigenous staff exist in many regions and can lead to a greater involvement of non-indigenous advisors and bureaucrats than originally planned for. This is not only mentioned by Daryn Leas as one of the priorities in the Yukon but also taken up in numerous accounts of the new Nunavut territory, where the government was initially understaffed and the continuing shortage of Inuit with post-secondary education has led to an influx of non-Inuit people from southern Canada to fill the new positions. In Greenland, the need for Danish staff in the Home Rule administration leads to monolingual Greenlanders feeling further discriminated as the bureaucratic system is dominated by the Danish language. As a general rule, one can observe that the lack of indigenous people is mainly a problem on the administrative level and not so much on the political level, where a majority of the politicians are indigenous.

A very relevant element for Saami politics are the Saami institutions. The Saami university college, the Saami institute, Saami radio etc. provide the Saami parliaments and the Saami organisations with an institutional basis that supports their political work and which they can use for gaining or distributing information. The work of the institutions enables the Saami politicians not only to react to the political discussions and decision-making of the national state but to be pro-active and take up discussions and initiatives. This model shows the need for capacity building and the development of a knowledge frame.

Awareness of a self-government agreement on the part of the state bureaucrats is certainly not an issue to be underestimated. The negotiating team usually consists of an elite government group. Ordinary government officials, however,

are rarely adequately informed of the fact that certain sections of the self-government agreements may require that they do their jobs differently (for example, by giving preference to indigenous-owned companies who are bidding for a government contract). There is an awareness in principle that a self-government agreement has been reached but, among senior government officials, little appetite for spending the resources required to fully implement the agreement ("we created Nunavut - what more do you want"?!).[4] An agreement does not end with its signing but has to be presented to a wider public and made common knowledge in the country.

Conclusion

Any democratic space available in the dominant system can be utilized for advancing the interest and the collective benefit of the indigenous peoples. The successful use of these spaces will depend greatly on the unity and strength of indigenous peoples, rather than on reliance upon a few indigenous leaders. Likewise, the political, economic and social realities confronting indigenous peoples should lead to collective responses and actions to advance their interests in the electoral process and should aim to prevent worsening violations of their rights.

The formation of alliances with other groups and sectors at the local, national and international levels for the promotion of indigenous peoples' rights, protection of their resources, democratic participation and representation of all democratic sectors within the nation-state can lead to political gains and more democratic space inside and outside the electoral process.

Given the unwillingness of many states to accept the ancestral rights of the peoples and their ongoing policy of treating the territories of the indigenous peoples as internal colonies, legal forms of struggle, including the electoral process, can be considered. Nevertheless, lobbying for the recognition of ancestral land rights, adopting and implementing international instruments promoting indigenous peoples' rights and other collective actions of the indigenous peoples are of fundamental importance.

Current scenarios of globalisation and resource exploitation also have to be integrated into the strategies of indigenous peoples and into their struggle for survival. The political empowerment, or any form of self-governance, of indigenous peoples therefore must include control over land and resources.

An exchange of experiences between indigenous peoples from different Arctic regions and a discussion of negotiating strategies and challenges should be supported in any way possible. The experiences of indigenous peoples, however, are very different (this cannot be stressed enough) and the same strategy will not apply in every region or community. It is important that indigenous peoples are able to decide for themselves what kind of political system they want to practise,

how and if they want to join the national political discourse and activities and how they want to form their own government, be it through a consensus style of decision-making, through a party system or another alternative. It is also important to give space for and acceptance of internal discussions, litigation and conflict. After all, real participation and a feeling of ownership lead to the voicing of concerns and to the challenging of processes; raising concerns and criticism also shows the existence of a capacity to participate actively – i.e. the basis of a healthy society. ❑

Notes

1 Wikipedia, the free encyclopaedia: www.en.wikipedia.org
2 The consequences of merging *subjekty* into joint administrative units was discussed at length in the Coordinating Council of the Russian Association of the Indigenous Peoples of the North in October 2004, held in Krasnoyarsk.
3 Jack Hick personal communication, 2005
4 See forthcoming work by Jack Hicks in this regard.

References

Jens Dahl, Jack Hicks, Peter Jull (eds.), 2000. *Nunavut: Inuit regain control over their lands and their lives*. IWGIA, Copenhagen.

Kathrin Wessendorf (ed.), 2001. *Challenging politics: indigenous peoples' experiences with political parties and elections*. IWGIA, Copenhagen.

INTRODUCTION: THE INTERNATIONAL ROUND TABLE ON AN INDIGENOUS PARLIAMENT

Olga O. Murashko

Most of the papers in this book have been prepared for the international round table "Numerically Small Indigenous Peoples of the North, Siberia and the Far East and the Parliamentary System in the Russian Federation: Reality and Perspectives", which took place from 12 - 13 March 2003 at the Federation Council of the Federal Assembly of the Russian Federation. The round table was organized by the Russian Association of Indigenous Peoples of the North (RAIPON) and the International Work Group for Indigenous Affairs (IWGIA). The round table was conducted as part of the international project "Capacity Building and Promotion of Rights of Indigenous Peoples," supported by the Danish Ministry of Foreign Affairs.

The goal of the round table was to discuss the current situation of indigenous peoples' participation in the political processes of various countries, and the degree to which the existing electoral and other political systems allow them to have representation in government legislative structures. Questions that were raised covered the forms of parliamentarism and self-government that are closest to the cultures of the indigenous peoples; what needs to be done to encourage them to take part in the decision-making process, etc., always bearing in mind the parliamentary experiences of indigenous peoples abroad, as well as in Russia, where the issues of political representation are only beginning to be addressed. The results of the discussion were to be taken forward in the form of recommendations for developing a legal basis for representation of the numerically small indigenous peoples of Northern Russia in both the Russian government structures and bodies of local government.

A discussion on the legal foundations for representation of the indigenous peoples of Russia in government structures is long overdue: it has already been discussed at the international round table "Experience of Government Authorities of Sweden, Norway and Finland with Saami Parliaments", which took place in Moscow in 1999 at the initiative of the Russian Association of the Peoples of the North, the Saami Parliaments and with the support of the federal government. As a result of the 1999 round table, a set of recommendations was agreed upon regarding development of a legal basis for representation of indigenous peoples in the Russian Federation's government structures. Round table participants stressed the need to form a representative body of authorized representatives of numerically small indigenous peoples at federal level, which would have

A group of Nenets reading RAIPON's newsletter. Photo: Yasavey

consultative status at the Federal Assembly and which would protect the interests of the peoples by conducting expert evaluations of State Duma legislative acts.

Since the meeting in 1999, negotiations have been held with G. N. Seleznev, President of the State Duma, regarding the conceptual development of indigenous peoples' participation in the legislative process. RAIPON also asked the Institute of the Numerically Small Indigenous Peoples of the North and the Siberian Department of the Russian Academy of Arts and Sciences to work on a concept of parliamentary development for the peoples of the North, Siberia and the Far East as part of a "Concept for the Development of the Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation in the First Quarter of the 21st Century" but this initiative did not meet with the support of the State Duma.

In October 2002, the corresponding draft bill and the issue of forming a parliament of the numerically small indigenous peoples were discussed at the joint circuit session of the RAIPON Coordination Council and the National Organizing Committee for the International Decade of the World's Indigenous Peoples in Yakutsk. It was decided that it would be necessary to form a consultative, representative body of indigenous peoples at the State Duma. RAIPON approached two deputies who were also members of the National Organizing Committee for the International Decade of the World's Indigenous Peoples and asked them to prepare the corresponding draft bill for submission to the Duma in 2003.

The role of RAIPON as representative organization

It should be noted that RAIPON's authority, as representative of 40 regional and ethnic associations of Russia's indigenous peoples and forty[1] indigenous peoples of the North, Siberia and the Far East, with a population of around 200,000, has been steadily increasing over its 12 years of existence and its role in and influence over the government authorities has fundamentally changed.

RAIPON concluded cooperation agreements with government legislative and executive authorities on the problems of the numerically small indigenous peoples, encouraging government representatives to approach the Association when formulating federal legislation concerning indigenous peoples; on the development of the Federal Special Program "Social and Economic Development of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East" and on individual solutions to the socio-economic development of the regions inhabited by indigenous peoples.

Indicative of RAIPON's growing role and authority is the current initiative of the President of the Russian Federation to examine federal legislation from the point of view of dividing competence and authority between the government, constituent federal entities and local bodies of government. After RAIPON's President S. N. Kharyuchi approached the representative of the Presidential Committee on Drafting the Division of Competence and Authority between the Federal Government Bodies and the Government Bodies of the Constituent Entities in 2001, the Committee's work groups were expanded to include representatives and experts from RAIPON. The Association's representatives influenced the Committee decisions in terms of revising the federal legislative acts on the rights of the numerically small indigenous peoples that were passed between 1999 and 2001, and which some Committee members had tried to revoke. Under pressure from RAIPON, and with the support of the Federal Assembly representatives, the Committee decided to keep the three federal legislative acts passed at that time and introduce the necessary changes and amendments.

The federal legislative acts in question were:

- *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation;*
- *On General Principles of the Organization of Communities* [obshinas] *of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation;* and
- *On Territories of Traditional Resource Use of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation.*

When the government of the Russian Federation is now working on the bills that were recommended by the Committee, RAIPON representatives continue to be

active in the government work groups and continue to promote recommendations on changes and amendments aimed at protecting the interests of the indigenous peoples in two dozen current federal legislative acts.

Acceptance of RAIPON's current influence over government authorities' decision-making with regard to the interests of indigenous peoples can also be seen in the northern regions. Regional associations of the indigenous peoples are approaching the legislative authorities of the constituent federal entities with recommendations on how to improve provincial legislation with a view to protecting the rights of indigenous peoples. When making decisions that affect the vital interests of the indigenous peoples, regional authorities are compelled to take into consideration the opinions of their social organizations. In those provinces where legislation on the rights of the indigenous peoples is still not very well developed, deputies of the provincial legislative assemblies often voice paradoxical appeals to the regional associations: "...develop legislation, give us your suggestions". This is often the case in provinces where indigenous peoples are still not legally vested with the right of legislative initiative. The indigenous peoples of the North themselves have encountered this kind of attitude towards their associations, as if they were surrogates or branches of government executive authorities. When representatives of the indigenous peoples approach the appropriate executive authorities regarding certain socio-economic problems, they are often told to "take up the issue with your Association". Such advice can be seen as a sign that government officials do not want to address the problems of indigenous peoples. But it cannot be denied that it also reflects a degree of acceptance of the social organization of the numerically small indigenous peoples of the North and their activities.

Constitutional realities and legislative developments

Despite *de facto* recognition by the executive branch of government that there is a need to cooperate and take into consideration the recommendations of RAIPON and its regional associations, these relationships have no legal basis at federal level. Russian legislation on the numerically small indigenous peoples has currently come to a halt. Discussions around a revision of legislation on the rights of indigenous peoples are deviating from the democratic norms enshrined in the Constitution of the Russian Federation and other federal legislative acts.

The Presidential Decrees of 1992 on the legal status of the numerically small indigenous peoples have not been followed up, are forgotten or have been revoked: Decree No. 118 of 5 February 1992, for instance, which recommended ratification of *ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries* ("ILO Convention No. 169"), and Decree No. 397 of 22 April 1992, which recommended that,

two draft bills, On the Legal Status of the Numerically Small Indigenous Peoples of the North and On the Legal Status of the Ethnic Region, Ethnic Village and Settlement Councils, Tribal and Community Councils of the Indigenous Peoples of the North *be prepared by the end of 1992 and submitted to the Supreme Council of the Russian Federation.*

In 1999, the federal legislation of the Russian Federation *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* established the norms for creating territorial, social self-governance for the indigenous peoples, and for introducing quotas for the indigenous peoples in legislative bodies of the constituent federal entities as well as representative bodies of local government, to be regulated by the laws of these entities. Since these norms have still not been enshrined in the corresponding federal legislation, the provincial legislation that was passed in several autonomous districts is not considered entirely valid.

Unfortunately, the possibility of legitimating the representation of the indigenous peoples in the governing authorities and bodies of local government is mentioned neither in the State Duma discussion on changes and amendments to federal legislation on electoral rights nor in the federal draft bill *On General Principles of the Organization of Local Government in the Russian Federation*, which was submitted to the Duma by the President of the Russian Federation. This will endanger the existence of systems of representation of the indigenous peoples that are already enshrined in the legislation of several provinces of the Russian Federation, as well as the corresponding articles (Articles 11 and 13) of the federal legislation *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation*.

Furthermore, discussions on changing the territorial and administrative organization of the Russian Federation to consolidate its provinces revolve around the issue of abolishing the sovereignty of the autonomous *okrugs*, which are the ones that have made the most significant progress in fulfilling the rights of the indigenous peoples. The main argument for consolidating the provinces at the expense of the autonomous districts is that the autonomous districts do not fulfill their tasks regarding indigenous peoples' development, while administrative and territorial dispersion endangers rational economic exploitation and development of the northern regions. In this respect, it is worth noting that the government ministry in charge of drawing up the legislation on the indigenous peoples is the Ministry of Economic Development and Commerce.

It is worrying that, nowadays, when the economic problems of Russian development have become the corner-stone of government policy, the economic interests of some agencies rather than the interests of the indigenous peoples and international principles and norms governing the rights of these peoples, which are already enshrined in the legislations of the Russian Federation, may turn out to be decisive in forming government policy on the numerically small indigenous peoples.

International experience, including that of the countries of the circumpolar region, demonstrates that the democratic principles and norms for creating systems of representation and self-governance of the indigenous peoples within the national legal systems of each individual country have found their place in relation to the historical, socio-economic context of that country and its legal tradition. A tradition of self-governance of the indigenous peoples in the North of Russia existed in the past when, in compliance with the *Decree on Aborigine Governance* of 1822, tribal community authorities were established to elect elders that would then represent the interests of their communities in the larger administrative and territorial units - aborigine councils. This system was abolished during the Soviet era.

The indigenous peoples of the North's experience of self-governance and representation in government bodies in contemporary Russia is relatively small. But the models that have emerged in the Khanty-Mansi Autonomous Okrug, Yamalo-Nenets Autonomous Okrug, and Republic of Sakha (Yakutia) may turn out to be sufficiently effective should the provinces be vested with the right and obligation to develop and practically fulfill the various ways of representing the interests of the indigenous peoples in government bodies and local government.

The round table "Numerically Small Indigenous Peoples of the North, Siberia and the Far East and the Parliamentary System in the Russian Federation: Reality and Perspectives" is RAIPON's latest attempt to discuss this issue with the authorities and develop practical recommendations for its solution, taking existing international experience into consideration. Since the federal legislation *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* entitles the provinces of the Russian Federation to address the issue of representation of the indigenous peoples in government at their legislative level, the regional associations ought to be assisted to prepare and initiate legislative draft bills that would improve the legislation of the constituent federal entities of the Russian Federation on the rights of indigenous peoples.

During preparations for the international round table, its organizers - the Russian Association of the Indigenous Peoples of the North and the International Work Group for Indigenous Affairs - asked representatives of the state authorities, Russian and foreign experts to prepare papers on developing indigenous parliamentarism in some provinces of the Russian Federation and countries of the circumpolar region.

The papers that were presented at the round table form the basis of this publication. ❑

Note

1 Since the Coordinating Council meeting in October 2004 in Kransoyarsk, RAIPON has been representing 41 peoples, as the Izhma-Komi people were included at the request of their organization "Izvatas" [editor's note].

PARTICIPATION IN THE POLITICAL PROCESS: RUSSIAN REALITY AND FOREIGN EXPERIENCE

Vladimir A. Kryazhkov

The numerically small indigenous peoples, as part of the multinational population of the Russian Federation, are essential participants in the political process. In this respect, those peoples and individuals that belong to them participate in state governance on equal terms with others, have the right to elect and be elected into government bodies and local authorities of government, to participate in referendums, form associations, submit individual and collective addresses to the authorities, and protect their political rights in court (Art. 3, Sect. 3, Art. 5, Sect. 2, Art. 19, 30, 32, 33, 46 of the Constitution of the Russian Federation).

Conditions and legal basis for the rights of indigenous peoples in Russia

Numerically small indigenous peoples are a statistical minority and, admittedly, not entirely competitive in the political sphere. The Russian state therefore creates certain conditions by which to allow for an adjustment. Legislation at **federal level**, in particular, prescribes:

- the right of constituent federation entities to legally establish representation quotas for the numerically small indigenous peoples in their legislative bodies and representative bodies of local government;[1]
- the right of constituent federation entities to form electoral constituencies on territories densely populated by the indigenous peoples with a deviation from the average electoral representation of up to 40%, and in the remote and difficult to reach areas, which are more often than not populated by the above mentioned peoples, of up to 30%;[2]
- the legal entitlement of municipal institutions to reflect, in their charters, issues of organizing local self-government on territories densely populated by ethnic groups and indigenous communities while taking into consideration their historical and other local traditions;[3]

Roundtable meeting with the Nenets organisation Yasavey and oil companies. Photo: Yasavey

Coal development on the land of the Teleut people in Kemerovo. Photo: Nabat

- inclusion of authorized representatives of public organizations of the numerically small indigenous peoples on the Consulting Council on Affairs of Ethnic and Cultural Autonomy with the Government of the Russian Federation;[4]
- the right of the numerically small indigenous peoples to delegate authorized representatives to the councils of representatives of the indigenous peoples at the executive level of the provinces and local government authorities, and to participate in the preparation and implementation of solutions offered by state and local government authorities regarding issues affecting indigenous peoples; conducting environmental and ethnological assessments; controlling land use, complying with legislation guaranteeing the rights of the numerically small indigenous peoples.[5]

The federal guarantee of the rights of the numerically small indigenous peoples of the North without doubt lies in the existence of Autonomous Okrugs (A.O.), which are special constituent federation entities of the Russian Federation (Art. 65 of the Constitution of the Russian Federation). They were formed by the Resolution of the All-Russian Central Executive Committee (VCIK) of 10 December 1930 in the areas densely populated by these peoples, were considered a form of self-determination, contributed to - and are still aimed to a larger extent than other constituent federation entities at - finding solutions to the political, socio-economic and cultural development of the peoples of the North.

The necessary guarantees for the participation of the numerically small indigenous peoples in state and municipal affairs are established in the provinces. An analysis of the **provincial legislations**[6] shows various approaches toward achieving this goal, which include:

- establishing administrative and territorial structures with regard for the interests of the numerically small indigenous peoples (Republic of Sakha (Yakutia), Khanty-Mansi A.O., Yamalo-Nenets A.O. and Taymyr (Dolgano-Nenets));
- participation in the electoral process in compliance with the right of the numerically small indigenous peoples to propose candidates for the legislative body (Khanty-Mansi A.O.), as well as representation quotas for the numerically small peoples in electoral committees (Yamalo-Nenets A.O.);
- guaranteed representation of the numerically small peoples in the legislative body (Khanty-Mansi A.O.: 5 seats, Yamalo-Nenets A.O.: 3 seats, Nenets A.O.: 2 seats);
- establishment of special structures within legislative bodies (Assembly of Representatives of the Numerically Small Indigenous Peoples in the Khanty-Mansi A.O., committees and commissions on the affairs of numerically small indigenous peoples in the Koryak A.O., Evenk A.O. and Nenets A.O., representative of the numerically small indigenous peoples of the North at the Sakhalin Duma, election of the president or vice-president of the legislative body from the representatives of the indigenous peoples in Khanty-Mansi A.O. and Yamalo-Nenets A.O.);

- granting the rights of legislative initiative to the associations of the numerically small peoples (Sakhalin, Koryak A.O., Nenets A.O., Evenk A.O.), as well as other forms of encouraging their participation in the legislative process (Khanty-Mansi A.O., Evenk A.O., Chukchi A.O., Sakhalin);
- involving numerically small indigenous peoples and their representatives in the decision-making process (by means of the referendum that considers the position of these peoples in the Yamalo-Nenets A.O.; by means of the procedure of the public project discussion, for example, the leasing of a forest fund plot in Khabarovsk);
- establishment of authorities within the system of executive power that address the problems of the indigenous peoples (introduction of the capacity of vice-president (governor) for the affairs of numerically small indigenous peoples in Khanty-Mansi A.O. and Yamalo-Nenets A.O., establishment of committees with similar functions in Yamalo-Nenets A.O. and Evenk A.O.);
- organization of local self-government in the areas densely populated by the indigenous peoples, considering the particularities of their way of life (for instance, forming ethnic municipal institutions in Karelia, or ethnic territorial social self-government in Khanty-Mansi A.O., Yamalo-Nenets A.O., Nenets A.O. and Krasnoyarsk).

All of the above shows that efforts have been made in the Russian Federation to include the indigenous peoples in the political process. At the same time, one should note that these attempts are still fragmentary, unsystematic, and of uneven scope and depth. As a consequence, the measures taken do not always give the expected results: there is currently only one representative of the indigenous peoples of the North in the State Duma of the Federal Assembly[7]; the number of representatives is diminishing in provincial parliaments; normative acts protecting the rights of these peoples are rarely discussed with them; consultative bodies of representatives of the indigenous peoples are not being formed in public government structures, and so forth.

The reasons for the decreasing impact of measures taken to involve the numerically small indigenous peoples in the governing process are: a lack of understanding of the issue on the part of society and the authorities and, in some cases, insufficient activity of the indigenous peoples and their associations. Problems also arise due to insufficient regulation, for example, of the representation quotas for the indigenous peoples in the parliaments of the constituent federal entities and representative bodies of local government. The fact that the given quotas are not mentioned in federal legislation on electoral rights is taken as a prohibition on their establishment.

The political potential of the indigenous peoples is also reduced by the fact that existing legislation does not allow for the formation of political parties along ethnic lines (Sect. 3 Art. 9 of the federal legislation of 11 July 2001 *On Political Parties*[8]), nor the association of these peoples (or any other associations based solely on ethnic, national principles) among subjects entitled to participate in direct elections, enter coalitions, propose candidates for deputies etc.[9]

International examples

In order to progress in an analysis of the issue at hand, we need to decide as a matter of principle: whether any kind of preferential status in the political sphere should be applicable to the numerically small indigenous peoples as a particular group of national minorities. International experience in this respect speaks for this possibility. In some countries, legislation guarantees parliamentary representation (in the chambers) of autonomous formations or territories densely populated by ethnic groups (Denmark, Spain, Canada, Finland),[10] while in others direct representation of the national minorities is guaranteed. In the latter case, there are different approaches: in Hungary, a separate law determines that minorities have the right to be represented in the state assembly.[11] In Poland, electoral committees of the organizations of national minorities have the right to propose a list of parliamentary candidates without any additional conditions imposed upon them, while the parties of national minorities do not need to reach the threshold of 7% of all votes.[12] In the National Chamber of India, there are 38 and 37 seats reserved for registered or enlisted tribes and castes.[13] In the Republic of Croatia, persons belonging to ethnic and national associations or minorities that make up more than 8% of the population of the Republic have the right to be represented proportional to their population numbers in the Assembly and government, as well as higher organs of the judiciary; if the minority population makes up less than 8%, they can have five deputies elected to the Chamber of Representatives of the Assembly of the Republic as representatives of all ethnic and national associations or minorities that elected them, and they are obliged to protect their interests.[14]

The right of guaranteed representation of national minorities in the state authorities is often a topic of public discussion. In those cases that need to be resolved in court, the European courts often allow, under certain circumstances, this kind of representation. The Federal Constitutional Court of Germany, for instance, handling the issue of representation of national minorities in the parliament, formulated the following position: an electoral law with a 5% threshold excludes representation of the parties of national minorities and the removal of that obstacle vis-à-vis those parties is fully acceptable (resolution of 11 August 1954);[15] elections need to guarantee the national representativity of the parlia-

Fishing in Sovrechka, Krasnoyarsk. Photo: Sibir Diu

Signs of oil exploitation near Sovrechka, Krasnoyarsk. Photo: Sibir Diu

ment; stipulations of the electoral law that guarantee the representation of minorities serve their purpose, are not domineering and destructive of the principle of equal rights; all in all if the measure of reaching the goal does not surpass the needs (resolution of 23 January 1957).[16]

The Constitutional Court of the Republic of Hungary is sufficiently consistent on this question. Its resolutions of 10 June 1992 (No. 35/1992 (VI.10)) and of 6 May 1994 (No. 24/1994 (V. 6.)) regarding the delays in legislating on electing national minorities to the State Assembly pointed out several aspects: national minorities are a national state-forming element, a source of power; they have the right to be represented in parliament; parliament is obliged to pass legislation guaranteeing that representation; failure to pass legislation is a violation of the Constitution insofar as it fails to lay down this established competence.

Discussions and inspirations

Not without reason is the experience of participation in the political life by the indigenous peoples of the circumpolar countries of special interest to the peoples of the North of Russia. There was a fairly detailed discussion of this issue at the international round table "Experience of Government Authorities of Sweden, Norway and Finland with Saami Parliaments", which took place in Moscow in 1999 at the initiative of the Russian Association of the Indigenous Peoples of the North, with the support of the federal authorities. In their papers, the leaders of the Saami parliaments revealed different aspects of their activities and co-operation with the authorities. The resolutions of the round table included the task of establishing a similar structure in the Russian Federation, a Parliament of the Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation.[17]

The international round table on "Numerically Small Indigenous Peoples of the North, Siberia and the Far East and the Parliamentary System in the Russian Federation: Reality and Perspectives" (12-13 March 2003, Moscow), organized by the Russian Association of the Indigenous Peoples of the North with the support of the International Work Group for Indigenous Affairs (Denmark) and with the participation of the Committee on Northern Affairs and Numerically Small Indigenous Peoples under the Federation Council of the Federal Assembly of the Russian Federation, can be seen as a continuation of the same discussion. The goal of the round table was to analyse the contemporary situation with regard to the participation of indigenous peoples in the exercise of power: to what degree does the current electoral system allow the indigenous peoples to be represented in legislative bodies, what needs to be done to encourage the peoples to participate in the decision-making process and protect their interests?

In actual fact, the round table participants went beyond the given topic. Along with the parliamentary system, presentations touched upon other questions that could widely be categorized as "self-governance of the indigenous peoples".

The papers of foreign participants, which describe the experiences of indigenous peoples' participation in the political process of Arctic countries, are of particular interest. These papers generally demonstrate that there is a variety of approaches and that the measures they establish are embedded in the organic context of the historical, geographic, demographic, economic, political, cultural and legal conditions of the indigenous peoples as a part of the countries in which they live.[18]

When familiarizing ourselves with the Canadian experience in particular, which is characterized by a consensual relationship with indigenous peoples and the coupling of their self-government with land issues, we need to take into consideration the history of the colonization of North Canada, the density and homogeneity of the given peoples within the borders (including the treaties regulating land ownership issues) corresponding to the indigenous peoples of Canada.[19] The situation in Greenland is that of historically determined self-governance on the principles of wide autonomy with a consideration for the remoteness of the island from the metropolis, homogeneity of population ("Greenland nation") and lack of attractive resources. The self-governance of the Alaska Natives is realized on the basis of American values in relation to the unification of indigenous peoples in commercial corporations (essentially, self-governance has a place based on ethno-economic principles). The self-governance of the Saami, who densely populate the northern regions of their countries, is based on European political and legal democratic norms, limited by political, social and cultural issues, and not based on or related to any pretensions of the indigenous peoples to the land or other natural resources.

Is it possible to take advantage of these foreign experiences in Russia? Directly no, but some elements could be appropriated. This relates, for instance, to the Saami parliaments. The formation of such institutions in Russia as a particular kind of social institution with an advisory function would be useful for the self-expression of the indigenous peoples. From the Alaskan experience, associations of indigenous peoples could be of interest. The Canadian system of self-governance is attractive because of the process of building the relationship between the state and indigenous peoples on the basis of consensus (which in multinational Russia would be problematic), the determination of land use, and the orientation towards preserving traditional institutions and norms of self-governance.

The Russian experience of creating the conditions for the participation of the numerically small indigenous peoples in state affairs was presented at the round table using the examples of four constituent federation entities (Khanty-Mansi A.O., Khabarovsk, Amur and Sakha (Yakutia). The value of these experiences lies

in the fact that they have been adapted to the political and legal precepts of the Russian Federation and, correspondingly, have the best prospects for expansion.

The round table participants formulated their basic ideas on expanding the involvement of the numerically small indigenous peoples in the political process in recommendations, addressed to the state authorities, bodies of local government and associations of the indigenous peoples. It is worth noting that these recommendations are based on the stipulations of the Constitution of the Russian Federation and international legal norms guaranteeing the rights of ethnic minorities, including the indigenous peoples. They are aimed at developing existing legislation and experience, gathered in both the Russian Federation and abroad, and creating the conditions for active participation of indigenous peoples in political life at all levels of government and in various forms. ❑

Notes

1 Cf. Federal legislation of 30 April 1999 , *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* (Art. 13) // *Sobranie zakonodatel'stv Rossiskoi Federacii* (SZ RF). 1999. No. 18. Page 2208.
2 Cf. Federal legislation of 12 June 2002 with changes and amendments of 4 July 2003, *On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum* (Sect. 4, Art. 18) // SZ RF. 2002. No. 24. Page 2253; Rossiiskaia gazeta. 2003. 9 July.
3 Cf. Federal legislation of 28 August 1995, *On General Principles of Organizing Local Self-Management in the Russian Federation* (Sect. 1, Par. 14, Art. 8) // SZ RF. 1995. No. 35. Page 3506.
4 Cf. Federal legislation of 17 June 1996. *On Ethno-Cultural Autonomy* (Art. 7) // SZ RF. 1996. No. 25. Page 2965; Regulation of the Consulting Council on the Affairs of Ethnic and Cultural Autonomy to the Government of the Russian Federation. Established by the Regulation of the Government of the Russian Federation of 18 December 1996 No. 1517 with changes and amendments of 25 January 1999. // Ibid. 1997. No. 1. Page 160; 1999. No. 5. Page 680.
5 Cf. Federal legislation of 30 April 1999. *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* (Par. 1, 2, 5 Art. 5, Par. 8 Art. 6, Par. 2, 3, 5, 6, 7, Sect. 1, Art. 8).
6 Cf. in more detail: Constitutional rights of the constituent federal entities / Prof. V. A. Kriazhkov. M. 2002. Pages 286-294.
7 In the last Duma elections in December 2003, no indigenous person was elected to the State Duma.
8 Cf. SZ RF. 2001. No. 29. Page 2950.
9 Cf. Federal legislation of 14 April 1995 with changes and amendments of 19 July 1998. *On Public Associations* (Art. 12-1) // SZ RF. 1995. No. 21. Page 1930; 1998 No. 30, Page 3608; Federal legislation of 4 July 2003 *On the Changes in Articles 2 and 35 of the Federal Legislation 'On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum'* // Rossiiskaia gazeta. 2003. 8 July.
10 Cf. Constitution of the Kingdom of Denmark (par. 28, 32(5). - Constitutions of the States of the European Union. M. 1998. Pages 303-314. Constitutional (State) Law of Foreign Countries. T. 3 / Edited by B. A. Strashun. M. 1997. Pages 207-208; A. A. Mishin, Canadian Parliament, in Parliaments of the World. M., 1991. Page 210, 240; Finnish Parliament, Helsinki, 1996. Page 7.
11 Cf. Legislation No. 77/1993 *On the Rights of National and Ethnic Minorities*. - Magyar közlöny, 100. Budapest, 1993. Julius 22.
12 Cf. Constitutional (State) Law of Foreign Countries. T. 3 / Edited by B. A. Strashun. Pages 505-506.
13 Cf. V. E. Chirikin. Constitutional Law of Foreign Countries: A Textbook. M., 1997. Page 505.
14 Cf. Constitutional legislation of 8 May 1992 *On the Rights and Freedoms of Man and the Rights of Ethnic and National Associations or Minorities in the Republic of Croatia* (Art. 18)., in collection: Constitutions of the Countries of Central and Eastern Europe. M., 1997. Pages 462-484.
15 Cf. Entscheidungen des Bundesverfassungsgerichts. 4 Band. Tübingen, 1956. No. 4. Pages 31-44.
16 Cf. Ibid. 6 Band. Tübingen, 1957. No. 10. Pages 84-98.
17 Cf. Papers from the International Round Table on the Study of the Experiences of Sweden, Norway and Finland with Saami Parliaments. 14-19 March 1999. Moscow, Russian Federation. M., 1999.
18 This is reflected in the legislation of the corresponding countries. Some of the acts regulating relations in the given sphere have been translated into the Russian language and published (cf. Legislation of 29 November 1978, No. 577 *On the Internal Self-Government of Greenland*. - Status of Indigenous Peoples of Russia. Legal acts and documents. Editor V. A. Kriazhkov. M, 1994. Pages 413-416; Saami Legislation of 12 June 1987 (Norway). Ibid. Pages 463-467; Legislation on Saameting of 17 July 1995 (Finland) - Legal Status of the Indigenous Peoples of Circumpolar Countries. Editor V. A. Kriazhkov M., 1997. Pages 116-123; Legislation on Regulating Aboriginal Lands of Alaska of 18 December 1971 with changes and amendments of 2 January 1976 and 1987. - Ibid. pages 72-114; Conclusive Agreement with the Inuvialut (Canada) - Problems of the Traditional Means of Nature Exploitation. North, Siberia and Far East of the Russian Federation. M., 2000. Pages 119-149.
19 Cf. Constitutional Act of 1982, Part II, Article 35. - Constitutions of Foreign Countries. M., 1996. Pages 318-341.

INTERNATIONAL LAW AND REFORM OF RUSSIAN FEDERATION LEGISLATION

Pavel N. Pavlov

Section 4 of Article 15 of the Constitution of the Russian Federation states that the universal principles and norms of international law and international treaties are constituent parts of the legal system of the Russian Federation. The Constitution thus allows the possibility of direct effect and implementation of international legal acts regulating relationships governing numerically small indigenous peoples on the territory of the Russian Federation.

Any person interested in finding solutions to the problems of the indigenous peoples has the right to be guided by the stipulations of international legal acts, including during court proceedings. Article 69 of the Constitution of the Russian Federation also testifies to the fact that Russia is willing to comply with international legal standards on indigenous peoples. In compliance with Article 69 of the Constitution of the Russian Federation, the Russian Federation guarantees the rights of the numerically small indigenous peoples in accordance with the universal principles and norms of international law and the international treaties of the Russian Federation.

For the first time in the Russian Federation, the need to protect the rights of the indigenous peoples, as established in international legal texts, has thereby been vested at constitutional level. Symbolically, the year in which the Constitution of the Russian Federation was passed was the International Year of the World's Indigenous Peoples. The Russian Federation found it expedient to reflect constitutionally on the need to preserve their ancient territories and traditional way of life (Point "m", Section 1 of Article 72 of the Constitution of the Russian Federation). The Constitution thus highlighted the essential problems that need resolving with regard to ethnic minorities, including the small indigenous peoples. One could claim that the presence in the Constitution of stipulations relating to the indigenous peoples shows the degree to which international legal texts have influenced our country's domestic policy.

It is sufficient to remember that the very term "indigenous peoples" comes from international law. An analysis of international legal texts shows that there exists a sufficiently wide selection of legal materials on indigenous peoples. At the same time, it should be borne in mind that the corresponding norms of international law are very general in nature. It is often the case that the international treaties state that implementation problems need to be resolved by individual countries "within the framework of the national legal system".

Reindeer herding in Sovrechka, Krasnoyarsk. Photo: Alexander Afanasjev

International legal acts related to indigenous peoples are often not implemented because the domestic laws necessary for their implementation are lacking. Problems in recognising the rights of the indigenous peoples would largely be solved with ratification of the *Convention of the International Labor Organization no. 169 concerning Indigenous and Tribal Peoples in Independent Countries* ("ILO Convention no. 169"). Unfortunately, this convention is not part of the legal system of the Russian Federation.

This situation obstructs the implementation of other international legal acts. Unlike the above mentioned Convention, other international legal standards speak of the rights of indigenous peoples and ways of implementing them only in the most general way. At the same time, albeit with difficulties, the norms of international law are gradually beginning to be implemented in Russia. At federal, provincial and municipal level, a number of laws and other normative legal acts, which, in one way or another tackle the problems of the indigenous peoples, have been passed.

Despite progress in developing legislation, there are no fewer legal problems in this field. It must be noted that, for various reasons, corresponding legislation has been developing in a chaotic manner. As a result, the laws and other normative legal acts that determine the rights of the indigenous peoples have turned out to be poorly coordinated. This situation gives rise to a need to reform the given legislation. The President of the Russian Federation has asked for revisions of federal legislation on the indigenous peoples. It is expected that this legislation will be seriously reformed over the coming years.

For effective implementation of international legal norms on the indigenous peoples, one needs to know which the relevant international norms are and how they can be implemented in the Russian Federation in order to adopt the necessary legislation and other normative acts.

International legislation

International legal standards require that the norms of international law apply to the indigenous peoples because they relate:

a) to all people;
b) to national minorities;
c) to indigenous peoples.

In this way, international legal documents on indigenous peoples can be tentatively divided into three groups.

Legislation on the protection of the rights of indigenous peoples as part of the world community

Among these legal texts are a significant number of international treaties covering a wide range of topics. One is the *International Covenant on Civil and Political Rights* (CCPR). This treaty forms an international legal basis for resolving the essential problems of indigenous peoples, such as access to natural resources. In accordance with Point 2 of Article 1 of the Covenant, all peoples may freely dispose of their natural resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. In other words, the indigenous peoples, like other peoples living on their corresponding territories, must have free access to the use of their natural resources.

This norm can be compared to other international legal texts, for example, the *International Convention on the Elimination of All Forms of Racial Discrimination*. The

Committee on the Elimination of Racial Discrimination (CERD), established under Article 8 paragraph 1 of the Convention, recommends in relation to indigenous peoples that the states participating in the Convention should recognize the right of indigenous peoples to own, develop, control and use their lands, territories and resources and, where the lands and territories traditionally controlled or inhabited by them were taken from them or are being exploited without their free and informed consent, measures should be taken for the restitution of these lands and territories. The right to restitution should be replaced by the right of fair and immediate compensation in those cases in which the restitution of the land or territory is not possible for valid reasons. Such compensation should, wherever possible, be in land and territories.

International legal documents demand the protection of indigenous peoples' rights in economic, cultural, environmental and other fields. Principle 22 of the *Rio Declaration on Environment and Development*[1] is formulated as follows:

> *Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.*

Chapter 26 of Agenda 21, which was also passed at the UN Conference on Environment and Development in Rio de Janeiro in 1992[2], emphasized in particular that the values of the indigenous peoples, their traditional knowledge and resource management practices are especially important for the implementation of environmentally sound and sustainable development. These principles and directives are of direct relevance to the indigenous peoples of the Russian Federation.

This is confirmed, for example, in Article 7 of the *Nuuk Declaration on Environment and Development in the Arctic*, which reads as follows:

> *We recognize the special role of the indigenous peoples in environmental management and development in the Arctic, and of the significance of their knowledge and traditional practices, and will promote their effective participation in the achievement of sustainable development in the Arctic.* [3]

This first group of international agreements is of fundamental significance because the stipulations of international legal acts governing national minorities and indigenous peoples are based on them.

Legislation on the rights of indigenous peoples as minorities

The second group of international legal texts is aimed at protecting indigenous peoples as national minorities.

It should be noted that, in this case, we are considering international treaties directly aimed at protecting ethnic, religious and linguistic minorities.

The *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities* is aimed not only at preserving the identity of these peoples but also at facilitating their development. In line with Point 2 of Article 4 of the above Declaration,

> *States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.*[4]

One such measure is that of granting national minorities the right to land management. For the indigenous peoples, this measure is essential because, to use the formulation from the Constitution of the Russian Federation, a people cannot exist as an independent ethnic group without their traditional habitat. Equality between national minorities and the majority nations is a basic leitmotif of the corresponding international treaties.

Point 2 of Article 4 of the *Council of Europe's Framework Convention for the Protection of National Minorities* states that,

> *the parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.*[5]

The indigenous peoples are a particular group within that of national minorities. This is why there is a tendency in international law to create particular international treaties in their regard.

Legislation on the specific rights of indigenous peoples

The third group of international legal documents is aimed at protecting the rights of indigenous peoples specifically. International legal documents establishing the rights of indigenous peoples, first and foremost *Convention No. 169 of the International Labor Organization concerning Indigenous and Tribal Peoples in Independent Countries* ("ILO Convention No. 169"). The Convention was adopted on 27 June 1989 in Geneva at the 76th session of the General Conference of the International Labor Organization. In comparison with other international treaties, this Convention gives the fullest of treatment to the rights of indigenous peoples. The Convention clearly demonstrates that world views on indigenous peoples who lead a particular way of life have dramatically changed in recent years. The preamble to the last revision of ILO Convention No. 169 states that the developments that have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples throughout the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of earlier standards. The Convention has not been ratified by the Russian Federation and hence Russia is not obliged to follow its stipulations. However, one has to agree with the experts who believe that our state's membership of the ILO, and the position of the Soviet Union and the Russian Federation as its legal successor, make it necessary for the Federation to take into consideration the stipulations of the above Convention in its domestic policy. The attitude of the general public and various authorities towards the Convention is a sign that its stipulations should not be disregarded. The indigenous peoples of the North and their associations insist on the need to ratify the Convention. This position is supported and justified by scientific research.

In principle, the federal authorities and the authorities in a series of provinces have expressed their readiness to take such a step. The Convention requires that states, with the participation of indigenous peoples:

> *ensure that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population (Article 2, 2(a));*
> *promote the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions (Article 2, 2(b));*
> *assist the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life (Article 2, 2(c)).*[6]

The Convention singles out the basic goals whose accomplishment would guarantee the rights of indigenous peoples. These goals, include, in particular:

1 recognition and protection of the social, cultural, religious and spiritual values, practices and institutions of indigenous peoples;

2 guaranteeing the participation of indigenous peoples in decision-making on any issue that involves them, including:
   - consultations;
   - encouragement to prepare and implement state and municipal acts;
   - creation of the conditions for indigenous organizations' activity;
3 improving the living and working standards of indigenous peoples, as well as increasing their level of health care and education;
4 in applying national laws and regulations to the peoples concerned, due regard shall be made to their customs;
5 ensuring that indigenous peoples can take effective legal action to protect their rights;
6 recognition, within the national legislative framework, of the rights of ownership and possession of indigenous peoples over their lands and other natural resources;
7 participation of indigenous peoples in the management of natural resources on a particular territory;
8 compensation (if possible) and reparation of damages for indigenous peoples should any kind of activity have to be conducted on their territories;
9 where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only if the following conditions are met:
   - public inquiries with the participation of representatives of indigenous peoples;
   - the right to return to their traditional lands, as soon as the grounds for relocation cease to exist;
   - provision of lands of quality and legal status at least equal to that of the lands previously occupied by them;
   - the indigenous peoples may request compensation, either in money or in kind;
   - full compensation for any resulting loss or injury;
10 use of lands and other natural resources in compliance with the customs and traditions of indigenous peoples, unless they violate the stipulations of national legislation and international agreements;
11 exploitation of natural resources traditionally used by the indigenous peoples, only if the following conditions are met:
   - consultations in case of land expropriation or any other kind of transmission of land rights outside the indigenous community;
   - persons not belonging to these peoples shall be prevented from taking advantage of the customs of indigenous peoples or a lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them;

12 the following shall be recognized as important factors in the maintenance of indigenous cultures, their economic self-reliance and development:
   - handicrafts;
   - rural and community-based industries;
   - hunting, fishing, trapping, gathering and other traditional activities;
   - other activities guaranteeing the subsistence of indigenous peoples.

The Convention addresses all the basic problems whose resolution is considered necessary to protect the rights of indigenous peoples.

A juxtaposition of the stipulations of this Convention and the stipulations of Russian legislation demonstrate that a fully-fledged legal basis for resolving the problems of indigenous peoples has still not been created either in the Russian Federation as a whole or in the individual constituent federal entities. At the same time, it cannot be said that legislation relating to the indigenous peoples is not being developed. The question is how to revise existing legislation in order to find solutions to the problems in line with international legal standards.

Legislation of the Russian Federation

The Russian legal basis governing problems of the indigenous peoples' rights is an unsystematic conglomerate of different normative legal acts. This situation is a direct consequence of the development of Russian legislation in recent years. The political, economic and social transformations of the last decade have been so far-reaching that legal theory and legislative practice simply do not meet the legal needs of the country. Different models for resolving legal problems have been suggested. Each of the suggested models deserves attention and a positive evaluation.

At the same time, their concurrent implementation has led to a situation whereby normative legal acts regulating similar relationships are often based on entirely different principles. They are therefore contradictory.

New normative legal acts, including those on the indigenous peoples, are often prepared as if from scratch. The Russian legal basis concerning the indigenous peoples is characterized by a lack of systematic coordination.

However, positive moments can be seen in the development of the Russian legal basis in this field as well. In fact legislators have begun to attempt to regulate the corresponding relations and take into consideration new elements of the country's life.

Special federal legislation on indigenous peoples

There are three special legislative acts on the indigenous peoples currently in effect:

- *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation;*
- *On General Principles of the Organisation of the Communities* [obshinas] *of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of The Russian Federation;*
- *On Territories of Traditional Resource Use of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of The Russian Federation.*

No matter what we think of the content of these three federal laws, they currently form the legal basis for the development of Russia's entire legislation in this field.

On Guarantees of Rights of Numerically Small Indigenous Peoples of the Russian Federation

The most important of the three federal laws is the law *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation*. As a rule, in the Russian legal system, each legislative branch develops out of the stipulations of the fundamental legislation. For instance, in civic, land, forest and environmental laws, these are the *Civic Codex*, the *Land Codex*, the *Forest Codex*, and the federal law *On the Environment*.

The law on guarantees of rights of indigenous peoples plays the same role in the legislative corpus of the indigenous peoples that the *Civic Codex* plays in the civic corpus.

It should be noted that the attempt to create fundamental legislation in this field is not new. It is a known fact that one such area of fundamental legislation during the Russian Empire was the 1822 Statute on Aborigine Governance, followed by the Aborigine Resolution of 1892.

The federal law on indigenous rights has both advantages and disadvantages. One of the advantages is the presence of a stipulation regarding the need to guarantee the rights of indigenous peoples. Its serious shortcoming lies in the impossibility of accomplishing its goals. This paradoxical situation is of no great surprise. It must be recalled that this federal law is the first to directly aim at finding solutions to the problems of the indigenous peoples. There were many difficulties associated with adoption of this legislation. The very idea of regulating relationships concerning the indigenous peoples within special federal legislation was often met with objections and non-acceptance. The law states, albeit not fully and in less than perfect legal terms, the need to recognize specific indigenous rights. The recognition of such indigenous rights at the level of federal legislation is colossally important for Russia. The provisions of the law should, nonetheless, not be given high praise.

In our evaluation of this federal law, it should be remembered that this legislative act does not take into full consideration the provisions of international legal texts on the rights of indigenous peoples. If the main law on indigenous peoples had been based on, or at least incorporated, the most important provisions of ILO Convention No. 169, many of the problems now being faced by the indigenous peoples could have been avoided.

A serious, if not the most important, shortcoming of this federal law is its declarative nature. Essentially, the federal laws on the indigenous peoples prescribe that the indigenous peoples and their associations enjoy the same possibilities for fulfilment of their rights as other citizens of the Russian Federation and their associations. Implementation of this approach to regulating the corresponding relations is not in line with Article 69 of the Constitution of the Russian Federation, which guarantees the rights of the indigenous peoples in accordance with the provisions of international legal texts.

It has to be acknowledged that the special federal laws on the indigenous peoples merely mark the need to secure indigenous rights without establishing the legal mechanisms for realizing those rights.

On Territories of Traditional Resource Use of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation

The federal law *On Territories of Traditional Resource Use of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of The Russian Federation* differs positively from previous federal laws by attempting to incorporate historical and international experiences. Only time will tell if this attempt has been successful or not.

The idea of granting the indigenous peoples certain territories is not new. The Resolution of the Supreme Council of the Soviet Union of 27 November 1989 *On Immediate Measures for the Environmental Recovery of the Country* (Point 11) recommended legally vesting the territories of traditional resource use not subject to industrial exploitation in the indigenous peoples of the North, Siberia and the Far East in 1990. Territories of traditional resource use were not established in the Soviet Union. It is interesting, however, that Soviet legislation links the issue of establishing territories of traditional resource use to problems of environmental recovery.

This relationship was also taken into consideration in the development of the federal law on indigenous peoples' territories. Some time after the dissolution of USSR, the issue of creating corresponding territories resurfaced. Certain normative legal acts were adopted both at the federal level and at that of the provinces of the Russian Federation, including the Decree of the President of the Russian

Federation of 22 April 1992 No. 397 *On Immediate Measures for Preserving the Places of Habitation and Economic Activity of the Numerically Small Peoples of the North.*

These attempts at resolving the legal issues of territories of traditional resource use were, however, unsuccessful. This may have been because the corresponding legislative and sub-legislative acts were not harmonized with civic, land, forest and water management legislation.

The federal law on indigenous peoples' territories created the necessary legal basis for resolving these issues. The main task now is to implement this federal law. The question arises as to what provisions of the federal law implement the requirements of international legal texts. These relate, above all, to norms regarding the need to establish territories of traditional resource use with the participation of the indigenous peoples. Only the indigenous peoples or their authorized representative can initiate the establishment of territories of traditional resource use. The realization of this stipulation assumes that the scope of the territories and the mechanism for natural resource management should be determined on the basis of suggestions made by indigenous peoples. The corresponding suggestions from indigenous peoples need to be accepted or rejected on the basis of rational motives. In the case of illegal or unjustified rejection, the indigenous peoples can always take measures to protect their rights through the courts.

Article 8 of ILO Convention No. 169 states that indigenous and tribal peoples have the right to retain their customs and institutions unless they are incompatible with fundamental rights defined by the national legal system and internationally recognized human rights. There are also other provisions in this Convention that require the regulation of corresponding relations not only by international treaties and legislation but also by indigenous customs.

Section 3 of Article 2 of the federal law is based on the requirements of ILO Convention No. 169. This was the first time a federal law had recognized the need to regulate relations with indigenous peoples not only by law but also by custom. It is perfectly obvious that many of the indigenous peoples' customs are directly related to natural resource management.

Article 13 of the federal law states that natural resources on the territories of traditional resource use are to be used by persons belonging to the indigenous peoples and indigenous communities not only in accordance with the legislation of the Russian Federation but also with the customs of the peoples.

Article 17 of ILO Convention No. 169 prescribes that the corresponding peoples should establish procedures for the transmission of land rights among members of these peoples.

In other words, the indigenous peoples are, in a number of cases, entitled to use natural resources in line with their customs. This is where the stipulations of international law and of the legislation of the Russian Federation have something in common.

Article 11 of the federal law states that the legal status of the territories of traditional resource use is determined by the statutes on the territories of traditional resource use, affirmed by the Government of the Russian Federation, executive authorities of the provinces and local self-government authorities with the participation of persons belonging to the indigenous peoples and communities or their authorized representatives. The establishment of legal status is one of the ways in which natural resources may be managed.

Unfortunately, this cannot be effectively achieved yet, since the forms and manner of indigenous participation in resolving the corresponding issues are insufficiently developed.

According to the federal legislation on indigenous territories, the indigenous peoples can participate in establishing the legal status of the territories of traditional resource use by

- encouraging the authorized representatives of the indigenous peoples to develop and evaluate the normative legal acts of the Russian Federation (Article 5);
- coordinating the limitations of non-traditional economic activity with the authorized representatives of the indigenous peoples (Article 5);
- participation of the authorized representatives of the indigenous peoples in developing resolutions on issues of preservation of ancient lands, traditional ways of life, the economy and trade of the indigenous peoples to be passed by the state authorities of the Russian Federation, authorities of the provinces and local self-governance authorities (Article 8).

It must be borne in mind that persons belonging to the indigenous peoples, their communities or their authorized representatives have the right to participate in the organization, protection and functioning of the territories of traditional resource use, also in compliance with the legislation on specially protected natural resources. In accordance with Article 5 of the federal law *On Specially Protected Natural Resources*, citizens and corporate entities, including public and religious associations, contribute along with the authorities to the implementation of measures regarding the organization, preservation and functioning of the specially protected natural territories. State authorities take the recommendations of citizens and public organizations into consideration when implementing those measures.

The *Land Codex* also guarantees the right of indigenous peoples to participate in resolving the corresponding issues. In accordance with Subsection 4 of Point 1 of Article 1 of the *Land Codex*, the basic principle of the land legislation is the participation of citizens and public organizations (associations) in resolving issues concerning their land rights. The citizens of the Russian Federation and their public organizations (associations) have the right to participate in finding solu-

tions whose implementation could influence the condition of the lands in their use or under preservation, whereas the state authorities and local authorities of self-government, as well as economic or other subjects, are obliged to ensure the possibility of that participation in the manner established by law.

It is perfectly obvious that such legal norms on the form and manner of indigenous participation cannot be fulfilled until changes and amendments have been made to the administrative and other laws that directly regulate the activity of the governing authorities at different levels.

The legislation on governing authorities is still not harmonized with the legislation on the indigenous peoples. As a consequence, indigenous peoples cannot in practice make use of their governing rights.

The federal law on indigenous territories should be revised. The concept of the law, however, should not be changed.

Perspectives for the development of the Russian legal and normative basis on indigenous peoples

It has been noted that legislation on indigenous peoples will be reformed in the next few years. It is to be expected that a revision of laws affecting indigenous peoples will take place in the next couple of years. Initiatives are also to be expected in the sphere of harmonizing provincial legislation with the new federal legislation. Therefore, it is unlikely that the provinces will, under the current circumstances, try to find independent solutions to the issue of protecting the rights of the indigenous peoples.

It is worrying that the recommendations for legislative improvements regarding indigenous peoples stem not from the indigenous peoples themselves or the organizations associated with their protection but from the economic 'establishment'.

It seems that, in the revision of legislation on indigenous peoples, humanitarian issues are being pushed into the background. Recommendations somehow exclusively revolve around economic problems. It may once more turn out that the problems of the indigenous peoples, how they should lead their lives under current economic conditions, will be solved not in compliance with international legal norms but in terms of the ideas of certain economic agents. But such a pessimistic prognosis of further legislative developments regarding the indigenous peoples may prove wrong. It is possible that the indigenous peoples and the organizations protecting their interests will manage to overcome the current legal situation.

In recent years, much has been done to secure the rights of the indigenous peoples. The basis is there. Now we need to work diligently on the competent legal formulation of our achievements and on the formation of competent legal

mechanisms for resolving the corresponding problems. Once this task is accomplished, the main prerequisite for resolving the problems of the indigenous peoples will be taken care of. The main task will then be to realize the requirements put forth by legislation. Legislation should contribute to, rather than obstruct, the resolution of the corresponding problems. At the moment, the obstacles to achieving the rights of the indigenous peoples are embedded in the legislation itself.

These shortcomings of Russian legislation on the indigenous peoples need to be removed. Current legislative revisions are an opportunity to recognize and realize all the provisions of international legal texts on the rights of indigenous peoples. Whether advantage will be taken of that opportunity or not depends on the degree to which the indigenous peoples and their organizations are prepared to work alongside the participants in the legislative process.

In conclusion, the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* must be noted, which was passed by the United Nations General Assembly on 18 December 1992. This Declaration requires the states to take appropriate legal measures to enable the existence and identity of national, ethnic, cultural, religious and linguistic minorities on their corresponding territories. It seems that only by adopting appropriate legislation will it be possible to effectively ensure that the rights and interests of the indigenous peoples of the Russian Federation are protected. And ensuring that the appropriate legislation is adopted will only be possible if international legal standards are followed rigorously. ❑

Notes

1 Agenda 21 and the *Rio Declaration on Environment and Development* were adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 3 to 14 June 1992 [editor's note]. http://www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163.

2 Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which humans impact on the environment [editor's note]. http://www.unep.org/Documents/Default.asp?DocumentID=52.

3 The Nuuk Declaration signed by the Eight Arctic Nations on September 16,1993 [editor's note]. http://arcticcircle.uconn.edu/NatResources/Policy/nuuk.html

4 The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* was adopted by General Assembly resolution 47/135 of 18 December 1992 [editor's note]. http://www.unhchr.ch/html/menu3/b/d_minori.htm

5 *Council of Europe H(1995)010.* http://www.coe.int/T/E/human_rights/minorities/

6 ILO Convention No. 169: http://www.unhchr.ch/html/menu3/b/62.htm

INDIGENOUS PEOPLES AND THE ELECTORAL SYSTEM OF THE RUSSIAN FEDERATION

Mikhail A. Todyshev

The current electoral system in the Russian Federation unfortunately does not guarantee the numerically small indigenous peoples of the North, Siberia and the Far East a true opportunity to control their own development and, in the majority of cases, simply excludes them from the political process. The majority electoral system is particularly bad when combined with the party list system. In this case, the indigenous peoples have practically no chance of sending their representatives to the Federal Parliament. Suffice to say, while the peoples of the North were represented by eight members of the Supreme Council of the Union of the Soviet Socialist Republics in 1989, and by twelve in the Supreme Council of the Russian Federation in the 1990 assembly, they had only six representatives in the first assembly of the State Duma, and only two in the second State Duma assembly in 1995. None of their representatives entered the State Duma in 1999. Nonetheless, Vladimir Yetylin, a Chukchi, was elected in the most recent by-elections in Chukotka Autonomous Okrug[1].

If we look at the statistics regarding the number of indigenous people in the legislative authorities of the constituent federal entities, we see a worrisome tendency: Indigenous peoples' representatives are also disappearing from the provincial parliamentary bodies. For instance, the Republic of Buryatia had two indigenous representatives in its first assembly, one in its second, and only one in the acting assembly. The Republic of Karelia had two in its first assembly, one in its second, and none in the acting assembly. But in many provinces there have been no representatives of indigenous peoples in the last three assemblies, which means there have been no indigenous representatives among their deputies for the last decade.

More satisfactory is the situation in the Koryak Autonomous Okrug (A.O.), where there have always been three to four representatives among the members of the last three assemblies. Three indigenous parliamentarians work in the State Duma of Yamalo-Nenets A.O. Elections to the Duma of Khanty-Mansi A.O. were recently held, with several representatives of indigenous peoples elected.

In relation to the above, the issue discussed at the round table in March 2003 is important. Let us try to find out what the legal basis of electoral law and its legal control are in the Russian Federation.

At present, the legal requirements for elections and for participation in state decision-making in the Russian Federation is provided by federal legislation FZ-67 dated May 22, 2002, *On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum*. This federal law is one of the basic laws governing the electoral system of the Russian Federation. It defines basic guarantees for the citizens of Russia to exercise their constitutional right to participate in elections and referenda conducted on the territory of the Russian Federation, in accordance with the Constitution, federal laws, constitutions (charters) and laws of the constituent federal entities, and charters of the municipalities. The main provision of this legislation is that elections are held on the basis of the universal, equal and direct electoral right to vote by secret ballot (Paragraph 1, Article 3).

This legislation reinforces and develops the following provisions of the Constitution of the Russian Federation:

Article 32

1. Citizens of the Russian Federation shall have the right to participate in the administration of the affairs of the state both directly and through their representatives.
2. Citizens of the Russian Federation shall have the right to elect and to be elected to bodies of state governance and to organs of local government, as well as take part in a referendum.

Article 2

Man, his rights and freedoms shall be supreme. It shall be a duty of the state to recognize, respect and protect the rights and liberties of man and citizen.

Article 3

1. The pluri-ethnic people of the Russian Federation shall be the vehicle of sovereignty and the only source of power in the Russian Federation.
2. The people of the Russian Federation shall exercise their power directly, and also through organs of state power and local government.
3. The referendum and free elections shall be the supreme direct manifestation of the power of the people.

Article 19

2. The state shall guarantee equality of rights and freedoms regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance. Any restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds shall be forbidden.

If we look at international standards, we see that these provisions are based on the norms of the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Civil and Political Rights* (1996).

Article 21 of the *Universal Declaration of Human Rights* stipulates the following:

1 Everyone has a right to take part in the government of his country, directly or through freely chosen representatives
2 Everyone has the right of equal access to public service in his country.
3 The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 25 of the *International Covenant on Civil and Political Rights*:

Every citizen shall have the right and the opportunity, without any distinctions mentioned in article 2 and without unreasonable restrictions:

a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
c) To have access, on general terms of equality, to public service in his country.

According to the constitution of the Russian Federation (Paragraph 4, Article 15), universally recognized principles and norms of international law and international treaties comprise an integral part of its legal system. If an international treaty of the Russian Federation[2] sets forward different regulations from the ones stipulated by national law, the regulations of the international treaty shall take precedence.

Furthermore, Article 69 of the Constitution guarantees the rights of the numerically small indigenous peoples, in accordance with the universally recognized principles and norms of international law and international treaties of the Russian Federation.

These are the legal foundations of electoral legislation in the Russian Federation. Let us now see if this legislation enables the indigenous peoples to ensure their participation in state affairs, either directly or through elected representatives.

Federal laws on indigenous peoples' rights

Federal legislation FZ-82 *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation*, dated April 30, 1999, (Article 13) reinforces the right of Russian constituent federal entities to establish representation quotas for the indigenous peoples in the assemblies of the provinces and in the representative authorities of local government for the purposes of finding the most appropriate solutions to the social, economic and cultural development of these peoples, protection of their historic habitat, traditional way of life, home management and trade. This law is one of the specialized laws protecting the right of the indigenous peoples. We will further consider the way in which this right has been addressed by the assemblies of the provinces.

The sphere of electoral rights tends, however, to be governed by the previously mentioned federal legislation, FZ-67 dated May 22, 2002, *On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum*. A closer inspection of this legislation reveals that it only allows the possibility of creating electoral districts in territories densely populated by indigenous peoples with a deviation of up to 30 percent from the average voter representation standards (instead of 10-15 as a general rule) (Paragraph (b), Section 4, Article 18). And yet it mentions no other guarantees of representation for these peoples, nor those based on the quota system. However, in addition to the guarantees established by this legislation itself, paragraph 3 of Article 1 allows for guarantees of the electoral rights of citizens of the Russian Federation, along with their right to participate in a referendum, to be established at federal level (by means of federal constitutional laws and other federal laws), and at the level of the provinces (by means of the provincial laws). This is probably the only aspect of this federal legislation that we can use today as a basis for the practical implementation of the provisions of Article 13 of federal legislation on the rights of indigenous peoples regarding representation quotas in provincial assemblies.

In order to better understand the problems of representation of the indigenous peoples as a whole, we have to look separately at the practices adopted at federal and provincial levels.

Representation of the indigenous peoples at federal level

A four-day international round table on Sweden, Norway and Finland's experiences of working with the Saami parliaments took place in March 1999 in the buildings of the State Duma of the Federal Assembly of the Russian Federation and the City Hall of Moscow. This round table was organized by the Russian Association of Indigenous Peoples of the North (RAIPON) and the Committee on

Affairs of the North and Far East of the State Duma, and was also supported by the Swedish government and the Moscow city municipal authorities. The event was coordinated by the Saami Council and the Lauravetlan Information Center.

Over 250 participants enthusiastically discussed the issue of representation of indigenous peoples in the federal state authorities. The representatives of the indigenous peoples of Russia listened attentively to presentations by members of the Saami parliaments and international non-government organizations of indigenous peoples. In their recommendations, the participants stressed the need to create a representative body of authorized representatives of the indigenous peoples of the North, Siberia and the Far East at federal level, with consultative status at the Federal Assembly of the Russian Federation and which could provide expert assessments of draft bills under consideration by the State Duma in order to ensure that the interests of indigenous peoples are fully reflected.

RAIPON spent the next few years methodically implementing the round table recommendations. The effective participation of indigenous peoples in governing their own development at legislative level and thus influencing the decision-making processes concerning their interests is the most important ethno-political issue for any multinational state, Russia included. This round table formed part of the Association's long-term strategy of involving the indigenous peoples in the process of participating in the running of their country, and thus governing their own fate, either directly or through elected representatives. In this regard, it would be appropriate to give an account of our work in implementing the recommendations of the 1999 round table.

Together with members of the State Duma and members of the Federation Council, the Association worked on preparing a draft federal bill on the parliament of the numerically small indigenous peoples of the North, Siberia and the Far East of the Russian Federation. We did not want to go down the path of creating yet another public organization. We needed to find a way of building our parliament as an authorized structure of the Russian Federation's government so that it would not require amendments to the Russian Federation Constitution. Experts and specialists in the sphere of constitutional law were involved, and the legal concept was prepared.

In October 2002 this concept, and the issue of creating a parliament for the indigenous peoples, was discussed at a joint meeting of the Coordinating Council of RAIPON and the National Organizing Committee for the International Decade of the World's Indigenous Peoples in Yakutsk. It was decided that there was a need to create a federal representative authority of indigenous peoples with consultative status at the State Duma. In order not to provoke the parliamentarians, it was decided to take the word "parliament" out of the authority's name and to call it a "Representative Federal Body of the Authorized Representatives of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East". To achieve this, two members of the State Duma who were also members

of the National Organizing Committee for the International Decade of the World's Indigenous Peoples were requested to prepare and present this draft bill for consideration by the State Duma during 2003.

Representation of indigenous peoples at provincial level

Members of the State Duma and members of the Federation Council are aware of the issue of indigenous peoples' participation in the legislative authorities of the provinces and of the representative bodies of local government. On June 2, 2001, the Committee of the Federal Council on Northern Affairs and Numerically Small Peoples held a round table devoted to participation of the indigenous peoples of the North in the legislative authorities of the provinces and in the representative bodies of local government. The list of recommendations included the adoption of changes and amendments to the existing federal legislations *On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum, On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Government of the Russian Federation,* and *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* and the creation of a public consultative authority with the Federal Assembly of the Russian Federation, representing the interests of the indigenous peoples of the North.

On December 17, 2001, the Committee on Issues of Nationalities' Affairs of the State Duma held its round table on the topic of "Representation of the Peoples in Government and Bodies of Local Government". Its recommendations note the need for a revision of existing federal electoral legislation, the legislation of the provinces and the legal acts of the bodies of local government to ensure fuller representation of the Russian peoples within them. The round table participants acknowledged that the most acceptable mechanism for forming federal government bodies, governing bodies of the provinces and local government in a multinational Russia would be by means of proportional representation, including allocating certain representation quotas to each of the peoples residing on the territory of a constituent federal entity or a municipality.

RAIPON played an active part in these two round tables. It is worth mentioning that the Association established good relationships with the Committee of the Federation Council on Northern Affairs and Numerically Small Peoples and the Committee on Nationalities Affairs of the State Duma, which were later formalized in 2002 via cooperation agreements. The two committees always provide help and support to the indigenous peoples. It is no coincidence that the 2003 round table was organised in association with them.

On January 2003, the State Duma passed the legislation *On Temporary Measures to Assure Representation of the Numerically Small Indigenous Peoples of the Rus-*

sian Federation in Legislative Representative Bodies of Constituent Federal Entities, which was signed by the President of the Russian Federation on February 7, 2003. Being a temporary measure, the duration of this legislation is very short. It came into effect on the day of its official publication, and covered only the legal situation regarding the election of members of the legislative bodies of the constituent entities of the Russian Federation who were appointed prior to publication of the legislation. This legislation gives the legislative authorities of the provinces the right to establish, in their own legislation, an acceptable deviation from the average electoral representation standards when creating electoral districts on the territories densely populated by indigenous peoples. In principle, this legislation was selectively passed for the Republic of Daghestan, where the issue of representation of the peoples of Daghestan in the government authorities is very complicated: over 20 numerically small indigenous peoples live in this territory. Daghestan is about to begin its election campaign.

Let us now see how these issues are resolved in the provinces of the Russian Federation inhabited by indigenous peoples. Our regional experiences in Russia are very diverse and abundant. While organizing the round table meeting in 2003, the Association approached experts with a request to conduct small-scale research into experiences of resolving the problem of representation of indigenous peoples in the assemblies of the provinces. These experiences were studied in Sakha (Yakutia), Khanty-Mansi A.O., Khabarovsk and Amur. I will now recount the positive experiences of Yamalo-Nenets A.O. and Khanty-Mansi A.O., as these could set an example in terms of solving issues of representation at the level of the provinces.

Yamalo-Nenets Autonomous Okrug

Sergey Nikolaevich Kharyuchi, President of the Russian Association of Indigenous Peoples of the North (RAIPON), also heads the State Duma of Yamalo-Nenets A.O. S. N. Kharyuchi has already been elected twice to the Duma from the multi-mandate electoral district, in which other representatives of indigenous peoples also run as candidates. This electoral system was adopted in 1995 in order to provide guarantees of representation for indigenous peoples in the legislative body of the Yamalo-Nenets Autonomous Okrug. Corresponding provisions are stated in the Charter of the Autonomous Okrug and in legislation on the election of members of the Yamalo State Duma.

Article 42 of the Okrug law thus stipulates a quota of three members for the indigenous peoples in the Autonomous Okrug State Duma, elected in the joint multi-mandate electoral district from among the indigenous peoples.

According to Article 45, paragraph 2 of the same law, the Chairman or one of the Deputy Chairmen of the State Duma of Yamalo-Nenets Autonomous Okrug shall be elected from among the members elected by the indigenous people.

Article 30 of the Okrug Charter guarantees polling and registering of opinions of the indigenous peoples through a local referendum in case of allocating land plots for purposes other than traditional resource management on the territories inhabited and traditionally managed by them.

Apart from the above, the Okrug Charter stipulates indigenous peoples' representation in the executive authorities. Article 53 of the Charter gives the indigenous peoples a right of representation in the form of Deputy Governor of the Autonomous Okrug. The laws establishing the Autonomous Okrug Administration stipulate the creation of a structural unit – the Department on Issues of Numerically Small Indigenous Peoples – to facilitate protection of the rights of indigenous peoples. Similar structural units have been created within the municipal administrations of some towns and in all the rural municipalities in the Okrug.

Khanty-Mansi Autonomous Okrug

The Charter of Khanty-Mansi A.O. and the district law *On Election of Parliamentarians to the Duma of the Khanty-Mansi Autonomous Okrug* stipulate a special form of representation for the indigenous peoples in the parliament of the Okrug. It is called the "Assembly of the Numerically Small Indigenous Peoples of the North". This is an additional and newly sought structure within the Duma of the Khanty-Mansi A.O. that enjoys the status of a virtual second chamber of the legislative authority. The opportunity to create this Assembly arose from the 1995 Charter of Khanty-Mansi A.O.

The Assembly is created to represent and protect the interests of the indigenous peoples. It is not an independent government authority but unites representatives of the Okrug Duma elected from the joint multi-mandate electoral district. The Assembly comprises five members (originally six), which is the representation quota for the indigenous peoples.

According to legislation of Khanty-Mansi A.O., dated May 3, 2000, *On Elections of Parliamentarians to the Duma of Khanty-Mansi Autonomous Okrug*, the right to nominate parliamentary candidates in the said electoral district falls to the Congress of the Numerically Small Indigenous Peoples of the North residing on the territory of the Khanty-Mansi A.O. The Congress nominates ten to twelve parliamentary candidates with the highest number of votes from the Congress delegates.

The Congress procedure is regulated by Okrug legislation dated May 3, 2000, *On the Procedure for the Congress of the Numerically Small Indigenous Peoples of the North for Nomination of Parliamentary Candidates to the Duma of Khanty-Mansi Au-*

tonomous Okrug from the Joint Five-Mandate Electoral District. It is worth mentioning that nomination by the Congress of the parliamentary candidates is not the only way of nominating them, although it is an important one. Parliamentary candidates may belong to any nationality, not only to the indigenous peoples, and there is therefore no discrimination against the other nationalities that live alongside the indigenous peoples.

The legislation details the election procedure for the Congress delegates at regional and district meetings (congregations) and conferences of the indigenous peoples in the municipalities of the Autonomous Okrug according to the quota: one delegate per 200 citizens with voting rights, belonging to the indigenous peoples.

The fear that this system discriminates against the rights and interests of other parliamentary candidates is unjustified. These candidates run in single-mandate districts. Their task is essentially simplified. They only have to receive the highest number of votes from the electorate of their own electoral district. At the same time, parliamentary candidates of the indigenous peoples are forced to run their campaign among the electorate of the entire Autonomous Okrug, spread around a couple of dozen single-mandate electoral districts. Parliamentary candidates of the indigenous peoples are therefore in a more complex situation.

The five candidates who receive the highest number of votes in the Congress elections are considered elected to the Duma of the Okrug. These five candidates make up the Assembly of the Numerically Small Indigenous Peoples. The Assembly is headed by the Chairman who, according to the Okrug Charter, is also Deputy Chairman of the Duma of the Khanty-Mansi Autonomous Okrug and a member of the Duma Council. This provision does not prevent the Assembly Chairman from becoming the Duma Chairman, as is currently the case: the representative of the indigenous peoples, Vasily Semyonovich Sondykov, is also the Okrug Duma Chairman.

Nenets Autonomous Okrug

Another positive solution to the issue of representation of the numerically small indigenous peoples at provincial level appeared in 2001 in the Nenets Autonomous Okrug, in which the Parliamentary Assembly adopted the district legislation, dated September 28, 2001, *On Additional Guarantees of Electoral Rights of the Nenets People to be Elected to the Legislative (Representative) State Authority of the Nenets Autonomous Okrug*. According to this legislation, the Nenets people receive additional guarantees of direct representation in the legislative authority of the Autonomous Okrug in the form of a two-mandate parliamentary quota. Elections for the Okrug Assembly representatives of the Nenets people are held in a multi-mandate ethno-territorial electoral district. Okrug Assembly representatives of the Nenets people are elected on the basis of a universal, equal and direct

electoral right to vote by secret ballot on the part of all electors registered in the multi-mandate ethno-territorial district. Citizens' participation in the elections is free and voluntary (but only Nenets can vote).

Unfortunately, members of the Nenets Autonomous Okrug Assembly have gone no further than adopting this legislation. We know that, together with the "Yasavey" Association of the Nenets People, they are developing the legal and normative regulations necessary for further development of this legislation. We hope that the representation quota for the indigenous peoples in the Nenets Autonomous Okrug Assembly will be implemented.

Other examples

The examples of positive provincial experiences of Buryatia and Sakha (Yakutia) can be noted, where representatives of the indigenous peoples have been working hard within the supreme legislative authorities for a number of years. Following the efforts of the regional associations of the indigenous peoples, in many provinces parliamentarians are researching the possibility of implementing the provisions of Article 13 of the federal legislation *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation*. Unfortunately, this provision of the federal legislation, which does not contradict the Constitution of the Russian Federation, has been implemented in the legislations of only three constituent federal entities so far.

The indigenous peoples from several northern territories that do not have their own representatives in the legislative authorities are confronted with parliamentarians who are unwilling to discuss and adopt laws stipulating additional rights for the indigenous peoples, including those concerning quota representation, because of the alleged breach of the constitutional provision of equality of all citizens regardless of sex, race, nationality, language, origin, etc. This lack of political goodwill is apparent not only in members of parliament but also in high-level regional leaders.

It is perfectly understandable that democratic elections are not to be expected. In order to win the election marathon, you have to have considerable financial resources or the political support of the province's Governor at the very least. It can be seen that the parliamentary body is increasingly made up of the managing directors of large industrial enterprises (mostly mining companies), who are difficult to persuade with regard to the need to provide parliamentary quotas for representatives of the indigenous peoples. Changes and amendments to the federal legislation *On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum* are necessary in terms of entitling the provinces of the Russian Federation to introduce additional quota guarantees

for indigenous peoples in the legislative authorities at provincial level and in the representative bodies of local government.

Such is the reality today.

Consultation mechanisms

In order to guarantee the effective participation of indigenous peoples in the decision-making process at State or provincial level, various consultation mechanisms can be implemented. Some of them are widely used in a number of constituent federal entities, and are bringing results. As an example we can mention the Sakhalin Duma, which introduced representation for indigenous peoples in 1994. The representative of the indigenous peoples to the Sakhalin Duma is elected at the Congress of the Numerically Small Indigenous Peoples of Sakhalin. This representative reports directly to the Sakha Duma Chairman; he is entitled to legislative initiative and receives the allowance of a Sakhalin Duma parliamentarian. Through their representation in the Duma, the indigenous peoples of Sakhalin thus have an opportunity to present draft bills and argue with members of parliament directly on the platform of the Duma.

Another consultation mechanism can be created by granting the right of legislative initiative to a public organization of indigenous peoples. The right of legislative initiative is stipulated in the charters of several provinces. The basic legislation of the Evenk A.O., Nenets A.O. and Koryak A.O., as well as that of Sakhalin and Kemerovo, contains provisions granting the right of legislative initiative to indigenous peoples' organizations that are duly registered in accordance with the law. The problem lies in the degree to which the members of parliament support these legislative initiatives. In my opinion, the results depend on the active and constructive work of the indigenous peoples' regional organizations and on their ability to establish themselves as reliable cooperation partners for the state authorities. There is work to be done in this regard.

There have been some interesting experiences in Khabarovsk, where legislation *On Authorized Representation of the Numerically Small Indigenous Peoples of Khabarovsk* was passed not long ago. This legislation covers the indigenous peoples permanently residing on the territories of their traditional habitat. In accordance with Article 3 of the legislation, the authorized representatives of the indigenous peoples in the province are from indigenous organizations and unions, along with citizens authorized by the indigenous population to represent their interests before the state authorities and local government.

Authorized representatives of the citizens are elected at public meetings in every municipality, and they represent only the interests of the municipality that has elected them. Representatives of the indigenous peoples from villages and settlements form district councils, which function *pro bono* at the district executive authority and resolve the corresponding issues in their districts. A district council is headed by a Council Chairman who is elected from among its members.

Consultative councils attached to the Governors and the executive authorities of the municipalities can also be seen as consultation mechanisms of the indigenous peoples. This practice is being implemented in some provinces. In the Chukchi A.O., for example, a *pro bono* consultative council of authorized representatives of the indigenous peoples was created in 2002, in accordance with the Governor's decision. The federal legislation *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* allows the creation of such councils but this method is unfortunately not widely used in many provinces. The consultative council is formed on the basis of the Governor's decision but it has to be initiated by the communities and organizations of the indigenous peoples.

The federal districts

In 2002, the Russian Association of the Indigenous Peoples of the North (RAIPON) began to cooperate actively with the district representatives of the President of the Russian Federation[3]. It has conducted meetings in the Ural Federal District, the Siberian Federal District and the Far Eastern Federal District. Consultative councils on issues of the indigenous peoples of the North, Siberia and the Far East have been created with the Plenipotentiaries of the President of the Russian Federation in the Siberian Federal District and in the Far Eastern Federal District (the first session of a Consultative Council was held on February 20, 2003 in Khabarovsk). It should be noted that this form of participation in discussions and the decision-making process regarding vital issues for the indigenous peoples brings positive results. The Consultative Councils include, by virtue of their position, the presidents of the regional organizations of the indigenous peoples, federal inspectors of the Representative of the President of the Russian Federation in the corresponding constituent federal entity, and representatives of the executive and legislative authorities of the provinces.

The role of RAIPON in federal political bodies

The government of the Russian Federation is developing a draft decree that would grant the Russian Association of the Indigenous Peoples of the North the status of "Authorized Representative of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East" attached to the Government of the Russian Federation. This consultative body would be entitled to conduct, among other things, expert assessments of draft bills concerning the interests of the in-

digenous peoples, participate in the development and implementation of the special federal programs for social and economic development of the numerically small indigenous peoples of the North, and prepare and submit to the government of the Russian Federation an annual report on the conditions of the peoples of the North, Siberia and the Far East. We hope that this decree will be adopted and that we will thus receive another consultation mechanism at federal level.

The Association's experts are sometimes involved in developing and discussing draft bills that have been submitted to the State Duma. This has become possible through constructive cooperation between the Association and the specialized committees of the State Duma and of the Federation Council. But this is obviously not enough.

It is now time to create a representative authority (a public chamber) of the indigenous peoples within the State Duma, which would include representatives of the provincial legislative authorities, former State Duma members from among the indigenous peoples and Association experts. It could become an assembly of legislators of the indigenous peoples[4].

In conclusion, it can be said that legislation on the rights of the indigenous peoples in the sphere of public governance is fragmented, controversial and still interpreted by the courts without regard for their interests.

In order to further develop the provisions of the Constitution of the Russian Federation, international legal norms and federal legislation, as well as to account for the experience gained in the sphere of the legal regulation and practice of the provinces of the Russian Federation, the following recommendations are advisable:

- To attach universal authority to the federal legislation, dated 7 February 2003, *On Temporary Measures to Assure Representation of the Numerically Small Indigenous Peoples of the Russian Federation in Legislative Representative Bodies of the Constituent Federal Entities*. This is a kind of precedent that we can use as a basis when proposing that the State Duma should introduce changes and amendments to the federal legislation *On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum* in terms of entitling the provinces to allocate quotas for the indigenous peoples in their parliaments. As one acceptable alternative, we can go back to the legislative initiative of the Republic of Daghestan, dated November 30, 2003, which proposed amending Paragraph 9 of Article 4 of the above electoral legislation on the provision of representation quotas for the numerically small peoples;
- To approach the State Duma with a request to discuss the possible creation of a "Public Chamber of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East within the State Duma". The Association has various drafts on this issue.
- There is a need to continue developing the federal legislative draft *On a Representative Federal Body of Authorized Representatives of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East*;
- We also need to voice a number of requests and recommendations to the parliaments of the provinces of the Russian Federation. The legal situation in the Russian Federation enables these issues to be resolved at provincial level. For this to be achieved, as I mentioned earlier, political goodwill is necessary, above all, on the part of the highest-level provincial leaders and Governors. ❑

Notes

1 In the last Duma elections in December 2004, no indigenous person was elected [editor's note].

2 The paragraph of the Russian Constitution does not say whether an international agreement merely needs to be signed by the President or a minister or whether it has to be ratified. The point for President Yeltsin when the Constitution was adopted was, however, to have the possibility of conducting foreign policy independently of Parliament [editor's note].

3 The constituent federal entities are grouped into 7 federal districts that are administered by a Plenipotentiary of the Russian President appointed by the president. Indigenous peoples of the North, Siberia and the Far East live in the Far Eastern Federal District, the Siberian Federal District, the Urals Federal District and the Northwestern Federal District [editor's note].

4 A Public Youth Chamber already exists within the State Duma. This is an advisory and consultative body attached to the State Duma. For its creation, it was necessary only to adopt a State Duma decree, and to confirm the provision of the public youth chamber.

RAIPON AS AUTHORIZED AGENCY REPRESENTING THE RIGHTS OF INDIGENOUS PEOPLES

Anatoly N. Sleptsov

I would like to focus on the issue of representation of the numerically small indigenous peoples at federal level in particular, since it is at this level that fundamental decisions are now being made. It could be rather boldly stated that the existing legislative system and centralization of power offer no possibility of the numerically small indigenous peoples being elected to the Federal Assembly of the Russian Federation in sufficient numbers to realistically influence federal-level decision-making. There have been various approaches and recommendations regarding representation in the legislative authorities, from the federal parliament of the numerically small indigenous peoples to special consultative bodies at the State Duma of the Russian Federation.

According to RAIPON's Vice-President M. Todyshev, research by legal experts has concluded that, given the Russian Federation's current political situation and the processes taking place, in part related to D. Kozak's commission[1], on a revision of federal legislations, it is not realistic to expect that an indigenous parliament could be established as an independent body as a result of corresponding federal legislation. This is due, above all, to the need to introduce changes into the Constitution of the Russian Federation, and, furthermore, the fact that the existence of such a body would need to be financed from the budget of the Russian Federation, which entails a host of difficulties ranging from introducing changes and amendments to budgetary classification to very basic issues of introducing these expenses into the state budget.

Since the matter of real representation of the numerically small indigenous peoples within the federal authorities cannot be resolved in the short term, we feel it appropriate to address the topic of ensuring their active participation in the authorities' decision-making processes, when these decisions affect their vital interests, within the framework of existing federal legislations.

Obviously, such participation should, above all, be ensured, via the framework of the indigenous peoples' representative body. So first and foremost there needs to be an official body or organization representing numerically small indigenous peoples. Secondly, this body should represent all the regions that are densely populated by numerically small indigenous peoples leading a traditional way of life. Thirdly, this organization needs to have a certain amount of experience and a good reputation. Fourthly, it needs subdivisions, including at the level of local government.

RAIPON meets all these requirements. We believe the Association should be given the status of authorized body representing the rights of the numerically small indigenous peoples in the Russian Federation. RAIPON's president would thus act as advisor to the Russian president. This status should be given to RAIPON via the adoption of a federal law on the status of authorized body representing the rights of indigenous peoples. A current draft law could be further developed to fulfill the norms of the Constitution of the Russian Federation, constitutions (charters) of the provinces, universal principles and norms of international law with regard to State guarantees of the rights of indigenous peoples, including the right to participate in public and State governance.

The need for such a bill derives from Section 1 of Article 32, point "b" of Section 1 of Article 72, and Section 2 of Article 76 of the Constitution of the Russian Federation, which allow for the possibility of legally regulating the participation of the numerically small indigenous peoples in state activities via representation of their interests within the governing authorities. The concept of this future federal legislation should, we believe, be closely related to the concept within constitutional federal legislation on authorized human rights bodies in the Russian Federation.

The experience of the Arctic countries in involving indigenous peoples in their parliamentary activities, including the Saami Parliament, could be considered when determining the status and competence of the future authorized agency. One of the basic tasks of the authorized agency would be to develop legal and normative draft bills, stipulate the goals of socio-economic development programs and prepare conclusions on draft bills and existing legal acts of the governing authorities in relation to issues affecting the indigenous peoples. With such federal legislation, the indigenous peoples could realistically participate in the decision-making process of the governing authorities and local government on issues of vital importance to them. ❑

Note

1 In accordance with the Decree of the President of the Russian Federation, the Commission in charge of the issues of division of competencies between the Russian Federation, the provinces of the Russian Federation and local authorities was set up in 2001. This Commission, chaired by Mr D. Kozak, Deputy Head of the President's Administration, has drawn up a number of sectoral concepts on the division of competencies, and has been drafting amendments to 98 key federal laws relating to the competencies of different levels of public authorities, including the law *On the Division of Competencies between the State Bodies of the Russian Federation and the Provinces of the Russian Federation*, the law *On Local Government*, the Fiscal Code and the Budgetary Code, the laws *On Natural Resources*, *On the External Economic Relations of the Provinces of the Russian Federation*, the law *On Education*, the law *On the Police* etc. [editor's note].

THE EXAMPLE OF THE KHANTY-MANSI AUTONOMOUS OKRUG

Vladimir A. Kryazhkov

The opportunity to form an Assembly of indigenous peoples of the North was first stipulated in the Charter of the Khanty-Mansi Autonomous Okrug (KhMAO) adopted on April 26, 1995. This was an innovative and unprecedented move in Russia. The initiative is in compliance with the Constitution of the Russian Federation and international legal documents on protecting the rights of indigenous peoples. The decision, reflecting the political will of the local authorities and the interests of indigenous peoples, expanded the provisions of the Charter of the Khanty-Mansi Autonomous Okrug, by means of which:

- The autonomous okrug is recognized as an historical native area in which the indigenous Khanti and Mansi peoples have lived and which bears the name of these peoples (Article 1, Point 2);
- The rights of the indigenous peoples are guaranteed in accordance with the Constitution of the Russian Federation, the Charter of the KhMAO, universally recognized principles and norms of international law and international agreements of the Russian Federation (Article 2, Point 3);
- Government authorities of the KhMAO implement measures to restore and preserve the distinctive cultures of the numerically small indigenous peoples living within the KhMAO in order to allow for their free development, including creating the conditions for their participation in the work of provincial bodies of power and local administrations (Article 18).

The Assembly is a special body within the legislature of the KhMAO charged with representing and protecting the interests of the indigenous peoples living in KhMAO. The Charter and legislation of KhMAO establish the following legal features:

1. The Assembly is not an independent provincial body of power. It comprises deputies of the KhMAO Duma who are elected from a single electoral district with five at-large candidates (Article 41, Point 2, Charter) who represent one of the legislative structures of the KhMAO Duma.
2. The Assembly is made up of five deputies, the quota of representatives of indigenous peoples of the North to the KhMAO Duma. Election of these depu-

Khanty nomads - Photo: IWGIA archive

Khanty-Mansi Autonomous Okrug - Photo: Vladimir Chen

ties is directly to the Assembly, using a majority system in a single electoral district with five at-large candidates. This electoral district corresponds to the boundaries of the autonomous okrug (Article 37, Point 2, Charter).

Indigenous NGOs, registered in the KhMAO, public and citizens' meetings (according to the Charter of 1995) held the right to nominate candidates for the post of deputy. This provision was confirmed in the KhMAO law dated August 29, 1996 *On the Elections of Deputies for the KhMAO Duma* and in a special law dated September 29, 1997 *On the Election of Four Duma Deputies According to a Single National-Territorial Electoral District (Okrug) with Six At-Large Candidates*.

According to the KhMAO law, amended on May 3, 2000, *On the Election of KhMAO Duma Deputies*, on the basis of a decision of the KhMAO Electoral Commission to hold elections to the Assembly of Indigenous Peoples of the North in the KhMAO, a single, five-mandate electoral district (okrug) was to be formed, the boundaries of which would coincide with the boundaries of the KhMAO (Article 17, Point 1). The Congress of the Indigenous Peoples of the North living in KhMAO is one way (in fact, the most important way) in which candidates are nominated for the post of Duma deputy in this electoral district. The procedure for holding the Congress is regulated by a KhMAO law dated May 3, 2000 *On the Procedure for Holding a Congress of the Indigenous Peoples of the North to Nominate Candidates for the Post of KhMAO Duma Deputy Based on an Electoral District (Okrug) with Five At-Large Candidates*. In accordance with this law:

- The Congress assembles once every five years and no later than 50 days before elections take place for the KhMAO Duma deputies. The KhMAO Duma determines the date and location of the Congress. The governor of the KhMAO provides the organizational, technical and financial support with which to hold the Congress;
- Candidates for KhMAO Duma deputies – no less than 10 but no more than 12 – are nominated at the Congress of the Indigenous Peoples of the North;
- The election of delegates to the Congress is held at meetings of indigenous peoples in the municipalities of the KhMAO, in accordance with the following rules of representation:
  - One delegate is elected to the Congress for each 200 indigenous citizens who have the right to vote and who live within the jurisdiction of a municipality;
  - In the event that a municipality has less than 200 indigenous citizens with these rights, one delegate is elected to the Congress.

- The head of the local administration provides for the holding of meetings in municipalities as a way of electing Congress delegates; voting is based on a list of citizens who belong to an indigenous people and who either live permanently or partly within the jurisdiction of a municipality and who have the right to vote;
- The list of citizens belonging to an indigenous people is approved (certified) by an authority from the local administration. The meetings can make a decision if at least 50% of the citizens on the lists participate. A citizen who receives more than 50% of the vote from participants at a meeting, is considered a Congress delegate;
- The Congress of the Numerically Small Indigenous Peoples of the North held to nominate candidates for KhMAO Duma deputies is legitimate if at least half of the delegates elected to the Congress participate in it;
- Citizens of the Russian Federation, regardless of sex, race, nationality, language, national origin, actual or official capacity, location of residence, religious persuasion, allegiance to public groups or other conditions can be nominated as candidates for KhMAO Duma deputy by a decision of the Congress of the indigenous peoples;
- The Congress elects authorized representatives who then present all essential documentation to the Electoral Commission of the KhMAO, including the decision of the Congress to nominate candidates for the post of KhMAO Duma deputy.

In the end, the five candidates who receive the greatest number of votes from the electorate (regardless of their national origin) are elected to the Assembly of the KhMAO Duma.

Members of the Assembly of Indigenous Peoples of the North are deputies of the KhMAO Duma. Consequently, their rights and guarantees are the same as those of other KhMAO Duma deputies (KhMAO law, amended on June 20, 2001 *On the Status of Deputies to the Duma of the Khanty-Mansi Autonomous Okrug*). At the same time, based on the idea of ethnic representation, there is reason to state that deputies elected to the Assembly bear certain, specific responsibilities on behalf of the electorate of indigenous peoples who live in KhMAO.

A chairperson heads the Assembly. He is elected directly by the Assembly members. In accordance with its Charter, the Assembly chairperson is the deputy chairperson of the KhMAO Duma (Article 41, Point 2) and, as such, he is a member of the Duma Council. This does not, however, exclude the KhMAO Duma Chairperson from being elected from among the Assembly members, as is currently the case.

The Assembly is delegated certain, special powers. In accordance with the current KhMAO Charter, bills that directly affect the rights and interests of indigenous peoples are considered by the Duma following a preliminary review by

Assembly deputies (Article 67, Point 2) The Assembly issues recommendations on bills that are referred to the responsible Duma commissions (Article 32, Point 4, KhMAO law *On Normative Legal Acts of the Khanty-Mansi Autonomous Okrug*, as amended on May 6, 2002).[1]

The standing orders for the KhMAO Duma (Articles 88-92) establish a special procedure for making comments and offering proposals to the Assembly. It is in one part stipulated that if there are numerous comments and proposals to a piece of legislation, the Duma must create a working group to revise the bill: Assembly members appoint half of the working group, the relevant Duma Commission appoints the other half. The working group's decision on a bill is made by an open, separate vote of the majority of its members from the Assembly and the deputy members from the Duma Commission. The Duma then considers and decides on each of the working group's proposals by a simple majority vote of Duma deputies. If, after one or several of the Assembly's remarks or amendments are considered, the working group is unable to deliver an agreed revised version of the bill, or if the working group rejects proposals for the bill under revision, the Duma can pass the bill by a simple majority vote of Duma deputies.

The other forms of the Assembly's authority are not prescribed in the KhMAO law. However, on the basis of the fact that the Assembly has equal status with the Duma, it is logical to assume that this Assembly enjoys all the rights delegated to deputies and their groups, including:

- The right to introduce legislation to the Duma;
- The right to conduct an exchange of opinions on questions considered by the Duma;
- The right to make an appeal.

The Assembly is a self-governance body. Its working procedures are determined by its own working rules. As such, the Assembly decides issues at meetings called by the Assembly chairperson. These meetings must occur at least once a month. Decisions are made by a majority vote of those in attendance at the meeting.

As part of the KhMAO Duma, the Assembly of Indigenous Peoples of the North should be seen as a truly optimum institute that guarantees the representation of indigenous peoples in the provincial representative body. Consolidation of the Assembly's status could be achieved by adopting a special provincial law. It would be expedient in this law to define the Assembly's mission, its objectives and the nature of its activities, its organizational structure, powers (in the area of legislative drafting, control, etc.), its work procedures and financing, plus its relationship with other Duma bodies and their staff.

To preserve and promote this representative body for indigenous peoples within the legislative structure of the provinces of the Russian Federation, a way must be found to "inscribe" the Assembly into new electoral practice. This partly

relates to bringing ethnic representation into line with the demands of the federal law *On the Basis for Guaranteeing Citizens of the Russian Federation Electoral Rights and the Right to Participate in Citizen Referendums*. This law states that at least half the deputies elected to legislative bodies in a province of the Russian Federation must come from among those candidates put forward by electoral groups or electoral blocks, and in proportion to the number of votes that these electoral blocks receive (Article 35, Point 16).[2]

This, I must point out, is a direct threat to ethnic representation in legislative bodies. It is therefore essential to adapt existing legislation and acts on quotas for representation of indigenous peoples in provincial legislatures to include the quota language prescribed by the federal election law. In addition, indigenous peoples should raise the issue of creating assemblies within the legislatures of regions where indigenous peoples live. These assemblies would be made up of representatives of various social and ethnic groups. This is not prohibited by the federal law *On General Principles for Organizing Legislative (Representative) and State Bodies of Power of the Russian Federation* (Article 4, Point 2). ❑

Notes

1 The Charter of the KhMAO, as amended in 1995, provides that such a review is obligatory when preparing legislation on issues related to establishing and changing the borders and legal status of territories of traditional nature use; to determining the legal status of clan lands, of reserve territories, of indigenous communities (*obshina*), of national villages; to the legal administration of traditional economic activities; to chartering and using target funds; to approval of hunting rules, of fishing, of collection of non-timber forest products, of protection of natural, cultural and cult monuments, of ancient burial grounds; to guaranteeing the social protection of indigenous peoples; to organizing health care in areas where indigenous peoples live.

2 In September 2004, President Putin first put forward a proposal and in December signed a bill under which governors will no longer be elected by direct popular vote. Instead, the president will pick his nominees and ask provincial parliaments to approve them. If provincial legislators reject a presidential nominee twice, the president will be entitled to dissolve the parliament and name an acting governor until a new parliament is elected [editor's note].

THE EXAMPLES OF AMUR AND KHABAROVSK

Vadim A. Turaev

The sharing of legislative and executive power with ethnic minorities, including indigenous peoples, along with the consequent establishment of their capacity to influence decisions affecting their interests are two of the most important ethno-political challenges facing any pluri-ethnic state. A simple truth has long been recognized in countries with developed democratic institutions: the stability of the socio-political status of the entire state depends on the political status of its national minorities.

The Scandinavian experiences of involving indigenous peoples in their own development by means of Sami parliaments with certain political, economic and cultural independence are interesting.

Some foreign countries with national minorities who, because of their small numbers, are unable to obtain legislative representation stipulate additional measures via constitutional and legislative acts in order to resolve the issue of indigenous representation.

In the Republic of Croatia, for example, in accordance with the constitutional law *On the Human Rights and Freedoms and the Rights of Ethnic and National Groups and Minorities in the Republic of Croatia* (1991), national minorities comprising less than 8% of the population have the right to proportional representation in the legislature, in the government and in the higher courts. They elect five deputies to the Council ("Sabor") of the Republic of Croatia, the state's House of Representatives. In addition, these minorities are given the right to proportional representation in local governance bodies.

Article 59 of the Romanian Constitution stipulates that national minorities unable to gain enough votes to achieve parliamentary representation are entitled to a single seat in accordance with the conditions established by electoral law.

According to the People's Republic of China's electoral law, for Chinese national and local peoples' legislatures, the Permanent Committee of the Chinese National Legislature establishes representation quotas for national minorities for each province, autonomous region and city. Nationalities that are small in number send at least one deputy to the Chinese National Legislature. The law also stipulates that, in areas where national minorities live, each village must have its own representative in local bodies of representation.

In some countries where the constitution or electoral laws do not stipulate special conditions to ensure that minorities have mechanisms to promote their interests within state bodies, special consultative bodies are created. For example, councils of national minorities to represent and protect these groups' cultural and economic interests have been created in Austria, as part of the Federal Chancellor's office. The opinion of these councils must be considered prior to adopting legal acts that affect the rights and interests of national minorities.

There are many examples of national minorities' representation in legislative and executive bodies being successfully resolved by creating an administrative or territorial division. Administrative or territorial districts are created to provide minorities living in close proximity to one another with greater influence over decisions affecting their interests. For example, the Aldan Islands in Finland, where most of the residents are Swedish, have been given the status of an autonomous region. In Greenland (Denmark), where most of the population is Inuit, in accordance with the law on local administration, local governance bodies have been created that include both legislative and executive functions. Similar examples can be found in Italy, Spain and other countries.

When considering the distribution of political power in Russia, it should be noted that there were similar or very similar representation quotas in place at certain times within the USSR. Representative bodies (Supreme Soviet of the USSR and its Republics; regional, district and municipal councils), in general, corresponded to the country's ethnic make-up. This principle was also used to create the Communist Party's Central Committee and its regional committees. From the outside, the process appeared democratic and an illusion of local governance was created, with various groups in Soviet society actively participating in the country's political life. It is well known, however, that due to the nature of the political regime, these representative bodies functioned as little more than an approval mechanism for decisions made by other government agencies. Neither the Central Committee members nor the deputies of the Supreme Soviet of the USSR, to say nothing of the other representative bodies distributed throughout the USSR, were able to realistically promote the interests of their peoples, influence the country's political direction or direct the nature of the state's national and ethnic policies.

An obvious Soviet-era analogy with the consultative councils in Austria can be seen in the activities of the Committee of the North and its regional offices, which operated until the mid-1930s in areas occupied by indigenous peoples. At that time, national and territorial districts were established to increase the political activism of indigenous peoples and to draw them into the process of managing their own self-development. In the Soviet North of the 1930s, in areas where indigenous peoples lived in close proximity to one another, several dozen national regions and hundreds of national councils made up of indigenous repre-

sentatives were established. Their participation in the executive / administrative bodies of these areas was significant.

The current electoral system in the Russian Federation unfortunately does not guarantee indigenous peoples of the North any genuine opportunity to take control of their own destiny, and, in most cases, the system simply excludes them from the political process. The existing electoral system is especially poor in that it operates on the principle of party tickets. Such a system makes it almost impossible for indigenous peoples to send their own representatives to legislative bodies. This is amply illustrated by the fact that, in the Supreme Soviet of the USSR in 1989, there were eight representatives of indigenous peoples of the North (ten deputies in the Supreme Soviet of the Russian Soviet Federated Socialist Republic (RSFSR)[1] called to order in 1990) and yet, in 1999, there were only two representatives in the Russian Federation Duma.

We must, of course, be realistic. The Russian Federation is a pluri-ethnic state in which more than a hundred different peoples live. To represent them all meaningfully in a federal legislature, and in a manner that provides each with a mechanism for controlling the decision-making process, moreover, is impossible. This is not to imply, however, that reforms of the electoral system are not extremely necessary, in part to increase the representation of Russia's nationalities within the legislatures.

The issue of indigenous representation at provincial level and in local governance bodies is more realistic and to the point, all the more since it is at this level that the key issues affecting the survival of these peoples are decided. But even at this level, the situation is not significantly better. In the autonomous provinces created for individual nationalities, due to their low numbers, indigenous peoples lack guaranteed rights to participate in the decision-making process around issues directly affecting their interests and rights. In other provinces of the Russian Federation, as well as at district level, the existing system favors the ethnic majorities, who control legislatures through their greater electoral strength.

There would appear to be a legal norm in the current law of the Russian Federation that guarantees the participation of indigenous peoples of the North in provincial legislatures and in representative local governance bodies. Article 13 of the federal law *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* states that the provinces of the Russian Federation can pass laws specifying quotas for indigenous peoples' representation in provincial legislatures and representative local governance bodies. In practice, however, this norm is not universally applied.

Khabarovsk and Amur are no exception to what has been described. There is not a single indigenous representative in the legislatures of these Russian Federation provinces despite the fact that there are eight nationalities, totaling more than 20,000 people, including representatives of the Nanai, Ulch, Evenk and Nivkh peoples, living in these regions. The situation is no better at municipal

level. There are 45 indigenous representatives in local governance bodies in Khabarovsk, and in only one district – Nanaisky – does a representative of an indigenous group head the district legislature. There are but a handful of indigenous representatives in local governance bodies in Amur.

The attention paid by local authorities to indigenous issues in Russian Federation provinces is not uniform and depends both on objective (character and condition of the regional economy, the number of nationalities) and subjective (personal attitudes of regional authorities to the problems of indigenous peoples) factors.

Khabarovsk and Amur

Around 20,000 indigenous peoples live in Khabarovsk, and 1,500 in Amur. The indigenous peoples of Khabarovsk live in 54 communities. Large communities of indigenous peoples, with high education levels and professional training, have formed in the city of Khabarovsk and in other cities. Two administrative districts bear the names of the province's indigenous peoples: Nanai and Ulch. In some districts (Tuguro-Chumikansky, Ayano-Maisky) indigenous peoples make up 20% of the total population. In Amur almost all the indigenous groups (mainly Evenk) are concentrated in four villages and they make up no more than one percent of the total population. These demographic features play a key role in forming the attitude of provincial authorities towards the indigenous population.

In Khabarovsk, 43 traditional use zones - territories of traditional resource use (TTP) - had already been defined by the beginning of the 1990s and these TTPs cover 30 million hectares. To date, none of these TTPs has been abolished, in contrast to other provinces of the Russian Federation where there is an active process to eliminate them. In Amur, former president Yeltsin's Decree on *Immediate Measures to Protect the Land and Livelihood of Indigenous Peoples of the North*, in which the state in part calls for the creation of territories to protect the traditional interests of indigenous peoples, has yet to be fully implemented.

Draft legislation to protect the rights of the indigenous population in Khabarovsk noticeably exceeds similar efforts at federal level. The Khabarovsk law *On the Communities* [Obshina] *of Indigenous Peoples of the North* was adopted in 1996, four years prior to the adoption of a similar law at federal level. The law *On Territories of Traditional Resource Use for Indigenous Peoples of the North in Khabarovsk* was adopted in 1999.

Provincial measures to protect the rights of indigenous peoples were adopted in a series of other laws and legal acts: the *Forest Code of Khabarovsk; Fisheries and Protection of Aquatic Resources in Khabarovsk; Hunting Management in Khabarovsk.*

Over the past three years, the head of the Khabarovsk administration has issued 18 different orders and decrees aimed at protecting indigenous peoples'

rights to use natural resources, find employment, obtain an education and protect their health.

It would be wrong to think that these measures have resolved all the problems of Khabarovsk's indigenous peoples. Many of the *kray*'s laws, as is the case with Russian federal law, are declarative and difficult to implement in practice. Given recent efforts to update Russian federal laws, many Khabarovsk laws have been invalidated and must now be revised. Several of them lack material resources and, for this reason, they do not function as intended. But it is important to note that there is an effort by provincial legislators and government officials to pay attention (even if formal in nature) to the least socially and economically protected group in society.

The situation in Amur is noticeably worse. Protecting the rights of indigenous peoples is clearly not a legislative priority. In a collection of legal acts entitled *The Status of Russia's Indigenous Peoples*, issued in 1994 and then again in 1999, there are no legal acts listed for Amur. Not a single law protecting indigenous peoples of the North had been adopted. It is true that in October 1999, the Amur Council of People's Deputies considered and adopted at its first reading a law *On Territories of Traditional Resource Use for the Indigenous Peoples of Amurskaya Oblast* but I am not aware that this bill has become law. What we do know is that not a single TTP has been created in Amur. At the same time, the socio-economic and ethnocultural situation of the province's Evenk is significantly worse than in Khabarovsk and there is a grave need for legal protection. I became convinced of this during a visit to three of the four indigenous villages in Amur during the summer of 2002.

Analyzing legislative acts adopted in recent years in Blagoveshchensk, the administrative center of Amur [ed.], one is left with the impression that there is no legal basis for its relationship with the indigenous peoples of Amur. They are referred to only from time to time.

In its Charter, the basic law of the *oblast*, aside from the formal Article 16 that declares that "conditions are created in the *oblast* to support and advance the national and ethnic traditions of the peoples of the North living within the province", there is not a single provision defining the status of indigenous peoples, the nature of their interaction with the provincial authorities, their right to independent development, etc.

Apart from the *oblast* Charter, three laws contain a few words on indigenous peoples:

- *Tax Rates (Collections) and Benefits in Amurskaya Oblast for 1998:* Reindeer herding of indigenous peoples is exempt from that part of property taxes that is to be turned over to the provincial budget, provided that the exempted funds are reinvested to improve the material and technical infrastructure of the enterprise;

- *On General Principles for Organizing Local Governance Bodies in Amurskaya Oblast*: In areas where indigenous peoples live, the native language of those living in the area can be used in these bodies;
- *On the Natural and Protected Land Base*: An ethno-ecological territory is included in a list of categories and types of protected territories. Article 16 of this law characterizes an ethno-ecological territory as one where conditions are created to protect areas key to the traditional activities of indigenous peoples. All forms of economic activity that could degrade natural communities and that could disrupt traditional economic activities are prohibited in an ethno-ecological territory.

These can hardly be considered a legal basis for defining the province's relationship with its indigenous peoples.

It is to be hoped that legislators in Amur are not consciously ignoring the legal rights and interests of the province's indigenous peoples. But how else can the fact be explained that there is not one single provision, be it even declarative, that acknowledges international and federal acts on indigenous peoples in any of the laws that affect the activities of the province's citizens in one way or another?

The provincial law on culture (1999), for example, openly ignores Article 22 of the *Basis for Russian Federation Legislation on Culture*, which prescribes government protection for indigenous peoples' cultural heritage. In the substantive section of the *Integrated Program for the Socio-Economic Development of Amurskaya Oblast for 2000*, where the emphasis is on the province's situation (among the peoples of the North the situation is catastrophic), there is no mention of the hunting economy or animal husbandry (reindeer herding among the Evenks has all but disappeared) nor of indigenous peoples. And what is more, even such a fixed concept as a "territory of compact inhabitancy of indigenous peoples"[2] has been replaced in the program by the neutral word "north". Amur legislators see no problems among the indigenous peoples of the North; what they see are problems in northern areas. No less indicative is the fact that the *oblast*'s executive body has no structure responsible for the indigenous peoples. The department created in the late 1980s to deal with numerically small indigenous peoples was quickly disbanded.

There are many questions that spring to mind. Why is it that Amur cares little for the Evenks who have lived in the region for hundreds, if not thousands, of years? Why is it that in the multitude of *oblast* legislative acts there is a concerted and inexorable attempt to ignore this group of 1,500 people? After all, would it not have been possible to define the province's relationship to indigenous rights in the mass of legal documents adopted in Amur between 1995-1999? Why, for example, in the law *On the Procedure for Using Forest Territories and Forest Lands Not Included in the Forest Fund* (1998) is the right to use, free of charge, the forest fund for hunting (both sport and professional) stipulated for hunting societies but not for peoples of the North? Why, in the list of exemptions to federal and

provincial taxes paid to the provincial budget (appendix to the law *On the Taxes and Collections Paid Within the Oblast* dated 28 September 1995) are all possible groups listed save the peoples of the North? Is this a sad omission, a lack of professionalism among legislators or a conscious position of the *oblast*'s Council?

If Amur legislators so purposefully avoid the question of the social, economic and cultural rights of its indigenous population, it would be naïve to expect any legislative initiatives from them that promote the participation of the peoples of the North in the province's political life, the expansion of their representation in state bodies of power and local governance bodies.

The list of legislative acts in which these issues could have been addressed in Amur is extensive. Aside from the Charter and the Electoral Codex for Amur (1999), the *oblast* Council has passed a law *On Elections of Deputies to Representative Local Governance Bodies and of Elected Officials for Local Governance Bodies* (1995), a law *On General Principles of Organizing Local Governance Bodies (1995)*, a law *On Local Referenda*, a law *On Authorized Human Rights Representatives* (1999) and others. None of these laws contain norms that promote the active participation of indigenous peoples in the province's political life. It is true that most of these laws were adopted prior to the adoption of similar laws at federal level. But the Amur legislature would have lost nothing by including appropriate amendments to bring their legislation into line with Article 13 of the federal law *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation*.

Norms stipulated in this federal law, which establishes quotas for indigenous peoples in legislative bodies of Russian Federation provinces and in local governance bodies, also fail to operate in Khabarovsk. But there is a general inclination apparent among Khabarovsk legislators to create the conditions by which its numerically small indigenous peoples can take a much more active role in the province's political life and more productively insist on their rights and legal interests. For example, the law *On the Election of Deputies to the Khabarovsky Kray Duma*, adopted on 27 December1995, was amended by the Duma in 1997 to allow for the creation of electoral districts made of non-contiguous territories in remote areas and in areas where indigenous peoples live.

Under certain conditions, this amendment would undoubtedly increase the chances of indigenous peoples electing their own representative to the legislature. This amendment, however, contradicted federal legislation stipulating the creation of electoral districts only in contiguous territories, and the amendment thus had to be repealed.

Provincial and federal laws

The failure of provincial legislation to comply with federal legislation is a serious problem that has a certain psychological impact on local legislators. If federal

laws do not stipulate the norms necessary to make it easier to attract certain segments of the population into the political process, it is naïve to expect that these norms will appear in provincial legislation; such local attempts to draft norms will contradict federal law and have to be repealed.

There is yet another factor that stymies provincial initiative to a certain degree: the shortcomings of federal legislation. It is no secret that there are different federal laws regulating one and the same activity, and in different ways. This is also the case with legislation on numerically small indigenous peoples. Various examples have been mentioned in the past and I will refrain from repeating them here.

One serious concern is the attitude of certain political forces in the government and in the presidential apparatus towards the legislative needs of indigenous peoples of the Russian Federation. It is clear that some openly refuse to advance this area of Russian law. The State Duma had just passed a law *On Territories of Traditional Resource Use of Numerically Small Indigenous Peoples of the North, Siberia and Far East of the Russian Federation* (TTPs) when the government forwarded its own, more acceptable version of the law. Voices speak ever more loudly on the need to repeal the federal law *On the Guarantees of the Rights of Numerically Small Indigenous Peoples of the Russian Federation*. If this occurs, the only law in Russia facilitating the active participation of indigenous peoples in the political life of the state will vanish.

The instability and unpredictability of the federal legislative process in relationship to the numerically small indigenous peoples of the North, Siberia and the Far East can but reflect on provincial legal initiatives. Here one can observe passivity and a clear lack of desire to "get ahead of the game". There are, no doubt, objective reasons. There is a reason why people say that, "those who want to – make it happen, those who don't – search for reasons".

An example of making things happen is the Khanty-Mansi Autonomous Okrug where provincial legislation requires that five of the 23 deputies elected to the Duma are selected from a single electoral district with five at-large candidates. These deputies form an Assembly of Indigenous Peoples of the North in the Duma and the Assembly's chairperson is deputy chairperson of the Duma. Quotas for indigenous representatives in the legislature are established in the Charter of the Yamalo-Nenets Autonomous Okrug and in the upper bodies of state power in the Republic of Sakha (Yakutia).

Representation of indigenous peoples in the legislatures of the Russian Federation and in the provinces will not in and of itself solve the problem of involving indigenous peoples in the affairs of the state. Their representation in the Federal Duma will never be great. In provincial legislatures, the best that can be hoped for is to elect two or three deputies (in autonomous okrugs representation should, of course, be greater[3]) and, as such, they will of course not have a serious impact on the decision-making process. That is why, along with directly increas-

ing the representation of these peoples in federal and provincial state bodies of power, other mechanisms must be found that lead to the active participation of indigenous peoples in the political life.

International experience provides a few positive examples. Consultation mechanisms used in many countries to resolve issues affecting the interests of indigenous peoples are important to the future of Russia's indigenous peoples. Some aspects of this process are already in place in Russia. In 1994, the Sakhalin Oblast Duma created a full-time position for a representative of the indigenous peoples. That person is part of the Duma structure, subordinate to its leadership, and has the right to introduce legislation. Councils of representatives of indigenous peoples operate, on a volunteer basis, as part of local administrations in the Republic of Sakha (Yakutia).

A Khabarovsk Duma initiative

In November 2001, the Khabarovsk Duma adopted a law *On an Authorized Representative of Indigenous Peoples of the North in Khabarovsky Kray*. This law applies to all indigenous peoples who permanently live in traditional areas, to individuals not belonging to indigenous peoples but who permanently live in areas of indigenous peoples and who carry out traditional economic functions, as well as to indigenous peoples' organizations, government bodies and governance bodies.

A council of authorized representatives of indigenous peoples is, by nature, a consultative one whose functions are in many ways similar to the functions of the Councils of National Minorities in Austria mentioned earlier. Its functions are also similar to the Committee of the North in the 1920s and 1930s.

In accordance with Article 3 of the law, indigenous groups and organizations, as well as citizens aged 18 years or over, can elect an authorized representative of indigenous peoples. These representatives are empowered to represent the indigenous population's interests in state bodies of power and in local governance bodies.

Authorized representatives are elected from among the citizens of each municipality in an area where indigenous peoples live and work; individuals represent only the interests of the municipal unit from which they are elected. Citizens' groups of more than five people, elected bodies of indigenous peoples' groups and organizations, as well as the heads of municipal units, can organise a meeting to elect an authorized representative.

Authorized representatives of indigenous peoples of the North from towns and villages form a district council and, as non-paid representatives, are part of the district executive body that addresses issues affecting their particular provinces. A council chairperson, elected from among the council members, heads the district council. District councils send their representatives to meetings of state

bodies of power and local governance bodies, and to various hearings on issues affecting the interests of citizens, their civil organizations and unions.

In order to protect the rights and legal interests of indigenous peoples of the North, the governor's office can create a council of authorized representatives. This council is made up of representatives of the district councils of authorized representatives. Article 4 of the law formulates the concept of authorized representatives of indigenous peoples, of district councils and the governor's council. These bodies forward proposals to the *kray* administration and to local governance bodies:

- on the need to create territories of traditional resource use (TTPs),
- on the legal regime of these territories,
- when decisions are made to allow commercial exploitation of territories of traditional resource use (TTPs).

They participate:

- in supervising the use of the land necessary for traditional economic activities,
- in supervising compliance with environmental protection legislation during the commercial exploitation of natural resources,
- in implementing environmental and ethnic reviews (*ekspertiza*),
- in tender procedures issuing licenses for natural resource use in TTPs,
- in developing programmes and projects promoting indigenous peoples' interests,
- in the work of committees, commissions, work groups of state bodies of power and local governance bodies when issues affecting the interests of indigenous peoples are being addressed.

The law on authorized representatives of indigenous peoples in Khabarovsk, in our view, is not without its flaws. District councils of authorized representatives and the governor's council should, without doubt, have the right to draft legislation. It would also be extremely useful to give them the right to appeal against orders issued by sectoral departments and other commercial structures when such orders are at variance with the interests of the indigenous peoples.

It is still too early to judge the effectiveness of authorized representative bodies. The work to establish them in Khabarovsk is not yet complete. Elections for authorized representatives have taken place in most villages where indigenous peoples live. District councils have been established in Ulchsky, Nanaisky, Khabarovsky, Solnechny and Imeni Lazo Districts. The efforts to establish councils in Nikolaevsky, Ayno-Maisky, Okhotsky, Verkhne-Bureinsky and other districts are nearing completion.

This mechanism to involve indigenous peoples in the political life of the province, in the decision-making process on issues affecting their future development, is undoubtedly very promising for it assumes an active dialogue between authorities and indigenous peoples, it establishes partner relationships and mutual understandings. But it is also clear that this form of representative body will only have a genuine effect if it gains legal and normative support at federal level.

It is obvious that in order to effectively resolve the problem of the right of numerically small indigenous peoples of the North, Siberia and the Far East to control their own destiny and actively participate in the social and political life of the state, a harmonious system of laws that encompasses federal, provincial and local levels must be established. The key elements of such a system, as international and Russian experience shows, are:

- Direct representation of indigenous peoples in legislative and executive bodies at all levels;
- Separate representative bodies of indigenous peoples;
- Obligatory inclusion of representatives of indigenous peoples in discussions and decision-making that affect their interests through legally authorized consultative bodies;
- Co-management bodies in which state bodies of power, indigenous peoples, commercial entities and other stakeholders share among themselves the rights and obligations of managing specific territories and their natural resources.

To create the basis for such a system, work must begin immediately to develop and adopt a federal law *On the Federal Representative Body (Parliament) for Indigenous Peoples of the North, Siberia and the Far East*. As I understand the situation, the Ministry of Justice of the Russian Federation recognizes the appropriateness of creating such a body. The creation and functioning of the Norwegian law on "*Saami National Parliaments*" should serve as a basis for this bill.

The experience of the legislature and administration of Khabarovsk, and of several other provinces, in creating authorized representative bodies for indigenous peoples must be disseminated to other provinces of the Russian Federation where indigenous peoples live. It would be expedient to adopt a federal law *On the Authorized Representative Bodies for Indigenous Peoples of the North, Siberia and Far East in the Provinces of the Russian Federation*, in order to significantly expand the power of these authorized representatives and afford them the right to draft legislation so as to avoid what could possibly be contradictions with federal law and local legislation.

The quality of Russian legislation

A word must be said about the quality of the Russian legislation enacted to guarantee the rights of indigenous peoples. Our long experience of interacting with the administrative apparatus in the provinces of the Russian Far East, with administrations at various government levels, demonstrates an extremely low level of understanding of human rights and of inter-ethnic relations among public officials. The fact is that it is upon these people that, in most cases, the effectiveness of state policy on human rights and indigenous interests depends. In the light of their significant independence from the federal center and the personal relationship of one or other authority to these problems is often the determining factor. In these conditions, the traditional Russian legal phrasing of "... it is possible to create..." is not perceived at local level as constituting an important and obligatory state task in respect of indigenous peoples.

The situation is further aggravated by the fact that federal legislation on indigenous peoples, as a rule, does not carry a requirement for direct action and laws lack implementation mechanisms. Such mechanisms are developed not by legislatures but by government bureaucrats, who are directed in their efforts by personal biases and interests. Legislators need to pay serious attention to this problem. Laws must be adopted that contain precise and unequivocal language and that have clearly stated implementation mechanisms. If this is not the case, why waste state funds on a legislative process? Laws should not be riddled with loopholes that make them easy to manipulate. Otherwise, we end up with what we have. Each year, the volume of legislation dedicated to the North increases but the problems only grow worse.

Ensuring the constitutional guarantees of the rights of the numerically small indigenous peoples is an extremely relevant issue. Here, we have in mind the need for effective monitoring of compliance with already existing legislation. The issue of creating a council of authorized representatives of the indigenous peoples has been raised repeatedly, including in the Federal Duma, but it has yet to be resolved.

Conclusion

In conclusion, I would like to address another important issue. The low level of education and professional training of numerically small indigenous peoples of the North, Siberia and the Far East explains, in part, why they are poorly represented in federal and provincial bodies of state power and administration. As a rule, indigenous representatives hold positions that have no authority to make decisions. In Khabarovsk, for instance, there are 79 indigenous people holding

executive positions at various levels but only a few have decision-making authority. The political weakness of peoples of the North excludes them from key positions in the executive branches of state power.

This problem of education cannot be ignored. The education level of state school graduates in indigenous villages and towns is indeed lower than their urban equivalents. It must be noted that the situation is similar in Russian village schools; ethnic background plays no role here. This can but have an impact on an indigenous person's options with regard to receiving a technical or higher education. The drop-out rate among indigenous students at higher education facilities is high, and a significant proportion of those who do receive a diploma (especially from rural technical schools) in actual fact lack the essential knowledge and background for practical work.

Many graduates, having lived and studied in larger metropolitan areas for five years, are imbued with a value system that is out of character with the indigenous population. Returning to their native villages following their studies, they have to undergo what is in essence a second ethnic adaptation. Not everyone can make this readjustment. This process was easier in the Soviet period when a centralized system of assigning graduates to specific villages for a prescribed period of time was in place. There is no "guaranteed" role in the social structure to which they return and this is a reason why educated indigenous people so often return to metropolitan, non-indigenous areas to seek employment.

There has to be a multi-faceted approach to solving this problem. Amendments to provincial charters and constitutions must be made to include quotas for the representation of indigenous peoples at all levels of the province's administration. Even the Russian experience shows that professionalism and ethnic representation in the executive branch are not mutually exclusive principles. Numerous examples from the recent past and present are documented. What is needed is the political will to legislatively adopt these principles.

A systematic government effort is needed to prepare qualified administrative staff from among indigenous peoples. In recent decades, the government has turned its back on this work. It would be useful, in part, to return to the experience of the 1930s, creating, as part of the Academy of Government Service, a special department for peoples of the North that offers a two-tier course of study. Representatives of indigenous peoples and long-time residents of Siberia and the Far East who have a higher education and greater experience of working in the executive branch could be sent to improve their qualifications.

The education infrastructure of the North, Siberia and the Far East must be revisited to protect its language and cultural environment, to avoid such negative phenomena as a second adaptation of indigenous people to their ethnic heritage, and to reduce the outflow of educated indigenous people to large cities. The creation of provincial branches of large universities and other higher educational

institutions in the areas where indigenous peoples live would be a good way of resolving this problem.

There are undoubtedly other ways of solving the problem. In Khabarovsk, for example, state school graduates in towns and villages have, in recent years, received a higher education based on a contract that specifies that they must return and work in their native villages. ❑

Notes

1 The Supreme Soviet of the Russian Soviet Federated Socialist Republic (RSFSR) was the largest republic in the Soviet Union, that later became the Russian Federation, [editor's note].
2 A territory of compact inhabitancy is an area densely populated by the numerically small indigenous people [editor's note].
3 Autonomous Okrugs were formed by Resolution of the All-Russian Central Executive Committee (VCIK) dated 10 December 1930 in the areas densely populated by indigenous peoples, and were considered to be a form of self-determination. They contributed to, and are still aimed to a larger extent than other provinces, at finding solutions to the political, socio-economic and cultural development of the indigenous peoples of the North (see article by Kryashkov) [editor's note].

THE EXAMPLE OF SAKHA (YAKUTIA)

Dmitry N. Zakharov

The legal status of the numerically small indigenous peoples in the Republic of Sakha (Yakutia), along with electoral rights and the election process, are determined and regulated by the Constitution and laws of Sakha[1].

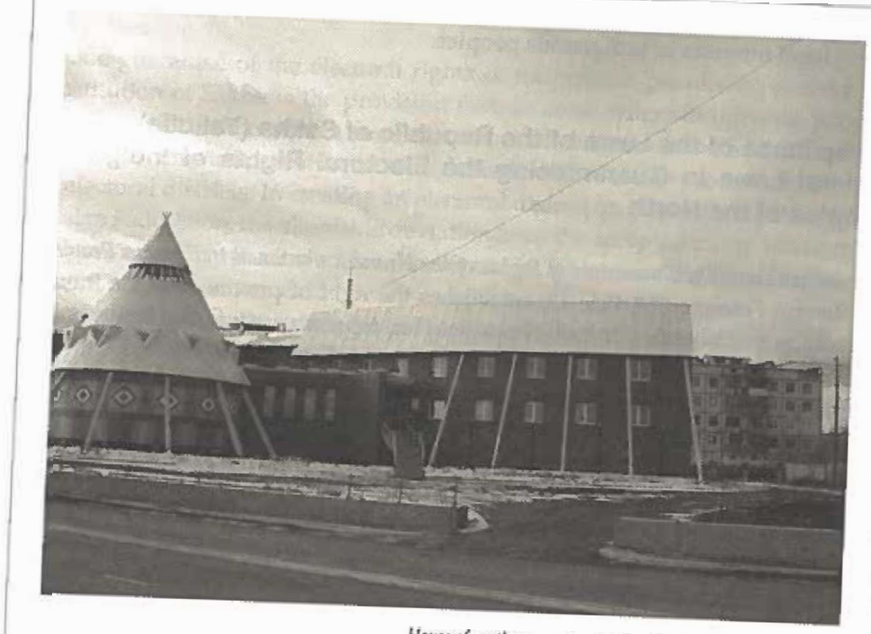
The Basic Law of Sakha states: "The People express their sovereign will through representative bodies or indirectly" (Article 1) and: "The individual, his rights and freedoms are supreme" (Article 2).

The Constitution of the Republic of Sakha identifies numerically small indigenous peoples as a special group and guarantees the survival of the indigenous peoples of Sakha, as well as protecting and guaranteeing their inalienable rights (Article 42).

The law *On the Legal Status of Indigenous Peoples of the North* (Point 1, Article 1) recognizes indigenous peoples in Sakha as peoples who live on the traditional territories of their ancestors, who preserve a distinct way of life, who number less than 50,000 and who consider themselves independent ethnic groups. In accordance with the law of Sakha, the indigenous groups on the List of Indigenous Peoples of the North and Location of Their Villages in the Republic of Sakha (Yakutia) are the Dolgan, Even, Evenk, Chukchi, Yukagir and descendents of the Russian explorers[2].

The law of Sakha *On the Legal Status of Indigenous Peoples of the North* guarantees the:

- Creation of traditional territories for indigenous peoples at a size adequate to assure their independent development, to protect the environment and to sustainably replenisht he natural resources consumed;
- Creation of the conditions necessary to protect the culture and the economic, political and social development of indigenous peoples;
- Achievement of the rights of these peoples;
- Respect for the national heritage of indigenous peoples, their cultures, languages, traditions and customs, to the extent that these efforts do not conflict with federal, republic or international legal norms;
- Functional formation, in the prescribed manner, of social groupings of indigenous peoples;



House of northern peoples in Yakutsk. Photo: Uffe Christensen

Nelemnoye Yukagir settlement. Photo: Uffe Christensen

- Prosecution of organizations, officials or citizens that violate the rights and legal interests of indigenous peoples.

Compliance of the Laws of the Republic of Sakha (Yakutia) with the Federal Laws in Guaranteeing the Electoral Rights of Indigenous Peoples of the North

The federal law *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation* (Article 13) establishes the right of provinces of the Russian Federation to set quotas for indigenous peoples' representation in legislative bodies of the Russian Federation and in local governance bodies. It follows from this that the federation's provinces can themselves pass appropriate laws within the framework of the federal law *On the Basis for Guaranteeing Citizens of the Russian Federation Electoral Rights and the Right to Participate in Citizen Referenda.*

This federal law, a basic law in the system of electoral laws of the Russian Federation, provides citizens with basic guarantees to pursue their constitutional right to participate in elections and in referenda in accordance with the Constitution of the Russian Federation, federal laws, provincial constitutions, the laws of the provinces and the charters of municipalities. The key provision of this law is that elections are to be conducted on the basis of direct universal suffrage with a secret ballot (Point 1; Article 3).

This provision was established in the Constitution of the Republic of Sakha and in its laws at all levels and is in full accordance with federal law. The electoral process in Sakha is based on direct universal suffrage and equal representation, with open nomination of candidates and a secret ballot (Point 1; Article 93, Constitution of the Republic of Sakha).

According to the law *On the Election of Peoples' Deputies for the Republic of Sakha (Yakutia)*, deputies in Sakha are elected by citizens of the Russian Federation, permanently or temporarily residing in Sakha, and who are eligible to vote, based on direct universal suffrage and a secret ballot (Point 1; Article 2).

The law *On the Election of Deputies for Local Representative Bodies and Local Administration Heads* (Article 1) and the law *On the Election of People's Deputies to Local Government Bodies in the Republic of Sakha (Yakutia)* (Point 1; Article 8) state that elections are carried out in Sakha on the basis of direct universal suffrage and a secret ballot.

The federal law *On the Basis for Guaranteeing Citizens of the Russian Federation Electoral Rights and the Right to Participate in Citizen Referenda* does not contain special provisions specifying the opportunity to establish, through provincial laws, quotas for representation of indigenous peoples in provincial legislative bodies or in local government bodies. But, in accordance with Article 1, Point 3 of the same law, the laws of the federation's provinces can establish additional guarantees of the electoral rights of citizens, although the law does not name these guarantees.

One guarantee of the electoral rights of indigenous peoples created by the Constitution of Sakha is the provision that, in areas where indigenous peoples live, electoral districts with a smaller number of electors can be formed (Article 93, Point 2). This is in accordance with the federal law on the procedure for creating electoral districts. In creating an electoral district on a specific territory of the Russian Federation, the allowable deviation from the accepted minimum number of voters necessary to form such a district can be lower than the stated limits, but by no more than 30 percent[3].

In accordance with Article 12 of the law of Sakha *On the Election of People's Deputies to Local Government Bodies in the Republic of Sakha (Yakutia)*, when forming an electoral district in areas where indigenous peoples live, a deviation of up to 30% from the number of voters necessary to form a district is possible; the general rule is 10-15%.

To ensure constitutional rights, including the legal guarantees underlying the electoral rights of citizens, the laws Sakha, in accordance with Point 10, Article 65 of the federal law on electoral rights, specify a procedure to allow for voting in instances when voters (from among indigenous peoples) are located in remote and difficult to access locations (Articles 61 and 63). The law of Sakha dated 14.10.2002, No. 430-II *On the List of Remote and Difficult to Access Locations in the Republic of Sakha (Yakutia)* establishes the criteria for remote and difficult to access locations in Sakha. The criteria are a lack of year-round road and water transportation, the presence of natural barriers in terms of changing from one form of land transportation to another, and the absence of certified landing fields for aviation, as well as extreme remoteness from district centers (Article 1).

Article 43 of the Constitution of Sakha affirms the right of indigenous peoples to create national-territorial districts in the areas in which they live. In accordance with the law *On the Status of National Administrative-Territorial Units in Locations (Territories) of Numerically Small Indigenous Peoples of the North of the Republic of Sakha (Yakutia)*, an administrative-territorial district that is part of Sakha and that has been given the status of "national", with the goal of protecting and preserving the land base and the rights to traditional resource use, to national economic activities, the renewal of national culture and language, the gratification of spiritual needs and the creation of the conditions for the socio-economic development of indigenous peoples in areas where they live in close proximity to one another, is considered a national district. A national village (*nasleg*) is an administrative-territorial unit that forms part of Sakha. The Eveno-Bytantaisky District (*ulus*) and 27 villages (*nasleg*) carry the status of "national".

According to Article 52 of the Constitution of the Republic of Sakha (Yakutia), the State Council (Il Tumen) consists of 70 elected deputies from territorial districts (*okrug*), 12 of whom are elected from electoral districts known as Arctic or

national (indigenous) districts (*ulus*): Verkhoyansky, Kobyaisky, Oimyakonsky, Tomponsky, Ust-Maisky, Ust-Yansky, Bulunsky, Olymo-Indigirsky, Kolymsky, Alazeisky, Severnyi and Evensky.

A series of laws has been adopted in Sakha that stipulates the establishment of quotas for representatives of indigenous peoples in upper state administrative bodies, in local representative bodies and in the local administration. The law *On the Legal Status of Numerically Small Indigenous Peoples of the North* specifies a right (Article 7) to quota representation in upper state administrative bodies of the Republic, in local representative bodies and in the local administration. According to the law *On the Status of National Administrative-Territorial Units in Locations (Territories) of Numerically Small Indigenous Peoples of the Republic of Sakha (Yakutia)* a national district (*ulus*) has a quota in the State Council Il Tumen and the national village in turn has a quota in the national district (*ulus*) council of deputies (Article 7, Point L).

A respective law of Sakha also establishes that the makeup of the *ulus* council will comprise at least one-third of deputies from among indigenous peoples (Article 10, Point 3). Unfortunately, these norms are only of a declarative nature.

The laws of Sakha that determine the legal status of indigenous peoples are not relevant to the laws that regulate the procedure for calling and holding elections to republic, local state bodies of power and local governance bodies.

The laws that establish the rights of citizens of Sakha to elect and be elected do not stipulate additional guarantees of electoral rights in the form of establishing quotas for indigenous peoples in representative bodies of state power and local governance.

The electoral laws of Sakha do not contradict the federal law on electoral rights, which requires direct action. But provincial legislation has not, or has not wanted to establish, additional guarantees stipulated by this law, including those based on quotas.

The State Council Il Tumen, when elections are called, and the Central Election Commission of the Republic of Sakha (Yakutia) during preparations for and during the holding of elections, are guided by the Constitution of the Russian Federation and the Constitution of the Republic of Sakha (Yakutia), by the federal law on electoral rights, and by the following laws of Sakha:

On the Election of the Peoples' Deputies for the Republic of Sakha (Yakutia),
On the Election of Deputies for Local Representative Bodies and Local Administration Heads,
On the Election of Deputies for Representative Bodies of Local Government for the Republic of Sakha (Yakutia),

that is, by those laws that do not directly refer to providing a quota for representatives of indigenous peoples in upper state administrative agencies, in local representative bodies and in the local administration.

A quota-based assembly of indigenous peoples in federal agencies, in local agencies and in local governance bodies must be introduced into the electoral legislation of Sakha so that the indigenous peoples can achieve their rights and in order to effectively defend their interests.

The Suktul of the Yukagir People

The law of Sakha *On the Legal Status of Numerically Small Indigenous Peoples of the North* establishes, in areas where indigenous peoples have traditionally lived, a system of local governance intended to resolve local issues that affect the life, language, ways and traditions of indigenous peoples (Article 12, Point 1). In accordance with the law dated 27.11.97, No. 22-I *On Local Governance in the Republic of Sakha (Yakutia)*, local issues are understood as being those that directly affect the activities of people living in a municipality that has a charter in accordance with the Constitution of the Republic of Sakha (Yakutia), the current law and other normative legal acts (Point 1, Article 1).

The law dated 30.06.94, No. 22-I *On Local Governance in the Republic of Sakha (Yakutia)* establishes the right of representatives of indigenous peoples, in areas where they live in close proximity to one another, to form local governance bodies in the light of national, ethnic and other features (Article 1).

One way of protecting the right of the indigenous peoples to representation in local governance bodies is the Suktul of the Yukagir People.

The law *On the Suktul of the Yukagir People* defines the legal, economic and financial basis of local governance of the Yukagir and the state guarantees for their survival. The Suktul of the Yukagir People is a municipality in which local governance of the Yukagir is executed. It has municipal property, a local budget and elected local governance bodies (Article 2). The decision to establish a Suktul is made at a town meeting, a general meeting or by means of a local referendum of the people who live in close proximity to one another in a certain area and who carry out the traditional economic activities of the Yukagir, by a majority of the population who have a right to vote in a given area (Point 1, Article 3). The procedure for holding elections to a representative body of the Suktul and for elections to senior authorities of the Suktul is prescribed in the charter for the Suktul and is carried out in accordance with federal and republican laws on local governance. The features of local governance bodies are:

- An elected local governance body – Suktul Council (*Suktul Mulchepuj*) – formed in accordance with legislative acts and the charter of municipality. It is made up of deputies elected on the basis of the right to a secret, general, equal and direct vote;

- A general meeting *(shakhadzhiba)* of the people of the Suktul, consisting of the adults of the given municipality. The general meeting *(shakhadzhiba)*:
  - o Makes decisions on plans for socio-economic, cultural and ethnic development;
  - o Approves the report of the leader *(anidzha)* on the activities of the executive body of the local governance body for the financial year;
  - o Determines levels and types of expenses, the conditions and procedure for distributing income;
  - o Sets the boundaries of clan, family and individual territories;
  - o Examines issues of cooperation and mutual relations with the administration of the district *(ulus)*, with indigenous communities *(obshinas)* and with enterprises;
  - o Elects delegates to the Big Meeting or Congress *(chomosolgodzhil)*, to the audit commission and to other local governance bodies.
- A leader *(anidzha)* of the Suktul – an elected head of an executive body;
- A local governance body that:
  - o Organizes economic activities on the territory of the Suktul;
  - o Represents the Suktul in the government and in other organizations;
  - o Decides issues of cooperation with state enterprises, and other legal and physical entities;
  - o Manages the implementation of socio-economic, cultural and ethnic development programs;
  - o Creates enterprises, associations and other collectives;
  - o Makes contracts with legal and physical entities, including foreign entities;
  - o Manages finances and credit;
  - o Organises the general meeting and commissions of the Suktul Council;
  - o Provides Quarterly reports on its activities to the Suktul Council.

The leader *(anidzha)* of the Suktul, in accordance with the charter of the municipality, is directly responsible to the people and to the representative body of the local governance body, the Suktul Council. The establishment of Suktul bodies is determined in the charter of the municipality.

Responsibility of the deputies to their electors

Mutual relations between deputies and their electors in Sakha are regulated legislatively. In accordance with Article 6 of the law *On the Status of a Deputy of the State Council (Il Tumen)*, a deputy maintains contact with the electors of his/her district, is responsible and accountable to them. In accordance with legal procedures, a deputy that does not warrant the confidence of the electors can be recalled. A deputy must report to the electors of his/her district on his/her activities and on the work of the State Council (Il Tumen) at least once a year. Local authorities must provide whatever necessary for a deputy to make reports, and hold receptions and meetings with district electors.

Article 8 of the law *On the Status of a Deputy for the District* (Ulus), *Municipal (Cities of Republic Significance) Councils in the Republic of Sakha (Yakutia)* states that a deputy of the Council must:

- Maintain contact with their electors;
- Take measures to assure the rights, freedoms and legal interests of their electors;
- Consider suggestions, complaints and notices submitted by electors;
- Assist in the appropriate and timely execution of the substance of electors' questions;
- Hold public consultations with citizens;
- Monitor public opinion.

A deputy informs the electorate of his activities during meetings with them, as well as through the mass media. A deputy of the Council interacts with local executive bodies of state power, with local governance bodies, with other deputies of the State Council (Il Tumen), with the local structures of political parties and with other public organizations.

Article 5 of the law *On the Status of a Deputy in a Representative Body of a Local Governance Body of the Republic of Sakha (Yakutia)* establishes that a deputy is responsible to his/her electors. A deputy that does not execute, or ineffectively executes, his/her obligations, who violates the Constitution and laws of the Republic, the Constitution and laws of the Russian Federation or the charter of municipalities can be recalled by the electors of the corresponding electoral district. The recall mechanism for deputies is regulated by this law and by the charter of a municipality.

Prospects for Developing Representative Bodies for Indigenous Peoples in the Republic of Sakha (Yakutia)

At sessions of the Parliament of Sakha, peoples' deputies to the Second Convocation of the House of Representatives for the State Council (Il Tumen) (1997-2002) from among indigenous peoples repeatedly raised the question of the advisability of amending the law *On the Elections of the Peoples' Deputies for the Republic of Sakha (Yakutia)* in order to introduce amendments establishing quotas for indigenous peoples in the legislative body of the Republic. An opinion was expressed

that these amendments were essential to more effectively take account of the interests of indigenous peoples, to include this group of citizens in the composition of a legislative body and to ensure their involvement in its activities.

The peoples' deputies of Sakha consulted with their colleagues from other provinces of the Russian Federation, with scholars and legal experts, with members of the Central Election Commission of the Russian Federation and the Central Election Commission of the Republic of Sakha (Yakutia). During the consultations with members of the Central Election Commission of the Russian Federation, the parties came to the conclusion that the time had arrived to immediately resolve the issue of a lack of clarity in the provisions of the laws of Sakha establishing the legal status of indigenous peoples, and in the laws of Sakha regulating the electoral process and, in part, the law that calls for quota representation of indigenous peoples in the legislative (representative) bodies of state power of Sakha and local governance bodies.

Members of the Central Election Commission of the Russian Federation, during an unofficial meeting with deputies from Sakha, proposed that new ways of implementing the voting rights of indigenous peoples should be sought, using the examples of the Khanty-Mansi and the Yamalo-Nenets Autonomous Okrugs. One suggestion made by the Central Election Commission of the Russian Federation was to adopt appropriate amendments to the electoral laws of Sakha as part of the federal law on electoral rights. All attempts to draw on the legislative experience of these Autonomous Okrugs with regard to electoral reform have met with little understanding on the part of most deputies and have frequently met with aggressive resistance in the Parliament of Sakha.

On December 29, 2002, elections for the State Council (Il Tumen) and for local representative bodies were held in Sakha. Three deputies from among the indigenous peoples were elected to the Third Convocation of the State Council Il Tumen:

- Andrei Arkadevich Illarionov (Evenk) from Belozersky Electoral District No. 13, Yakutsk;
- Ekaterina Alekseevna Portnyagina (Evenk) from Verkhoyansky Electoral District No. 59, Verkhoyanskii Ulus;
- Andrei Vasilevich Krivoshapkin (Even) from Evensky Electoral District No. 70, Eveno-Bytantaiskii National Ulus

More than half of the re-elected deputies to the Third Convocation of the State Council (Il Tumen) (37 people) represent industrial concerns; many are the managing directors of companies. 14 deputies represent ALROSA (diamonds), six – the oil/gas industry, three – Yakut Coal, and five are from the energy sector. Not without reason does the republic's mass media call the Third Convocation of the State Council Il Tumen a "parliament of heads of industry".

Given the current legislative composition, the prospect of introducing electoral reform in Sakha that includes a quota system for representatives of indigenous peoples in legislative bodies of state power and local governance bodies is dim. The search, both in Sakha and in other areas, for ways of resolving this electoral reform problem now dates back ten years.

Will industrial groups move to strengthen the representation of indigenous peoples in legislative bodies of state power and in local governance bodies?

The answer to this question is obvious. ❑

Notes

1 The following laws regulate the legal status of the indigenous peoples in Sakha:
- *List of Indigenous Peoples of the North and Location of Their Villages in of the Republic of Sakha (Yakutia)*, 11.04.2000, ZN 168-II;
- *Legal Status of Indigenous Peoples of the North;* 24.04.97; ZN 172-I (Amended, 16.11.2000; ZN 231-II);
- *Clan and Clan-Nomadic Communities (Obshchina) of Indigenous Peoples of the North;* 23.12.92; N 1279-XII (Amended, 09.04.1996; ZN 105-I; 20.12.2000; ZN 237-II);
- *Status of National Administrative-Territorial Units in Locations (Territories) of Indigenous Peoples of the North of the Republic of Sakha (Yakutia);* 17.05.2000; ZN 194-II (Amended, 15.06.2002 28-z N 387-II);
- *Suktul of the Yukagir People;* 18.03.1998 ZN 8-II (Amended, 28.12.99; ZN 141-II; 26.04.2001; ZN 279-II);
- other laws.

The following laws regulate the electoral rights in the Republic of Sakha:
- *Election of the Peoples' Deputies for the Republic of Sakha (Yakutia);* 10.07.2002; ZN 404-II;
- *Election of Deputies for Local Representative Bodies and Local Administration Heads;* 22.09.94; ZN 36-I (Amended, 9.10.96; ZN 133-I; 18.02.97; ZN 161-I; 11.07.97; ZN 183-I; 26.11.97; ZN 209-I);
- *Election of Deputies to Representative Bodies for Local Self-Government for the Republic of Sakha (Yakutia);* 8.07.99; ZN 116-II;
- other laws.

2 The descendants of the Russian explorers who have lived for many centuries in the North are recognised as indigenous by law. They are sometimes also called the "old timers" [editor's note].

3 Federal law *On the Basis for Guaranteeing Citizens of the Russian Federation Electoral Rights and the Right to Participate in Citizen Referenda* (Article 18, Point 4, B).

INDIGENOUS SELF-GOVERNMENT AND POLITICAL INSTITUTIONS IN ALASKA

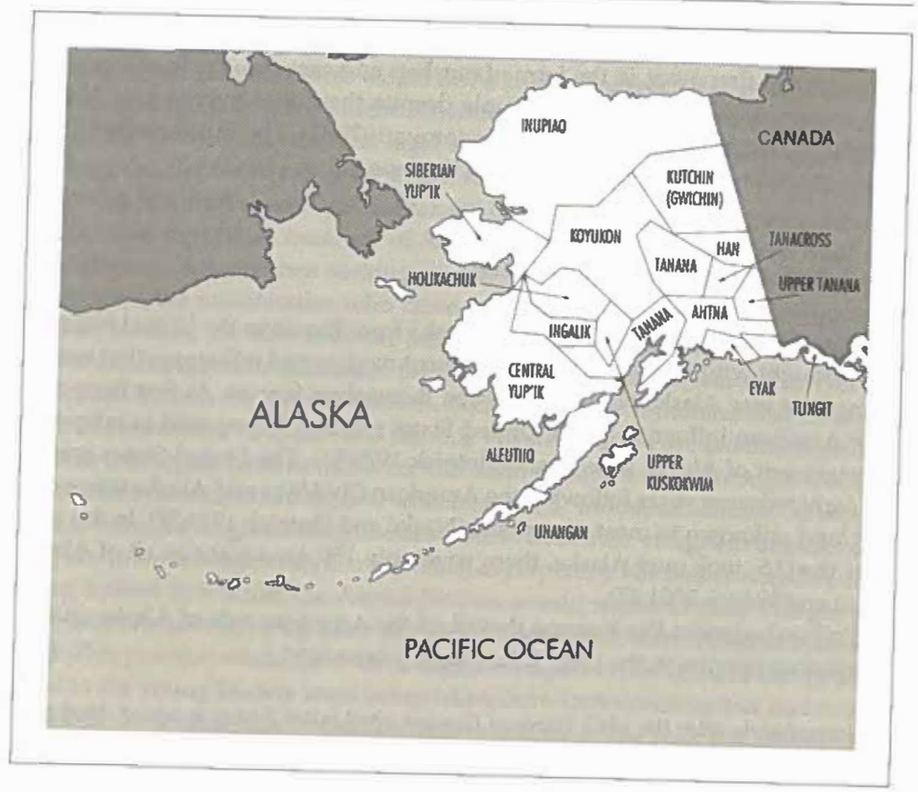
Gordon L. Pullar

Alaska's indigenous people have endured the impacts of colonialism twice over, first on the part of Russia and then the United States. This unique history has had a tremendous influence and impact on how Alaska Natives[1] governed themselves in the past and how they govern themselves today. This is a story of endurance and self-preservation. There have been many changes and yet Alaska Natives have found ways to survive and maintain methods of governing themselves even when it meant altering their governing institutions. Over the past 80 years, Alaska Natives have actively participated in the overall governing of Alaska by joining the mainstream system and seeking and achieving election to the Alaska Legislature. In 2002, an Alaska Native was elected to the position of lieutenant governor[2], making him the first Alaska Native to be elected to a statewide position. It is apparent that Alaska Natives will continue to use the resources available and make any adaptations to the political systems that may be necessary to ensure their survival.

Historical Background

The Russian Period

According to archaeological evidence, indigenous peoples have occupied Alaska for at least 12,000 to 14,000 years (Turner 1988:115, Crowell 1988:131). The barely 250 years since the arrival of the first Europeans in the form of Russian fur traders pales beside these millennia of cultural development. Before the first Russian contact, it is estimated that there were over 75,000 indigenous people living in Alaska, speaking more than 20 different languages (Fienup Riordan 1992:2). We will most likely never have a clear or complete picture of the governmental structures that were in place prior to the Russian occupation. We must assume, however, that in order to effectively function in the sometimes harsh climate of the north, indigenous peoples had their own ways and methods of governing themselves (Pullar 1997:51).



The period of Russian occupation began at different times for different areas of the southern and south-eastern regions of Alaska. The first Russian ship, captained by the Dane Vitus Bering, arrived in Alaska in 1741 (Naske and Slotnick 1979:27). It was not until the 1760s, however, that the Russian fur traders took firm control of the Aleutian Islands and their indigenous residents, the Unangan[3] (Aleuts) (Naske and Slotnick 1979:31-32). The heavy-handed rule and atrocities committed by these fur traders undoubtedly greatly reduced the effectiveness of self-government for the Unangan.

In 1784, the Russian fur traders, led by Gregorii Shelikhov, conquered Kodiak Island and the surrounding area, which was the homeland of the Sugpiat[4] (Black 1992) The Russians ruled the Sugpiat in much the same way as they ruled the Unangan and, once again, indigenous self-government suffered. Shortly thereafter, Shelikhov expanded his rule to the Tanaina Athabascan Indians of south-central Alaska (Fall 1987:15). After some bloody encounters, the Russians were able to subdue the Tlingit Indians in south-east Alaska in 1804 (Naske and Slotnick 1979:42-43). The Russians did establish some trading posts and other forms of presence among the Yupiks of south-western Alaska, the Athabascans of interior Alaska and some of the Inupiat of north-west Alaska but never achieved the kind

of control they had in the more southern regions (Fedorova 1973:129) Because of their superior firepower, in the form of muskets and cannons, the Russians were able to rule Alaska's indigenous people despite their own numbers in Alaska never reaching more than about 800 (Fedorova 1973:11). The Russians had little, if any, contact with the Inupiat of the Arctic slope.

The American Period and Assimilation

The transfer of occupation rights over Alaska from Russia to the United States in 1867 brought with it a new set of government models and influences that would change the way Alaska Natives governed themselves forever. At first there was little American influence, as the United States seemed ill-prepared to take over management of Alaska (Naske and Slotnick 1979:57). The United States was in the early recovery years following the American Civil War and Alaska was a distant land unknown to most Americans (Naske and Slotnick 1979:57). In the year after the U.S. took over Alaska, there were only 150 Americans in all of Alaska (Case and Voluck 2001:47).

Political scientist Fae Korsmo described the American rule of Alaska and its indigenous peoples in the years following the takeover:

> *Immediately after the 1867 Treaty of Cession, the United States occupied Alaska militarily, using both the army and navy. The 1884 Organic Act ended military rule in Alaska and made Alaska a customs district governed by several federal officials. The Second Organic Act of 1912 made Alaska into a territory of the United States and provided for a legislature. . . .With regard to Native rights, US rule consisted of a mixture of neglect, assimilation and segregation* (1994:87).

In the *Treaty of Cession* between the U.S. and Russia, however, a clause makes reference to Alaska Natives. It states that the "inhabitants of the ceded territory" can either return to Russia or become American citizens, with the exception of the "uncivilized tribes" (Case and Voluck 2001:378). The treaty said that, "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country" (Case and Voluck 2001:46). This clause implies that the indigenous people of Alaska had a status with the U.S. government that was similar to the Indian tribes in the contiguous United States.

In 1871, just four years after the U.S. took control of Alaska, the U.S. Senate ended treaty making with the Indian tribes (Getches, Rosenfelt and Wilkinson 1979:67-68). This act marked the beginning of the long period of assimilationist policy that the U.S. government maintained towards Native Americans (Getches, Rosenfelt and Wilkinson 1979:67-68). While there were undoubtedly no indigenous people in Alaska thinking about this action, or even aware of it, it was important as it meant that there would be no treaties between indigenous tribes in Alaska and the U.S. government. It would be many years before anyone even posed the question of what the legal and political relationship between Alaska Natives and the American government was.

It was not until several years after the United States officially took control of Alaska that significant numbers of Americans began to arrive. These were first opportunists, usually men seeking wealth through furs, gold and fish. Among these were the missionaries who came with the stated goal of "civilizing" the Alaska Natives. In 1886 Sheldon Jackson, a Presbyterian missionary, was appointed U.S. Agent for Education for Alaska. His job was to establish a Western education system for Alaska Natives. Because he was simultaneously drawing salaries from both his church and the U.S. government, he set about establishing schools for Alaska Natives that were Christian in nature. He also began a boarding school system and established what he termed "industrial schools". It was his goal to bring the brightest indigenous students from their villages to these schools in order to learn Western-style trades such as carpentry. His theory was that, after being trained in a trade, the Alaska Natives would return to their villages and convince others to give up their indigenous ways and learn Western trades as well. This practice would have had a negative impact on indigenous self-governance as the young leaders were being taken from their communities and taught that their own values and practices were uncivilized. The policy of assimilation thus had a detrimental effect on indigenous self-governance in Alaska. Of course, there were other negative impacts of the American education system imposed on Alaska Natives during this time period, most notably the ban on the use of Native languages in the school system (Fienup-Riordan 1992:7).

The Indigenous Political Movement

Alaska Natives and the Alaska Legislature

William L. Paul, a Tlingit Indian attorney, became the first Alaska Native elected to the Alaska Territorial Legislature in 1924 (Naske and Slotnick 1979:203; Arnold 1976:85; Mitchell 2002:12). Paul had been active politically through the Alaska Native Brotherhood, founded in 1912, in fighting for Native rights, especially the right to vote (Arnold 1976:85). This was a slow beginning for Alaska Natives serving in the Alaska Legislature. It would be another 20 years before two more Alaska Natives, Tlingits Frank Peratrovich and Andrew Hope, were elected in 1944 (Naske and Slotnick 1979:203). By 1952 seven Alaska Natives were serving in the Alaska Legislature (Naske and Slotnick 1979:203). When Alaska became a state in 1959, ten of the 60 members of the first Alaska State Legislature were

Alaska Natives (Mitchell 2002:12). While the number may have vacillated over the years, it is only slightly more today than in 1959 as there are now 11 Alaska Natives in the twenty-third Alaska State Legislature that first sat in 2003.

There were years when the Alaska Natives in the Alaska State Legislature held considerable power through the Bush Caucus[5] of the 1970s and 1980s. Most members of the Bush Caucus were members of the Democratic Party, which was the majority party in the legislature at that time. With the increase in Alaska's population taking place mostly in urban areas and being largely non-indigenous people from outside Alaska, the rural legislature members do not have the power and influence they once had. The majority political party in the Alaska State Legislature is now the Republican Party, which holds considerable power and controls a large majority of the seats. The overall party affiliations of the Alaska Natives in the legislature have also shifted over the years. Until recently, it was somewhat unusual for an Alaska Native legislator to be a member of the Republican Party. Now there are three, with a fourth who has joined a coalition with the Republicans. In the last legislature there were five Alaska Native Republicans serving.

While there have been numerous Alaska Natives who have had very successful mainstream political careers and a number who have run for statewide and national office, it was not until the 2002 elections that an Alaska Native was elected to a statewide office. Loren Leman, a Sugpiaq from the village of Ninilchik, was elected lieutenant governor. Leman was elected and served in the Alaska State Legislature for five terms but was not known for being pro-Native in his political position. He is a member of the Republican Party and is considered very conservative politically. Perhaps for this reason, his "Nativeness" is seldom mentioned either inside or outside the Alaska Native community.

Who is an Alaska Native?

At the root of any discussion of Alaska Native cultures, political issues or self-government in Alaska is the question, "Who is an Alaska Native?" This issue comes up in reference to Alaska's new Lieutenant Governor, Loren Leman. Because his political views are often at odds with those of the majority of Alaska Natives, he is not generally considered a member. His village of Ninilchik was established as a retirement colony for Russian fur traders and their Sugpiaq wives in around 1840 (Arndt 1996:242). The following generations generally recognized themselves by their dual heritage, often using the self-designation of "Russian-Aleut". But there were others that preferred only "Russian" as an identification. The current residents of Ninilchik consider themselves Alutiiqs (Sugpiaqs) and trace their kinship ties to Kodiak Island (Jackinsky 2001:96). The "legal" Alaska Natives[6] who had previously self-identified as "Russian-Aleut" or "Russian" and who enrolled under the *Alaska Native Claims Settlement Act* were met with

resentment and anger from many indigenous people, who felt they had always identified as Alaska Native or, more specifically, as a member of a particular Native ethnic or cultural group (Pullar 2001:73-74 and 1996:31-33). There continue to be those Alaska Natives who accuse other Alaska Natives of "not being a Native until 1971" (when the *Alaska Native Claims Settlement Act* was passed) or calling them "land claims Natives". There is an even more specific label of "Ninilchik Natives", which is considered to be derogatory and implying that Natives from Ninilchik are not legitimately Native or that they are Natives who had previously refused to acknowledge their Native heritage.

When the *Alaska Native Claims Settlement Act* was passed in 1971, any person who could prove one-quarter Native blood quantum was eligible to enroll and become a shareholder in the Native corporation for their geographic region established under the Act. Most of the people from Ninilchik were thus eligible to enroll and became shareholders in the corporation, Cook Inlet Region, Inc. They were then legally Alaska Natives in the eyes of the U.S. government and the corporation. Ninilchik also has a tribal government that is officially recognized by the U.S. government as an Alaska Native tribe. The enrolled members of the tribe are also legally considered Alaska Natives by the U.S. government.

Because there are many different markers for identifying an Alaska Native, individuals will undoubtedly continue to have varying opinions as to who is a Native and who is not. Some of these markers are knowledge of language, knowledge of traditions, residency, blood quantum and physical appearance. Locally, most Alaska Native groups accept either formally or informally who a Native is on the basis of family kinship ties (Pullar 2001:94-95).

The *Indian Reorganization Act* (IRA)

In 1934 the U.S. Congress enacted the *Indian Reorganization Act* (IRA), a law that signaled the end of the assimilationist policy of allotment that had been so damaging to tribes in the contiguous United States. Under the IRA, tribes could reorganize their tribal governments and take greater control of their own affairs. The Act, however, did not apply to Alaska Natives as it was originally written (Case and Voluck 2002:380). In the immediate aftermath of the IRA, the federal Bureau of Indian Affairs[7] surveyed fifty Alaska Native villages to determine their form of government organizations (Case and Voluck 2002:381). By this time, it appeared that most Alaska Native villages had forms of self-government that were a mixture of what their traditional government forms looked like combined with more Western-influenced forms (Case and Voluck 2001:381). The most common weakness, as perceived by the governments, was a lack of "legal authority" to enforce ordinances and other local laws (Case and Voluck 2002:381).

In 1936 the *Indian Reorganization Act* was amended to include Alaska Native villages and provided the authority for them to "reorganize themselves for governmental and business purposes based on 'a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district'" (Case and Voluck 2002:381-382).

Another provision of the IRA Alaska amendments was that the Secretary of the Interior[8] was authorized to create new Alaska Native reservations on land occupied by Alaska Natives (Case and Voluck 2002:382). Under these 1936 amendments to the IRA, 69 villages were reorganized under federally approved constitutions and six IRA reservations were established (Case and Voluck 2002:382). To be eligible to organize under the Act, Congress required a group of Alaska Natives to have a "common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district" (Berger 1985: 140-141). An important part of the law was the authorization for the villages to adopt constitutions that contained federally approved corporate charters allowing the villages to take advantage of the IRA business loan provisions (Case and Voluck 2002:382).

The *Indian Reorganization Act* was specifically enacted to reverse the federal Indian policy of allotment that had taken vast amounts of land from tribal control and greatly diminished the effectiveness of tribal governments (Case and Voluck 2002:383). According to Indian rights attorneys David Case and David Voluck,

> *...tribes were permitted to adopt federally approved constitutions which, in addition to their existing powers of self-government, also (1) prevented disposition of tribal assets without tribal consent; (2) entitled the tribe to hire attorneys with limited federal oversight, and (3) authorized tribes to negotiate with federal, state, and local governments* (2002:383).

While the IRA was undoubtedly a positive piece of legislation in terms of strengthening indigenous self-governance in Alaska, it was still heavily influenced by the U.S. government. For example, the tribal constitutions were often "boiler plate" forms produced by the federal Bureau of Indian Affairs and thus did not originate from the tribes themselves. Their approval was then required by the federal Secretary of the Interior, again taking away some of the independence of the tribes in their quest for self-government.

While reorganizing under the *Indian Reorganization Act* provided a sense of validity for those Alaska Native villages that chose that route, it did not make those villages more legitimate tribes than the villages that chose not to organize under the IRA (Case and Voluck 2002:383). Just as there are many tribes in the contiguous United States that chose not to organize under the IRA, a majority of Alaska Native villages chose not to adopt IRA constitutions (Case and Voluck 2002:383).

The issue of legitimacy of Alaska Native tribes, even within the indigenous community in Alaska, had become an issue by the 1980s. Those tribes that had adopted IRA constitutions often claimed to have more legitimacy and more authority then those that had not. In some cases, however, those villages that did not adopt IRA constitutions claimed to be more legitimate than the IRA governments and the term "traditional councils" became the most common way of distinguishing them from IRA councils. Their claim was that they were operating under traditional law and had not been "created" by an Act of the U.S. Congress. The fact is, however, that both types maintained their political status as tribes and their distinct and unique relationship with the U.S. government (Case and Voluck 2002:384). There are two ironies in these distinctions. One is that the IRA tribal governments were indeed formed pursuant to an Act of the U.S. Congress and had to conform to the provisions of that law. The other is that the "traditional" tribal governments of the late twentieth century were not exactly traditional. In order to receive government funding, services and programs, villages needed to set up a form of tribal government that the federal Bureau of Indian Affairs could understand and interact with. Tribal government structures for the "traditional" governments thus looked very much like the IRA governments, with constitutions and bylaws and an elected tribal council. This new form usually replaced the truly traditional forms of indigenous governments, even if there was often a cultural influence over the tribal councils.

The *Alaska Native Claims Settlement Act* of 1971 (ANCSA)

During the 1960s, Alaska Natives began in earnest to seek a settlement of aboriginal land claims. A series of Alaska Native associations were formed throughout Alaska with the main purpose of pursuing this aim. As a result, the first bill to settle these claims was introduced in the U.S. Congress in 1967 (Arnold 1975:97). A new type of Alaska Native leader emerged from this effort, known as a "land claims leader" or sometimes a "statewide Alaska Native leader".

The Alaska Native leaders involved in pursuing this settlement with the U.S. Congress were more likely to be urban-based than come from a traditional background. Most of these leaders were likely to have had at least some higher education. Most were also quite acculturated to Western culture. It appears that the Alaska Native tribal governments did not actively participate in this movement. It seems apparent that, had the leadership been made up of more traditional people from the tribal villages, the settlement would have been different. Or perhaps it would not have taken place at all. It seems clear, however, that many if not most traditional people living in remote communities not only were not involved but also may not even have been aware that settlement negotiations were taking place on their behalf.

Declaring that there was "an immediate need for a fair and just settlement of all claims by Natives and Native groups in Alaska, based on aboriginal title", Congress passed the *Alaska Native Claims Settlement Act* (ANCSA) on December 18, 1971 (U.S. Public Law 92-203). The settlement included the transfer of title to 44 million acres of land and a cash payment of $962.5 million for lands lost (Korsmo 1994:91). The *Alaska Native Claims Settlement Act* was different from any other agreement Native Americans had made with the U.S. government in that the settlement bypassed the tribal governments and required "the Natives to set up village and regional corporations to obtain title to the land"(Berger 1985:6).

ANCSA required the regional Native associations, most of which had been established expressly for the purposes of pursuing a land claims settlement, to establish for-profit business corporations to receive the settlement (U.S. Public Law 92-203, Section 7). The new regional corporations were to represent twelve geographic regions of Alaska "with each region composed as far as practicable of Natives having a common heritage and sharing common interests" (U.S. Public Law 92-203, Section 7).

According to Thomas Berger, a Canadian jurist who studied the impact of ANCSA, "Many Alaska Natives simply do not accept ANCSA because it was, they believe, imposed on them by Congress. They think now that their traditional tribal governments were the only appropriate bodies to make these decisions, and Congress never consulted with tribal governments" (1985:119). Berger concluded that, "When Congress enacted ANCSA, it considered tribal governments an impediment to assimilation" (1985:6).

The leadership of the newly formed Alaska Native for-profit corporations was generally made up of the same individuals that had worked on securing the settlement from Congress. Although they did not have many financial resources while working toward the settlement, once the settlement was made, the corporations established and the cash settlement received, there were considerable financial resources within the corporations. High salaries were common. There was a significant problem, however. These leaders were generally politicians, not business people. In many cases the corporations did not do well and lost considerable amounts of money. This made it necessary to reevaluate what types of skills were required to successfully manage business corporations, and many changes were made.

Today the Alaska Native regional corporations are very important to the economy of Alaska. Some have done far better than others, however. There are a variety of reasons for this discrepancy. One has to do with natural resources. While the Act did provide a requirement for the sharing of revenues among the corporations from the sale of natural resources, the corporations with the most natural resources clearly have more assets and a greater probability of financial success.[9]

The Alaska Federation of Natives (AFN)

The Alaska Native leaders that were pursuing a land claims movement in the 1960s established the first statewide Alaska Native organization in 1966, called the Alaska Federation of Natives, to work towards this effort (Arnold 1976:97; Korsmo 1994:91; Mitchell 2001:12). The organization's first board of directors consisted of 22 Alaska Native men and no women (Arnold 1976:337). Nearly all came from cities or regional hubs (Arnold 1976:337). The Alaska Federation of Natives was formed on the basis of a Western model of organization, with a membership of regional Alaska Native associations also formed along Western lines. When the land claims Act was passed in 1971, these 12 associations were designated in the Act and charged with the responsibility of forming for-profit business corporations that would in turn receive the title to the land and cash that would make up the settlement (Pullar 1997:57-58).

The Alaska Federation of Natives became a powerful political force as the Alaska Native land claims movement evolved throughout the 1960s. After the Act was passed in 1971, this power even increased as the newly formed regional Alaska Native corporations that made up the AFN were significant participants in the Alaskan economy. As the largest private landholders in Alaska, and with the influx of cash from the settlement, the corporations could command considerable respect from the state and federal governments as well as the non-Native residents of Alaska. The corporations' representative on many issues was their organization, the Alaska Federation of Natives. This power and respect continued through the 1980s as AFN pursued Congressional amendments to ANCSA that would eliminate the damaging 20-year time schedule ANCSA was on. As the law was passed in 1971, it provided that in 20 years all Alaska Native corporation-owned land could be taxed by state and local governments and that Alaska Native corporate shareholders could sell their shares. The possible impact of this would have been that the corporations would lose the land through an inability to pay taxes on land that was not generating revenues and that Alaska Native shareholders in need of money might sell their Native corporation shares, thus allowing the corporations to be taken over by non-Native outside interests. Largely as a result of AFN lobbying, Congress passed amendments in 1988 removing these clauses.

The passage of the amendments to the *Alaska Native Claims Settlement Act* may have been the last demonstration of real power and influence by the Alaska Federation of Natives. By this time, many of the corporations were powerful in their own right and were dealing with Congress on many issues unique to their areas. The political power of the individual corporations diminished the need for a powerful statewide Alaska Native organization. AFN continued, however, and operates today. Its annual convention held in October of each year is by far the

largest gathering of Alaska Natives in the state. The convention provides a forum for discussing issues that impact on Alaska Natives and their communities and a mechanism for passing resolutions in line with Alaska Native positions on these issues. The conventions are also considered important social events at which Alaska Natives from across Alaska and from different Native cultures can come together.

It was not until several years after the land claims were officially settled with the U.S. through the congressional passage of the *Alaska Native Claims Settlement Act* in 1971 that it was realized that the Act had actually separated the ownership of the land from the tribal governments by stipulating that legal title to the land was to be conferred on Alaska Native business corporations. The cash payment of $962.5 million for lands lost actually amounted to about three dollars per acre (Berger 1985:20).

The *Alaska Native Claims Settlement Act* abolished the aboriginal hunting and fishing rights of Alaska Natives (Korsmo 1994:92). This loss continues to haunt Alaska Natives as they struggle to maintain subsistence rights that were spelled out in the *Alaska National Interest Lands Conservation Act* of 1980. Under this Act "rural residents," not Alaska Natives, were given a preference in the taking of fish and game in Alaska during times of shortage (Korsmo 1994:97; Alaska Natives Commission Volume II 1994:57). The State of Alaska Supreme Court ruled that a state law passed by the legislature to bring the state into compliance with the federal law was unconstitutional (Korsmo 1994:98). This stalemate between conflicting state and federal laws has resulted in the federal government taking over fish and game management on federal lands in Alaska.

Contemporary Alaska Native Organizations

There has been a proliferation of formal organizations in Alaska, usually referred to as "Alaska Native organizations". In most cases, however, they are "Alaska Native organizations" because they are controlled by Alaska Natives and not because of any traditional structure or way of operating. These organizations, established by Alaska Natives under Western laws and regulations for a variety of purposes, are described as a "non-system" by attorney David Case (1984:371). Some were established in the early twentieth century while others came much later.

One of the first Western style organizations formed by Alaska Natives was the Alaska Native Brotherhood, founded in Sitka in 1912 by a group of nine Tlingits and one Tsimshian Indian (Drucker 1958:16-17). Drucker said of the founders,

> *"All were men who were not quite acculturated, but who specifically were strongly influenced by the Presbyterian missionaries of Sitka Training School (later 'Sheldon Jackson School'). This influence was manifest in the emphasis in Brotherhood policy on Christian ideals and morality"*(1958:17).

The primary goal of the Alaska Native Brotherhood was to secure the right to vote for Alaska Natives (Arnold 1976:82-83; Taylor 1983:15). The other goals of the Alaska Native Brotherhood were to encourage Alaska Natives to abandon their traditional customs and pursue a Western-style education. The organization was an assimilationist organization acting in response to language in the 1887 *General Allotment Act* (also called the *Dawes Act*) that said that American Indians could only obtain United States citizenship if they "severed tribal relationship and adopted the habits of civilization" (Arnold 1976:83).

Many whites in Alaska resisted the idea of citizenship for Alaska Natives, a resistance that resulted in the Alaska Native Brotherhood persuading the Alaska Territorial Legislature to pass legislation in 1915 that contained language similar to that of the 1887 *Dawes Act*. Even with this new law, however, most Alaska Natives were not able to gain U.S. citizenship until the U.S. Congress passed the *Citizenship Act* in 1924 making all Native Americans citizens of the United States (Arnold 1976:83).

The majority of Alaska Native organizations today stem from the associations established in the 1960s. These associations formed the regional for-profit corporations under the *Alaska Native Claims Settlement Act* and these corporations, in turn, helped form over two hundred village corporations within their respective regions. The associations generally reorganized and became incorporated as not-for-profit corporations known as "regional nonprofits". They then focused on social, health, education and political advocacy issues. A number of other Alaska Native service organization sprung up from these.

On a statewide level, those interested more in securing stronger tribal rights established an organization called United Tribes of Alaska in 1983 (Case and Voluck 2002:360). The United Tribes of Alaska was made up of Alaska Native villages that constituted tribes under U.S. law. The organization was particularly focused on securing amendments to the *Alaska Native Claims Settlement Act* under which Native corporation land could be transferred to tribal ownership. The organization faltered after just two years, however, and was forced to dissolve because of debt (Case and Voluck 2002:361). A successor organization, the Alaska Native Coalition, was formed to carry on the same work but was also short-lived. A third organization, the Alaska Inter-Tribal Council, has had more success. It was formed in 1992 with a membership of 92 Alaska Native Tribal governments and within five years had a membership of 164 tribal governments (Case and Voluck 2002:362). While it has survived, the Alaska Inter-Tribal Council has consistently been short of financial funding and has not emerged as a particularly strong organization. It has worked effectively with other organizations, especial-

ly the Alaska Federation of Natives, in advocating for Native rights, especially subsistence hunting and fishing rights.

The Tanana Chiefs Conference

A confederation of Athabascan Indian chiefs called the Tanana Chiefs Conference (TCC) was formed in 1915 in an organized effort to protect their lands against settlement by whites (Arnold 1976:81). TCC traces its history back to 1912 and is considered "the historic successor to the traditional consultative and governing assembly of the Athabascan people of interior Alaska"(Case and Voluck 2002:340). TCC, or Dena'Nena'Henash, was reorganized in 1962 primarily to address the aboriginal land claims issue (Case and Voluck 2002:340). Just before the passage of the *Alaska Native Claims Settlement Act* in 1971, TCC was again reorganized and incorporated as a not-for-profit corporation under Alaska state law (Case and Voluck 2002:340).

The Tanana Chiefs Conference stated nine goals in its formal articles of incorporation in 1971. They are:

1 To secure to the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled under the laws of the United States and the State of Alaska.
2 To enlighten the public towards a better understanding of the Native people of Alaska.
3 To preserve the customs, folklore, art and cultural values of the Native people of the region of the Tanana Chiefs Conference.
4 To seek an equitable adjustment and settlement of Native affairs and the land claims of the Native People of said region.
5 To promote the common welfare of the Natives of Alaska and their physical, economic and social well-being.
6 To foster continued loyalty and allegiance of the Natives of Alaska to the United States and the State of Alaska.
7 To promote pride on the part of the Natives of Alaska in their heritage and traditions.
8 To discourage and overcome racial prejudice.
9 To promote good government.[10]

The Tanana Chiefs Conference currently states its mission as:

> *A unified voice advancing tribal governments, economic and social development, educational opportunities and protecting traditional and cultural values. Balancing traditional Native values with modern demands, TCC provides specially tailored programs in the areas of health, employment, economic development, and generalized family services.*[11]

The Tanana Chiefs Conference is made up of 42 member villages, each of which is considered a "tribe" and possesses special rights under the American legal system. Two organizations, the Fairbanks Native Association and the Tok Native Association, are also members (Case and Voluck 2002:341). Each member village holds one seat on the board of directors and the full board meets once a year (Case and Voluck 2002:341). The management of the corporation between annual meetings is in the hands of an executive board of directors consisting of the TCC president, vice-president, secretary/treasurer and one representative from each of six subregions (Case and Voluck 2002:341).

The president of the Tanana Chiefs Conference is elected for a three-year term and serves as the chief executive officer of the corporation, presiding over all meetings of the board of directors (Case and Voluck 2002:342). The TCC board also elects a traditional chief to a lifetime position (Case and Voluck 2002:342). The current TCC president is Harold "Buddy" Brown, an attorney originally from the Koyukon Athabascan village of Huslia.

With the passage of the federal *Indian Self-Determination and Education Assistance Act* of 1975, the Tanana Chiefs Conference, like the other Alaska Native regional organizations, began contracting with the U.S. government to provide the services to Alaska Natives that would ordinarily have been provided by the U.S. Department of the Interior and the U.S. Department of Health, Education and Welfare (later known as the Department of Health and Human Services) (Getches, Rosenfelt, and Wilkinson 1979:110-111). Because of the large numbers of Alaska Natives in the interior of Alaska, TCC obtained a significant budget from this contracting to provide services to its constituents. It took some time after the Act was passed in 1975 before it was effectively implemented but, by 1980, TCC was administering some $6 million in programs (Case and Voluck 2002:342). The TCC budget nearly doubled over the next five years and rose to over $50 million in 1995 (Case and Voluck 2002:342). In late 2002 the Tanana Chiefs Conference had a paid staff of about 700 members and a budget of $76 million but was experiencing budget shortfalls, necessitating staff layoffs (Associated Press November 11, 2002).

The example of the Sugpiat

The Sugpiat (singular Sugpiaq) are the indigenous people inhabiting the south-central Alaska area of Prince William Sound, the lower Kenai Peninsula, Kodiak Island and adjoining archipelago and the Alaska Peninsula. The people are a part of the overall group, commonly called Eskimo or Inuit, that stretches around the

coastline from Prince William Sound to the North Slope of Alaska, across Arctic Canada to Greenland.

The Russian fur traders that arrived in the late 18th century called the Sugpiat Aleuts. This was the term the Russians also applied to the first Alaska Native people they encountered, the Unangan of the Aleutian Islands. After a period of time, both the Unangan and the Sugpiat began calling themselves Aleuts and became in danger of losing their own ethnic identification. But the traditional name, Sugpiaq, meaning "a genuine human being", was not completely lost and is now making a return. In the interim years, many Sugpiat called themselves "Alutiiq", which is the word "Aleut" spoken in their own language.

The Sugpiat governed themselves in an egalitarian fashion, with decisions being made by a council of elders once village members had had an opportunity to provide their input. This system underlies the current system of tribal councils that are in place in each Sugpiaq village. The councils are either formed as *Indian Reorganization Act* councils or "traditional" council that are very similar in form.

A 1987 study conducted by the Kodiak Area Native Association focused on traditional Sugpiaq governance, emphasizing the use of community meetings and consensus decision-making (Pullar 1997:170). In the study one Sugpiaq elder said:

> *You know them olden days, they were running their village very systematically to make things easier. And they always advised and always had meetings, what's going to take place. And they take, have meetings, you know, they take opinions from people on what they want them to do. They will not do business on their own like city council or whatever. But nowadays we very, very seldom have any gathering or meeting or they ask of the majority of the people 'What should we do?' . . . Whatever happens pertaining to village affairs, maybe they are going to build something or upgrade something else, they have to notify the other people what's going to take place. It's not undercover, no way! People know. The main purpose to have a meeting was to take everybody's opinion. When all agree, we've got it!* (Kodiak Area Native Association 1987:9, from Pullar 1997:170).

The chief of village did not act without the support of the people. The position was regarded as one of a servant to the people. The chief would always seek input and advice before making important decisions. The Sugpiaq elder added:

> *Whoever they appoint to be the leader of the community, he's the advisor in everything. But, he's not alone. You see, the elders, they talk to each other. . . . So, it's not him alone that's working. And so he gets advised from others, elders. So that makes work easier. They put all of their opinions together. It's better to have more than one head to accomplish something!* (ibid. 1987:9, from Pullar 1997:171).

The elders used to meet in a "men's house" called a *qasgiq* when they had important items to discuss. The *qasgit* are no longer used but some Sugpiat yearn for their return. The world view behind this system remains, however, but is manifested in a different form. This is the modern day tribal council. Decisions are made by consensus in tribal council meetings or in meeting of boards of directors of the corporations and organizations. After a topic has been discussed and a decision agreed on, a formal motion is made to ratify the decision in the Western system governed by the rigid Roberts Rules of Order that most Western-style organizations operate meetings under.

The Sugpiaq geographic culture area suffered a setback with the passage of the *Alaska Native Claims Settlement Act*. The culture area was divided up into four different regions under the Act. This meant that the Sugpiat corporate shareholders were now enrolled in four different regional corporations. These four regional corporations, Koniag, Inc., Chugach Alaska Corporation, Cook Inlet Region, Inc. and Bristol Bay Native Corporation, are completely independent of each other and carry out business ventures as each sees fit. The effect of this division was to break down the strength of the culture as a whole, as many people began to identify as shareholders in the different corporations rather than as Sugpiat. This has begun to change, however, and representatives from all four regions have gathered in Kodiak to renew their cultural and family connections. The second of these gatherings, held in 1998, was appropriately called "We Are One" (Crowell, et. al. 2001:14).

The corporations in the Sugpiaq culture area have not been without their own controversy. Cook Inlet Region, Inc., a corporation that has two Sugpiaq villages within its geographic boundaries, paid out $50,000 to each of its shareholders in 2000 (Dobyn 2000:A1). The money, accumulated from profits from the sale of a telecommunications business, provoked envy and resentment from Alaska Native shareholders from other regions, some of whom had never received any cash from their corporations.

The 1990s brought opportunities for Alaska Native corporations to sell land, something that in the past had seemed like an unconscionable thing to do. But money made available from funds paid by Exxon as a penalty for the Exxon Valdez oil spill of 1989 caused government agencies to begin making offers to Sugpiaq corporations for their lands. Some of the corporations felt that selling the land would be an opportunity to establish permanent funds that would generate cash incomes for their shareholders in perpetuity. This idea backfired, however, when shareholders of the affected village corporations voted to distribute the money. The Akhiok-Kaguyak Corporation from Kodiak Island, for example, was forced to pay out $5 million to its 147 shareholders (Mitchell 2002:525). This was followed by a $100,000 payment to each shareholder in 2002 (Loy 2003:E1). In early 2003 the corporation made another distribution of $100,000 per shareholder (Loy 2003:E1).

Koniag, Inc., the regional corporation representing the Sugpiat of the Kodiak Island area sold land to the Exxon Valdez Oil Spill Trustee Council in 1995 for $26.5 million with the intention of establishing a trust fund for the money (Mitchell 2002:526). As in other cases, however, the shareholders voted for a distribution and each shareholder received a check for $5,890 in 1999 (Mitchell 2002:526).

The result of these cases is that the Alaska Native corporations no longer own the land and the money received by many, if not most, of the shareholders has been spent. The idea of providing for future generations has been lost.

A positive process in the Sugpiaq culture area has been the cultural revival taking place over the past two decades (Pullar and Knecht 1995:14). After surviving two colonizations and countless epidemics and, in some cases, atrocities, the Sugpiat are showing their strength and resilience by reclaiming their culture and traditions. Much remains to be done but much is underway. An important part of this effort is the strengthening of their tribal governments and other organizations to help take them into the future.

Conclusion

The history of Alaska Natives has had similarities with that of indigenous peoples in other parts of the world. But there have also been differences. The parts of Alaska that experienced Russian and American colonization have both had to endure incredible changes and demonstrate a strong resilience just to survive. But the same has been the case in other parts of Alaska, even those that only experienced American colonization. The American legal system has been challenging for Alaska Native tribes and organizations to succeed in but there have been successes. The assimilation effort has not been successful and now Alaska Natives are returning to their cultures for the knowledge and wisdom needed to successfully govern themselves into the future. ❑

Notes

1 The indigenous peoples of Alaska are usually referred to by the generic term of "Alaska Natives". This term is used without regard for cultural or linguistic differences among the various indigenous groups.
2 The lieutenant governor is an elected official serving as deputy to the governor of a state in the United States. The lieutenant government becomes governor in the event of the governor dying or otherwise leaving office before his or her term is completed.
3 The *Unangan* (singular *Unangax*) are the indigenous people of the Aleutian and Pribilof Islands. They were mistakenly called "Aleuts" by the Russian fur traders and, to a large degree, the name stuck.

4 The *Sugpiat* (singular *Sugpiaq*) are the indigenous people of Prince William Sound, lower Kenai Peninsula, Kodiak Island and surrounding area, and of the Alaska Peninsula.
5 The Bush Caucus is the group of Alaska legislators that represent rural Alaska. The overwhelming majority of the members of the Bush Caucus are and have been Alaska Natives. In the 1970s and 1980s the Bush Caucus exerted tremendous political power in Alaska.
6 In order to be recognized as an Alaska Native by the U.S. government, a person must meet the requirements set forth in federal legislation. The *Alaska Native Claims Settlement Act* of 1971 recognized anyone who could proof a one-quarter blood quantum as an Alaska Native. Anyone born after this act was passed was not recognized as an Alaska Native, which created the need to develop a tribal enrolment. A list of "federally recognized tribes" was thus developed by the U.S. government that included Alaska Native villages. Most tribes enrol members based on being a descendant of an Alaska Native rather than on blood quantum. Enrolment is very important to Alaska Natives as it qualifies them for government sponsored health care, education and other benefits.
7 The Bureau of Indian Affairs (BIA) is an agency within the federal Department of the Interior responsible for programs serving Native Americans. An exception is health care, which is provided through the Indian Health Service (IHS), an agency within the federal Department of Health and Human Services where it was transferred from the BIA in 1955.
8 The Secretary of the Interior manages the federal Department of the Interior, which is the agency that oversees relations between Native American tribes and the U.S. government. The Secretary of the Interior is a cabinet level position that reports directly to the President of the United States.
9 Section 7 (i) of the *Alaska Native Claims Settlement Act* states, "Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the Regional Corporation among all twelve Regional Corporations...."
10 Dena'Nena'Henash, Articles of Incorporation (September 27, 1971) from Case and Voluck (2002)
11 http://www.tananachiefs.org/

Bibliography

Alaska Natives Commission. 1994. *Final Report*, (Volumes I and II). Anchorage: Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives.

Arndt, Katherine L. 1996. 'Released to reside forever in the colonies:' Founding of a Russian-American Company retirement settlement at Ninilchik, Alaska. In: Davis, N.Y. and William E. Davis (eds.), *Adventures Through Time: Readings in the Anthropology of Cook Inlet, Alaska.* Anchorage: Cook Inlet Historical Society.

Arnold, Robert A. 1976. *Alaska Native Land Claims*. Anchorage: The Alaska Native Foundation.

Associated Press. 2002. Tanana Chiefs will lay off ten: Crunch: Conference officials cite budget shortfall in acting. *Anchorage Daily News*. November 11, 2002.

Berger, Thomas R. 1985. *Village Journey: The Report of the Alaska Native Review Commission.* New York: Hill and Wang.

Black, Lydia. 1992. The Russian Conquest of Kodiak. *Anthropological Papers of the University of Alaska* 24(1-2): 165-182. Fairbanks: University of Alaska.

Campbell, L.J. (ed.). 1996. *Native Cultures in Alaska.* Anchorage: The Alaska Geographic Society.

Case, David S. and David A. Voluck. 2002. *Alaska Natives and American Laws* (Second Edition). Fairbanks: University of Alaska Press.

Chaussonnet, Valerie (ed.). 1995. *Crossroads Alaska: Native Cultures of Alaska and Siberia.* Washingon, D.C.: Smithsonian Institution.

Crowell, Aron. 1988. Prehistory of Alaska's Pacific Coast. In: W.W. Fitzhugh and A. Crowell (eds.). *Crossroads of Continents: Cultures of Siberia and Alaska.* Washington, D.C.: Smithsonian Press. 130-140.

Crowell, Aron L., Amy F. Steffian and Gordon L. Pullar (eds.). 2001. *Looking Both Ways: Heritage and Identity of the Alutiiq People.* Fairbanks: University of Alaska Press.

Davis, NancyYaw and William E. Davis (eds.). 1996. *Adventures Through Time: Readings in the Anthropology of Cook Inlet, Alaska.* Anchorage: Cook Inlet Historical Society.

Dobyn, Paula. 2000. Dividend hits banks, markets. *Anchorage Daily News.* December 29, 2000. A-1.

Fienup-Riordan, Ann. 1992. *Culture Change and Identity Among Alaska Natives: Retaining Control.* Anchorage: Institute of Social and Economic Research, University of Alaska Anchorage.

Getches, David H., Daniel M. Rosenfelt and Charles F. Wilkinson. 1979. *Federal Indian Law: Cases and Materials.* St. Paul, Minnesota: West Publishing Company.

Jackinsky, McKibben. 2001. Kinship. In: Crowell, A., A. Steffian and G.L. Pullar (eds.). *Looking Both Ways: Heritage and Identity of the Alutiiq People.* Fairbanks: University of Alaska Press.

Kodiak Area Native Association. 1987. *The History of the Traditional Native Village of Old Harbor and its Government.* Unpublished manuscript on file at KANA.

Korsmo, Fae L. 1994. The Alaska Natives. In: *Polar Peoples: Self Determination and Development.* London: Minority Rights Group. 81-104.

Loy, Wesley. 2003. Akhiok get big payday: $100,000. *Anchorage Daily News.* January 16, 2003. E1.

Mitchell, Donald Craig. 2002. *Take My Land, Take My Life: The Story of Congress's Historic Settlement of Alaska Native Land Claims, 1960-1971.* Fairbanks: University of Alaska Press.

Naske, Claus-M. and Herman E. Slotnick. 1979. *Alaska: A History of the 49th State.* Grand Rapids, Michigan: William Eerdmans Publishing Company.

Pullar, Gordon L. 1996. Indigenous Identity on Kodiak Island. In: L.J. Campbell (ed.). *Native Cultures in Alaska.* Anchorage: The Alaska Geographic Society.

Pullar, Gordon L. 1997. *Indigenous culture and organizational culture: A case study of an Alaska Native organization.* Unpublished doctoral dissertation. Cincinnati: The Union Institute.

Pullar, Gordon L. 2001. Contemporary Alutiiq Identity. In: Crowell, A., A. Steffian and G.L. Pullar (eds.). *Looking Both Ways: Heritage and Identity of the Alutiiq People.* Fairbanks: University of Alaska Press.

Pullar, Gordon L., and Richard A. Knecht. 1995. Alutiiq. In: V. Chaussonet (ed.). *Crossroads Alaska: Native Cultures of Alaska and Siberia.* Washingon, D.C.: Smithsonian Institution. 14-15.

Taylor, Theodore W. 1983. *American Indian Policy.* Mt. Airy, Maryland: Lomond Publications.

Turner, Christy G. II. 1988. Ancient Peoples of the North Pacific Rim. In: W.W. Fitzhugh and A. Crowell (eds.). *Crossroads of Continents: Cultures of Siberia and Alaska.* Washington, D.C.: Smithsonian Press. 111-116.

Appendix 1: Alaska Native Regional Organizations

ANCSA Regional for-profit	Regional not-for-profit	Regional not-for-profit Health
Ahtna, Inc.	Copper River Native Association	Combined with regional not-for-profit
The Aleut Corporation	Aleutian/ Pribilof Islands Association	Combined with regional not-for-profit
Arctic Slope Regional Corporation	Inupiat Community of the Arctic Slope[1]	North Slope Borough[2]
Bering Straits Native Corporation	Kawarak, Inc.	Norton Sound Health Corporation
Bristol Bay Native Corporation	Bristol Bay Native Association	Bristol Bay Native Health Corporation
Calista Corporation	Association of Village Council Presidents	Yukon-Kuskokwim Health Corporation
Chugach Alaska Corporation	Chugachmiut	Combined with regional not-for-profit
Cook Inlet Region, Inc.	Cook Inlet Tribal Council, Inc.	Southcentral Foundation
Doyon, Ltd.	Tanana Chiefs Conference, Inc.	Combined with regional not-for-profit
Koniag, Inc.	Kodiak Area Native Association	Combined with regional not-for-profit
NANA Regional Corporation	Maniilaq, Inc.	Combined with regional not-for-profit
Sealaska Corporation	Central Council of Tlingit and Haida Indian Tribes of Alaska	Southeast Alaska Regional Health Corporation
The Thirteenth Regional Corporation[3]	None	None

1 The Inupiat Community of the Arctic Slope is an IRA tribal government recognized by the US government and not a corporation
2 The North Slope Borough is a regional municipal government recognized by the State of Alaska and not a corporation
3 The Thirteenth Regional Corporation is composed of Alaska Native shareholders who were residing outside Alaska in 1971 when the lands claims bill was passed.

SELF-GOVERNMENT IN THE YUKON

Daryn Leas

Introduction

While the structures and processes of Yukon First Nation self-government have evolved during three decades of negotiations, the objective of self-government has remained consistent and steadfast. The Yukon First Nations have sought self-government to ensure that they have a substantive role in the management of the lands and resources in the Yukon and, perhaps more importantly, the power to provide effective and fair governance for their communities and citizens.

For the period following the completion of the Alaska Highway in 1942, the Yukon First Nation communities and citizens were politically muted and economically marginalized. They had neither a political voice nor an economic base. Several generations of their children were taken at a young age and placed in residential schools. Their languages and lifestyles were slipping away. They had no control over the programs and services delivered to their communities and citizens. Reflecting the experience of other regions of Canada, the *Indian Act*[1] was imposed and served to disempower and divide Yukon First Nations. But in the late 1960s, Yukon First Nations took steps to mobilize politically and crystallize a vision of the future for their communities – a vision that would enable Yukon First Nation citizens to be full participants in Canadian society without surrendering their identity.

In 1973 the Chiefs met with the Prime Minister and Minister of Indian Affairs and proposed an approach to a land claims settlement in the Yukon. Following ten years of negotiations, the negotiators of the Yukon First Nations and federal and territorial governments reached an agreement-in-principle in 1984. The Yukon First Nation Chiefs subsequently rejected the proposed agreement-in-principle for several reasons, including the absence of self-government powers and authorities for the Yukon First Nations. The agreement-in-principle established a one-system of government for Yukoners that did not recognize the self-government powers and authorities of the Yukon First Nations.

Ultimately, the Yukon First Nations and federal and territorial governments signed the Umbrella Final Agreement (the "UFA") in 1993 that set out a framework for self-government for Yukon First Nations and Yukon First Nation final and self-government agreements were subsequently finalized. The self-government agreements recognized the substantive and broad self-government powers and authorities of the Yukon First Nations, including their law-making powers.

Arctic Athabaskan Council (AAC)

The UFA and the first four final and self-government agreements[2] were actually brought into legal effect almost two years later, on February 14, 1995, with the proclamation of the *Yukon First Nation Land Claims Settlement Act*[3] and *Yukon First Nation Self-Government Act* (Canada).[4] Subsequently, the final and self-government agreements of the Little Salmon/Carmacks First Nation and Selkirk First Nation were brought into legal effect by way of a federal order-in-council in 1997 and the Tr'ondek Hwech'in in 1998 and Ta'an Kwach'an Council in 2002. Therefore, eight of the fourteen Yukon First Nations presently have final and self-government agreements in legal effect.

Before we can examine the scope and extent of the self-government agreements and assess their impact, we must review the history of the negotiations and the evolution of those discussions in order to understand the objectives of the agreements. As we will discuss below, the self-government agreements are progressive and fulfill many of the original objectives articulated by the Chiefs in 1973. Although the negotiations have been finalized and the self-government agreements are operational for eight Yukon First Nations, the self-governing Yukon First Nations face many challenges to bring effective and fair governance to their communities and citizens.

Background

The Reality

The Yukon is located in the far north-western corner of Canada and comprises more than 480,000 square kilometers. It is a remote and rugged land that is

sparsely populated. Today more than two-thirds of the Yukon's population of 30,000 live in Whitehorse.

The Yukon First Nation citizens comprise approximately twenty-five percent of the population in the Yukon. They have lived in the area that today covers the Yukon Territory, the western areas of the Northwest Territories and the northern area of British Columbia since time immemorial. Archaeological findings have confirmed the occupation of this area by indigenous peoples more than 25,000 years ago.

The Yukon First Nations comprise eight distinct language groups: seven are Athabaskan and one is Tlingit. While each Yukon First Nation had its own traditional territory where its members hunted and trapped, the Yukon First Nations developed extensive trading and kinship relationships with adjacent groups.

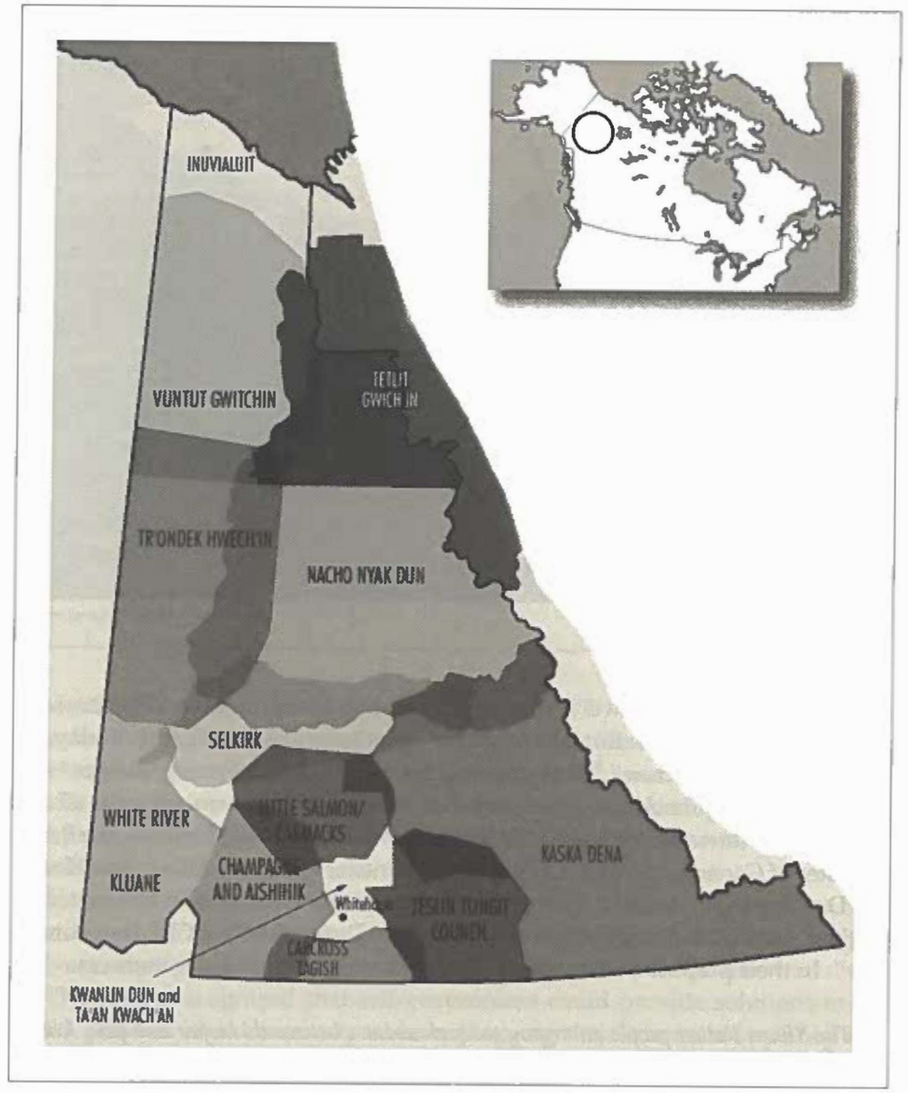
Prior to the Klondike Gold Rush in 1898, a handful of prospectors, trappers and traders lived and traveled through the Yukon and their contact with the Yukon First Nations was minimal.[5]

The impact of the Klondike Gold Rush on Yukon First Nations was severe but short-lived for the most part. The stampeders brought disease that devastated the Yukon First Nation communities along the Yukon River from the foot of the Chilkoot Trail to the Klondike gold fields.[6] More than 35,000 stampeders settled in Dawson City during the Klondike Gold Rush and displaced the Tr'ondek Hwech'in from their traditional camps at the confluence of the Klondike and Yukon rivers – a site known to the Tr'ondek Hwech'in as Tr'o-ju-wech'in. The impact was devastating – the waters and fish, including salmon, were impacted by the placer mining, the wildlife was overhunted to feed the new city, and the forests were clearcut for firewood. The majority of the stampeders had left the Yukon by 1905.

Several generations of children were impacted by experiences in the residential schools established by various churches. Furthermore, the completion of the Alaska Highway in 1942 disrupted the cultures and lifestyles of the Yukon First Nations' citizens through over-hunting of wildlife along the highway, establishment of the new wage economy and founding of permanent communities along the highway. Through the building of further highways, the Yukon First Nations lost their main source of income, which was cutting and selling of firewood for the steam boats traveling up and down the Yukon River. This led to their migration to new villages, built along the highways.

During the 1960s, mining and other development of the lands and resources of the Yukon were undertaken but the Yukon First Nations were not benefiting meaningfully. Many Yukon First Nation citizens left their traplines and subsistence lifestyles during this period of exploration and construction for menial labour employment, such as line-cutting and staking.

It was then that the Chiefs understood that they must take steps to regain their identity and reinvigorate their communities by building a new relationship with other Yukoners and the federal government. Otherwise all might be lost forever.



The Vision

In 1970 the Yukon Native Brotherhood was registered as a society under territorial legislation in order to pursue a land claim settlement on behalf of Yukon First Nation people. The Chiefs recognized that the unity of Yukon First Nations was necessary in order to achieve a fair and just settlement.

Photo: Kathrin Wessendorf

In January 1973, the twelve Yukon First Nation Chiefs[7] met in Whitehorse to prepare and endorse the final draft of their proposal entitled "Together Today For Our Children Tomorrow".[8] This document set out a statement of grievances and proposed an approach for a fair and just settlement. Subsequently, the Chiefs traveled to Ottawa in February 1973 to meet with Pierre Elliot Trudeau, the Prime Minister of Canada, and Jean Chrétien, the Minister of Indian Affairs and Northern Development. At this meeting, the Chiefs outlined their vision of a better future for their citizens and submitted "Together Today For Our Children Tomorrow". In their proposal, there was an undercurrent of anger and bitterness:

> *The Yukon Indian people are trying to think about what would be fair and just. We keep thinking about how we used to be independent and free. We think about being born and raised on lands that we always thought of as our land. We remember the diseases that killed so many of our people. We have watched the Whiteman [sic.] move onto our land without even asking our permission. We have watched the Whiteman destroy parts of our land. We have watched the Whiteman destroy our traplines. We have watched the Whiteman bring in alcohol and prostitution. We have watched the Whiteman take away our children and destroy our language and culture.*[9]

In summary, "Together Today for Our Children Tomorrow" proposed an approach for a settlement "to enable the Indian people in the Yukon to live and

Photo: Kathrin Wessendorf

work together on equal terms with the Whiteman"[10] by establishing an economic base for Yukon First Nations. Under this proposal, the Chiefs "demanded the right to plan [their] future".[11] They requested that land and financial compensation be transferred from the federal government to the Yukon First Nations. They also proposed that funding for federal programs and services, such as health, be maintained.

In general, a fundamental objective of their proposal was to provide a substantive role for the Yukon First Nations in the management of funding and the delivery of programs and services to their communities and citizens.

The Chiefs recognized that self-government could provide solutions to the social, political and economic problems plaguing their communities. They saw that if their communities had decision-making powers and authorities, these problems could be addressed and perhaps resolved.

> *When our Communities are planning programs of Recreation, Education, Health, Economic Development, Law Enforcement, Youth, and Housing; and have their own Government set-up, they will be well on the way to becoming cured. Then some of the people that we see in our villages, will only be needed in emergencies. The people we most often see coming on the villages now are the police, the welfare worker, the Indian agent, the nurse, the Probation Officer, etc.* [12]

A general governance structure comprising central and local bodies was proposed. Yukon First Nation citizens would elect the representatives of these bodies. The central bodies would have political and administrative responsibilities and provide services and resources to the local bodies and regional organizations. The local bodies would be established as municipalities under territorial legislation.

While it was proposed that a central body known as the Yukon Indian General Council would initially control all lands and funds for a period of up to five years following the settlement, Yukon First Nations saw central control of land and funds as undesirable – since it would reflect the centralized structure of the Department of Indian Affairs that historically excluded and marginalized the role of the Yukon First Nation communities. But the Chiefs also recognized that a lack of capacity existed at the local level and proposed that the central bodies be flexible enough to allow authority for various programs and services, such as cultural, land management, housing and justice matters to be transferred to the local level as soon as trained, experienced and qualified people were available.

The Chiefs also proposed joint management of the lands and resources of the Yukon with public government. They wanted to ensure that they had a meaningful role with respect to land and resource management matters throughout their traditional territories and not only the lands retained under their settlement. They also called for local capacity building, in particular training, adult education and community development initiatives.[13]

In "Together Today For Our Children Tomorrow", the Chiefs requested that the federal government immediately establish a negotiation committee to study the proposal and develop the legislation to implement the proposal. It was proposed that this committee be comprised of an equal number of representatives of the Yukon Native Brotherhood and Government of Canada. They proposed that the committee would complete its work by March 31, 1973, so that a package would be available for endorsement at the annual meeting of the Yukon Native Brotherhood in April 1973.

The Yukon First Nation Chiefs were overly optimistic to believe that a settlement could be expeditiously completed. While the Prime Minister of Canada accepted "Together Today For Our Children Tomorrow" as a basis to negotiate a settlement with Yukon First Nations pursuant to the new federal comprehensive claims policy, the federal legislation to implement the provisions of the Umbrella Final Agreement and the first 4 Yukon First Nation Final and Self-Government Agreements was not enacted until more than two decades later, in February 1995.

The Negotiations

The Council for Yukon Indians[14] (the "CYI") was established and registered as a society on November 15, 1973. Its primary objective was to represent status and

non-status Indian people[15] with Aboriginal rights in the Yukon and pursue the recognition and entrenchment of those rights through a settlement with the federal government.

The negotiation process for a settlement consumed more than two decades. The Yukon First Nations encountered limited federal mandates and were forced to break new ground with many issues, such as certainty[16], resource royalty sharing and self-government. The cost of the negotiations was tremendous – Yukon First Nations borrowed monies and paid interest on those monies to fund their participation in the negotiation process.

Following the submission of "Together Today For Our Children Tomorrow" to the Government of Canada, discussions commenced with the federal government in April 1973. While several attempts were made to negotiate a settlement from 1973 to 1978, including the establishment of a cooperative planning process, the Yukon First Nations and federal government were unable to achieve any significant progress.

A new proposal

In January 1978, the CYI withdrew from the negotiation process to reassess their original proposal and the negotiations were subsequently suspended for approximately one year. The CYI submitted a revised proposal entitled "A Proposal For a Yukon Indian Settlement" to the federal government on January 20, 1979, to initiate a new round of negotiations. It was not intended to be a comprehensive position but rather an elaboration of underlying principles.

It was clear that the Yukon First Nations had devoted much more discussion and thought to the details and structure of self-government since 1973. In 1973, the Chiefs had largely focused on matters related to land and economic development. While "Together Today For Our Children Tomorrow" set out a vague framework of central and local self-government bodies and identified the assumption of program delivery as a priority, the new proposal set out the composition, responsibilities and powers of a central Indian government and local bodies.

While the new proposal stated that the self-government structure had to be decentralized in order to strengthen the band governments[17], the CYI proposed the establishment of a central Indian government with substantive responsibilities and powers. In fact, it was proposed that the powers and authorities of self-government, including law-making powers, be divided between the local and central bodies. While the local bodies would have fee simple title to all Indian lands, the central Indian government would hold the subsurface rights and a reversionary interest in those lands.

The funding suggestions included core funding from the Federal Government, royalties and rents generated by resource development on Indian lands and revenues from licenses, fines, permits and taxes that it levied.

Negotiations finally recommenced in 1979 under the condition that the Yukon Government was a full partner.

The Agreement in Principle (the "AIP")

An AIP is a declaration of the intention of the parties to reach a final agreement based on the terms and conditions set out in the AIP. It is however not a legally binding or enforceable contract. The AIP requires the approval of the cabinets of the federal and territorial governments as well as ratification by the Yukon First Nations. If the AIP was approved, the parties would authorize their negotiators to conclude a final agreement based on the AIP.

The AIP presented in 1983 was not acceptable to the Yukon First Nations[18]. Over the course of several days at the 1984 CYI special general assembly, the Yukon First Nations studied and debated the substance of the AIP. On August 2, 1984, the delegates of the general assembly passed a resolution calling for a renegotiation of the AIP on the following principles:

- Aboriginal title should not be extinguished;
- subsistence hunting rights should be recognized and protected;
- land selection or re-selection should be based on need and not on a quantum basis;
- Indian control, not fee simple ownership, over land selected by the Indian people as settlement land;
- full and proper recognition of non-status Indians; and
- bands and band authorities should be fully recognized and strengthened.[19]

Clearly the absence of self-government played a pivotal role in the rejection of the AIP. The AIP failed to provide any substantive powers or authorities to the Yukon First Nations.

Following the rejection of the AIP by the Yukon First Nations in 1984, the Government of Canada reconsidered its comprehensive claims policy and considered options for self-government. During this time, much national debate was focused on matters related to self-government. It appeared that support for self-government was building. The second constitutional conference on Aboriginal rights was held in Ottawa and the Prime Minister stated that self-government might be discussed as part of land claims.

The Umbrella Final Agreement (the "UFA")

Despite the progressive national dialogue, the federal and territorial governments maintained that no major changes to the AIP would be accepted and that the Yukon land claim process might be shelved if the bands did not adopt the AIP. Ultimately, however, the federal government announced in March 1985 that land claim negotiations would recommence and reconfirmed that the CYI claim was still a high priority.

An agreement-in-principle was reached in November 1988 and ratified by the CYI and both the federal and territorial governments. Subsequently, the parties signed a framework agreement in Whitehorse on May 29, 1989.

In 1993 the parties finalized the Umbrella Final Agreement, which was negotiated in accordance with the 1988 agreement-in-principle. The terms of the UFA are incorporated into and form the bulk of the final agreement of each Yukon First Nation. In the negotiation of each final agreement, specific provisions are negotiated within the framework of the UFA to deal with matters related directly to that Yukon First Nation.[20]

Before examining the self-government arrangements, it is important to summarize the land, financial and self-government components of the UFA.

Land

Under the UFA, 41,439.81 square kilometers are allocated amongst the Yukon First Nations; 25,899.88 square kilometers include both surface and subsurface ownership; the Nations have no subsurface ownership on the remaining settlement land but can use substances such as gravel, peat, limestone and sand.[21]

The Yukon First Nations have the rights, obligations and liabilities "equivalent to fee simple title" with respect to their settlement land. The Yukon First Nations assert that their Aboriginal titles and interests are accommodated within that title and, therefore, their Aboriginal rights, titles and interests are not released on their settlement lands.[22]

In addition, Yukon First Nation citizens have a right of access "to enter, cross and stay on Crown Land" for both commercial and non-commercial purposes. This right is subject to several conditions.[23] Similar rights are granted to third-parties to use settlement land that has been designated as undeveloped.[24] The UFA also sets out provisions for the expropriation of settlement land[25] and a process to resolve disputes related to access and compensation with respect to settlement land.[26]

Financial

Under the UFA, the Government of Canada agreed to provide financial compensation to the Yukon First Nations to an amount of $242.673 million (1989).[27] A share of this amount is allocated to each Yukon First Nation in annual payments over a period of fifteen years after its final agreement is brought into legal effect.[28]

Loans made during negotiations have to be paid back from the financial compensation.

Self-Government

The UFA sets out a broad framework of self-government for Yukon First Nations. It guarantees the representation of persons nominated by Yukon First Nations on various boards and committees. It also establishes the Yukon First Nations as government bodies with substantive powers and authorities. Neither the UFA nor the Yukon First Nation self-government agreements provide for a guaranteed number of seats in the territorial legislature or municipal councils.

Under the UFA, Yukon First Nations nominate persons to various territorial and regional boards and committees. In most cases, the boards and committees comprise an equal number of nominees of the Yukon First Nations and public government, such as the Yukon Fish and Wildlife Management Board, Renewable Resources Councils, Surface Rights Board and Yukon Heritage Resources Board. The Yukon First Nation nominees represent one-third of the members of the Water Board and the Yukon Land Use Planning Council. The UFA also stipulates that the membership of the Yukon Council on the Economy and the Environment and the Yukon Energy Corporation should be one-quarter Yukon First Nation membership.

For the most part, these boards and committees are established to provide recommendations to the Yukon First Nations and federal and territorial governments. In other cases, certain boards have a quasi-judicial function, such as the Surface Rights Board, or issue authorizations for the use of certain resources, such as the Water Board.

Clearly the objective of the UFA system of boards and committees is to ensure that the input and knowledge of Yukon First Nation citizens informs the development of the recommendations of the boards or committees and is perhaps incorporated into the policy of public government. This system of boards and committees originated from the objectives of "Together Today For Our Children Tomorrow" and the substance of the AIP.

It must also be pointed out, however, that the system of boards and committees established under the UFA are not government-to-government institutions since the members are not delegates of the parties who nominate or appoint them.[29] The federal and territorial governments agreed to take into account the recommendations of boards and committees that have specialized expertise and knowledge but they have not fettered their authority. They retain the final decision-making authority with respect to those recommendations in relation to non-settlement land. In some cases, however, if the affected Yukon First Nation and federal or territorial government cannot reach an agreement, the disagreement

can be referred to mediation – but the final decision remains with the federal or territorial governments.[30]

The UFA recognizes the Yukon First Nations as governments. As will be discussed below, these governments are established in law by federal legislation[31] and not by the *Indian Act*. The powers and authorities of the Yukon First Nations are more substantive than those of a band under the *Indian Act*. Perhaps most significantly, the laws developed by the Yukon First Nations are not subject to the approval of the Minister of Indian Affairs.

The UFA identifies a broad range of matters that may be included in the negotiations for a Yukon First Nation self-government agreement. These include the following:

- the Yukon First Nation's constitution;
- the Yukon First Nation's community infrastructure, public works, government services and local government services;
- community development and social programs;
- education and training;
- communications;
- culture and Aboriginal languages;
- spiritual beliefs and practices;
- health services;
- personnel administration;
- civil and family matters;
- subject to federal tax law, the raising of revenue for local purposes, including direct taxation;
- economic development;
- the administration of justice and the maintenance of law and order;
- relations with the local, territorial and federal governments;
- financial transfer arrangements; and
- an implementation plan.[32]

The UFA also provides that the parties may agree to devolve responsibility for programs and services related to the above matters to the Yukon First Nations.[33] In particular, the UFA confirms that the Yukon First Nations may negotiate the devolution of programs and services related to education, health and social services, justice and employment opportunities.

Yukon First Nation self-government agreements

Subsequent to the signing of the framework agreement in 1989, the Yukon First Nations and federal and territorial governments negotiated a model self-govern-

ment agreement in accordance with "Chapter 24 – Self-Government" of the Umbrella Final Agreement, to serve as a template. The model self-government agreement has subsequently formed the foundation for the Yukon First Nation self-government agreements.[34]

Under its self-government agreement, a Yukon First Nation has powers and authorities to make decisions and govern in a manner consistent with its cultural values and institutions. The self-government agreements set out substantive powers and authorities of the Yukon First Nations, but they also establish a broad and flexible framework for self-government that will evolve at a pace determined by the Yukon First Nations.

Once a self-government agreement comes into legal effect, the band entity under the *Indian Act* is dissolved and ceases to exist and is replaced by the Yukon First Nation established pursuant to the *Yukon First Nation Self-Government Act*. This means that the self-governing Yukon First Nation will no longer be a band within the meaning of the *Indian Act*. The Chiefs originally contemplated that the local bodies would be established as municipalities under territorial legislation – after more than two decades of negotiations, it became clear that it would be unworkable and inappropriate for the self-governing Yukon First Nation bodies to be established under territorial legislation.

In fact, many take the position that the self-governing Yukon First Nations are neither created nor established by the federal legislation. Rather it is asserted that the federal legislation simply recognizes and acknowledges the Yukon First Nation citizens' inherent right to self-government.

While a self-government agreement cannot be amended without the consent of the affected Yukon First Nation, it is not a treaty right within section 35 of the *Constitution Act* at this time.[35] In fact, if the Yukon First Nations and federal government agreed to entrench the self-government agreements within section 35, the UFA and each final agreement would require an amendment, and new self-government agreements would require ratification from the affected Yukon First Nations and federal and territorial governments.[36]

Under the self-government agreement, Yukon First Nations have the following powers:

1 The Yukon First Nations have exclusive law-making authority to enact laws with respect to the administration of their affairs and their internal operation and management.[37] The Yukon First Nations also have law-making authorities to enact certain laws that apply to their citizens throughout the Yukon[38] and certain laws that apply to all persons on Settlement Land.[39] Under a self-government agreement, the parties are obliged to enter into negotiations to conclude an agreement with respect to the administration of justice.[40] This agreement may set out matters related to enforcement of Yukon First Nation laws, including punitive sanctions such as fines, penalties and imprisonment.

2 The Yukon First Nations and territorial government have agreed that certain parcels of settlement land and adjacent non-settlement land will be subject to a process that promotes compatible land use. The parties agree to consult each other about an actual or potential incompatibility in land use and attempt to resolve it.

3 The self-government agreements provide the Yukon First Nations with the power to enact various taxation laws.[41] While this power does not limit the power of the federal or territorial government to levy tax or make taxation laws, it creates the need for the parties to coordinate their taxation systems.

4 The Yukon First Nations are still entitled to participate in and benefit from federal and territorial programs for status Indians, non-status Indians or native people, in accordance with the general criteria of those programs. Moreover, the Yukon First Nations have the ability to negotiate the assumption of responsibility for the management, administration and delivery of certain programs and services.[42]

5 The Yukon First Nations and Government of Canada will negotiate a self-government financial transfer agreement ("FTA") that ensures that the Yukon First Nations have the resources to provide public services to its citizens at levels comparable to all Yukoners.[43]

6 A Yukon First Nation may enter into discussions with another Yukon First Nation, a municipality or Yukon Government to negotiate a local government agreement. A local government agreement may address matters such as joint planning or zoning or coordinated delivery of municipal or local government services, such as water delivery, sewage disposal and road maintenance.[44]

7 A Yukon First Nation and Yukon Government may agree to establish a common administrative and planning structure. If such a structure is established, it must remain under the control of all the residents of the affected area and include direct representation of the affected Yukon First Nations.[45]

Community governance

Perhaps most importantly, the self-government agreements allow Yukon First Nations to establish their government structures and processes in accordance with their cultural values and institutions. Of course, Yukon First Nations had effective systems to govern their citizens and manage their lands and resources

for thousands of years before the arrival of white prospectors, trappers and traders.

In the mid-twentieth century, the Indian agent arrived in the Yukon and the *Indian Act* defined the system of government for the Yukon First Nations and established its relationship with the federal government. An elected chief and council system was imposed on the Yukon First Nations by way of the *Indian Act* - one chief would be elected and one councillor elected for every one hundred members of the band.

In the Yukon, separate and distinct communities were amalgamated together by the federal government for administrative purposes in the 1950s. It is assumed that federal officials found that it was more convenient and less costly to amalgamate small communities within a general area into a single band.[46] These amalgamations served to undermine the values and institutions of each of the communities and create division within the communities that lingered for generations.

Therefore, it is significant that Yukon First Nations are able to establish their governance structures and processes without any restriction or limitation dictated by the *Indian Act*. The Yukon First Nation self-government agreements only identify the matters to be set out in the Yukon First Nations constitutions, without dictating the substance of those matters. In particular, each constitution must provide for:

- a citizenship code that includes the requirements for citizenship and a procedure for determining whether a person is a citizen;
- the governing bodies and their powers, duties, composition, membership and procedures;
- a system of reporting, which may include audits, through which the Yukon First Nation will be financially accountable to its citizens;
- the recognition and protection of the rights and freedoms of citizens;
- challenging the validity of laws enacted by the Yukon First Nation and quashing invalid laws; and
- the amendment of the constitution by the citizens.[47]

In some communities, the development of a constitution has been a difficult exercise – particularly in those communities that are no longer culturally cohesive due to the influxes of members from other communities.

Based on the experiences of the Yukon First Nations, a community will only embrace a constitution if the citizens of that community were involved directly or had the opportunity to participate in the development of that constitution. The citizens must have a relationship with their constitution. If a small group of citizens and technicians develop a constitution for adoption by the community, it is likely that that constitution will not have credibility within that community. In fact, it is doubtful if the constitution will be adopted by the community or, if

adopted, will be respected. Therefore, the development of a constitution has usually been an inclusive but protracted, and often costly, process.

In most cases, the Yukon First Nations have returned to some form or variation of their traditional systems of governance and moved away from the *Indian Act*. Often the *Indian Act* established a governance system that created dysfunction and chaos. The political positions were very unstable. Politics at the community level did not usually benefit the community or facilitate effective and fair governance.

The traditional values and institutions of the Yukon First Nations have influenced contemporary governance models established under their constitutions. In some communities, the traditional governance systems had only been displaced for less than fifty years and the elders of those communities were children when those systems were still employed and so they were able to provide invaluable input into the development of the contemporary systems.

For the most part, the Yukon First Nations have moved away from Western concepts of elections and votes. Elections and votes are often seen as counterproductive for small communities. In some Yukon First Nation communities, there may only be a few hundred adult citizens who reside in the community and few of those citizens may be trained, experienced or qualified to assume a political or management position. As a result of that lack of capacity, it is important to have each citizen participating constructively in the governance of the Yukon First Nation communities.

By their nature, elections create winners and losers. They are competitive and divisive. The defeated candidates in elections often became the opposition to the elected representatives on principle rather than on substance. The elected representatives often see the defeated candidates as a threat and do not include them in the governance process or value their input.

The election system often fostered a short-term view of governance – decisions were made term-by-term when those decisions required a multi-generational view. In other words, the focus was: will this decision benefit me in the next election? In many cases, an assessment of a decision required an examination of that decision's impacts far into the future – perhaps ten or twenty years, not one year or eighteen months.

Similar to election systems, many Yukon First Nations see the voting process to reach decisions as competitive and divisive. Conversely, it is often a protracted process to reach a decision within a consensus system. On some occasions, consensus decisions only represent the lowest common denominator. But, for many Yukon First Nations, the process is as important as the final decision.

Given the above background, many communities have adopted systems based on their clan systems. In most Yukon First Nations, there is a matrilineal clan system: each citizen is either a member of the wolf or crow clan as determined by his or her mother. In the Tlingit communities, there are a number of

matrilineal clans. These clans provide an identity to Yukon First Nation citizens and establish a social structure.

Some Yukon First Nations have constitutions in which clan or family members appoint their representatives to govern the communities subject to certain checks and balances.[48] In other constitutions, Yukon First Nations hold elections for each clan to elect its representative.[49] Other Yukon First Nations have retained election processes.[50]

Nevertheless, there are general characteristics of the Yukon First Nations that are common. There is a fundamental role for the elders. In general, an executive body is accountable to, and responsible for carrying out the directions of, a larger community body. The Yukon First Nation governments are committed to making efforts to reach a consensus during the decision-making process. The objectives of the Yukon First Nation governments are clear: the establishment of an inclusive, transparent and accountable process that seeks consensus rather than votes. Clearly these are not characteristics of governance under the *Indian Act*.

The constitutions of the Carcross/Tagish First Nation (the "C/TFN"), Ta'an Kwach'an Council (the "TKC") and Champagne and Aishihik First Nations (the "C/AFN") are discussed below and their governing structures and processes are reviewed. These constitutions merit review since they each set out a unique system of governance. The C/TFN constitution sets out a government based on its clan system and an appointment process. Similarly the TKC constitution establishes a governance system based on the family structure of its citizens who appoint the governing bodies, including the hereditary chief. Lastly, the constitution of the C/AFN provides for an election process.

Carcross/Tagish First Nation

The traditional territory of the C/TFN is located in southern Yukon and northern British Columbia. Its membership numbers approximately 800. The offices of the C/TFN government are located in Carcross, Yukon, which is approximately 80 kilometers south of Whitehorse. At this time, the C/TFN is finalizing its proposed final and self-government agreements and hopes to hold a ratification vote of its citizens for those agreements in 2005.

The C/TFN comprises two distinct groups that share the clan system: the Tagish and Tlingit. After many years of internal discussion, the C/TFN adopted a constitution in 1997 based on its clan system. For the most part, the constitution has been able to bring citizens together to work cooperatively in the best interests of the C/TFN.

Under its constitution, the C/TFN government is structured around the six clans of its citizens. All citizens of the C/TFN are members of one of the six matrilineal clans. Citizens who transferred into the C/TFN and are not a member of

a clan are adopted by one of the clans but they cannot be appointed to any branch of the C/TFN government. Since the elders are the advisors to the C/TFN government, the constitution establishes an elders council to provide advice and guidance to the assembly and council.

The assembly is the main governing body of the C/TFN and comprises three representatives, including one elder, from each of the six clans. Each clan appoints its representatives in accordance with its procedure for a term of four years. Among other powers, the assembly enacts the laws and regulations of the C/TFN and provides mandates to the council.

The council is the executive branch of the C/TFN government and comprises seven members. Every four years, each of the clans and the elders council appoint one representative to sit on the council for a term of four years. The clan housemasters appoint one of the six clan representatives on the council as the "*haa shaa du hen*" – the spokesperson of the C/TFN – for a term of four years.

The C/TFN constitution provides that all business of the assembly and council must be conducted by consensus. In circumstances where consensus cannot be reached, a motion or resolution may be approved if seventy-five percent of the representatives present vote in favor of that motion or resolution.

The constitution establishes a justice council and provides the assembly with the authority to determine its composition and structure. The constitution provides that the justice council will hear petitions for redress made by citizens with respect to acts of the C/TFN government, including challenges to the validity of C/TFN laws. While the constitution was adopted in 1997, the justice council has not yet been implemented. The council has effectively resolved disputes in relation to the C/TFN government and its citizens.

The Ta'an Kwach'an Council

The Ta'an Kwach'an have lived since time immemorial in the area of Ta'an Mun,[51] which is located approximately 40 kilometers north of Whitehorse. It has a membership of approximately 400 citizens.

In 1902 Chief Jim Boss, the hereditary chief of the TKC, requested that a treaty be negotiated with the TKC since newcomers were taking the land and resources of the Ta'an Kwach'an. This request was not fulfilled until 100 years later when the TKC signed its final and self-government agreements in 2002.

In 1956 the federal government amalgamated the Indians in the Whitehorse area, including the members of the TKC, to form a single band for administrative purposes. In July 1998 the Minister of Indian Affairs made an order establishing the TKC as a band within the meaning of the *Indian Act*.

Following a lengthy process of constitutional development and drafting, the general assembly of the TKC adopted a constitution by consensus based on the

six traditional families of the TKC in August 1998. All the members of the TKC can trace their ancestry to one of the six traditional families. Non-family members of the TKC are adopted into a traditional family.

The constitution establishes a hereditary chief who is appointed for life as the symbolic representative of the TKC. The TKC constitution also provides that the elders council and board will appoint a TKC citizen as the chairperson for a term of three years. The chairperson has two responsibilities. He acts as the spokesperson for the TKC and is responsible for the administration and management of the TKC government.

Similar to the constitutions of other Yukon First Nations, the TKC constitution establishes an elders council to carry out specific responsibilities, including providing advice to the TKC government and overseeing the traditional activities to ensure that the values of the Ta'an Kwach'an are respected and followed. The elders council also has a substantive power to remove a judge of the judicial council if the dignity and effectiveness of the judicial council is compromised.

The constitution provides that a general assembly be held at least once each calendar year. Each of the six traditional families may appoint, according to its procedures, six representatives as delegates to a meeting of the general assembly. The general assembly reviews the reports of the TKC government and provides direction and mandates to the chairperson and board.

Under the TKC constitution, the board is the main governing body of the TKC government. It comprises nine representatives of the traditional families. The traditional families that have more members than other families are provided with more than one representative on the board. The board is directed by the constitution to make its best efforts to conduct business by consensus. In cases where consensus cannot be reached, a three-quarter majority vote is required.

The TKC constitution also establishes a youth council comprising one representative from each traditional family who is between the ages of fourteen and twenty. This youth council has not been active.

The constitution establishes a judicial council to adjudicate alleged violations of TKC laws and mediate or arbitrate disputes in relation to the TKC and its citizens. It also has the power to determine the validity of a TKC law and investigate financial irregularities of the TKC government. It comprises three judges, including one elder, appointed by the elders council. The provisions of the TKC constitution related to the judicial council have not yet been implemented.

During the development of the TKC constitution, many citizens wanted the constitution to provide stability and certainty to the community. To that end, any proposed amendment to the constitution requires a three-quarter majority vote at a meeting of the general assembly of at least sixty citizens who are at least sixteen years of age. If sixty citizens are not present at a meeting of the general assembly, a consensus of the citizens present is required to amend the constitution.

Therefore, it has been very difficult to approve amendments to the constitution and the rigid amendment process has generated some frustration.

Champagne and Aishihik First Nations C/AFN

The traditional territory of the C/AFN is located in the south-western area of the Yukon and north-western area of British Columbia. The C/AFN has two principal offices for its government: one is located in Whitehorse and the other in Haines Junction, which is 130 kilometers west of Whitehorse. It has a membership of more than 1,000 people living in several communities throughout the C/AFN traditional territory.

The final and self-government agreements of the C/AFN were brought into legal effect in 1995 and its present constitution was adopted in July 2000 following a lengthy community process. Under its present constitution, an elders council is established that comprises C/AFN citizens who are at least sixty years of age. The purpose of the elders council is to provide advice, assistance and recommendations to the C/AFN government.

The C/AFN constitution establishes the general assembly to provide direction from the citizens to the C/AFN government and receive updates and reports from the government. The general assembly consists of a minimum of forty citizens who are at least sixteen years of age, and a quorum of the council. The constitution encourages the general assembly to make decisions by way of consensus.

The council is established by the constitution as the legislative body of the C/AFN. It comprises an elected chief, four councillors, one elder councillor and one youth councillor. Among other duties, the council will enact, amend and enforce the C/AFN laws and fulfill the mandates and direction set out by the general assembly. The constitution encourages the council to reach unanimous agreement in the approval of its decisions.

A youth council is also established that comprises citizens between the ages of sixteen and twenty-three years. The youth council may provide advice, assistance and recommendations to the C/AFN government.

While the C/AFN constitution does not establish a judicial body, it provides that the C/AFN laws may only be challenged in a court of competent jurisdiction. It is assumed that this means that the Supreme Court of the Yukon Territory, or a court established pursuant to an administration of justice agreement between the C/AFN and the federal and territorial governments, may quash an invalid C/AFN law. It should also be noted that the C/AFN has enacted and implemented a law to resolve disputes in relation to the C/AFN government and its citizens. Under this law, an independent panel may be established to mediate or arbitrate such disputes.

The C/AFN constitution prohibits the sale of any settlement land and sets out a detailed process for the transfer or exchange of parcels of settlement land.

Conclusions

Eight years after the first four Yukon First Nation self-government agreements were brought into legal effect, the question to be considered is whether the self-government agreements have facilitated effective and fair governance. Perhaps it is too soon to undertake a definitive assessment, but some conclusions may be drawn.

Firstly, it is clear that the self-government agreements have improved program and service delivery and the effectiveness of the programs and services. Under the Programme and Service Transfer Agreements (PSTAs),[52] the Yukon First Nations can re-design the structure or criteria of most of the assumed programs and services. This has resulted in more relevant and responsive programs and services that benefit both the community and citizens. For instance, when a self-governing Yukon First Nation assumed management, administration and delivery of the federal social assistance program, it established a new program with stricter criteria and eligibility in order to encourage young able-bodied citizens to pursue training, education or employment opportunities.

Under the PSTAs, it is fair to state that the funding for the programs and services assumed by the Yukon First Nations is better utilized. The bureaucracy consumes less money so more funds can be devoted directly to the objectives of the programs and services. Perhaps most significantly, health professionals have noticed that social and health conditions and standards in the self-governing communities have improved[53] and that this improvement may be a reflection of a more effective management, administration and delivery of programs and services.

It is arguable that taking on the management, administration and delivery of programs and services has stretched the capacity and resources of certain Yukon First Nation governments. But the Yukon First Nations themselves determine the pace of assuming programs and services and, therefore, they have the power to control their growth of responsibilities.

Secondly, local control and input into land and resource management has served to enhance the management of those lands and resources.

In particular, the powers and authorities, including the law-making powers, of the self-government agreements enable Yukon First Nations to substantively manage and administer their lands and resources. These powers and authorities have resulted in better local management of their lands and resources. It should be noted that most of the self-governing Yukon First Nations have enacted laws related to the management of their settlement lands.

The involvement of Yukon First Nation citizens in the boards and committees system established under the Umbrella Final Agreement has resulted in better management of lands and resources throughout the Yukon. The traditional knowledge of Yukon First Nation citizens has brought new issues and perspectives to the attention of public government. The local knowledge of other residents who participate on UFA boards and committees has also contributed to improved management.

As the Chiefs stated in "Together Today For Our Children Tomorrow", public government served to politically marginalize Yukon First Nation citizens – their opinions and perspectives were not taken into account by government in decisions related to the development of the lands and resources of the Yukon. In many cases, those decisions had adverse impacts on the environment and communities. At present, the opinions and perspectives of Yukon First Nation citizens are incorporated into the public government process through the system of boards and committees.[54]

Thirdly, the governance structures and institutions of the self-governing Yukon First Nations have been largely stable. The development and implementation of the Yukon First Nation constitutions have brought citizens together. Under the *Indian Act*, internal conflicts raged for years within some bands and made headlines in the Yukon media. Petitions were circulated to impeach elected chiefs and councils. Election results were typically challenged. Appeals were made to federal officials to intervene in the affairs of the band and resolve the disputes. These were the hallmarks of dysfunctional governance under the *Indian Act*.

Of course, internal debate and conflict continues to take place within the self-governing Yukon First Nations, but such debates and conflicts and the manner in which they are resolved indicate that their governance systems are working. It appears that the debates and conflicts are based on issues, and resolutions are often reached amicably without escalation.

Why the difference between governance under the *Indian Act* and under the Yukon First Nation self-government agreements? Perhaps citizens respect the legitimacy and credibility of the governance structures and processes established under their constitutions and are more committed to making them work. Perhaps citizens recognize that their governments can make decisions with respect to their community and its future. Under the *Indian Act*, the sense of powerlessness and paternalism contributed to the dysfunction. Conversely, under the self-government agreements, citizens can see that they can take steps to address problems, ameliorate conditions and plan for the future of their community. They see that they can now make a difference.

Challenges of self-government for Yukon First Nations

Eight Yukon First Nation self-government agreements have been brought into legal effect since 1995 and a number of common issues have emerged with respect to the implementation and administration of those agreements.

Must develop capacity

As Yukon First Nations have assumed more responsibilities related to management, administration and delivery of programs and services, their capacities have been stretched. The additional implementation responsibilities and obligations related to the final and self-government agreements have compounded the pressure on the limited capacity of the Yukon First Nations.

As stated earlier, there are a limited number of citizens residing in the communities who are trained, educated or qualified to assume senior management roles within a contemporary government. Often, the managers within Yukon First Nation governments are already overwhelmed with unfair workloads and expectations.

While many citizens want to work on behalf of Yukon First Nations, since the work itself is meaningful and challenging, the Yukon First Nations must still work to draw and attract such citizens to their systems. It is certainly in the best interests of a Yukon First Nation to employ its citizens – they may be more willing to make a commitment to long-term employment and have greater motivation to take an interest in the work than non-citizen employees. The Yukon First Nation governments, however, must understand that their educated, trained and qualified citizens probably have many employment opportunities with the public government and private sector.

The Yukon First Nations cannot only encourage their citizens to pursue education and training opportunities and provide financial assistance to those citizens for such purposes. Obviously the Yukon First Nations must continue to make education and training of its citizens, including its mature citizens and those citizens already working within their governance systems, a priority. They must provide incentives for the citizens to pursue further training and education and develop a broad range of skills. But they must also take steps to recruit and retain those citizens who are already educated, trained and qualified.

Firstly, the work environment of a Yukon First Nation government must be professional and stable. This environment must be non-partisan. The Yukon First Nation must establish a public service that is independent and divorced from the politics of leadership. If the Yukon First Nation governments face internal obstacles to the establishment of such an environment, perhaps there is a need for unionization within their systems to ensure that the rights of employees are respected and advanced.

Secondly, wages and benefits must be attractive and comparable with public government. Benefits, such as professional development and training programs, must be available for employees of the Yukon First Nations.

Thirdly, the Yukon First Nations must work with public governments in a strategic manner to develop the capacity of citizens. While the final agreements

obligate the federal and territorial governments to develop a "representative public service" in the Yukon[55], and this may compound the problem of Yukon First Nations retaining their employees, there are many opportunities for cooperation. For instance, exchange and secondment opportunities with other governments would broaden the experience and knowledge of the Yukon First Nation employees.

Lastly, the Yukon First Nations must establish a pension system to attract educated, trained and qualified citizens as employees. If Yukon First Nations do not implement pension systems, it may be very difficult to retain them as long-term employees.

It must be pointed out that the capacity deficit of Yukon First Nations was recognized in 1973. As stated earlier, the Chiefs proposed that training and education programs be developed and implemented to assist the local bodies to develop their leadership and properly organize. While some capacity has developed over the past thirty years, the requirements to implement and operate self-government are insatiable. Much work remains.

Must develop leadership

Traditionally, elders and leaders groomed younger citizens of their community as the next generation of leadership. But, during the tenure of the *Indian Act*, a leadership void developed. The election process of the *Indian Act* did not facilitate mentorship or the development of young citizens for leadership. But, perhaps more significantly, many of the young and promising Yukon First Nation citizens left their communities in the 1970s and 1980s to participate in the land claims process. Many of these citizens remained consistently involved in the negotiations over the years and their absence from the communities had a tremendously adverse impact.

Not only were they unable to assume leadership roles in their communities, they also could not mentor the next generation of citizens of their community.

Today the Yukon First Nations require dynamic leaders with strong skills and broad knowledge. They must be able to grasp the complexities of the final and self-government agreements and foster intergovernmental relationships with other governments. They must also be able to work within their community, generate consensus and resolve disputes without confrontation or division. While there are such leaders, they are largely inexperienced and few in number.

Given that few people have leadership skills and experience, the Yukon First Nations must ensure that all citizens are given the opportunity to contribute and that their input is valued. If citizens are marginalized by or excluded from the Yukon First Nation's governance system as a result of elections or politics, then it is a loss for that Yukon First Nation. As discussed earlier, a fundamental principle

of many Yukon First Nation constitutions is inclusion. The Yukon First Nations must be committed to that principle and work to implement it.

Similar to the issues related to the development of capacity, the Yukon First Nations must attract their qualified and talented citizens to assume leadership roles. There must be comparable wages and benefits, including pension and severance packages. The Yukon First Nations must provide opportunities for their leaders to broaden and enhance their skills, such as the establishment of mentorship programs and exchange programs with other parliamentarians. Otherwise, Yukon First Nation citizens who wish to pursue leadership responsibilities may pursue opportunities with public government.

This leadership void is a serious problem: if Yukon First Nations are facing tremendous pressure due to limited capacity, and skilful and experienced leadership is not present, the progress of the Yukon First Nations may meander.

Must be resourced adequately

The Yukon First Nations must be resourced financially at sufficient levels. Funding is necessary not only to operate a government but also to develop capacity and cultivate its public service.[56]

As indicated above, the federal and territorial governments are obligated to transfer funding to the Yukon First Nations by way of Financial Transfer Agreements (FTAs) and Programme and Service Transfer Agreements (PSTAs) to operate their governments and fund programs and services for their citizens. In general, the terms of these agreements are either three or five years. In addition, the Yukon First Nations receive federal funding to carry out responsibilities related to the implementation of their final and self-government agreements.

In many ways, these arrangements reflect the federal-provincial funding relationship. While the provinces have other stable and significant sources of funding and can absorb funding cutbacks, the Yukon First Nations' sources of income are modest and immature at this time and likely will be for the foreseeable future. Therefore, any reduction of federal or territorial funding to the Yukon First Nation governments would have a significant adverse impact.

Of course, funding matters are always contentious discussions amongst governments. But if self-government is going to facilitate effective and fair governance for the Yukon First Nations, adequate funding is required. To that end, the parties need to examine options to objectively assess whether funding levels are adequate. Perhaps there is a role for the auditor general or other independent bodies to assess self-government responsibilities, expenditure and funding and make public recommendations.

At present, the federal government is not willing to examine the adequacy of funding or consider such issues in the various review processes to be undertaken

by the parties pursuant to the land claim package.[57] The federal government is reluctant to re-examine funding levels for the final and self-government agreements. This approach is counterproductive and may jeopardize the success of self-government in the Yukon.

The parties should also identify and remove any barriers that obstruct or frustrate the Yukon First Nations' ability to develop their own sources of revenue, such as revenue generated by way of taxation, royalties or economic development. For example, if a significant portion of a Yukon First Nation's own sources of revenue are deducted from its FTA, that Yukon First Nation may be reluctant to make investments and expend resources to pursue opportunities. Incentives must be established to promote the economic independence of the Yukon First Nations. The development of a viable and long-term economic base must be encouraged since indefinite reliance on federal funding would be neither positive nor desirable.

Must fully implement the Yukon First Nation constitutions

As discussed above, the governance structures and processes of the self-governing Yukon First Nations have for the most part been implemented. In some cases, however, certain provisions have yet to be implemented. For instance, the youth and elder bodies of many Yukon First Nations have not been active.

While most of the Yukon First Nation constitutions establish a judicial body to protect the rights of citizens, mediate or arbitrate disputes between citizens and the Yukon First Nation governments, or adjudicate alleged violations of Yukon First Nation laws, those bodies have not yet been implemented. This is problematic: citizens who have a grievance or wish to seek remedy with respect to a Yukon First Nation government may not have an independent and objective forum to which to bring those matters for resolution. For instance, what options does a citizen have if his Yukon First Nation government has taken action contrary to the constitution?

While a citizen could make an application to the Supreme Court of the Yukon Territory[58] to resolve such an issue, that process is often prohibitive due to cost and time.

The Yukon First Nations could look at the C/AFN law[59] that establishes an independent tribunal to ensure effective and respectful resolution of disputes involving the administration activities of the C/AFN government. The tribunal has the power to investigate, hear and decide complaints.[60] They could also look at the establishment of an ombudsman to independently review the actions of Yukon First Nation governments and its officials. Or an office could be established to examine allegations of conflict of interest.

Some Yukon First Nations wish to finalize their negotiations regarding the administration of justice before they implement their judicial bodies since it is expected that these agreements will establish processes and forums to deal with alleged violations of Yukon First Nation laws. But it is uncertain when these negotiations will be completed. In the meantime, disputes must be resolved expeditiously within fair and independent processes and forums.

In any event, it is essential that the provisions of the constitutions be fully implemented so that the checks and balances of the Yukon First Nation governance systems are in place and that self-government has legitimacy and credibility for both the citizens and public.

Must establish a substantive role for a central institution

The Chiefs have always recognized the need for a central institution to undertake a substantive role and assume certain responsibilities and powers in conjunction with the Yukon First Nations. In both "Together Today For Our Children Tomorrow" in 1973 and "Proposal For A Yukon Indian Settlement" in 1979, the Chiefs articulated a vision of self-government that established a central institution to support and complement the work of the local governments.

Under the final and self-government agreements, the CYFN, presently the central organization of eleven of the fourteen Yukon First Nations, has certain implementation responsibilities. But it has a minimal role, if any, in relation to the exercise and operation of self-government. The CYFN is delegated certain tasks and responsibilities by the Chiefs. But the Yukon First Nations are reluctant to pass their new powers and authorities to a central institution. After all, they negotiated for twenty years to empower their communities and dissect the central bureaucracy of the Department of Indian Affairs and move powers and authorities to the communities.

As stated above, however, many Yukon First Nation governments are overwhelmed by their new implementation and self-government responsibilities. In fact, some acknowledge that they lack the capacity to assume all these new responsibilities. There is therefore a need for a strong central institution or regional institutions to provide support.

If a central organization is adequately funded and fully mandated, it should be more economical for a central organization to carry out certain responsibilities and functions. Certainly, the scales of scope and economy indicate that common matters should be more effectively and efficiently addressed by a central organization than individually by its members.

For instance, a central organization would be well suited to dealing with matters related to the capacity deficit and leadership void as discussed earlier. It could continue its work to develop and implement a Yukon First Nation public service strategy. It could continue to develop information technology and infrastructure to promote more effective communication amongst the Yukon First Nations.

Perhaps it would be appropriate for certain Yukon First Nations laws to be developed and administrated by a central or regional institution.[61] Perhaps it would be more effective and cost-effective for a central institution to manage, administrate or deliver certain programs and services for Yukon First Nation citizens.

The Council of Yukon First Nations and its members have recently established a self-government secretariat devoted to providing support and expertise to the self-governing Yukon First Nations. It has a mandate to bring together Yukon First Nations to develop strategic policies and discuss issues related to self-government. It is hoped that this initiative will evolve into a central institution that not only assists the self-governing Yukon First Nations but also fulfills an integral role in the development and operation of self-government in the Yukon. Clearly this role is required.

Must appoint committed and knowledgeable representatives to the various boards and committees

A fundamental pillar of the Umbrella Final Agreement (UFA) is the guarantee that persons nominated by the Yukon First Nations will be appointed to the various management boards and committees. As discussed earlier, there are a number of advisory and quasi-judicial boards and committees that comprise the nominees of the Yukon First Nations and public government. As stated earlier, these nominees are not delegates of the parties who nominate or appoint them.

It is demanding to be an effective member of a board or committee. Often the time commitment required to prepare for and attend the meetings or proceedings of a board or committee is significant. Often the deliberations of the members of the boards and committees can be heated and contentious since the members bring many different, and sometimes conflicting, perspectives and viewpoints. In the case of persons nominated by Yukon First Nations, it is hoped that they are able to bring forward the concerns as well as the perspectives of Yukon First Nations.

In many instances, the boards and committees are responsible for implementing the principles of the UFA and Yukon First Nation final and self-government agreements in the course of carrying out their functions. Therefore, the Yukon First Nation nominees must be knowledgeable of the agreements and effective advocates of them.

To that end, it is important that the Yukon First Nations actively develop and recruit suitable persons to be their nominees on the various boards and commit-

tees. If the UFA system of boards and committees fails to address the concerns of the Yukon First Nations or to incorporate their perspectives into the recommendations of the board or committee – which hopefully will influence or form public policy – then a pillar of self-government will have been undermined.

In closing, it must be emphasized that the UFA and self-government agreements are not intended to be a panacea. Those agreements set out tools for Yukon First Nations to establish governance structures and processes consistent with their cultural values and institutions that are respected by their citizens and responsive to their needs. It is hoped that these tools will also be used to forge a new relationship with other residents of the Yukon and the public governments.

Although the negotiation process in the Yukon was frustratingly protracted, the fulfillment of the objective of the Yukon First Nations to provide effective and fair governance to their communities and citizens will continue to be challenging. It will take some time to realize the full benefits of these agreements. But, if Yukon First Nations continue to work together to address those challenges, that objective can be fulfilled. ❑

Notes

1 Revised Statutes of Canada (R.S.C), 1986, c. I-5.
2 The final and self-government agreements of the following four Yukon First Nations were brought into legal effect on February 14, 1995: Champagne and Aishihik First Nations, First Nation of Nacho Nyak Dun, Teslin Tlingit Council and Vuntut Gwichin First Nation.
3 Statutes of Canada (S.C.), 1994, c. 34.
4 S.C. 1994, c. 35.
5 See Michael Gates, *Gold at Fortymile Creek: Early Days in the Yukon* (Vancouver: UBC Press, 1994).
6 See Julie Cruikshank, *Life Lived Like A Story: Life Stories of Three Yukon Native Elders* (Vancouver: UBC Press, 1992).
7 Twelve Yukon First Nations signed "Together Today For Our Children Tomorrow": Carcross/Tagish First Nation, Champagne and Aishihik First Nations, Kluane First Nation, Kwanlin Dun First Nation, Liard First Nation, Little Salmon/Carmacks First Nation, First Nation of Nacho Nyak Dun, Ross River Dena Council, Selkirk First Nation, Teslin Tlingit Council, Tr'ondek Hwech'in and Vuntut Gwitchin First Nation. The executive of the Yukon Native Brotherhood also signed the document. Under the UFA, fourteen Yukon First Nations are recognized: in 1991 the White River was established as a band under the *Indian Act* and the Ta'an Kwach'an Council was recognized as a band in 1998.
8 Yukon Native Brotherhood, 1973: 50. In 1969 representatives of the Yukon bands met in Whitehorse to discuss the settlement of their land claims. In 1970 the Yukon Native Brotherhood held three meetings, eight meetings in 1971, and seven meetings in 1972. In January 1973 a special five-day meeting was held with 110 representatives of the Yukon Bands to complete "Together Today For Our Children Tomorrow". Meetings were also held in the Yukon First Nation communities.
9 Id.: 72
10 Id.: 4

11 Id.: 4
12 Id.: 37
13 Id.: 59
14 The delegates of the 1995 CYI general assembly in Dawson City adopted a new constitution and the name of the organization was changed to the Council of Yukon First Nations. At present, the CYFN represents the interests of eleven of the fourteen Yukon First Nations. The Kwanlin Dun First Nation, Liard First Nation and Ross River Dena Council did not sign the new constitution in 1995 and, therefore, are not members of the CYFN.
15 Status Indians are those Canadian citizens who are recognized as Indians within the meaning of the *Indian Act* (Canada) and registered as such with the federal government as Indians. Under section 91(24) of the *Constitution Act, 1867*, the federal government has jurisdiction over such Indians. They have certain rights and benefits that are not applicable to Non-Status Indians or Métis, such as on-reserve housing benefits and exemption from federal and provincial taxes in specific situations.
16 The purpose of "certainty" on the part of the federal and provincial governments is to "exhaustively and completely set forth" all aboriginal and treaty rights. Rather than simply accepting the existence of Aboriginal title as ownership and jurisdiction over land and resources, certainty limits and defines Aboriginal title and rights. A modern land claim agreement is a contract between First Nations citizens, the Government of Canada and the affected province or territory. Each party gives something in exchange for something. In order to gain "certainty", the Government of Canada and the affected province and territory are willing to grant a limited recognition of Aboriginal title to a reduced portion of a First Nation's traditional territory, in exchange for the release of all aboriginal title and rights not specifically set out in the land claim agreement.
17 Prior to becoming a self-governing Yukon First Nation under the *Yukon First Nations Land Claim Settlement Act* (Canada) upon ratification of its Final and Self-Government Agreements, each Yukon First Nation was a band within the meaning of the *Indian Act* (Canada).
18 The AIP required the support of at least nine of the twelve bands for ratification. Following a two-month public information campaign in relation to the AIP that commenced in October 1983, eight bands approved the AIP by way of referendums held individually during the period November 1983 to June 1984. Old Crow Indian Band voted 97-6 in favor of the AIP. Champagne-Aishihik Band voted 143-24 in favor of the AIP. Carmacks Indian Band approved the AIP by a vote of 97-25. Laird Indian Band voted 108-79 in favor of the AIP. Selkirk Indian Band voted 85-43 in favor of the AIP. Kluane Tribal Council approved the AIP by a vote of 50-17. Dawson Indian Band approved the AIP by a vote of 148-42. Teslin Band voted in favor of the AIP by 105-43. While the Carcross-Tagish Band approved the AIP by a vote of 54 percent, the chief and council established a 75 percent requirement for acceptance and Chief Stanley James interpreted the results as disapproval of the AIP. See Stephen Smyth, *The Yukon's Constitutional Foundations*, Vol. 1 – The Yukon Chronology (Northern Directories Ltd: 1991).
19 At its special general assembly held at Tagish, Yukon, in 1984, CYI passed resolution no. 34 by consensus (sixty delegates in favor and two abstentions).
20 The UFA set out several additional sub-agreements that were negotiated following the finalization of the agreement-in-principle in 1988, including sub-agreements related to water management and environmental assessment.
21 "Umbrella Final Agreement" (Ottawa: Supply and Services Canada, 1993), section 9.2.
22 Id.: section 5.4.0.
23 Id.: section 6.2.0.

24 Id.: section 6.3.0.
25 Id.: "Chapter 7 – Expropriation".
26 Id.: "Chapter 8 – Surface Rights Board".
27 Id.: section 19.2.0.
28 Id.: "Schedule A – Apportionment of the 1989 Aggregate Value" of "Chapter 19 – Financial Compensation".
29 Id.: section 2.12.2.12.
30 For instance, see UFA at section 16.8.0.
31 S.C. 1994, c.35.
32 Umbrella Final Agreement, section 24.2.0.
33 Id.: section 24.3.0.
34 The newer self-government agreements have incorporated new provisions or amendments to existing provisions. For instance, GST provisions have been incorporated into and technical amendments have been proposed to the tax and administration of justice provisions.
35 Umbrella Final Agreement, section 24.12.1. On February 14, 1990, Minister of Indian Affairs Pierre Cadieux informed the CYI that the self-government provisions of the 1989 agreement-in-principle would not be constitutionally entrenched upon the settlement of the Yukon land claim. The federal cabinet decided that self-government issues would only be resolved nationally at First Ministers' Conferences: Stephen Smyth, *The Yukon's Constitutional Foundations*, Vol. 1 – The Yukon Chronology (Northern Directories Ltd: 1991) at p. 246.
36 The CYFN and federal and territorial governments commenced negotiations in 1995 to entrench the Yukon First Nation self-government agreements within section 35 of the *Constitution Act, 1982*, pursuant to the federal inherent right policy. During the course of these discussions, the parties have discussed other matters related to the self-government agreements, including section 13.5.2. At this time, these negotiations are outstanding and the discussions are dormant.
37 Id.: section 13.1.0.
38 Id.: section 13.2.0.
39 Id.: section 13.3.0.
40 Id.: section 13.6.0.
41 Id.: section 14.0.
42 Id.: section 17.0.
43 Id.: section 16.1.
44 Id.: section 26.0.
45 Id.: section 27.0.
46 In 1991 the White River First Nation was separated from the Kluane First Nation and established as a band within the meaning of the *Indian Act*. The Ta'an Kwach'an Council was separated from the Kwanlin Dun First Nation and established as a band in 1998.
47 Tr'ondek Hwech'in Self-Government Agreement, section 10.
48 See constitutions of Carcross/Tagish First Nation, Teslin Tlingit Council and Ta'an Kwach'an Council.
49 See constitutions of Selkirk First Nation and First Nation of Na-Cho Nyak Dun.
50 See constitutions of Champagne and Aishihik First Nations and Tr'ondek Hwech'in.
51 Ta'an Mun is the Southern Tutchone name for Lake Laberge.
52 The self-governing Yukon First Nations have assumed the management, administration and delivery of three main areas: programs and services related to band government and status Indians, medical services for status Indians, and resource management. The Ta'an Kwach'an Council did not assume the programs and services related to social assistance for status Indians or medical services for status Indians under its self-government agreement.

53 Julie Ramona Jai, "Negotiated vs. Judge-made Aboriginal Law: Bridging the Two Solitudes" (unpublished LL.M. thesis submitted to the Graduate Department of Law, University of Toronto (September, 2000), p. 36. Ms. Jai sets out the comments of Dr. Timmermans, as quoted on CBC Radio News, Whitehorse, Yukon, May 26, 2000: "The Yukon's Chief Medical Officer states that 'the single biggest factor in improving the health status in the Yukon has been the movement through land claims, independence, devolution, letting people decide what they want to do, let people have control over their own resources like the rest of us hope we have'. Dr Timmermans adds, 'Clearly, if you have more control over your life, more control over your own resources, more control over your own family, your educational system, health, all that sort of thing, this is a big part of social status and improving that will improve the health in those communities'."
54 In general, the federal and territorial governments have given serious consideration to the recommendations of the various boards and committees. For instance, none of the recommendations of the Yukon Fish and Wildlife Management Board have been varied or rejected by the territorial government as of this date.
55 Tr'ondek Hwech'in Final Agreement, section 1.0 "Schedule A – Economic Measures: Part I – Specific Economic Measures" of "Chapter 22 – Economic Development Measures".
56 The CYFN has undertaken some preliminary work related to the development of a Yukon First Nation public service. The establishment of training opportunities, secondment arrangements, benefit packages and pension programs amongst Yukon First Nations and public governments are not only complex but also costly.
57 Tr'ondek Hwech'in Self-Government Agreement, section 6.6. See also section 6.0 of the "Tr'ondek Hwech'in Final Agreement Implementation Plan" (Ottawa: Public Works and Government Services, 1998): "Unless the Parties otherwise agree, they shall complete a review of the THFA Plan to determine the adequacy of the provisions of the THFA Plan and of the implementation funding provided under the THFA Plan, in the fifth fiscal year following the Effective Date of the THFA; in the ninth fiscal year following the Effective Date of the THFA; and thereafter, as the Parties may agree."
58 Tr'ondekHwech'in Self-Government Agreement, section 8.11: "The Supreme Court of the Yukon shall have jurisdiction in respect of any action or proceeding arising out of this Agreement or Self-Government Legislation."
59 *Government Administration Act*, Revised Statutes of the Champagne and Aishihik First Nations, 2002, c.3, section 17.
60 Id.: section 18.2: "The tribunal may not investigate a decision, recommendation, act or omission: (a) made by the First Nations Council; or (b) for which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to another body internal to the First Nations, until after that right of appeal, objection or application has been exercised by the person or until after the time allowed for the exercise of the filing of the right of appeal, objection or application has expired."
61 Tr'ondek Hwech'in Self-Government Agreement, section 13.3.2. A Yukon First Nation may enact laws of a local and private nature on Settlement Land in relation to the control or prohibition of the possession or use of firearms, other weapons and explosives. At the 1995 general assembly at Brooks Brook, Yukon, the Chiefs delegated this law-making power to the CYFN in order to enact a common law related to firearms on behalf of the CYFN members. The CYFN tabled a draft firearms law to the Chiefs but the law has not been enacted. A Yukon First Nation may delegate its powers and authorities, including its law-making power, to the CYFN and other certain bodies pursuant to section 12.0 of its self-government agreement.

THE GREENLANDIC VERSION OF SELF-GOVERNMENT

Jens Dahl

Greenland Home Rule is often considered a model for other indigenous peoples, perceived by some as being the maximum degree of autonomy that a small indigenous group can hope to achieve. Many Greenlanders, however, seem to be of a different opinion. This paper will look at the unique nature of the Home Rule arrangement and, at the same time, seek to explain some of the factors behind the dissatisfaction with the current arrangement as expressed by many Greenlanders.

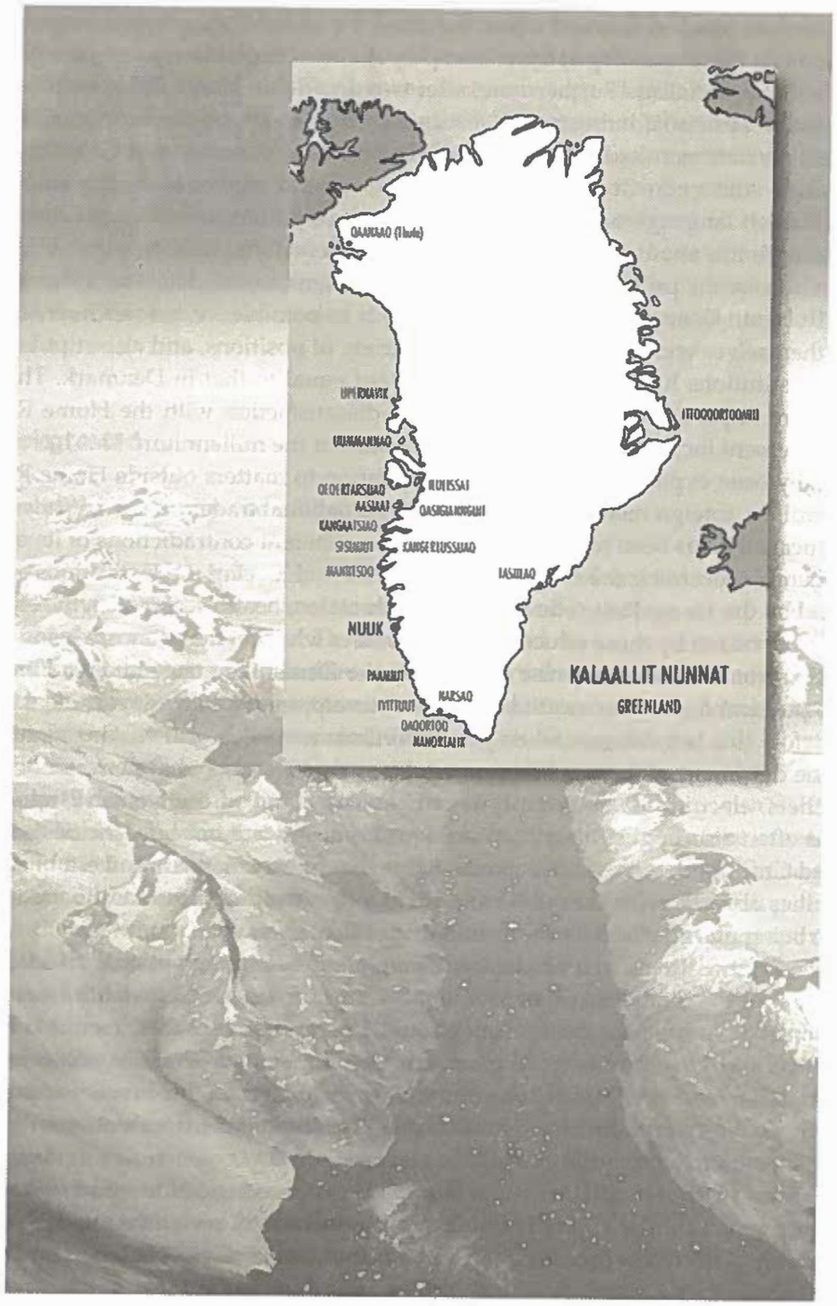
There are obvious historical and demographic reasons as to why Greenlandic Home Rule cannot easily be copied by other indigenous peoples and these will be considered. However, a lot can be learned from experiences gained in Greenland under the Home Rule arrangement, from the negotiation processes and from the nature of the political institutions.

Summary

Home Rule was introduced in Greenland in 1979. This followed less than four years of negotiations in a Danish-Greenlandic Commission, the Home Rule Commission. The report of the Home Rule Commission was adopted by the Danish government and the Greenland Provincial Council. When the Home Rule Act and accompanying acts (including the Act on Mineral Resources in Greenland) were introduced in the Danish Parliament, they were adopted by a large majority in November 1978 and confirmed by referendum in Greenland in January 1979.

The introduction of Home Rule should be seen as a process that gradually transferred power and control from Danish to Greenlandic authorities. In the decade following 1979, most institutions dealing with internal matters were brought under Greenlandic authority. These included the education system, the economy (including fishing and trade), health, domestic policy matters, the Church, infrastructure, etc. Until 1979, Greenlandic society was completely dominated by the Royal Greenland Trade Department, which was taken over by the Home Rule authorities, thus providing these with enormous control over the country's development.

Twenty years later, Greenland has developed into a self-governing region that, in most matters of daily concern to its inhabitants, is in charge of its own



affairs. However, the Home Rule authorities rely on the Danish government (in the form of block grants and other transfers) for about 50 % of public expenditure, a fact that psychologically at least perpetuates a dependency complex reminiscent of colonialism. Furthermore, after two decades of Home Rule control, the education system, administrative institutions, health sector, etc, rely to a large extent on staff recruited from Denmark. The fact that these are non-Greenlandic speakers with a non-Greenlandic cultural background implies that proficiency in the Danish language and Danish traditions largely dominates these sectors of society. To this should be added the fact that, when Home Rule was introduced, the Greenlandic politicians adopted a development model that was to transfer control from Denmark to Greenland as quickly as possible, i.e. before Greenlanders themselves were able to fill the large variety of positions, and also stipulated that institutions had to operate on a standard equal to that in Denmark. These facts are important in understanding why dissatisfaction with the Home Rule arrangement increased in Greenland at the turn of the millennium. This has specifically been expressed by politicians in relation to matters outside Home Rule control, i.e. foreign relations, defence and international trade relations. While the political elite has been reluctant to discuss the inherent contradictions of its own decisions concerning the structure and professional level of the institutions governed by the Home Rule (administration, education, health sector, etc), the effect seems to be felt by those educated Greenlanders who feel that they are being excluded from positions because they fail in the Danish language and traditions. The political discussion around the future development of self-government has therefore to a large degree taken place on ethnic terms (Danish vs. Greenlandic) to the detriment of those who cannot get into the educational system as nurses, teachers, electricians, etc, simply because a command of the Danish language (and often also English) is a precondition. Ironically, a number of the best educated Greenlanders, who have lived outside the country for years and established families abroad, often do not have a perfect command of Greenlandic are thus also being marginalised by the dominant political agenda.

The Home Rule system has a functioning administration which, in many respects, has the character of a mini-state. However, gradually, the establishment of this mini-state has revealed the limitations of the authority of the Greenland Parliament and government to take autonomous decisions without first obtaining permission from the Danish authorities. The existing Home Rule type of autonomy is therefore seen by many as an obstacle to the further development of the present system in accordance with their aspirations.

This was the situation when, in late 1999, the Greenland Home Rule government announced the appointment of a self-government commission. The mere establishment of this commission is a strong indication of Greenland's wish to re-evaluate its relationship with Denmark in order to gain more independence than the existing Home Rule structure allows. This desire has been notified to the

Danish Government and, in 2004, a Danish-Greenlandic Commission on self-government was appointed by the Danish Prime minister. The commission consists of an equal number of Danish and Greenlandic politicians and is chaired by a member of the Home Rule Parliament. A report is expected in 2006.

When Home Rule was established in 1979, it was seen by the vast majority of Greenlanders as a great step forward and few people had anticipated that Greenland would, in many respects, develop a *de facto* self-governing system within 20 years. Despite social, educational and administrative problems, Home Rule in Greenland has been a political success and the Greenlanders have achieved what very few other indigenous peoples in the world have been able to. First and foremost, they have gained control of their own society and future, in spite of all the limitations.

Background

Geography, economy and education

More than 3,000 km from Denmark, Greenland is considered to be the largest island in the world. The whole of its interior is covered by a huge ice cap and only the coastal zone is free of ice. The long winters and cold summers do not allow much vegetation and only in the southern part of the country do we find some petty farming. Even the sea is frozen for some months of the year, leaving only a few towns free of ice all year round. From outside Greenland, the only practical way to enter the island is by air.

The life of the people in Greenland is oriented towards the sea, with industrialised fishing and hunting of sea mammals being the mainstays of the economy. Fish and fish products constitute about 90 per cent of export value and one species alone, shrimps, constitutes 64 per cent of total export value[1]. Hunting of sea mammals is important for the subsistence of the population but the export of sealskin is of minor importance compared to the export of fish products. The fishing fleet of small boats and large trawlers is privately owned by Greenlanders except for some trawlers owned by the 100 per cent Home Rule-controlled Royal Greenland. "The major part of the land-based fishing industry in Greenland is owned by Royal Greenland A/S, which now has 10 fish processing plants and a number of settlement installations in North Greenland and the Disko Bay area"[2]. Tourism is a slowly growing industry but it only employs a small percentage of the labour force.

The economy of the Home Rule is based upon income taxes, sales taxes and block grants from the Danish Government. The 18 municipalities all operate under Home Rule authority. The municipalities levy taxes on their inhabitants and receive grants from the Home Rule for fulfilling social, technical, cultural and

educational responsibilities. The municipalities are governed by municipal councils elected by all adults over 18 years.

Greenland's 57,000 inhabitants live in more than 80 towns and settlements but more than 40 per cent live in the three major towns of Nuuk (capital), Sisimiut and Ilulissat. About 12 per cent of the total population are ethnic Danes while 88 per cent are ethnic Greenlanders (Inuit)[3]. As we compare Greenland with other Inuit territories, we should always remember the 3,000 km that separates Denmark from its colonial acquisition. Thus, there has never been a gradual movement of the inhabited frontier further north - a practical and psychological fact never to be underestimated. It has affected Danes as Greenlanders to the extent that very few, if any, have ever seriously questioned the territorial integrity of Greenland and its political status as separate from Denmark. Although most Greenlanders of today have one or more Danish forefathers, few Danish ever settled permanently in the country.

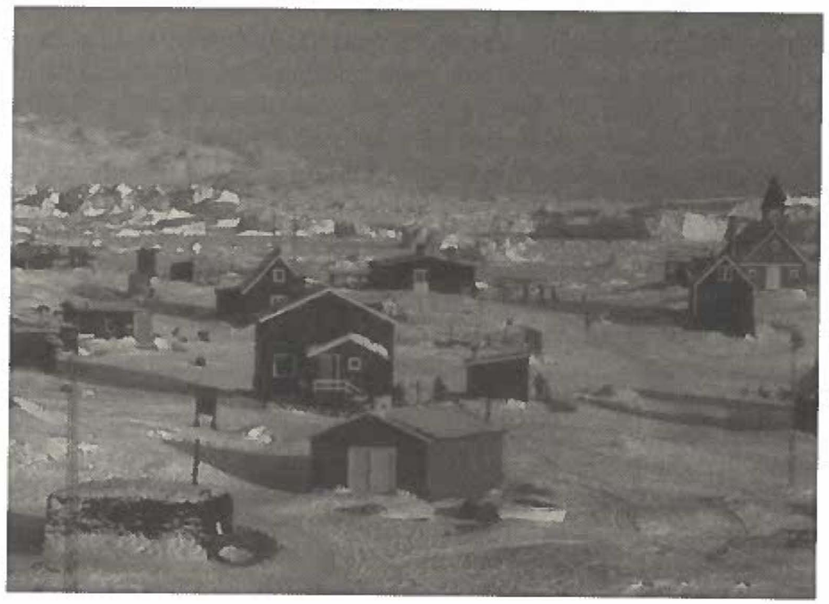
There are 12,000 people "born in Greenland" now living in Denmark, either permanently or as students in higher education. A recent estimate (Togeby 2002) concludes that this figure might overestimate the number of ethnic Greenlanders because only about 7,000 of these were born in Greenland with at least one parent being born in Greenland. The same author also estimates that the number of Greenlanders in Denmark has by and large remained constant since 1980 and will decrease in the future[4].

Danes in Greenland often occupy leading positions in the administration and many workers in the construction industry are still recruited from Denmark. Of particular importance is that many teachers in the education system, including the primary schools, are Danes and only Danish-speaking persons.

Compared to other Inuit, the Greenlanders are well-educated but still lag behind compared to the level in Denmark and Europe. There are nine years of compulsory school attendance and all communities have an elementary school. Greenland has three high schools, some vocational training institutions, a teachers training college and a small university that teaches social sciences and Greenlandic culture and language. Greenlandic is the language of instruction in the elementary school, with Danish as the first foreign language. Many students, specifically from the outlying districts, leave school with a limited knowledge of Danish and thus fail to cope with the demands put on them when they want to continue in the education system, whether in Greenland or Denmark. To this should be added the fact that, given that approximately 25 per cent of the teachers are from Denmark and only speak Danish, and due to the fact that many Greenlandic teachers fail in the modern school system, many students are disqualified when they enter educational institutions operating on Danish or international standards.

Saqqaq, Greenland. Photo: Jens Dahl

Hunting in Saqqaq, Greenland. Photo: Jens Dahl



The colonial period

Not far from Nuuk, today Greenland's capital, the Danish-Norwegian missionary, Hans Egede, established the first colonial settlement in Greenland in 1721[5] and, during that century, a number of colonial settlements were established along the West Coast of Greenland. Only a few years after Hans Egede's landing, the colonial settlement was moved to Nuuk, and since then this has been the political and administrative centre. The Danish colonists were traders and missionaries and their number never reached more than a small minority.

Less than 60 years after Hans Egede's landing, the whole west coast from the southern spit of the island to Upernavik in the north had come under colonial rule. Before the end of the 1700s, real power came into the hands of the Royal Greenlandic Trade Department in Copenhagen from where all colonial settlements were ruled for more than 200 years. The settlements of East Greenland and North Greenland did not come under Danish control until shortly before and after the start of the 20th century. From its inception, Danish colonial policy was based on mission and trade.

The missionaries soon learned Greenlandic, and the dialect spoken around Nuuk was used in the churches and in the schools all along the vast coast. When the first newspaper, *Atuagagdliutit*, was published in 1861, the Nuuk dialect was used and it developed into a new written vernacular used in all colonial districts. This dialect became the administrative language in all colonial districts and became the chief language of the country (Kleivan, H. 1984:525). The use of a common language created a sense of unity around being a Greenlander, and the identity of being a Greenlander, *Kalaaleq*, emerged gradually in the 18th and 19th century (Dahl 1988:76). The significance of this is that Greenland had been a political reality for a very long time when the demand for Home Rule was heard in the 1970s. Although North Greenland and East Greenland in many respects were, and still are, marginal regions, the claim for self-government was put forward in a unified way without regionalism playing any significant role. The legitimacy of those negotiating self-government was never seriously disputed – they spoke on behalf of Greenlanders from East, West and North Greenland. The size of the territory of the Greenlanders was undisputed by the Danish authorities.

The political attitude of the Danes toward the colonized people was best characterised as "benign paternalism" or top-down decolonisation. Presumably inspired by the political developments in Europe in the middle of the 19th century, decolonisation and indirect rule became important in the governing of Greenland. The first step was taken in the early 1860s with the introduction of district councils that were quasi-democratic structures made up of elected Greenlanders (male only) and members of the colonial administration. These councils had a number of social and legal functions but the most important was to return part of

the profit from the colonial trade back to the skilled hunters. In 1911, elected municipal councils had replaced these district councils and two indirectly elected provincial councils were established. Franchise for women was given in 1948.

Post World War II

The impact of World War II was significant. For five years the country was cut off from German-occupied Denmark, and Greenland relied on newly established links with the USA. When the war was over, the colonial system did not remain unchallenged and the protective policy of the Danish authorities was gradually abolished. Greenland became an "open" country, huge US military bases were established and, with the new Danish constitution of 1953, Greenland "lost" its colonial status and became a distinct region within the Danish realm.

From 1953 on, Greenland was divided into two electoral districts each sending a representative to the Danish Parliament. Also in 1953, the provincial councils were united, chaired by the Danish governor. The Provincial Council came to include East Greenland and North Greenland in 1961. From 1967, the council elected its own chair. In 1975, four years before the introduction of Home Rule, modern municipalities were established. The municipal councils were given wide executive functions and their economy was based on income taxation.

Heavy Danish investment programmes in the fishing industry and housing during the 1950s and 1960s had the demographic implication of causing the presence of Danes to reach about 20 per cent of the total population by the 1970s. In 1950, more than 200 years after the first colonial settlement was established in Greenland, only 4.5% of the population were Danes. The other important demographic change that took place in the wake of the industrial programme was an influx of people from the small settlements to the economic and administrative centres, in Greenland called towns. A large number of settlements were deserted. Not only were people concentrated in the towns, so were investments. While fish processing plants, schools and housing became available in the growth centres along the central West Greenlandic coast, settlements and outlying districts were neglected. The resettlement programme was carried out by the use of administrative force but there was no check-and-balance between the ambitions and the opportunities created in the towns.

The ultimate consequence of the resettlement policy came when the colonial authorities closed down the coal mining town of Qullissat and 1,000 people were forced to move. When the last inhabitants moved in 1972, Qullissat became a symbol of the effects of colonial ruling.

The early 1970s were years of lasting change in Greenlandic society. The effects of colonialism crystallized and, in a few outstanding cases, as the one just mentioned, the demise of colonial relations were projected large upon the wall,

to be seen and understood by all Greenlanders. Within a few years, the humiliations were turned around and the Greenlanders had taken the initiative (for a substantive treatment of this period, see Dahl 1986).

In 1971, a new generation of young politicians entered the scene. One of them was Moses Olsen who was elected to the Danish Parliament. Between 1971 and 1973 he played the balance between the two blocks in Danish politics – and whatever he did he was blamed for intervening in internal Danish matters. It became obvious to every Greenlander that Greenlandic members of parliament were not considered equal to the members elected in Denmark. The logical conclusion of Moses Olsen and his political allies was therefore that a change in Greenland's status within the realm was needed. The feeling of discrimination was further enhanced in the referendum of Danish membership of the European Economic Community (EEC - later the European Union) in October 1972. The outcome was a majority in favour of membership among the Danish population. However, in Greenland there was a substantial majority against joining the EEC, but it was to no avail because the votes from Greenland were merged with those from Denmark[6].

The Greenlanders were opposed to EEC membership first and foremost due to a fear of European interference in the fishery in Greenlandic waters. However, the real significance of the referendum in Greenland was that the people did not only vote for or against the EEC but that they voted against any kind of foreign ruling. The result was frustration because the great majority had voted against but when Greenland was drawn into the EEC by Denmark this implied further incorporation into and rule from abroad. The psychological impact was never fully understood in Denmark (nor by all Greenlandic politicians) and for the Greenlanders there was only one way out. Demands were now raised for changing the relationship between Denmark and Greenland with the clear aim of more autonomy for Greenland.

The Greenlandic Home Rule Committee of 1973

Voices were raised in the advisory Provincial Council in Greenland for setting up a committee to look into the possibilities of self-government for Greenland. The Greenlanders had decided to work out their own agenda before entering negotiations with the Danish government. Only a few months later therefore, the minister for Greenland, a Greenlander himself, established the *Home Rule Committee*, composed of the two Greenlandic members of the Danish Parliament and members of the Provincial Council.

The Home Rule Committee took two years to discuss the issue and draft its report. The report emphasised a number of principle viewpoints on the future relationship between Greenland and Denmark. Despite serious political discrepancies (to be revealed over the coming years) between the members, the report

was unanimously adopted. The only exception concerned subsurface resources, which the majority claimed came under Greenlandic jurisdiction. The main viewpoints of the Committee were that:

- Because the Greenlanders are a distinct people,
- Because Greenland is geographically separate from Denmark,
- Because the people in Greenland want to keep their own distinct language,
- Because colonialism has marginalized the Greenlanders from decision-making processes,
- Because the Greenlanders want a higher degree of self-determination,

the Home Rule Committee suggests a number of public affairs should be transferred to Greenlandic authority. Considered most important were: political matters internal to Greenland, taxes, social affairs, trade, education, culture, family and criminal jurisdiction, nature conservancy and subsurface resources.

All Greenlanders shared the same dream: to develop a "Greenlandic society on Greenlandic terms and conditions". A symbolic community based on the Greenlandic language and culture. Naturally, the dream was often phrased in terms of opposition to the colonial policy. Thus, it stressed a Greenland based on the "traditional Greenlandic culture", on decentralised settlements rather than people living in a few urban centres, on democracy instead of colonial rule and on a community dominated by the ethnic Greenlandic majority. The strength of the Greenlandic quest for self-government was exactly the strength of the dream, unanimously shared by all Greenlanders.

The dream and the demands put forward by the Greenlanders were phrased in terms of opposition: Greenlandic traditional culture versus Danish culture, Greenlandic language versus Danish language, decentralised settlement as opposed to the Danish concentration policy, etc. The dream was *not* an expression of nostalgia. On the contrary, the movement was headed by persons who wished to develop a modern industrialised Greenlandic society – not very different from the one so strongly forced upon them by the rulers in Copenhagen but it was to be developed with cultural and historical roots in Greenland. The claim was based on culture and history – it was a nationalistic movement.

There was another strength that helped to explain the development that took place after the introduction of Home Rule: the "traditional culture" was allowed to change and to modernise – and so did the concept of self-government, which now looks quite different nearly 30 years after the Home Rule Committee wrote its remarkable report.

The Danish-Greenlandic Home Rule Commission of 1975

The Greenlandic Home Rule Committee submitted its report in February 1975 and in October that same year the Danish Government (the Minister for Green-

land) announced the establishment of a Danish-Greenlandic *Home Rule Commission*. The Commission had 7 Greenlandic members (the 2 members of the Danish parliament + 5 members appointed by the Greenland Provincial Council) and 7 Danish members appointed by the Parliament. The Chair was appointed by the Minister for Greenland.

The Home Rule Commission was established as recommended in the Committee report and the work of the Commission took its departure from this (Betænkning 837/1978 bd.1:12). The Commission was given three main tasks: a political, an economic and an administrative one.

Politically, the Commission was to recommend areas to be transferred to Greenlandic (Home Rule) authority. Economically, the Commission was to develop suggestions for future funding of Home Rule and other public expenditure. The final issue to be dealt with was the administrative consequences, including the division of responsibilities between Danish and Greenlandic authorities.

It is very important at this stage to stress that no one in the Commission seriously questioned that Home Rule should be introduced in Greenland. It was, furthermore, generally accepted that the Greenlandic politicians *legitimately* negotiated on behalf of all residents – ethnic Greenlanders and ethnic Danes – living in Greenland. And last but not least no one ever seriously challenged the idea that the region to be governed by the Home Rule was the undivided island of Greenland.

Less than three years after its establishment, "the Commission concluded its work in June 1978 by submitting a report containing proposals for a Home Rule Act with adjacent consequential statutory provision" (Foighel 1980:4). By and large, agreement between members of the Commission was preponderant except for on the right to subsurface resources. The Greenlandic Home Rule Committee had stressed that surface as well as subsurface resources should belong to Greenlandic society. However, this seeming unity concealed the fact that some Greenlandic politicians did not share this point of view, and this became obvious during the negotiations in the Home Rule Commission. Under pressure from the Danish Prime Minister, Anker Jørgensen, who stressed that either Greenland had to share its resources with Denmark or they had to seek independence, a compromise was found. But some of the Greenlandic (and one Danish) members of the Home Rule Commission never really accepted the compromise that "The resident population of Greenland has fundamental rights to the natural resources of Greenland". During the first 10-15 years of Home Rule this was the most controversial political issue between Denmark and Greenland. It is worth emphasising that it has remained a political, not a legal, issue and despite many legal opinions it is generally recognised that Greenland could claim full ownership of all surface and subsurface resources.

All the statutes proposed by the Commission were adopted without amendment by the Danish Parliament in November 1978, and approved by referendum in Greenland on 17 January 1979. 63% of the electorate (approximately 80% Greenlanders and 20% Danes) voted and, of these, 70% were in favour and 26% opposed to the introduction of Home Rule on the conditions agreed in the Commission and adopted as law by the Parliament in Copenhagen. There is no indication that Danes in Greenland were more opposed to Home Rule than Greenlanders.

Decolonisation

As an outcome of decolonisation, the Greenlanders had acquired experience with political decision-making and a tradition for electing their own representatives to political bodies. When claiming self-government, there already existed a political structure and a political tradition to be further developed, and there was an administrative infrastructure in the municipalities and in the secretariat of the Provincial Council to build upon. Thus, the institutional legacy of decolonisation had its rewards, besides being an important steering instrument of colonialism. Political democracy had gained some roots in Greenlandic culture and Greenlanders knew the implications of holding political office in a system that, by and large, was modelled overseas.

The Home Rule process diverged from all earlier decolonisation initiatives in one important aspect. While the reforms in the 19th and early 20th centuries were instigated and controlled by the Danish authorities, the Home Rule process had its roots in Greenland and was initiated and promoted by the Greenlanders. The era of paternalism had gone forever and the Danish authorities never regained the initiative.

The public (the Ministry for Greenland) bureaucracy was involved in all sectors of society to an extent unknown outside the communist bloc. The Home Rule hence inherited an "over-developed" (Alavi 1972) structure that had very little economic foundation in Greenland society.

Most of the Danes who came to Greenland in the 1960s and 1970s worked in the construction sector, in the administration or in the service industry. Greenlanders were in control of fishing and hunting. The Greenlanders, who were always in inferior positions in economic, administrative and political life, dramatically felt the effects of the industrialisation process and the concentration policy. The result was ethnic tension. Even though the Greenlanders often silently put up with the colonial dominance the reaction was unequivocal and, in daily life, in the Provincial Council, in the Danish parliament, in music and among young Greenlanders, protests and anger became common. Ethnic dominance and control (Kleivan, H. 1968) was no longer accepted. The result was that one more factor was added to the inferior positions of the ordinary Greenlanders, many of whom became destitute, unemployed citizens in their own country.

There were many similarities between Greenland in the 1960s and 1970s and the post-colonial underdeveloped countries of Africa, Asia and Latin America. The high birth rate was one of them. The creation of metropolis-satellite relations within Greenland was another, and which left East Greenland and North Greenland (Thule) behind. Even today, these regions depend on hunting as their mainstay, and industrialised fishing has by and large never become established here. As ice covers the sea for most of the year in these parts of Greenland, the climatic conditions are the main reasons. However, the proliferation of Greenland halibut fishing in Northwest Greenland in the 1990s indicates that other options are available even in the hunting districts. Thus, when Home Rule was introduced, the regions that were often considered by Greenlanders as "the real Greenland" where "traditional" Greenlandic culture still remained and as symbolising Greenlandic vs. Danish, were also the regions left behind by colonial policies. However, as we shall see, the Home Rule authorities have done very little to change this.

Urbanisation was thus one of the outstanding characteristics that followed with the development ideology of the post-war era. Another demographic trend was the migration from Greenland to Denmark. Kids were taken out of school in their home community to attend schools in Denmark for a period and most higher education was only available in Denmark. At the end of the annual construction season, many young women followed Danish migrant workers back to Denmark, often with disastrous social consequences. Yet others chose to settle and live there. Today there are at least 7,000 Greenlanders in Denmark or about 12-15% of all ethnic Greenlanders. Although several new educational options are now available in Greenland (like high schools), many of the Greenlanders in Denmark are students who will return after having finished their studies. These people often bring with them new ideas, skills and ideologies, facts that have often made an impact on political and social developments at home.

As already mentioned, the 3,000 km of ocean separating Greenland from Denmark remains one of the most important factors explaining the uniqueness of the Greenlandic Home Rule – even today. It is a factor that unavoidably adds to the notion of Greenland as "the last frontier" in the minds of many Danes, and of Denmark as the distant colonial power in the minds of many Greenlanders. As history has taught us, there is much substantial and psychological truth to these notions. However, there is also another important aspect that seems to have an impact on the notion among Greenlanders and Danes of the global position of the Greenlandic nation, *Kalaalit Nunaat*. This is a feeling of being linked by mutually dependent ties.

Surely, this feeling is different among Danes and Greenlanders. The post-war development of Greenlandic society gave rise to ethnic tensions and still does today as Danes occupy many superior administrative, education and economic positions. Among many Danes there is also the idea of superiority, which gives rise to utterances that "either Greenland must be an equal part of Denmark or sail in its own waters" – a notion of the benign Danes helping a naughty people of the

far north. These are legacies of colonialism that do not easily disappear. But among both peoples there are also strong bonds of solidarity, kinship relations and perceptions of a shared history that seem to endure conflicts, suppression – and self-determination. In the Arctic this is not a unique phenomenon but it is nevertheless a factor of utmost importance in understanding the character and scope of Greenland's quest for self-government. Years ago, the foreign minister of Denmark and likely prime minister to be, Uffe Elleman Jensen, was asked how he, if he became prime minister, would react to a wish by the Greenlanders to establish their own state. After some thought, he simply said: "it would make me unhappy". This reaction could be interpreted as colonialism in hiding – maybe, but there was more behind it.

Self-determination and nation building

A nation of hunters

Self-determination is something that people do. It is a process that differs from country to country, from nation to nation depending on the specificity of the society and the culture of the individuals. There is no global universal form of self-determination and "the right of self-determination should be regarded as a 'process right' rather than a right to a pre-defined outcome" (Henriksen 2001:14). The way the indigenous peoples approach the issue of self-government, the attitude they take to the holders of power, the means they use to reach their goals, the visions they have, etc, all depend upon culture and social facts. The atmosphere might often be difficult to grasp, and without some understanding of the social and cultural fundamentals there is no comprehension of self-determination as a process into which so many people invest such great effort. There is no simple *a priori* and overall structure that we can look for but there are at least a number of essential factors that we can use as building blocks in our understanding of the structure.

Greenlanders are basically hunters by culture. Although only a minority of the population are hunters by trade the cultural ideology associated with hunting is taught to the children from the day they are born. It is difficult not to fall into the trap of transferring stereotypes but there are a variety of facts of life that carry meaning to each and everyone and that have their origin in the life of hunters and in today's modern society, being pursued in full by those who grow up to live by hunting. It includes a lifelong commitment to animals and the environment, it implies particular kinds of social relationships and it entails certain obligations such as sharing and the ideology of being a provider (Nuttall 2000:40ff).

Anthropologists have often characterised Inuit societies, including Greenlandic society, as relatively egalitarian. Many Greenlanders celebrate traditions that

promote egalitarianism or have egalitarian connotations. Sharing and meat exchange between relatives, friends, neighbours or political party fellows is an important example. Prestige is acquired when you are able to give away meat and fish and to give more than you receive, implying that the person who gives has a surplus to give away. This goes back to the time when hunting was the main occupation of the Greenlanders and when the people lived in small communities in which authority and prestige were bestowed on the skilled hunter who could give more than he received. It is obvious that this alleged egalitarianism does not imply that everyone in a small community was equal but it did imply that everyone in the community had equal access to the resources, the means, the technology and the knowledge necessary to acquire those resources (Dahl 2000:176). To a large extent, this is still the case in small communities in Greenland – often considered as the "real Greenland".

Greenland as a whole is no longer this egalitarian society but the notion of egalitarianism still seems to be so strong that raising oneself above others is associated with personal abilities, skills and qualities. The essential point is, however, that a person who has this position is expected to share with others – expectations that also include politicians. Prominent politicians are often highly regarded, not least if they are able to make an impact on the world outside Greenland. But only to the extent that they are able to exchange the votes given them with something that can be consumed literally or symbolically by the people: this might be part of the explanation as to why some politicians who become "too big" (meaning that they give less than they receive) are suddenly seen as being deserted by their supporters. As the hunter is the *provider* for the family and the community, the politician is the provider for his/her electorate – and the position as provider is not only a technical one but is filled with symbolic values.

Enormous economic differences have developed between rich and poor in Greenland and the lines of division no longer follow ethnic boundaries. Nevertheless, the egalitarian vision still exists and makes its impact on political life. The recent and sudden rise in the political arena of Hans Enoksen, premier since the election in December 2002, can be interpreted as an example of this. Hans Enoksen only speaks Greenlandic and many might see him as spokesperson for those who only speak Greenlandic and for those who rely upon fishing and hunting. These people seem to have been forgotten by politicians, pre-occupied with establishing institution after institution in Nuuk to which the entrance fee was fluency in Greenlandic as well as Danish. They are the lost generation, forgotten in the rush of building Home Rule.

The type of egalitarianism we deal with is very different from a class-based socialist ideology, and this might explain why the two parties Inuit Ataqatigiit and Siumut (to which we often attribute the labels of socialist and social-democratic) have accepted the most unequal economic development in the country.

There might also be a connection between the egalitarian aspect of the Greenlandic culture and other factors, such as a respect for the integrity of each person. This also implies a certain preference for not mixing in the affairs of other people. The scepticism that many have towards people with a higher education (educated in Denmark) should also be mentioned as part of the egalitarian complex.

A closely-knit society

A nation with 56,000 inhabitants has a life different to that of nations with millions of inhabitants. Travelling along the coast and visiting a new community, a Greenlander will always be able to find a relative or a friend. This is a strong integrationist factor and even in situations with serious disputes there are usually always relatives willing to mediate conflicts. The political system must abide by this fact and so must the relationships between Greenland and Denmark because most Greenlanders (I guess) will have relatives in Denmark from mixed marriages or from Greenlanders that have moved to Denmark.

> *The mixed marriages (..) have now reached a level that it has become a political factor that has to be faced. Without having any statistical confirmation, there is no doubt that this aspect plays a significant role for the general relationship between Denmark and Greenland. It is otherwise impossible. Thousands of Danes live in Greenland either because they are married to a Greenlander or because they simply like to be there* (Lynge 1998: 47)[7].

There are other factors that make Greenland a comparatively tight-knit nation. The most important is the West Greenlandic Inuit language, spoken by a vast majority of Greenlanders even though daily communication in East Greenland and in Thule takes place through the local dialects. And all Greenlanders enjoy products from seals, whales and fish, considered "Greenlandic food" with both the preparation and the eating being signs of being a Greenlander (Petersen, R. 1985: 296).

> *One confirms and maintains one's Greenlandic identity, among other ways, by eating and liking Greenlandic food in a world where there are many other options. As the process of internationalization has become more striking in Greenland, and in the area of food too, Greenlandic food as an ethnic symbol has taken on new dimensions. Greenlandic food products are something one is proud to present to guests from the outside world. Greenlandic food is thus used both to underscore the community spirit among Greenlanders and to show Greenlanders and Danes that Greenlandic food is in no way inferior to foreign food* (Kleivan, I.: 155).

Important to the unity of the Greenlandic nation is also the fact that basically everyone belongs to the same religious denomination, the Lutheran Church. The church is an important element of Greenlandic culture and, although introduced by the Danish and Norwegian missionaries, it is today considered a fully Greenlandic institution.

A friend of mine once made me aware of a telling factor with regard to differences between the situation in Greenland and the Canadian Arctic and Alaska. All towns in Greenland have an open air market where hunters and fishermen come and sell meat from seals, whales and musk-ox, birds, fish and caribou, and in all food stores in Greenland you can buy frozen meat and fish products and prepared delicacies produced in Greenland. This is economically significant but is also an indicator of a society that is more closely knit than other Inuit societies. Greenland is a nation.

A unified nation

The historical process that turned this enormous island into a nation is naturally a product of colonialism, which brought together the many widespread Inuit communities and united them through the colonial administration, political decolonisation and cultural unification (language, religion).

In pre-colonial days the communities along the coast were united in a web of kinship and trade relations. To the outside, colonialism cut the Inuit in Greenland off from their relatives in Canada and the internal network was institutionalised and monopolised by the colonial authorities. However, the internal network has always been there and plays a significant role in social, political and economic affairs.

The introduction of Home Rule gave further impetus to the process of unification in political terms, by giving up the structure in which settlements were automatically represented in the municipal councils, by making Greenland into one constituency when electing the Home Rule Parliament and by holding a referendum in 1982 on Greenland's future relationship with the European Union. When the Greenland electorate voted Greenland out of the EU, it added significantly to the feeling of belonging to a separate nation. Economically, this also took place by transferring all the institutions controlled by the Danish state through the Royal Greenlandic Trade Department to Home Rule-controlled institutions and companies.

When the discussion turns to independence or further self-determination for Greenland, it is worth noting that - since the introduction of Home Rule in 1979 - not only have the Greenlandic authorities managed to put themselves in an increasing number of positions that deal with international affairs but they have also been able to do it in a way different from most other indigenous peoples.

When Greenlanders appear in meetings in the United Nations representing the Home Rule Government or a Greenlandic NGO, it is obvious that they have a mandate as national representatives. They – politicians or civil servants - speak from this mandate *and* on behalf of those (the government, members of an organisation) they represent. The importance is not only the specific legitimacy of the person appearing at such a meeting but the legitimacy (and legality) of the mandate the person brings. This confers great flexibility and power of negotiation on the person because he/she knows the limits of their mandate.

In an indigenous world, this is a unique situation. Usually, the situation is such that indigenous representatives speak on behalf of a group of people or an organisation without having a full mandate to negotiate. Or they have a clear mandate without being legitimate representatives of the group to which they belong. The first situation is most conspicuously expressed by those who cannot enter real negotiations "without having talked to our elders at home who send us here", and the latter position are often those representing NGOs that can symbolically express the viewpoints of their people and can fight for these viewpoints very strongly and often quite efficiently without being able to claim to represent the majority of their people or the elected or appointed legitimate representatives of their people. The one position is not more "positive" than the other but the outcome of very different circumstances – political, demographic and cultural.

One of the major obstacles to Greenland's international ambitions is its external dependence on military protection. This has often and fervently been pointed out by the former European Parliament member for Greenland, Finn Lynge (1998). Greenland cannot defend itself and will either have to depend upon Denmark as now – or upon the USA. There is no alternative and this enormous island with its strategic position will never be allowed to exist without a military presence. The Greenlanders will, furthermore, be unable to defend their own fishing territory for the foreseeable future.

To some extent it could be said that Greenland has experienced less encroachment upon its lands and culture than other Arctic regions that are more easily accessible by roads or waterways. However, "although no land-altering physical developments have occurred close to their homes, the ideas developed in distant industrial centers have damaged their lives just as effectively" (Freeman 2000: xiv). Nevertheless, and in contrast to many other Arctic cultures, the Greenlandic culture and language are far from endangered.

> *In many respects, Greenlanders are at the forefront of indigenous peoples globally in responding to threats to cultural survival. Rather than being simple victims of progress, they have struggled continually to secure control over their homeland, to protect their language and culture, and ensure their rights to determine what course future development will take* (Caulfield 2000:180).

Vulnerability

Strategic matters should always be kept in mind when considering options for regional self-government or autonomy of any kind. But maybe, and in the first instance, there are other factors that confine the possibilities for developing self-government. The economic dependence on block funding from Denmark has already been mentioned. The low educational level compared to the countries with which Greenland competes is another.

Often also mentioned are the social problems, including the alcohol abuse that haunts Arctic communities, including those in Greenland. This is one of the factors that seems most detrimental to the survival of the economy and culture of the Greenlandic nation and which comes from within society and not from the outside world. A brief look at the social situation reveals a society with an enormous number of dysfunctional individuals and families. Alcohol and drug abuse, violence and suicides are among the most often cited signs of families and communities in crisis. At a meeting in the Danish Parliament on 9 January 2003, the executive director of the Royal Greenland company, Keld Askær, made an unusual speech for a person in his position. He linked the quest for independence to the development of increased economic productivity and education levels but he went further:

> *The economic possibilities of a country cannot be seen as isolated from other factors such as social-, health-, children – and educational policy. In this presentation on the economy I have chosen to focus upon the family because no increase in productivity is realistic unless we also have focus upon the many serious social problems that many families unfortunately suffer from today. Our members of staff cannot work optimally a) if they week after week have to work side by side with a colleague that suffers from violence, b) if they know that the children of the other workers suffer from physical or psychological violence, c) if you are afraid that one's spouse has used all the money when you come home*[8].

Although the seriousness of such problems should not be concealed, the director of Royal Greenland forgot to mention the opposite fact which, in the long term, may show itself to be much more significant to achieving the dream of developing Greenland as an equal partner with other nations. This is the large number of families from which highly skilled fishermen, entrepreneurs, workers, academics and others could be recruited and who have the potential for running a modern society – rather than always depending on the recruitment of specialists from other countries.

Political realities

Home Rule in Greenland

Let us briefly review the process that established Home Rule. Home Rule was introduced in Greenland on 1 May 1979 following a process that took 6 years. The Greenland Provincial Council established its own Home Rule Committee in 1973 and, based on its recommendation, the Danish-Greenlandic Home Rule Commission was appointed in 1975. The recommendations from this commission were put forward in a number of acts presented to the Danish parliament in November 1978 and confirmed by referendum in Greenland on 17 January 1979. The first election to the Home Rule Parliament took place on 4 April that same year, less than one month before Home Rule became a reality.

The first areas of responsibility and authority were transferred in January 1980 and, in the ensuing years, area after area has come under Home Rule control. In general, Home Rule has taken control over all domestic policy matters, the economy, the education system, culture, social affairs, etc. In all these matters, legislative competence rests with the Home Rule authorities. Some matters are under joint Danish-Greenlandic jurisdiction, first and foremost the exploitation of sub-surface resources. The basic principle in the Minerals Act is that it provides both parties, Denmark and Greenland, with a veto on all matters relating to prospecting and exploitation of sub-surface resources (including hydro-electricity). Since 1998, the administration of all mineral resource activities has been in the hands of the Home Rule authorities in Nuuk. The economic distribution of income from mineral resource activities has changed since the first model in 1979, to the advantage of the Greenland economy, such that the first 500 million DKK in income from these activities will automatically accrue to the Home Rule. The distribution of income above that level between Denmark and Greenland is negotiable. However, the exploitation of mineral resources to date has had very little significance for the economy of Greenland.

There are also those matters for which authority rests with the Danish government. These are, first and foremost, foreign relations and defence but also including monetary issues and certain legal matters. In matters of foreign relations, the Home Rule can be represented through Danish Ministries and in a few cases it has been Greenland representing the Realm. For the time being, Greenland has its own representation in Brussels (EU) and, until recently, also in Ottawa. The Home Rule also has its own office in Copenhagen.

Home Rule was established by an act of the Danish Parliament and, in principle, it can be repealed by the Parliament. There are some disagreements among legal experts as to what degree the Danish Parliament can unilaterally repeal or change the Home Rule Act. However, whatever legal viewpoints are given on

this matter, it is generally recognised that *politically* Home Rule self-government arrangements in Greenland are no longer a matter to be dealt with unilaterally by the Danish Parliament or Government. This was strongly emphasised in early 2002 by the former chair of the Home Rule Commission Isi Foighel[9], and the current and former Prime Ministers have also clearly indicated that Greenland has the option to further develop self-government.

Besides a strict legal interpretation of the power and authority of the Home Rule, it is worth noting a certain discrepancy between the structure of Home Rule and the local conditions under which it operates. As has been the case in many other former colonial territories, independence or self-government was created in a way that made the self-government institutions more or less detached from the society, even though ideologically Greenland was united and is a tight-knit community. The Home Rule institutions have never reflected the "Greenlandic terms and conditions" let alone its size. The institutions are modelled on similar Danish institutions and therefore rely on employing a large number of Danish people, and the running costs cannot be covered by locally sourced income tax.

The political system of Greenland is very similar to the Danish style of parliamentarian democracy. The parliament, *Inatsisartut*, has 31 seats and is elected by common vote among all adults over 18 years of age who have been residents for more than six months prior to the election. It is important to note that Home Rule is a public government and that there is no distinction between persons born in Denmark and persons born in Greenland. All have the same right to vote provided they are Danish citizens. The parliament elects the Home Rule Government, *Naalakkersuisut*, which is headed by the premier. The premier, along with each member of the government (at the moment 6 including the premier), requires an absolute majority in the parliament to be elected (Janussen 1999). The parliament sits for four years unless the premier calls for an interim election.

Political parties

In the first years of Home Rule, Greenland was divided into a number of constituencies to ensure that even the remotest municipalities were represented in the parliament but, today, Greenland has only one constituency. Elections take place through political parties, of which five were represented in the parliament following the elections in December 2002. The social-democratic Siumut has been in power since Home Rule was introduced, either alone or in coalition with the socialist Inuit Ataqatigiit or the conservative Atassut[10]. With a short interruption, Siumut and Inuit Ataqatigiit have formed a coalition government since the elections in December 2002.

Greenland is part of the Danish Realm and elects 2 members to the Danish Parliament. For the time being, one member is from Siumut and one from Inuit Ataqatigiit.

Greenland today has what is a genuine political parliamentarian democracy. To this should be added the fact that the Greenland Parliament and Government in general enjoy great legitimacy (although its actions are often strongly criticised) as representing the whole Greenlandic population, Greenlanders and Danes. This is most conspicuously seen in the fact that Danes in general seem to vote for Greenlandic candidates and that at no time has there been more than one Danish member of the Home Rule Parliament.

The political party system was a key factor in the establishment of Home Rule in Greenland. The first parties were founded in the mid-1970s and they soon became instrumental in formulating the quest for abolishing the remnants of the colonial system and for developing the visions of Home Rule. It was during the years 1971-73 that young Greenlanders became outspoken in criticizing the Danish policy in Greenland, and the founding of the political parties took place as a culmination of this process. Leading young Greenlanders organised themselves in the Siumut movement, which developed into the foremost driving force for establishment of Home Rule. Siumut was soon supplemented by an opposing political party, Atassut, and within a short time both were able to establish themselves in all or most communities in Greenland. A third political party, the left-wing Inuit Ataqatigiit, was also established at that time and has continuously increased its influence over the political life of home-ruled Greenland. Thus, if the success of the Home Rule process during the early years can be attributed to any factor it should be to the establishment of the political parties that legitimised self-government and also gave some dynamic to the process and not the least to the democratic discussion of political alternatives.

The Commission on Self-Government in Greenland

There is no simple answer to the question as to whether Home Rule in Greenland *in general* has been a success or a failure and there are – not surprisingly – various opinions about this in the country. Thus, Home Rule has not eliminated the dependency complex, and there seems to be a general agreement that changes are needed due to social, cultural and economic developments and processes that would have taken place with or without Home Rule.

In the 1970s, the quest for home rule was driven by the craving for a "Greenland on Greenlandic terms and conditions", in other words ending Danish colonial hegemony and Danish ways of thinking in Greenland. The Home Rule Agreement as negotiated between Greenland and Denmark should be seen as a compromise between various wishes and diverging interests between Denmark and Greenland but also internally within the two countries. The latter is important in order to understand the situation today. The major advantage of the Home Rule Agreement was that it was endorsed by an overwhelming majority in both

countries when it was adopted by the Danish Parliament and endorsed in a referendum held in Greenland. This should not be underestimated, and when the Home Rule authorities acted swiftly to implement the agreement at a much quicker pace than anticipated, it was generally endorsed in both countries. Home Rule has been a *political* success unmatched anywhere else in the world, to the extent that it can sometimes seem as if it is drowning in its own success. The increase in political aspirations and the development of a modern welfare state have outgrown the possibilities embedded in the present political, administrative and economic system.

The development of a Greenlandic mini-state has gradually revealed the limitations of the authority of the Greenland Parliament and government in terms of taking autonomous decisions without permission from the Danish authorities. The existing Home Rule type of autonomy is therefore seen by many as an obstacle to the further development of the current system in accordance with their aspirations (IWGIA 2000). Many Greenlanders have reflected upon the desire for changes to the constitutional system. As expressed by one member of the Greenland government: "The intentions in the Home Rule Act 20 years ago have, by and large, been fulfilled. It is from this understanding that we talk about a change or reform of Greenland's provisional status [Home Rule] within the Kingdom of Denmark" (Motzfeldt 2000, author's translation). This is an important backdrop to the establishment of the Commission on Self-Government.

Matters of special concern are defence, security and foreign relations. In particular the focus has been on the continued existence of a US military base at Thule in northernmost Greenland. Three issues are closely associated with the presence of the base. First of all, the forced relocation of the Inughuit people when the base was established in the early 1950s. This problem has been dealt with in several court cases. Secondly, there have been several cases of misinformation of the public and Greenlandic authorities on the part of the Danish government with regard to the presence of nuclear weapons in Thule, which has given rise to much anger in Greenland. Finally, the prospect of a possible placement of National Missile Defence (NMD) facilities by the US has created tensions between the Greenland and Danish governments.

The Commission on Self-Government was established by the Greenland Government in 1999 and its members were all prominent Greenlandic politicians. The Commission's task was "to prepare a report on the possibilities for expanding Greenland's autonomy within the Danish Commonwealth based on the principle of conformity between rights and responsibilities"[11]. The main responsibilities of the Commission are to "explore the possibilities for expanding Greenland's authority, role and ability to act in the foreign and security policy areas", to "consider possibilities for the transfer to Greenland in whole or part of the judicial system in Greenland", to "consider the need and feasibility of transferring other areas of responsibility to the Home rule", and the Commission should put forward proposals "for moving Greenland further in the direction of economic self-sufficiency"[12].

The main focus of the Commission was made clear in the way it would reach to its conclusion. It would "consider Greenland's role in security policy from the standpoint of its geographical situation", to "consider the need and potential for independent Greenlandic representation in international fora at which Greenlandic representatives currently form part of Danish government delegations" and to "explore and assess possibilities for Greenlandic participation in assertion of sovereignty and fisheries inspection"[13].

It is important to note that the mandate given to the Commission by the Home Rule Government was that of investigating Greenland's autonomy *within* the Danish Realm. The Commission was not to investigate independence as an option. In connection with the 150th anniversary of the Danish Constitution, the chairman of the Commission expressed his view on this issue: "A country like Greenland, with its geographical location and with such a small population base, will always be dependent on other countries. The question should rather be which dependency we wish to have" (Janussen 1999). And he continued "For my part, I believe that Greenland can preserve its greatest possible relative independence as long as the country is in a community of the realm with a small, militarily weak nation like Denmark " (Janussen 1999). Whatever independence means for a population of 56,000 people, and although it may be that there is no general wish in Greenland to become independent from Denmark, this does not disguise the fact that Greenlanders aim to achieve the highest possible degree of self-determination. This is the really important point felt by all, whatever constitutional, financial or other arrangements are being negotiated by politicians and authorities in Greenland and Denmark.

The Commission delivered its final report to the Greenland government in 2003. To promote its work, the commission had established four working groups. One group looked into foreign relations and security; another group into economic and business issues; another focused on constitutional and international laws and finally human resources (labour market) was the responsibility of a separate group. Given that the education system seems to be the most debated issue among the general public and also being in what is often said to be a critical situation, it is surprising that this was not in itself considered by any of the working groups.

In general, the work of the Commission as such has perhaps not been subject to as much public debate as expected or hoped by the commission members. For example, when the working group on foreign relations and security held a public meeting in Greenland's second largest town, Sisimiut, only one person showed up even though the meeting was held in Greenlandic. However, some of the controversial issues that are indirectly linked to the public view on autonomy and self-determination are constantly being scrutinized and dissected in the media,

most often under cover of use of the Danish or Greenlandic language. It is maybe characteristic that most public interest was shown when the Commission initiated a discussion on the use of the two languages, Danish and Greenlandic at public meetings in Nuuk in February 2001.[14]

Language and education – again

Over the past few years, the media in Greenland (TV, newspapers, radio) have given much coverage to two issues in particular: economic reform and the position of the Greenlandic Inuit language.

The language question appears time and again. It was the cause of ruthless debate when a member of parliament suggested that Greenlandic should be the only language spoken in that body. At that time, in early 2000, there was only one Danish and non-Greenlandic speaking member of the parliament (he has since left the country) but obviously the suggestion could have had a number of political ramifications and was not adopted. There is the question of protecting a (Danish) minority but there is also the fact that a number of Greenlanders and children of Danish-Greenlandic couples have problems in mastering Greenlandic. This question of the working language of the parliament has often been merged with the much broader issue of the position and use of Danish in all corners of society and many, primarily but not exclusively Danes, have taken this as a frontal attack on the Danish minority.

However, in this as in many other cases, decisions cannot be taken without asking the Danish authorities – a point of natural irritation of Greenlanders.

The language of the administration is often Danish due to the substantial number of people recruited in Denmark. It is often a focal point of criticism and frustration that a criterion for getting a job is fluency in Danish but it is never a demand for Danish staff that they get by in Greenlandic. It does not add to the integration of the Danish staff when we also consider the high turnover rate among this group. To this should be added the cultural dominance that follows the preferential use of a certain language. To some, this has become a symbol of Home Rule failure to terminate Danish dominance and to implement the promised Greenlandisation.

The most heated and longstanding dispute, however, concerns the integrated primary schools. The first language of instruction is Greenlandic, which is not usually mastered by Danish children, who often only stay in Greenland for a limited number of years. The lack of a proper language policy only adds to the Danes' feeling of being unwanted in Greenland and it makes living and working difficult for some of them.

The language debate reveals a number of dilemmas that many indigenous groups might face during a self-determination process. It has always been a

prominent goal of Home Rule Greenland to promote the indigenous Greenlandic language and, subsequently, way of thinking in all aspects of life. However, this easily comes up against the need to increase the educational standard of all Greenlanders, a goal that can only be achieved through increased knowledge of foreign languages, in this case Danish, and by allowing students access to specialised education outside Greenland. This dilemma becomes even more acute because there are, specifically among the group of well-educated Greenlanders, a substantial number of people who do not have a perfect grasp of Greenlandic. Although a small minority, they are in possession of much needed skills and, in a stressful situation, they could feel marginalized due to lack of language ability. Whatever the reason may be, the fact is that many Greenlanders do not return home after having finished higher education in Denmark.

It is important to note that changing the legal relationship between Greenland and Denmark alone cannot solve such dilemmas. Changing the framework of self-government should enhance the abilities of Home Rule to strengthen its external negotiating positions (trade, multinational agreements, setting of standards, etc) and a restructuring of Greenland's national and international position is much needed and desired. Greenland is becoming increasingly dependent upon decisions taken in international fora (like EU) and there is an obvious need for Greenland to be able to directly participate in such settings as a negotiating partner. The Commission on Self-Government was established in order to improve the Greenland authorities' ability to govern their own country, although dilemmas such as those mentioned above are only indirectly products of such structural and legal arrangements.

Conclusion

Those who want to learn from the Greenland self-government case should note the correlation between resources, options available, political processes and inventions.

The 3,000 km separating Greenland from Denmark is a resource and so is the demographic fact that ethnic Greenlanders have always made up the vast majority of the population in the country. The egalitarian ideology is a strong factor that worked against the creation of lasting cleavages in society when it developed from a number of semi-autonomous hunting communities along a vast coastal stretch to a modern nation. This is an often overlooked resource of the Greenlandic nation. To this should be added all the factors that made Greenland a unified nation.

Self-government was an option that in no way was a foreign phenomenon within the Danish realm. The Faroe Islands obtained Home Rule in 1949 and there has been a long tradition of decolonisation in Greenland. And, fortunately

one is tempted to say, Greenland has no major natural resources that could have tempted Danish politicians to take undemocratic measures to remain in control.

In the 1970s when the Greenlanders embarked on the road to self-government, they copied the Danish political party system. They fought the colonial power holders with their own weapons and, in my opinion, this was the major organisational reason behind the successful process that resulted in Home Rule.

The founders of Home Rule seemed to have been less successful in inventing new institutions. Maybe it is the fact that too many of the plethora of new Home Rule institutions were copied or transferred uncritically from Denmark with the result that the Home Rule has remained dependent upon Danish rules, traditions and procedures. This has given rise to the problems mentioned. ❑

Notes

1 *Greenland Statistical Yearbook 2000-2001*. Nuuk 2001.
2 *Ibid*: 62.
3 *Ibid*. As a matter of fact this is an approximate figure because the statistics are not based on ethnicity but distinguish between persons born in Greenland and persons born in Denmark. This implies that a person born of Danish parents in Greenland will appear in the statistics as born in Greenland and a Greenlander born of Greenlandic parents in Denmark will appear as born in Denmark. However, it is usually assumed that the numbers of Danes born in Greenland is equal to the number of Greenlanders born in Denmark and the term "born in Denmark" in the Greenland statistics is taken as being equal to the number of ethnic Danes.
4 *Ibid*: 45-46.
5 The Norse settlers who came to Greenland around 982 had disappeared before the end of the 15th century.
6 In a referendum held in 1982 a majority of the population in Greenland voted against EEC membership and left the European Community in 1985.
7 Translation of the author.
8 Translation of the author.
9 Said in February 2002 during a conference organised in Nuuk by the Greenland Commission on Self-Government.
10 The terms "socialist", "social-democrat" and "conservative" are far from accurate in relation to the political parties but cover the general philosophical differences between the European political left, right and centre.
11 From the "Terms of reference for the Commission on Self-Government". *www.selvstyre.gl*.
12 Ibid.
13 Ibid.
14 The meetings are referred to in *Atuagagliutit/Grønlandsposten* no.12, 13 February 2001.

References

Alavi, Hamza. 1972. The State in Postcolonial Societies: Pakistan and Bangladesh. *New Left Review* 74: 59-81. London.

Josef Motzfeldt. 2000. *Atuagagdliutit/Grønlandsposten no. 18.* 5 May 2000. Newspaper. Nuuk.
Betænkning 837/1978. 1978. *Hjemmestyre i Grønland* bd.1-4. Copenhagen.
Caulfield, Richard. 2000. The Kalaallit of West Greenland. In: Milton M.R. Freeman (ed.). *Endangered Peoples of the Arctic*. Westport, Connecticut: Greenwood Press. 167-186.
Dahl, Jens. 1986. *Arktisk Selvstyre*. København: Akademisk Forlag.
Dahl, Jens. 1988. Self-government, land claims and imagined Inuit communities. *FOLK* 30:73-84. Copenhagen.
Dahl, Jens. 2000. *Saqqaq. An Inuit hunting Community in the Modern World*. Toronto: University of Toronto Press.
Foighel, Isi. 1980. Home Rule in Greenland. *Meddelelser om Grønland, Man & Society* 1. Copenhagen.
Freeman, Milton M.R. (ed.). 2000. *Endangered Peoples of the Arctic*. Westport, Connecticut: Greenwood Press.
Greenland Statistical Yearbook. Greenland Home Rule. Nuuk
Henriksen, John. 2001. Implementation of the Right of Self-Determination of Indigenous Peoples. *Indigenous Affairs* 3:6-21. Copenhagen: IWGIA.
IWGIA. 2000. *The Indigenous World 1999-2000*. Copenhagen: IWGIA.
Janussen, Jakob. 1999. The constitution 150 years: The Community of the Realm viewed from a Greenland aspect. *www.selvstyre.gl*
Kleivan, Helge. 1968. Dominans og kontrol i moderniseringen af Grønland. In: Hjarnø, Jan (ed.). *Grønland i fokus*: 141-166. København: Nationalmuseet.
Kleivan, Helge. 1984. Greenland Eskimo: Introduction. In: Damas, David (ed.). *Handbook of North American Indians: Arctic*. Washington: Smithsonian Institution. 522-527.
Kleivan, Inge. 1996. An ethnic perspective on Greenlandic food. *Cultural and Social Research in Greenland 1995/96* [Essays in Honour of Robert Petersen]. Nuuk: Ilisimatusarfik. 146-157.
Lynge, Finn. 1998. *Selvstændighed for Grønland?* København: Arctic Information.
Nuttall, Mark. 2000. Becoming a hunter in Greenland. *Inuit/Études/Studies* 24(2): 33-46.
Petersen, Robert. 1985. The Use of Certain Symbols in Connection with Greenlandic Identity. In: Brøsted et al (eds.). *Native Power*. Oslo: Universitetsforlaget. 294-300.
Togeby, Lise. 2002. *Grønlændere i Danmark. En overset minoritet*. Aarhus: Universitetsforlag.
www.selvstyre.gl

THE EXPERIENCE OF SÁPMI

Eva Josefsen

This report is a presentation of two channels by means of which the Saami people influence the national parliaments in Finland, Sweden and Norway, namely the election of national parliaments and the election of the Saami Parliament. It is not intended to provide an in-depth analysis of these channels. In preparing this report it has been necessary to make some choices with regard to what to include and what to leave out. One important limitation with regard to giving a broader presentation of conditions in Finnish Saamiland has been the language barrier, which has meant that texts in Finnish have unfortunately not been available to the author. Because there is relatively little literature in English or the Scandinavian languages about indigenous peoples' channels of influence on the Russian side of the border, it has not been possible to present anything other than a very short and superficial description of conditions there.

As developments in relations between the Saami people and the state progress quickly, and the choice of a viewpoint can easily lead to important aspects not receiving the focus they should have, I hope that readers will take the time to send their feed-back and comments on the contents of the report to the undersigned.[2]

Introduction

This report examines the way in which the Saami relate to the nation states through the electoral systems and political parties. Saami mobilisation in Finland, Sweden and Norway has developed differently over time, and conditions for political participation and influence have also differed from country to country. Developments towards social equality between the Saami and society as a whole were positive during the last decades of the 20th century. The greatest and most fundamental change occurred with the establishment of the Saami parliaments in Sweden, Finland and Norway, but the Saami in Russia continue to work under extremely difficult conditions – economically, socially and politically.

The Saami's formal relationship to the national parliaments comprises two aspects: on the one hand, a ***direct channel*** by means of political parties and elections to the national parliaments and, on the other, an ***indirect channel*** by way of the Saami parliaments.

In principle, the direct channel provides an opportunity for direct influence with regard to the composition of the national parliament and hence the policies that are pursued. Through the indirect channel, the Saami people can influence the composition of the Saami parliaments and thereby the policies the Saami parliaments are to pursue in relation to the national parliaments.

That the report takes this approach does not mean that all important decisions affecting the Saami population are made in the national parliaments. The Saami peoples also have opportunities for influence other than those it has been possible to present in this report. Local and regional elections provide one such means

of exerting influence, and other cooperative relations and agreements provide another. The agreement between the Norwegian Sámediggi Plenary and Troms County administration that was entered into in 2003 is an example of the latter. Local, regional and central government administrations also play an independent role in the development of the Saami communities in Finland, Sweden and Norway. But within the framework of this report, it has unfortunately not been possible to take a closer look at this aspect. However, this does not mean that the significance of government administration, from those responsible for the preparatory works to the implementers of political decisions, should in any way be overlooked.

The Saami

The Saami inhabit four countries: Sweden, Finland, Russia and Norway. Providing exact statistics on the size of the Saami population poses considerable methodological problems. One reason for this is the earlier nation state policies of assimilation and repression of the Saami. However, it is estimated that 5,000-6,500 Saami live in Finland, 17,000-20,000 in Sweden, around 2,000 in Russia and 40,000-45,000 in Norway (Eriksson 1997). The Saami are a minority throughout almost the whole of the area they inhabit, with the exception of the municipalities of Kautokeino and Karasjok in Norway and Utsjoki in Finland. There may also be other municipalities where the majority of the population is Saami, but there are no statistics to confirm this at present.

Just under 10% of the Saami are engaged in reindeer herding. Parts of the Saami population gain their livelihood from agriculture, fishing and wilderness industries, while many Saami are employed in the general labour market. The Saami language has 9 dialects, which cross country borders. Many Saami have lost their language.

The policies of the nation states towards the Saami

The policies of the nation states towards the Saami in the past

The policies of the Nordic states towards the Saami, from the 19th century up until after World War II, were based on assimilation. This meant that the Saami were expected to replace their own cultural characteristics and language with those of the majority culture. The Saami culture, language and economic activities were seen as obstacles to the consolidation of the national states and to the general development of society, an attitude that was ideologically founded on social Darwinism (Nystø 1993b). This ideological foundation influenced and permeated all social structures: legislation, education, research and practical politics. There were national differences, however. From the early 20th century, Sweden

pursued a policy of segregation in relation to Saami reindeer herders and an assimilation policy in relation to all other Saami, while Norway adhered to an assimilation policy for all Saami. In Finland, the policy of assimilation was not as explicit as in Norway. As a result, the attempts of the authorities to suppress the language and culture of the Saami also varied in intensity. Sjølin comments that, "the Saami outside of Sweden have been subjected to an even more stringent assimilation policy than the Saami here" (Sjølin 1996: 28).

In the last half of the 20th century, this ideology was gradually replaced by a more positive attitude on the part of the state authorities, including the granting of a set of universal human rights to each individual. In due course, an international understanding developed around the fact that it was not possible to treat everyone in the same way on the basis of identical standards.

It was gradually recognised that citizens could have different cultural backgrounds, even though society as a whole was dominated by the majority culture. This recognition led to a positive change in relations between the nation states and minorities and indigenous peoples.

The Saami's demand for collective rights is based on their status as an indigenous people. Indigenous peoples' rights are a response to circumstances the members of this group have not chosen for themselves. The most important circumstances are that they share cultural bonds and that "their *historical areas of habitation* have been incorporated into the nation state through the use of varying degrees of force" (Oskal 1998: 149). This implies that indigenous peoples have been collectively incorporated in the nation without their consent.

The political perception of the relationship between majority and minority, between state and Saami, has thus changed over time. With the establishment of the national Saami parliaments, the states accepted the principle of group rights. Not only did the newly established Saami parliaments lead to a structural change in the national political systems, they also led to a broader understanding of representative democracy (Broderstad 1999).

In parallel with developments in the perception of the relationship between state and indigenous people, there was a change in the way in which representation through majority election was understood. It was recognised that if votes in an election in a multi-cultural society were given equal weight, ethnic minorities would always be in a minority position, always at the mercy of the will of the majority. Attempts were therefore made to find ways to ensure that the Saami had a voice and were heard.

The formal basis for today's national Saami policy

Over recent decades, there have been positive developments with respect to policy on the Saami. Saami political issues have received greater attention and have

been given more room than ever before on the national political agendas. Legislation has been adopted and decisions made that formally strengthen the rights of the Saami. These structural changes have created a new framework for Saami political activity and give the Saami, as a people, a potentially wider sphere of political influence than previously. There are, however, differences in the willingness of the individual nation states to grant the Saami broader political rights and to recognise them as an indigenous people, a group that can demand collective rights over and above the rights each individual has as a national citizen.

The formal basis for national Saami politics in Finland, Sweden and Norway consists of two pillars: international law and national legislation.

International law consists of a series of international agreements and conventions that the states have signed or ratified. The 1966 *UN International Covenant on Civil and Political Rights* and the *ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries* are two of the most central conventions.

Article 27 of the UN Covenant on Civil and Political Rights states:

> *In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

UN bodies have further stated that the article's concept of culture also includes the material basis for Saami culture. The nation states have also endorsed this interpretation.

ILO Convention no. 169 includes provisions for different sectors, among them education, health, occupational training, employment and working life. The convention is most frequently referred to with regard to Saami land rights, which are laid down in Articles 14 and 15, but there are also provisions to the effect that the states have an obligation to consult with indigenous peoples (Article 6) and that due regard shall be had to indigenous peoples' customs and customary laws when applying national laws and regulations (Article 8).

Finland

The international agreements concerning human rights that Finland has signed are a part of the Finnish legal system, on an equal basis with other Finnish legislation. The UN Covenant on Civil and Political Rights was ratified by Finland and is therefore also a part of Finnish law. ILO Convention no. 169 has not been ratified.

The Finnish constitution contains two provisions that deal with Saami rights. In Section 17, 3rd paragraph, the Saami's rights as indigenous people are recognised as well as their right to use the Saami language when communicating with the authorities. Section 121, 4th paragraph, states that the Saami people have linguistic and cultural autonomy within the Saami homeland,[3] to the extent that this is laid down in other legislation.

In 1995, the Finnish parliament (*Suomen Eduskunta*) approved a Saami Parliament Act (no. 974 of 17 July 1995). Section 1 has the following formulation on cultural autonomy within the Saami homeland: "The Saami, as an indigenous people, as further specified in this Act, shall be guaranteed cultural autonomy within their homeland area in matters concerning their language and culture." Section 5 further stipulates that the Saami Parliament shall be able to deal with all issues related to the Saami language and culture and their position as an indigenous people.

In contrast to both Sweden and Norway, the authorities are obliged to negotiate with the Saami Parliament on all broad and important decisions that may either directly or indirectly influence the Saami's status as an indigenous people. Section 9 reads: "The authorities shall negotiate with the Saami Parliament on all wide-ranging and important measures which may directly or specifically affect the status of the Saami as an indigenous people (...)." The Saami in Finland thus have stronger statutory rights than those in either Sweden or Norway.

However, these formal rights prove not to have been translated into practical political action to any particular extent. No comprehensive formal structures or meeting places of any significance have been established between the Saami Parliament and the Finnish government to ensure that the intentions of the legislation on Saami influence are fulfilled. The authorities' statutory obligation to negotiate with the Saami therefore remains a resolution with little real content. At the same time, knowledge concerning Saami affairs[4] – including knowledge of Finnish statutory provisions on Saami issues[5] – remains limited, both in the central government administration and among Finnish politicians. However, the Finnish government has an advisory body on Saami issues, on which five ministries are represented in addition to five representatives from the Saami Parliament (Sillanpää 2002). Saami affairs fall mainly under the Finnish Ministry of Agriculture and Forestry.

Sweden

Sweden has not formally recognised the Saami as an indigenous people in its legislation but, in connection with Sweden's ratification of the *European Council's Framework Convention on the Protection of National Minorities* (Strasbourg 1.II.1995) and the *European Charter for Regional or Minority Languages*, (Strasbourg 5.XI.1992), it was stated that the Saami are an indigenous people. The status of indigenous people is not recognised in the Constitution however, and the reason given for this by the Swedish authorities is that the Swedish Constitution's provision that ethnic, linguistic and cultural minorities shall be given the opportunity to maintain their culture and way of life also gives the Saami constitutional protection. In

Swedish Official Report (SOU) 2002:77, however, it was proposed that the Saami people's status as indigenous people be recognised in the Constitution since this status had been further strengthened by international law since the question was considered by the Swedish Saami Rights Commission. The European Convention on Human Rights has been a part of Swedish national legislation since 1995[6] and, in addition, Sweden has ratified the UN Covenant on Civil and Political Rights and thus has committed itself to complying with Article 27, etc.

With regard to ILO Convention no. 169, SOU (1999:25) discussed the conditions that must be met before the convention can be ratified. Sweden has still not ratified ILO Convention no. 169.

In 1992, Sweden adopted a *Saami Parliament Act* (Sametingslag 1992:1433). The law regulates the activities of the Saami Parliament and establishes the Saami Parliament as a government authority and a public administrative body generally. In addition the Saami Parliament is a body elected by popular vote by and from the Saami population. The Ministry of Agriculture, Food and Fisheries is responsible for Saami affairs. Within the Ministry, the Saami and Educational Division that works on Saami and reindeer husbandry issues is also responsible for higher education and research in the field of agricultural sciences, the protection of genetic resources, genetic engineering, hunting and game management, land use policy and land use in the agricultural sector (www.regeringen.se). Responsibility for issues regarding the language and culture of the Saami lies with the Ministry of Culture, while the Ministry of Education and Science is responsible for Saami schools.

Norway

At the opening of the Norwegian Saami Parliament in 1997, His Majesty King Harald V said: "The Norwegian State is founded on the territories of two peoples –Norwegian and Saami." (Hætta 1998). This had also been previously expressed in Storting Report no. 52 (1992-93) on Norwegian Saami Policy.

In Norway, the UN Covenant on Civil and Political Rights is a part of internal Norwegian legislation.[7] The Norwegian authorities also ratified ILO Convention no. 169 in 1990. Chapters 13 and 14 of the convention are of particular importance for Saami land rights. In the work preceding the completion of the convention, the Norwegian delegation proposed that right of use should be equated with property rights (Minde 1999). This was a standpoint that Norway eventually had to abandon in the negotiations on the convention since it would have weakened indigenous peoples' rights according to ILO Convention no. 107 of 1957.

In 1987, the Norwegian Parliament (*Storting*) adopted Act no. 56 of 12 June 1987 concerning the *Sameting* (the Saami parliament) and other Saami legal matters [*The Saami Act*] . Section 1 of the Act states that, "The purpose of the Act is to enable the Saami people in Norway to safeguard and develop their language,

culture and way of life." Approximately the same formulation was included as in Section 110a of the Norwegian Constitution. Chapter 2 of the Saami Act contains the provisions on the Saami Parliament. Section 2-1 provides that, "The business of the *Sameting* is any matter that in the view of the Parliament particularly affects the Saami people." Chapter 3 has provisions concerning the use of the Saami language in public bodies and delimitations, both geographical and administrative. Saami is an official language in Norway.

Russia[8]

Russia has ratified the UN Covenant on Civil and Political Rights and, like the other countries with a Saami population, is bound by the Covenant and Article 27 thereof. The Covenant is a part of Russian law (Ravna, 2002). However, Russia has not ratified ILO Convention no. 169.

Like Finland and Norway, Russia has a provision in its constitution intended to provide protection for indigenous people, which states:

> *The Russian federation guarantees all rights to minorities of indigenous people in accordance with generally accepted principles and standards of international regulations and international agreements that the Russian federation has agreed to. (Ravna, 2002: 154)*

Legislation at federal or regional level is subject to the Russian Federation's constitutional provisions.

On 30 April 1999 the Russian parliament adopted the law *On Guarantees of Rights of the Numerically Small Indigenous Peoples of the Russian Federation*, also called *Indigenous Minorities Act* (Ravna, 2002 s 156). The act grants indigenous peoples rights relating to participation in areas such as consultation and control of traditional land areas and to traditional ways of life and livelihoods. The law does not provide strong legal protection but nonetheless forms a legal basis (Ravna, 2002). Despite these formal provisions concerning indigenous people's rights, the experience of the indigenous people themselves is that they are excluded from their traditional land areas by other economic interests (IWGIA, 2002). The Saami language and culture and the natural basis for the Saami culture in Russia are therefore also under strong pressure. As a small indigenous minority, the Saami generally have little opportunity of reaching the Russian authorities, either through voting or as a result of elected representatives giving priority to the Saami and indigenous people in general. Russian Saami are not represented in the regional Duma in Murmansk (Gutsol & Riabova 2002). In 2001, however, Russian Saami cooperated with regional authorities in Murmansk County (oblast) to draft a county law concerning the status of indigenous people in Mur-

mansk County (IWGIA, 2002). Otherwise there are few Russian Saami in important positions and they lack financial resources. They also have little experience of political mobilisation. There is one light in the darkness, however: in Lujávri (Lovozero), the Saami comprise about 20% of the population, which has made limited political success possible. According to Eriksson (1997), the Saami won three of the fifty-four seats on the local council in 1990. Russian Saami also have the opportunity of conducting a dialogue with the public authorities in Russia through the work for indigenous peoples being carried out by the Barents region cooperation group. [9]

The Russian Saami founded their first organisation, the Kola Saami Association, in 1989. Internal conflicts led to the foundation of a new Saami organisation in 1998, the Lovozero Public Organisation of Saami of the Murmansk Region (Gutsol & Riabova 2002).

The position of the Russian indigenous peoples in the Arctic Council (where the Russian indigenous people's organisation: the Association of Indigenous Peoples of the North, Siberia, and the Far East of the Russian Federation (RAIPON), has the status of permanent participant [10]) could contribute to a general strengthening of the position of Russia's indigenous people as a whole. Russian Saami are permanent participants of the Saami Council, which also has the status of permanent participant in the Artic Council, and their voices are heard through this forum.

The Saami in Russia have increased their influence through participation in various non-governmental organisations while their political participation in formal public structures, political and administrative, is limited.

For the Saami in Russia, it is also important that the Saami in the Nordic countries show solidarity and use all possibilities open to them to influence Russian politics and politicians in a positive way, in terms of both social rights and indigenous people's rights.

The direct channel

The direct channel refers to systems that regulate the composition of and participation in national elected bodies. The fundamental principle is an electoral system in which every citizen of the state has one vote with exactly the same weight and decisions are made on the basis of a majority vote. In such a system, Saami have the same formal right to vote and to stand as candidates for elections to the national parliaments like the rest of the population.

In Western democracies, ideological differences are organised into national parties. In this system, Saami issues have to compete for attention with issues that are of national interest. Saami issues also have to fit within these systems, which are pervaded by the majority's cultural and social perception. The Saami's use of the direct channel has differed in the three countries. In Sweden, the Saami

have a history of refusing to join the national parties as a relevant means of promoting Saami political issues. In Norway, however, there has been a closer connection between national institutions and the Saami. This difference was already apparent at the first all-Saami meeting in Trondheim in 1917, when the Swedish Saami had "an overwhelming majority for a policy independent of party politics" (Minde 1996: 3). Finnish Saami participate in national parties to a greater extent than Swedish Saami but are less aggressive in promoting Saami policies within these fora than the Norwegian Saami. The fact that Saami in Finland, Sweden and Norway have made different use of the elective channel can be explained at least partly by the fact that central government Saami policies have been different in the three countries, as has the development of the Saami communities in these countries.

Saami representation in the national parliaments has occasionally been proposed, but the issue has thus far not been seriously considered in Finland, Sweden or Norway. Nor have the Saami organisations placed it high on their list of policy demands. However, there are examples in other countries of indigenous peoples having direct representation in elected national parliaments: the Danish constitution has a provision to the effect that Greenland shall be represented in the Danish parliament (NOU 1984:18). In New Zealand, the Maori have had permanent representation in the national assembly since 1867 (McGill 1996-97).

The direct channel in Finland

General elections to the Finnish parliament (*Suomen Eduskunta*) are held every four years and all citizens over 18 have the right to vote. Those who wish to be elected to the *Eduskunta* must have the right to vote in a parliamentary election. The President can call new elections. The country is divided into 15 electoral districts, and the size of the population determines the number of representatives to be elected from each district. Altogether, 200 members are elected to the *Eduskunta*.

Elections in Finland are based on proportional representation, and at the same time the voters can influence which candidates are elected. Lists of candidates can be nominated by a party, by an electoral list, but the candidates are not ranked on these lists. People vote for a list and for a person on the list. This personal vote is counted as a vote for the party, and the total number of votes for candidates from each party determines how many mandates each party wins in each district (Heidar & Berntzen 1993). The number of personal votes for each candidate determines who receives the mandate won by the party.

The Saami and the direct channel in Finland

The Saami population in Finland is not represented in the *Eduskunta* (Aikio 1993). Since 1978, however, the parliamentary committees have held hearings with repre-

sentatives from the Saami Parliament. The *Saami Parliament Act* of 17 July 1995 states in Section 9 that the authorities are obliged to negotiate with the Saami Parliament.

The Saami Parliament's administration in Finland has stated that none of the Finnish parties have adopted special policy programmes on Saami affairs. But Saami members have influenced the parties, especially the Centre Party (*Centerpartiet*). This influence is difficult to see, however, because the parties have not included Saami issues in any organised way within the work of the party nor formulated clear political goals regarding the Saami. On the contrary, the term "Saami policy" is seldom used because Saami politicians do not wish to "irritate" the Finnish majority (Eriksson 1997). Nevertheless, Finnish Saami are elected to municipal councils as representatives of Finnish parties in the Saami municipalities in North Finland.

In Utsjoki municipality, the Saami List has run for municipal elections for the last ten years. The Saami List is independent, without connections to any party.

The direct channel in Sweden

General elections to the Swedish parliament (*Riksdagen*) are held every four years. Local government elections are held on the same day as the federal elections. All citizens over 18 years of age have the right to vote. The country is divided into 29 electoral districts for elections to the *Riksdagen*. With few exceptions, electoral districts coincide with counties. 349 members are elected to the *Riksdagen*.

Those who wish to be elected to the *Riksdagen* must have the right to vote in parliamentary elections. Candidates must also be nominated by a political party or political group. The list of candidates is ranked.

The Saami and the direct channel in Sweden

The Saami and the right to vote

General suffrage was introduced in Sweden in 1908-1910 for men and in 1918-20 for women.

Rolf Sjølin has carried out an historical study of Saami political participation in Sweden (Sjølin 1996, 2002). Before 1910, the right to vote was linked to property ownership and payment of taxes. Swedish policy at that time was, in principle, that Saami reindeer herders should be segregated and all other Saami assimilated. This meant that Saami who were settled and had property or steady, taxable income had the same formal rights as the Swedish population, including the right to vote. Saami reindeer herders did not pay taxes, however, and therefore did not formally have the right to vote, although this rule was practised differently from one municipality to the next. [11]

After 1910, all Saami men enjoyed general suffrage on an equal footing with the rest of the population. The right to vote continued to be restricted, however, if a Saami had not paid taxes, had not completed military service, or received poverty assistance. During the period 1910-1924, Saami participation in elections was extremely low, even among those who fulfilled the voting requirements. "In several Saami municipalities, there was actually no Saami participation in elections at all. Thus, there was a very considerable difference between Saami and non-Saami participation" (Sjølin 1996: 35). This difference was greatly reduced in the 1960s due to improved communications and better developed media, and also to the fact that Saami with reindeer increasingly had permanent residences.

Saami representation on elected bodies

No Saami have been elected to the *Riksdagen* since general suffrage was introduced (Sjølin 1996). Proposals for Saami representation were presented to parliament in both 1920 and 1930 by the president of the parliament, C. Lindhagen. In 1940 he proposed a motion to establish a "Lapp parliament", which among other things would appoint a Saami member to the *Riksdagen* (Sjølin 2002: 51-56). Since this last motion, no written demands have been submitted for Saami representation in the Swedish *Riksdagen*. The Swedish authorities funded two Saami meetings in 1937 and 1948 in order to obtain Saami reactions to bills being debated in the *Riksdagen* (Sillanpää 1994). This could be interpreted as a desire on the part of the Swedish authorities to hear Saami viewpoints. However, these were just two isolated events against a background of government repression and denial of the Saami's rights as a people. This was expressed as recently as 1974: "The State was a poor protector of the Saami in matters in which the State itself was an interested party. Today, it is the State that inflicts the greatest incursions on the Saami." (Dahlström 1974: 109)

Party participation

At the first all-Saami meeting in Trondheim in 1917, the Swedish Saami had already rejected the idea of any cooperation with national parties. The same happened the following year, 1918, in Östersund, at the first national meeting for Saami in Sweden, where a majority was against engaging in mainstream party politics.

One of the main reasons for this rejection of party politics may lie in the historical conflict between reindeer herding and other means of livelihood. The Swedish national parties were not considered natural allies in this conflict. On the contrary, they were considered as spokesmen for and allies of agricultural and forestry interests. Another explanation may be that the Saami wished to follow a neutral line with regard to party politics so that they could have more

freedom to influence the existing decision-making processes without being bound to individual parties (Sjølin 1996).

Since the Saami had chosen a neutral strategy in regard to party politics, there were seldom any Saami on the candidate lists, or candidates with a knowledge of the Saami's situation. One explanation for the limited Saami participation in elections may therefore be that, "(...) among leaders and among candidates on the lists there were seldom people they knew and whose positions on Saami issues were known" (Sjølin 1996: 64). The consequences of this were perhaps reflected when the *Riksdagen*, in its debate on the Saami Report (SOU 1989:41), revealed an "obvious lack of insight into and expertise on Saami affairs" (Nystø 1993b: 48).

Parliamentary debate on Saami affairs revolved largely around the reindeer husbandry industry, without viewing it within the context of Saami politics as a whole. National Swedish Saami policy has thus to this present day focused on reindeer husbandry, and a connection with this industry has been regarded as the objective criterion for Saami ethnicity (Mörkenstam 1999).

Before the establishment of the Saami Parliament, no Saami lists were submitted for municipal, county or national parliamentary elections. After the Saami Parliament began to function and the Saami organisations had established their own Saami parties as extensions of these organisations, several of these parties submitted lists for municipal elections. In Jokkmokk municipality, for example, representatives of the Saami Welfare Organisation (*Samenes Vel*) party were elected for the period 1997-2001. In Jämtland County, the representative for the Environmental Party (*Miljøpartiet*) was Saami. This was the only county to elect a Saami in this election period. Another development in recent years has been that several Swedish parties have approved their own Saami programmes. This applies to the Liberal Party (*Venstrepartiet*), Environmental Party (*Miljøpartiet*), and Social Democratic Party (*Sosialdemokraterne*).

The direct channel in Norway

Elections in Norway are based on proportional representation. General elections to the Norwegian parliament (*Storting*) are held every four years and all citizens aged over 18 have the right to vote. The country is divided into 19 electoral districts for general elections, and 165 members of parliament are elected.

Those who are elected must have the right to vote in a parliamentary election. Candidates must also be nominated by a political party, an electoral list or an approved list. Candidates on lists are ranked.

The Saami and the direct channel in Norway

The Saami movement up to 1945

In 1906, Isak Saba of Finmark County was the first Saami to be elected to the *Storting*. He was a member of the Norwegian Labour Party (*Arbeiderpartiet*) and was elected on the basis of two programmes, one a Saami political programme.

The North Saami mobilisation that laid the foundation for Isak Saba's parliamentary mandate was to a great extent a mobilisation of the Coastal Saami, the background to which was the Norwegian assimilation policy and the economic decline of this group (Drivenes & Jernsletten 1994). However, it turned out that on the whole Saba was alone in parliament in his attempts to stop the Norwegianisation of the Saami. Nor did he receive any support from fellow members of the party for his cautious campaigns. The broad political agreement on Norway's policy towards both the Saami and other minorities showed no sign of change until after 1945.

A rise of consciousness also occurred among the South Saami. Like the Swedish Saami, they were motivated by the need to defend Saami reindeer interests, which were under severe pressure from the authorities. The fact that livelihood interests and conflicts were central and that the South Saami population was so small made it very difficult to form any alliances with the Norwegian parties (Drivenes & Jernsletten 1994; Minde 1980). However, this led to the formation of strong internal bonds among the South Saami, with the result that most South Saami organisations survived the 1930s-1940s.

In about 1920, the Saami movement in North Norway tried, like the South Saami in Norway and the Swedish Saami, to keep out of Norwegian party politics. In 1921 the Saami movement in Finmark County submitted its own lists for the *Storting* elections, as did Nordland County in 1924. However, these lists won far fewer votes than were required for a *Storting* mandate. These two attempts, together with the fact that the Norwegian Labour Party added a Saami policy supplement to its election programme of 1924, ended the Saami mobilisation directed at participation in parliamentary politics for several decades to come. Any members of the *Storting* with a Saami background who received a mandate from this period and up until the 1990s were not elected on a Saami political platform, and did not take any significant initiatives of a Saami political nature (Minde 1995).

The new Saami movement

After 1945, there was a new wave of Saami mobilisation, this time through the establishment of national Saami organisations.

The Saami in Sweden showed the way in the 1950s and 1960s. The breakthrough came in Finland, where an elected Saami Parliament was established in 1973. In Norway, a major change occurred in public opinion about the Saami situation during the 1980s (Magga 1994).

The conflict between the Saami and the Norwegian state over the construction of the Alta/Kautokeino dam created a political crisis regarding the legitimacy of the Norwegian authorities that improved the political climate for raising Saami issues.

Seeking power through participation in the *national* electoral system was a phenomenon found largely among the Norwegian Saami during this period. The Norwegian Saami Movement made it possible to submit Saami lists once more. This happened for the first time since 1945 when a Saami list was submitted for the *Storting* election in Finnmark in 1969 (NOU 1984:18). The reason for this list was that none of the Norwegian parties in Finmark had nominated Saami for safe seats. Since then, Saami lists have been submitted in Finmark, Troms and Nordland counties for municipal, county and *Storting* elections. Saami who have worked actively in Saami politics have also been elected through Norwegian party lists at municipal and county elections, especially since 1980.

Saami in the Storting *parliament again*

In 1993, two Saami women from Finmark, Johanne Gaup from the Centre Party and Mimmi Bæivi from the Norwegian Labour Party, were elected to the *Storting*. The two women took political initiatives on Saami issues both before and after their election (Minde 1995: footnote 11).

Johanne Gaup says that it was no problem for her to take up Saami political issues in parliament on behalf of her own party[12]. The *Storting* is organised into committees with responsibilities for different sectors. The Saami political sphere is wide and has to be included in most committees to a greater or lesser degree. The parliament's overarching Saami policy is the responsibility of the Municipal Committee. Gaup says that she sat on another committee during her period in parliament but that she tried to have a comprehensive overview of the Saami political issues that were being discussed, especially in the Municipal Committee. She could thus contribute to the work of her party's committee members. Other members of the *Storting* also consulted her. On the one hand, she says, it was a difficult task to keep abreast of the complex of Saami issues in the different committees. On the other hand, her expertise on Saami issues resulted in an informal position of power that made it easier for her to gain support for the initiatives she took concerning the Saami.

The Saami People's Party was recognised as a national party in 1999, and one of its goals is to work for the Saami's collective rights to land and water. The party submitted a list of candidates for the parliamentary elections in 2001 and also submitted lists of candidates in some constituencies for the elections to the Saami Parliament that same year. The party also submits lists of candidates to run in municipal and county elections.

Direct Saami representation in the *Storting* has been proposed several times. In 1969, when a Saami list was submitted in Finnmark county for the *Storting* election, it was said, for example that, "it is now time to change Norway's Constitution so that the Saami's right to representation in the *Storting* becomes law" (NOU 1984:18: 479). In 1974, the Liberal Party proposed an amendment to the Constitution, providing for the Saami in Norway to elect two of their own representatives. The demand for direct representation in the *Storting* has never been a central issue for the Saami organisations in their struggle. "In the post-war period, the idea of Saami representation in the *Storting* has never had any broad support among the Saami" (NOU 1984:18). The demand put forward by the Saami with a view to strengthening their democratic rights was a demand for their own elected body.

The indirect channel

The Saami channel, or ***the indirect channel***, consists of the popularly elected Saami parliaments. The elections take place by means of a direct ballot and on the basis of the Saami electoral roll. Inscription in the electoral roll is voluntary. The Saami parliaments were established with an awareness that the Saami will always be a minority in the national political system, and that the ordinary (direct) electoral channels cannot effectively ensure that Saami voices will be heard.

The establishment of an indirect or Saami channel began with the establishment of the national Saami organisations after World War II. The forerunners were local Saami associations and organisations with their roots in the non-Saami community, in which a large number of members came from academic circles whose work was related to Saami language and culture.

The Nordic Saami Council was established in 1956 as a coalition of the Saami national organisations in Sweden and Norway and the Saami Parliament in Finland. When the borders to the East were opened and Russian Saami could participate as members, the name was changed to the Saami Council. The Council receives annual funding from the budget of the Nordic Council of Ministers.

The election procedures of the Saami parliaments are very largely modelled on the electoral procedures that apply in the respective countries. This means that there are some structural differences between the three Saami parliaments.

The Saami parliaments of Finland, Sweden and Norway established a common Nordic forum: the Saami Parliamentary Council, in 2000. The Saami Council and Russian Saami have observer status in the council. The Saami Parliamentary Council is to be a body that protects Saami interests and strengthens Saami cooperation across national boundaries. The Saami Parliamentary Council also aims to coordinate the Saami voice internationally, and especially in relation to other

indigenous people of the world. The Saami Parliamentary Council gives high priority to work in connection with the issue of the low number of women elected to the three Saami parliaments. This is apparent from the overview below of women elected in relation to the total number of seats.

- Saami parliament in Finland, from 2000 to 2004: 6 women out of a total of 21 representatives.
- Saami parliament in Sweden, from 2001 to 2005: 8 women out of a total of 31 representatives.
- Saami parliament in Norway, from 2001 to 2005: 7 women out of a total of 39 representatives.

The Saami channel in Finland

The Saami organisations

The Society for the Promotion of Saami Culture (*Lapin Sivistysseura*) was established in 1931. The initiative was taken by non-Saami bureaucrats and academics whose work was related to the Saami language and culture. The members were also mostly non-Saami (Jernsletten 1995; Sillanpää 1994). For many years, this was one of the most influential organisations in the Nordic countries, its objective being to focus attention on Saami culture.

In 1945, the Saami established their own organisation, *Saami Litto* (the Saami Union). However, this organisation never became a strong national Saami pressure group in relation to the Finnish authorities (Sillanpää 1994).

Since Finnish Saami do not have an exclusive right to reindeer herding[13], a strong Saami reindeer organisation never developed in Finland. Saami reindeer owners comprise a minority in the Finnish reindeer organisation, *Paliskuntain Yhdistys*.

At a joint meeting of *Lapin Sivistysseura* and *Sami Litto* in 1947, a memorandum was drawn up listing the initiatives that were necessary on the part of the Finnish authorities to ensure the Saami's future. This meeting led first to the appointment of a commission for Saami issues in 1949 and then to the establishment of the Saami parliament in 1972, which was one of the main proposals of this commission (Sillanpää 1994).

The establishment of the Finnish Saami Parliament caused Saami activists to change their focus from political mobilisation to negotiations with the government. "Most non-governmental political organisations eventually died, and with them also critical and 'irresponsible' voices. This is an important explanation for the comparatively quiet and weak opposition of the Finnish Saami" (Eriksson 1997: 98).

With the establishment of the national organisation, *Suoma Sámi Guovddássearvi*, in 1996, the Finnish Saami again had an organisation catering for all Saami. However, this organisation is struggling with very limited financial resources. The organisation carries out most of its work through funds for earmarked projects. Without reasonable funds for running expenses, it will never be able to develop into a strong political organisation.

In answer to the question of who has driven the Saami cause forward in Finland, Sillanpää states, "In some ways, the Finnish state has been the instrumental force in the mobilisation of a collective Saami political identity when, by means of a Cabinet Decree in 1973, it created the Saami Delegation (or 'Saami Parliament')" (Sillanpää 1994: 58). This shows that political developments relating to Saami in Finland are special. The progress that was made in the 1980s and later years can be interpreted as indicating that: "pro-Saami bureaucrats in the ministries may have had a significant influence in bringing about reforms" (Jernsletten 1994).

The Saami Delegation (1972-1995)

The first elections to the *Delegationen för Sameärenden* (Saami Delegation) took place as a trial arrangement in 1972. The first regular elections were in 1975, and the first ordinary Saami Delegation convened at the beginning of 1976. The delegation had 20 representatives and also represented the Finnish Saami in the Saami Council. After the establishment of the Saami Delegation in 1972, it became the unifying body for the Finnish Saami. It also took initiatives on the part of the Saami in relation to the authorities. "In response to lobbying efforts by Saami activists in Finland, the Constitutional Committee of the *Eduskunta* has, since 1976, issued a number of statements (...)" (Sillanpää 1997: 206). The Saami Delegation was replaced by the Saami Parliament in 1995.

The Saami Parliament in Finland

In 1995, the *Eduskunta* officially passed a *Saami Parliament Act* (no. 974) to establish the Finnish Saami Parliament. Section 1 establishes the Saami's status as an indigenous people. This was an important change of status for the parliament and for the Saami people of Finland.

The parliament has 21 representatives and four alternates. The Finnish Saami Parliament Act stipulates that the Saami parliament shall be headed by a speaker and two deputy speakers (Section 11).

At least three ordinary representatives and one alternate shall come from each of the municipalities within the Saami homeland area (Section 4). Elections to the parliament are held every four years. The whole of Finland is one electoral district. Elections are based purely on votes for individual candidates, where "Family, friends, and neighbours seem to be the electoral basis" (Eriksson 1997: 140). To be able to run for election, candidates must be nominated by three other persons.

Party membership and the Saami organisations
As stated above, elections to the Saami Parliament in Finland are based on votes for individual candidates. Members of the parliament are thus not organised into parties. Since there is only one, relatively established national Saami organisation in Finland, the parliament can be expected to reign almost supreme in the Saami political arena for some time to come.

The Saami channel in Sweden

The Saami organisations
The first national Swedish Saami organisation, the National Association of Saamiland (*Same Ätnam)*[14] was founded in 1945. The main objective of this organisation is to promote Saami interests that are not connected with reindeer herding. In 1950, the National Union of Swedish Saami[15] *(Svenska Samernas Riksförbund - SSR)* was founded. It was largely concerned with Saami reindeer herders. Both organisations have been represented on government committees dealing with Saami issues. In addition, the Swedish Saami Youth Association (*Saminuorra*) was set up in 1963, and the Swedish Saami Union in 1980. Since then the national Saami organisations, the Reindeer Owners' Association *(Renägarförbundet)* and the Saami parliamentary party *Samerna* have also been founded.

Same Ätnam and SSR submitted a demand for the establishment of a Saami parliament in Sweden via two letters to the government in 1981. However, the background to the Swedish government's willingness to establish a Saami parliament can be found in international developments involving minority and indigenous peoples, as well as the judgements in the Skattefjäll case[16] and, in part, the Alta conflict in Norway (Nystø 1993a).

The Saami Parliament in Sweden
Examination by the Swedish government of the Saami question in Sweden resulted in legislation creating a Saami Parliament. Other Saami demands were not met, such as constitutional recognition of the Saami's status as an indigenous people or the ratification of ILO Convention no. 169. It was also emphasised that the Saami Parliament would be a body of the Swedish authorities, subject to the Swedish government, and not a Saami self-rule body. The first president of the Saami Parliament summarised the situation thus:

> *All those good intentions to acknowledge the Saami as a people and provide them with a kind of self-determination got no further than the introduction of the Saami Assembly Act, the purpose of which is merely to regulate the Saami Assembly* (Åhren 1994: 37).

The Swedish Saami Parliament sat for the first time in 1993. Thirty-one representatives are elected every four years. The whole of Sweden constitutes one electoral district. The government appoints a speaker proposed by the parliament (*Saami Parliament Act*, Section 2) because "The general rule is that the leader of a central government administrative authority is appointed by the government" (Prop. 1992/93:32 Annex 1: 45). The parliament itself appoints a board of up to seven representatives and seven alternates (Section 4) who are responsible for the day-to-day work. The Saami cabinet of the Saami Parliament is elected for the whole period and cannot be dismissed, even if it has only minority support from the Plenary. Plenary meetings are normally held three times a year.

When the Swedish Saami Rights Commission presented its proposal, the emphasis was on practical, political recommendations. However, if the commission had wished to do so, it could have interpreted its mandate in broader terms and proposed an in-depth examination of Swedish Saami policy (Korsmo 1993).

The government's proposal of 1992/93:32 states that the Saami parliament should not be a self-rule body. The Swedish state decided, in the *Saami Parliament Act* (1992: 1422), Section 1, to establish a Saami parliament "with the primary task of watching over issues concerning Saami culture in Sweden." Chapter 2, Section 1 of the Act lists the tasks of the Saami parliament, which include distributing state funds to Saami cultural programmes and organisations, appointing the Saami School Board, taking a lead in Saami linguistic work, contributing to community planning and ensuring that Saami needs are taken care of – including the interests of the Saami reindeer herders – and finally disseminating information about the Saami situation to the wider society. The list of specific tasks in the Saami Parliament Act emphasises and highlights the fact that the Saami Parliament is a state administrative authority. But at the same time it is also an elected Saami body.

Party membership and the Saami organisations
Saami organisations in Sweden decided early on that they did not wish to run for election through Swedish political parties. Instead, the Saami have established their own parties, either on the basis of the Saami organisations or in connection with elections. Registration of parties, groups or other organisations that wish to submit lists is carried out by electoral boards. In the 1997-2001 election period, ten Saami parties were represented in the parliament, while in the 2001-2005 election period, nine parties are represented.[17]

The inner life of the Saami Parliament
The Saami Parliament in Sweden has had problems functioning as an opinion-creating and decision-making body. The situation between the Saami parliament's Plenary and its Board became increasingly tense during the 1997-2001

election period because the Board's support in the Plenary diminished to a minority, while there were no clear rules for how the parliament should handle the situation. The Board remained sitting, while the opposition had a majority and could effectively block all the Board's proposals in the Plenary. As a consequence, the parliament was more or less paralysed.

Eriksson has pointed to several possible causes for the parliament's problems, such as the Swedish state's traditional division between Saami who herd reindeer and those who do not, the Saami parliament's role both as a Swedish government authority and as an elected Saami body, the relationship between the Saami parliament and its Board, and a shortage of Saami leaders (Eriksson 1998).

The Saami parliament's dual and contradictory role is partly due to the external regulatory framework created by the Swedish authorities with the *Saami Parliament Act*. In it, the Saami Parliament is defined as a state administrative body, which means that the Plenary is subject to the same rules as other government councils and committees.

> *It is undoubtedly an impossible situation. If a Parliament representing an ethnic minority is to enjoy any legitimacy and to show any kind of power, it is obvious that it cannot at the same time represent its major opponent, in this case the state* (Eriksson 1997: 162).

The time aspect, i.e. the time between the *Riksdagen*'s adoption of the *Saami Parliament Act* on 17 December 1992 and the opening of the parliament on 26 August 1993 could also be a contributing factor to the parliament's later development. In the course of one year, under circumstances of limited experience of electoral politics and no tradition of party politics, a party system was to be put in place, election lists drawn up and an election held. In addition, each group was to develop a specific policy that was to form the basis for the constitution of the Saami parliament.

The absence of administrative structures at the beginning may also have played a part. Unlike the Saami parliaments in Finland and Norway, the Swedish Saami Parliament had to build an administration up from nothing. The Saami parliament in Finland had its roots in the Saami Delegation. The Norwegian Saami Parliament took over the administration from the Norwegian Saami Council, which was a state-appointed advisory body for the Norwegian authorities. The starting point for the Saami parliament in Sweden was the worst possible: they did not even have a telephone. To build up an administration and establish sound administrative routines and systems takes time, and this influences how structured the political debate and proceedings can be in the preliminary phases.

The above are only a few of the possible explanations as to why the Swedish Saami Parliament has had problems in learning to function properly. Internal as well as external factors, such as the lack of both political and administrative

structures, appear to have contributed to setting the standard for how the parliament functions. Such standards can take a long time to change.

A new government position?

In due course, the problems that emerged made the need for a broad review of the Swedish Saami Parliament apparent. A new report (SOU 2002:77) considers the parliament's independence with regard to the right to representation, budgetary freedom and the government's right to instruct the Saami parliament. The report proposes that all the Saami parliament's responsibilities should be laid down in the *Saami Parliament Act*, as is the case today for Swedish municipalities. It further proposes that the Saami's status as an indigenous people be included in the Swedish constitution. In addition, the Saami parliament's internal organisation is discussed with regard to the relationship between the Plenary and the Board and the distinction between the parliament's role as a popularly elected body and as an administrative body. It is also proposed that the Saami parliament's organisational form be regulated by law in such a way that the composition of the Cabinet and committees is proportional.

The Swedish Saami Parliament supported most of the proposals made in this report but, when it comes to internal organisation, the parliament is of the opinion that it should decide on its own organisational form. The parliament also suggests that a new formulation be included in the *Saami Parliament Act* to the effect that the under-represented gender should receive not less than a third of the seats (Sametinget 2002, Sametingets Records 2003:1).

The Saami channel in Norway

The Saami organisations

The first national organisation, the Saami Reindeer Herders' Association of Norway[18] *(Norske Reindriftssamers Landsforbund)* was established in 1948 and is the organisation of the Norwegian Saami reindeer herders. In 1968, the National Association of Norwegian Saami[19] *(Norske Samers Riksforbund)* was founded. This organisation embraces all Saami, and has promoted Saami rights since its inception. Demands for an elected Saami body and for Saami land rights have been central to the organisation's work. The Norwegian Saami Union *(Samenes Landsforbund)* was founded in 1979 in connection with the Alta conflict. This organisation has opposed all claims concerning historic Saami rights as well as the establishment of the Norwegian Saami Parliament. The Saami People's Federation[20] *(Samenes folkeforbund)* was established in 1993 by dissenters from the Norwegian Saami Union who wanted to participate in the Saami parliamentary elections.

The Alta conflict forced the authorities to place the Saami question on the agenda as a result of several major reports on Saami culture and legal rights. Both the Reindeer Herders' Association and the National Association played key roles in this process.

The Norwegian Saami Parliament

The Norwegian Saami Parliament was opened in 1989 and has 39 representatives elected every four years. The country is divided into 13 electoral districts with three representatives from each district. The Saami parliament is composed of representatives from the national Saami organisations, Norwegian political parties and local lists. The day-to-day work of the parliament is led by the President and *Sámidiggi* Council (parliamentary council), which is selected from the current majority in the Plenary. The Plenary is led by the Presidium.

Party membership and the Saami organisations

Since the election of the first Saami parliament, Saami members of Norwegian political parties have submitted lists under their parties' names. Most of the parties that are represented in the *Storting* have also been represented on the various lists for Saami parliamentary elections. Up to now, Saami representatives from three Norwegian parties have been elected.

All Norwegian parties with representation in the *Storting*, except for the Progress Party (*Fremskrittspartiet*), have a Saami policy programme. However, there is great variation in how the parties' work is organised with respect to Saami policy.

The Norwegian Labour Party (*Det norske Arbeiderpartiet*) has had representatives in the Saami parliament since the first election period. The party has drawn up rules for its work with Saami issues that regulate, for example, the party's nomination procedure for the parliament and the work and areas of responsibility of the party's "Saami Policy Council" [21]. This Council has the mandate of advising the party's *Storting* group and, where relevant, executives in the ministries as well as the party's group in the parliament. The party's Saami Political Manifesto is adopted at the Labour Party Congress. If the chairman of the Saami Policy Council is not a member of the Labour Party's National Executive Board, he or she is granted the right to attend meetings on Saami issues.

The Centre Party (*Senterpartiet*) has been represented in the Saami parliament since the 1993 election. It has also established a formal structure that takes account of Saami issues through a "Saami Policy Council"[22] and through decisions regarding this council in the "Centre Party's laws". The Saami Policy Council is represented on the National Executive Board and is summoned to attend the Party Congress. The council is responsible for drawing up an election programme for the Saami parliamentary elections.

The Conservative Party's first representative to the Saami parliament was elected in 2001. The party has not established any formal structures in the party to follow up on this.

The fact that Norwegian political parties have submitted lists for the Saami parliamentary elections has contributed to making the Saami issue more noticeable within the parties, mobilising the Saami members and also motivating the parties to draw up Saami policy programmes. One of the national parties in the *Storting* that has presented a Saami policy programme, the Socialist Left (*Sosialistisk Venstreparti*), has not so far participated in elections to the Saami parliament.

Ways of exercising influence

Although Sweden, Finland, and Norway may appear to be relatively homogeneous countries when viewed from the outside, there are historical and cultural differences between them. Such differences are also found in the public sphere with regard to both political and administrative traditions.

Sweden and Finland have not yet had an in-depth social debate on the relations between the Saami and the nation state. The crisis of legitimacy that arose between the Norwegian Saami and the Norwegian state in connection with the conflict over the building of the Alta/ Kautokeino dam forced this debate to the surface in Norway and compelled the Norwegian authorities to undertake a fundamental re-evaluation of the government's Saami policy. The Saami in Sweden and Finland have failed to confront the national authorities in the same way.

National parliaments, parties and the Saami

Saami influence over decision-making in the national elected bodies depends on a series of factors. One of these is the degree to which the national parties are concerned with Saami issues and, to some extent, how far they have committed themselves to adopting Saami programmes. Another is Saami involvement in the national parties, and how active members are in placing Saami issues on the party's political agenda. Related to this is the question of whether Saami are nominated and elected to the national parliaments on the basis of the Saami policy position adopted by the parties. These variables come under what we have referred to in this study as the "direct channel".

Saami influence can also be exerted through the elected Saami parliaments, referred to here as the "indirect channel". This influence is structural, taking place through direct election of Saami representatives to the Saami parliaments. It is

the formal frameworks within the respective nation states and the Saami parliaments' own ability to create spheres of influence in relation to the national authorities that decide how effective this type of influence will be.

Historically, the Saami in the three Nordic countries have had similar experiences with regard to exerting influence on the national parliaments through national parties. Over the last 20-30 years, however, developments have taken different directions. The Saami in Norway, especially, have secured more central positions in several parties.

The parties have also committed themselves with respect to Saami policy by approving Saami political programmes to varying degrees in Finland, Sweden and Norway. This is a definite advantage because the Saami then have an opportunity to exert direct influence over the parties' viewpoints. The inclusion and development of Saami policy in relation to the political ideology of the various parties may in turn inspire political debate in the field of Saami policy. At the same time, it must be remembered that Saami members of national parties will always be in the minority. The decisions of the party's majority will determine the political platform that Saami party members are also bound by. This may create problems, especially in cases where the majority's priorities are in conflict with Saami interests. Saami members can end up as "hostages", legitimising a Saami policy that is not in line with the Saami's overall interests.

The Saami in Sweden and Finland have not become involved in the national parties to the same extent as the Saami in Norway. The Swedish Saami have directed their efforts towards the *Riksdagen* through the Saami organisations, while the Finnish Saami have used the Saami parliament.

Different development patterns have also emerged for the Saami parliaments in Sweden, Finland and Norway. This will probably have an influence not only on future Saami political developments in the three countries but also on the Saami parliaments' possibilities of influencing the national parliaments.

The Saami and channels of influence to the national parliaments

The three models below show the relationships between the Saami and the national parliaments.

The Saami organisations in Finland do not have the financial resources to operate as effective pressure groups. As the figure below shows, no local or national Saami organisation has an official connection through the electoral channel to the Saami parliament.

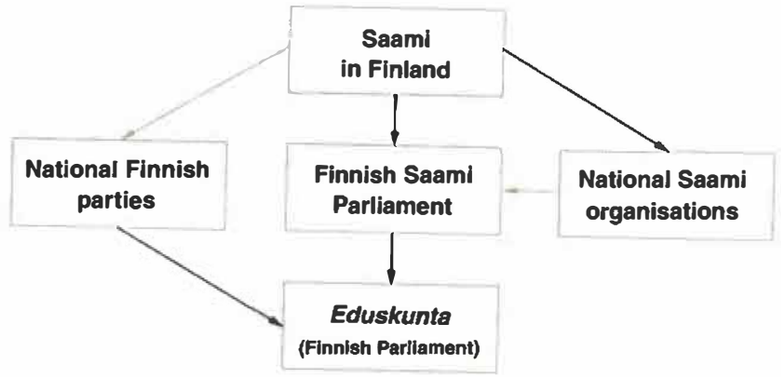


Figure 1. The Saami and the *Eduskunta*

Elections to the Saami parliament are organised purely as elections of individuals. As a consequence, candidates are not bound by any electoral programme, nor are they accountable to any member organisation. In addition, the Saami in Finland have not as yet challenged the Finnish parties to clarify their political position on Saami issues. As a result, the parties are under no strong obligation to function as channels for the Saami to the *Eduskunta*. The Finnish Saami parliament therefore faces great challenges in terms of protecting Saami interests in relation to the *Eduskunta*.

The Swedish Saami have a weak connection with the national Swedish parties. The parties have very few or no Saami members who are working actively and in a structured manner on Saami politics. Several parties, however, have agreed on Saami programmes to which they are politically committed.

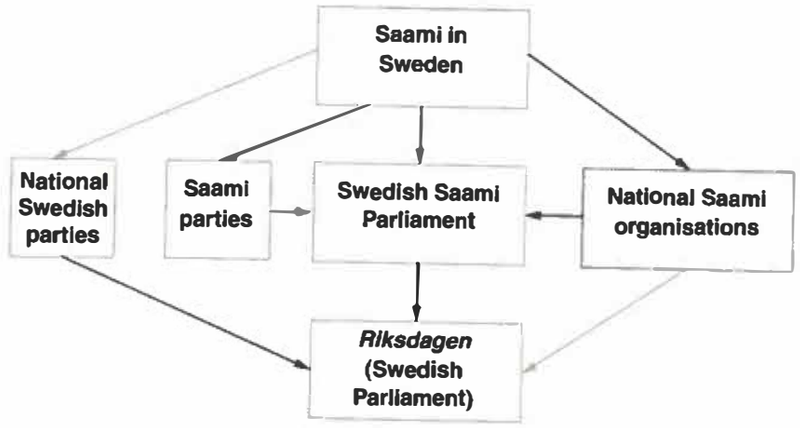


Figure 2. The Saami and the *Riksdagen*

The Swedish Saami organisations have a tradition of working with the Swedish authorities, both through lobbying and through negotiations. Their position is considered to have been weakened since the establishment of the Saami parliament, with the exception of the reindeer herding organisations. At the same time, the organisations participate in the Saami parliament through their own Saami parties.

The main line of influence for the Swedish Saami is therefore expected to be the Saami parliament. However, the Swedish Saami Parliament has had a relatively tight formal framework for its political scope of manoeuvre, since the Swedish authorities have defined it as primarily a government administrative body.

As shown in the figure below, the Saami in Norway have several ways of reaching the *Storting*.

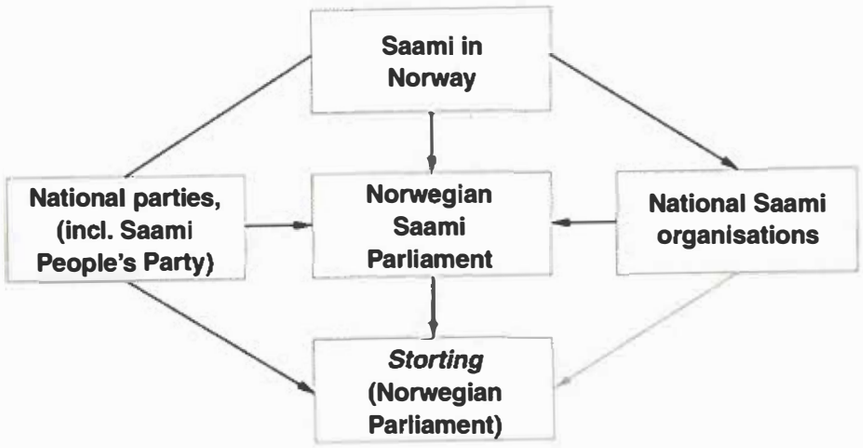


Figure 3. The Saami and the *Storting*

Before the establishment of the Norwegian Saami Parliament, the national Saami organisations were the most important channel. Their role has since been greatly reduced, with the exception of the business organisation, the Saami Reindeer Herders' Association of Norway, which is the state's negotiating partner in questions related to reindeer herding.

The Norwegian national parties are an open channel that has developed rapidly since the establishment of the Saami parliament. The advantages of such a channel are that it creates more arenas for the development of Saami politics, and that Norwegian party politicians can be held accountable to a greater extent. However, a system where Norwegian parties are represented in both the Saami

parliament and the *Storting* also has its disadvantages. For example, the parties in the *Storting* may take greater heed of the views of their party's Saami parliamentary members on a particular issue than of a decision adopted by the majority in the Saami parliament. Such a development could have an impact on the Saami parliament's legitimacy and political clout.

Conclusion

By focussing on national parliaments, one fails to capture all the channels of influence open to the Saami in the political and administrative sphere at regional and local level. There are more channels of influence than merely the election of Saami representatives to the national or Saami parliaments. The Saami participate to a varying degree in local and regional elections, both by voting and by standing as candidates for election. Saami participation is strongest at the local level, however, probably because it is easiest to achieve a position at this level. The municipal councils also offer a great deal of power and the possibility of exerting influence. There are several examples of representatives on Saami lists winning a position in which they have been able to tip the balance of power and thus make far greater demands than their number of representatives would normally allow. The Saami also have the opportunity of exerting influence through administrative positions in central, regional and local administration, and through appointments to various public councils and committees. However, this is a subject that lies outside the scope of the present study.

National influence depends on many factors. Historically, a new situation was created following World War II. During the 1980s and 1990s in particular, there were positive developments in Saami participation in various political and administrative arenas. The national governments have shown growing acceptance of cultural pluralism and of the idea that groups within the population should have real influence over their own situation.

This report has shown that the Saami have both a direct and an indirect channel. The conditions for participation in these channels and the manners in which the channels function vary, nevertheless, which means that Saami influence also varies.

This report has covered the descriptive aspects of the current situation. Within the scope of this report, however, it has not been possible to examine how real Saami influence actually is. ❑

Notes

1 This article was first published in 2003 by the Resource Centre for the Rights of Indigenous Peoples: http://www.galdu.org/english/

It is a revised version of an article published by IWGIA in 2001 under the title "The Sami and the National Parliaments: Direct and Indirect Channels for Influence". In: Wessendorf, Kathrin (ed.): *Challenging Politics: Indigenous peoples' experiences with political parties and elections*. Copenhagen: IWGIA.

2 I want to thank IWGIA for making it possible to revise and publish this study in Norwegian, Sami and English under the auspices of the Resource Centre for the Rights of Indigenous Peoples in Kautokeino. I would also like to thank Karin Mannela Gaup, Rune Fjellheim and Marit Myrvoll for constructive contributions and comments in connection with the revision of this report, in addition to the feed-back I received from those who participated in the IWGIA seminar in Kautokeino on 3 March 2000. However, any mistakes or omissions in the report are my responsibility alone.

3 This area comprises the municipalities of Enontekiö, Inari and Utsjoki, and the reindeer grazing areas in the municipality of Sodankylä

4 Heikki Hyvärinen, *Sametinget i Finland* [The Sami parliament in Finland], lecture at an IWGIA seminar in Kautokeino on 4 March 2000

5 *Framework Convention for the Protection of National Minorities* (Strasbourg, 1.II.1995), *European Charter for Regional or Minority Languages Strasbourg* (5.XI.1992)

6 *Act concerning the European Convention on human rights and fundamental freedoms.* (1994:1219)

7 *Act of 21 May 1999 relating to strengthening the status of human rights in Norwegian law.*

8 The channels of influence of Sami and indigenous peoples in Russia will not be discussed other than in this section. This is because there is relatively little written material on these matters in Russia available in either English or a Scandinavian language that could be used in this report.

9 A news report on Sami Radio's website (Samiweb.org) dated 24 April 2003 announced that Anna Prakhova, one of the Russian Sami representatives in the Barents Region Working Group on indigenous affairs, together with representatives from two Sami organisations in Russia, had met with the Russian Ministry of Justice. In addition to discussing the economic and social situation of indigenous people in the Murmansk region, and a Sami Centre in Murmansk, the question of increased influence over the Sami's own affairs was discussed. It was stated that the long-term goal was the establishment of an elected Sami parliament.

10 The status of permanent participant confers the same formal rights on representatives of indigenous peoples as representatives of the nation states, with the exception of the right to vote. This means that they shall be informed and consulted, have a right to propose suggestions for new items on the Council's agenda and have the right to participate in all meetings and at all levels of the Arctic Council.

11 The Sami in Jämtland County were a special exception. Jämtland Sami were not included in the ordinary census in the municipalities but in their own "Lapp assemblies" (Lappforsamlinger). Thus they did not formally belong to a municipality, nor did they have the right to vote. This applied to both Sami reindeer herders and non-nomadic Sami living in the county. The Sami who owned property were an exception; they were included in the municipal census and had the right to vote. The political status of the Jämtland Sami was only normalized in 1940. (Sjølin, 1996)

12 Telephone conversation with Johanne Gaup on 4 December 1999.

13 Even though Sami in Finland do not have an exclusive statutory right to reindeer herding, it is estimated that a larger number of Sami in Finland are connected to reindeer husbandry in one way or another (approx. 25-30%) than is the case in Norway or Sweden. Contrary to the situation in Norway and Sweden, where it is almost impossible for other Sami than reindeer herding Sami to enter the industry, Sami in Finland have a real possibility of beginning reindeer herding as long as they are resident in a reindeer grazing district. (Sillanpää 2002)

14 www.same.net/~same.atnam/index.htm

15 www.sapmi.se/ssr/index.html

16 The Swedish Supreme Court established, in its ruling in the Skattefjäll Case, that the right to conduct reindeer husbandry is an agricultural right based on age-old custom and that it is a right in both commercial and property terms. www.icj-sweden.org

17 www.sametinget.se

18 www.nrl-nbr.no/

19 www.nsr.no/

20 www.samene.no

21 www.dna.no

22 www.senterpartiet.no

References

Aikio, Pekka. 1994. Development of the Political Status of the Sámi People of Finland. In: *Majority-Minority Relations. The Case of the Sámi in Scandinavia. Diedut no. 1.*

Broderstad, Else Grete. 1999. Samepolitikk: Selvbestemmelse og medbestemmelse [Saami Policy: Self determination and the right to be heard]. In: *Makt- og demokratiutredningen* [Power and democracy report], Report 8: Makt, demokrati og politikk- bilder fra den samiske erfaringen [Power, democracy and politics - pictures from the Saami experience.

Dahlström, Edmund. 1974. Den samiske minoriteten i Sverige [The Saami minority in Sweden]. In: Lars Svonni (ed.). *Samerna - ett folk* i *fyra länder* [The Saami – one people in four countries]. Bokforlaget Risma.

Drivenes, Einar-Arne / Jernsletten, Regnor. 1994. Det gjenstridige NordNorge. Religiøs, politisk og etnisk mobilisering 1850-1990 [Unmanageable North Norway. religious, political and ethnic mobilisation 1850-1990]. In: Einar-Arne Drivenes, Marit Anne Hauan, Helge A. Wold (eds.). *Nord-norsk kulturhistorie. Det gjenstridige landet* [North Norway's cultural history. The unmanageable land]. Oslo: Gyldendal norsk Forlag.

Eriksson, Johan. 1998. Samipolitikens kända problem och okända fremgånger [Saami policy's known problems and unknown progress]. *Tidsskriftet Samefolket*, September 1998.

Eriksson, Johan. 1997. *Partition and Redemption, A Machiavellian Analysis of Saami and Basque Patriotism*. Umeå University, Sweden.

Gutsol, Natalia & Larissa Riabova. 2002. Kola Saami and regional development. In: Karppi, Kristiina & Johan Eriksson (eds). *Conflict and Cooperation in the North*. Umeå: Norrlands Universitetsförlag in Umeå AB.

Heidar, Knut & Berntzen, Einar. 1993. *Vesteuropeisk politikk* [Western European politics]. Oslo: Universitetsforlaget.

Hætta, Odd Mathis. 1998. *Sametinget i navn og tall, høsten 1997-høsten 2001* [The Saami Parliament in names and numbers. Autumn 1997 - Autumn 2001]. Sametinget.

Jernsletten, Regnor. 1995. The (Nordic) Sámi Council and National Sámi Associations. Paper presented at the Second International Congress of Arctic Social Sciences (ICASS II), Rovaniemi, May 29-June 6, 1995.

Jernsletten, Regnor. 1994. Samisk etnopolitisk mobilisering i et komparativt perspektiv [Saami ethno-political mobilisation in a comparative perspective]. Introduction to the seminar "The Saami - an indigenous people between tradition and modernity", 11 November 1994, arranged by the Centre for Saami Studies.

Korsmo, Fae. 1993. Swedish Policy and Saami Rights. *The Northern Review,* no. 11.

Magga, Ole Henrik. 1994. Sámi Past and Present and the Sámi Picture of the World. In: Lassi Heininen (ed.). *The Changing Circumpolar North: Opportunities for Academic Development*. Rovaniemi: Arctic Centre Publications.

McGill, Georgina. 1996-97. *Reserved Seats in Parliament for Indigenous Peoples. The Maori Example.* Department of the Australian Parliamentary Library, Research Note 51.

Minde, Henry. 1999. Mot rasediskriminering, for urfolksretter – to sider av samme sak? Et historisk perspektiv på samiske rettsspørsmål. [Against racial discrimination, for the rights of indigenous peoples – two sides of the same issue? An historical perspective of the Saami rights question]. In: Harald Eidheim (ed.). *Samer og nordmenn.* Oslo: Cappelen Akademisk Forlag.

Minde, Henry. 1996. The Saami Movement, the Norwegian Labour Party and Saami Rights, article, Centre for Saami Studies, Tromsø, 3 September.

Minde, Henry. 1995. The International Movement of Indigenous Peoples. An Historical Perspective. In: Brantenberg, Hansen, Minde (eds.). *Becoming Visible. Indigenous Politics and Self-government.* Tromsø: Centre for Saami Studies.

Minde, Henry - 1980. Samebevegelsen, det norske arbeiderparti og samiske rettigheter [The Saami Movement, the Norwegian Labour Party, and Saami Rights]. In: Trond Thuen (ed.). *Samene, urbefolkning og minoritet* [The Saami, Indigenous Peoples and Minorities]. Oslo: Universitetsforlaget.

Myrvoll, Marit. 1999. *Samene – et folk i fire land* [The Saami – One people in four countries]. Samisk utdanningsråd [Saami Educational Council].

Mörkenstam, Ulf. 1999. Om "Lapparnas privilegier". Forestelningar om samiskhet i svensk samepolitikk 1883 – 1997. Stockholm University, Statsvetenskapliga institutionen, Akademitryck AB.

Nystø, Nils Jørgen. 1993a. Sametinget og sameloven in nordisk perspektiv [The Saami Parliament and Saami law from a Nordic perspective]. In: *Forvaltningen av samiske interesser i 1990-årene* [Administration of Saami interests in the 1990s]. University of Tromsø, Institute for Social Science, mimeo. A no. 63.

Nystø, Nils Jergen. 1993b. *Nasjonalstat og minoritet* [Nation state and minority]. Thesis, University of Tromsø.

Oskal, Nils. 1998. Urfolksvern og demokrati: om det moralske grunnlaget for samiske rettigheter. Noen betraktninger om Samerettsutvalgets innstilling (NOU 1997:4) med vekt på grunnsynet [Protection of indigenous peoples and democracy: On the moral basis for Saami rights. Some thoughts on the Saami Rights Committee's recommendations (NOU 1997:4) with emphasis on the fundamental view]. In: Else Grete Broderstad (ed.). *Samisk rettigheter - utfordringer lokalt, regionalt, nasjonalt og internasjonalt* [Saami rights - local, regional, national, and international challenges]. Skriftserie no. 5, Centre for Saami Studies, University of Tromsø.

Ravna, Øyvind. 2002. *Kampen om tundraen. Nenetserne og deres historie* [The fight for the tundra. The Nenets and their history]. Sámi Instituhtta, Diedut nr 4/2002.

Sillanpää, Lennard. 2002. Government responses to Saami self-determination. In: Karppi, Kristiina & Johan Eriksson (eds). *Conflict and Cooperation in the North.* Umeå: Norrlands Universitetsförlag i Umeå AB.

Sillanpää, Lennard. 1997. A Comparative Analysis of Indigenous Rights. *Fennoscandia. Scandinavian Political Studies, vol.* 20, no. 3.

Sillanpää, Lennard. 1994. *Political and Administrative Responses to Saami Self-Determination. SSF* Commentationes Scientiarum Socialium 48, Helsinki.

Sjølin, Rolf. 2002. *En studie i ickemakt. Samer och samefrågor i svensk politikk* [A study in powerlessness. Saami and Saami questions in Swedish politics]. Sámi Instituhtta.

Sjølin, Rolf. 1996. *Samer och Samefrågor i svensk politik. En studie i ickemagt* [The Saami and Saami questions in Swedish politics. A study in powerlessness]. Umeå: Umeå University.

Åhrén, Ingwar. 1994. Political Development in Sápmi. In *Majority-Minority Relations, The case of the Saami in Scandinavia,* Diedut no. 1, 1994

IWGIA - 2002. *The Indigenous World 2001-2002,* Copenhagen: IWGIA.

Sweden

- The Government Proposal 1992/93:32 *Samerna och samisk kultur m.m.* [The Saami and Saami Culture etc.].
- Sametingslag av 1992 (SES 1992: 1433) [The Saami Parliament Act]
- SOU 2002:77 Sametingets roll i det svenska folkstyret [The role of the Saami parliament in Swedish democracy]
- SOU 1999:25 Samerna – et ursprungsfolk i Sverige [The Saami – an indigenous people in Sweden]
- SOU 1989:41 Samerätt og Sameting [Saami law and Saami parliament]
- Sametinget (2002): Sametingets yttrande över Sametingsutredningens betänkande "Sametingets roll i det svenska folkstyret" [The Saami parliament's statement regarding the Saami parliament's report concerning "The Saami parliament's role in Swedish democracy"] SOU 2002:77
- Sametingets protokoll 2003:1 [The protocol of the Saami parliament 2003:1]

Norway

- The act concerning the Sameting (the Saami parliament) and other Saami legal matters [The Saami Act]. 12 June no. 56, 1987.
- St.meld. no. 52 (1992-93) on Norwegian Saami Policy.
- NOU 1984:18 Concerning the Saami's legal status.

Finland

- Sametingslagen [Saami Parliament Act] of 17 June 1995 (974/95).

Web pages:

The Swedish government: www.regeringen.se
Sámi radio: www.Samiweb.org
The Saami Parliament in Sweden: www.sametinget.se
National Association of Norwegian Sami:www.nsr.no
The National Association of Saamiland: www.same.net/~same.atnam/index.htm
National Union of Swedish Saami: www.sapmi.se/ssr/index.html
Saami Reindeer Herders' Association of Norway: www.nrl-nbr.no/
The Saami People's Federation: www.samene.no
The Norwegian Labour Party: www.dna.no
Norwegian Centre Party: www.senterpartiet.no

CHANGES IN 2004

Vladimir A. Kryazhkov

On August 22, 2005 the legislation regarding indigenous peoples of Russia was changed. Legal advisor to the President V.A.Kryazhkov here goes through the changes and shows what laws, international agreements etc. indigenous lobbyist could still use to promote indigenous peoples' rights [editor's note].

The federal law entitled *On Modifying the Legislative Acts of the Russian Federation and Recognizing Several Legislative Acts of the Russian Federation as Outdated in Connection with Enforcement of Federal Laws 'On Incorporating Revisions and Amendments into Federal Law', 'On the General Principles of Organizational Structure of the Legislative and Executive Organs of the Federal Government of the Russian Federation' and 'On the General Principles of Organizational Structure of Local Self-Governments within the Russian Federation* introduces revisions to the existing 154 federal laws, including the Federal Law *On Guarantees of Rights of Numerically Small Indigenous Peoples of the Russian Federation* (page 119) and the Federal Law *On the Principles of Organization of Communities of Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation* (page 130). Changes concerning the rights and interests of numerically small indigenous peoples have also been introduced into several other laws. For example, sections of the following are deemed outdated:

- The Law of the Russian Federation of February 19, 1993, *On Federal Guarantees and Compensations for Individuals Who Work and Reside in the Far North and in Conditions Equated with Those in Such Regions (page 27) in Regard to the Social Security Pensions for the Citizens of the Peoples of the North*. In the past, all men of 55 years of age and women of 50 years of age qualified for social security pensions, whereas now one common retirement age applies to all citizens of the Russian Federation.
- The *Policy on Use of Forest Resources of the Russian Federation*, which relieves indigenous individuals from paying fees for using forest resources for personal needs.

The Federal Law of August 22 is to be enforced on January 1, 2005, with certain exceptions.

The new law introduces significant changes to the Federal Law *On Guarantee of Rights for Numerically Small Indigenous Peoples of the Russian Federation*. These concern the authority of the governing bodies to address issues affecting the numerically small peoples.

Revisions Concerning the Authority of Federal Bodies

The Federal Law of August 22, 2004 (#122-FZ), excludes the following powers of the governing authorities that were formerly established under the Federal Law *On Guarantees of Rights of Numerically Small Indigenous Peoples of the Russian Federation*:

a) the power of the federal government authorities to co-manage, together with bodies governing the provinces of the Russian Federation, the right of legal ownership, use and management of the territories of traditional land use and the territories of historical and cultural significance in places inhabited by numerically small peoples (Chapter 10, page 5);

b) the authority of bodies governing the provinces of the Russian Federation (page 6) to:

- pass laws and other legal regulations in the provinces of the Russian Federation on the protection of the ancestral lands, traditional ways of life and modes of production of the numerically small peoples, as well as on the way the community councils of the numerically small peoples organise their activities, acknowledging the historical, cultural and other traditions of these peoples (Chapter 1);
- establish general principles of organizational structure and the scope of activity of the self-governing entities of numerically small peoples in territories of their traditional inhabitance and land use;
- take administrative responsibility for violations of the policies established by the provinces of the Russian Federation and on protection of ancestral lands, traditional ways of life and modes of production of the numerically small peoples (Chapter 9);
- collaborate with organs of local self-government in ensuring that the legal acts of local self-government bodies are drawn up in compliance with federal policies and policies established by the provinces of the Russian Federation with regard to protection of the ancestral lands, tra-

ditional ways of life and modes of production of the numerically small peoples (Chapter 11);
- issue licenses and establish quotas for the traditional subsistence activities of the numerically small peoples, and ensure that the conditions prescribed by the licenses and quotas are being satisfied (Chapter 12);
- the power of the administrative regions of the Russian Federation to ap ply their laws on establishing quotas for numerically small peoples' representation in policy-making bodies of the provinces of the Russian Federation and in bodies representing local self-government (page 13);

c) the authority of the local self-government bodies to:

- allocate funds from local budgets to provide financial assistance for the socio-economic and cultural growth of numerically small peoples in order to protect their ancestral lands, traditional ways of life and modes of production (Chapter 1);
- create volunteer community councils that are part of the local self-governments (Chapter 4)
- create legal policies with regard to the socio-economic and cultural development of the numerically small peoples, as well as with regard to the protection of their ancestral homelands, traditional ways of life and modes of production (Chapter 5).

In addition to the extracts presented above, it should be noted that community-level self-governance of numerically small indigenous peoples is to be conducted in accordance with federal law (and not the law of the provinces of the Russian Federation, as had previously been the case (page 11)) and that the authority of the local self-government includes the power to establish overarching principles governing the organizational structure and activity of a particular type of self-governance (power excluded from the scope of authority of the government bodies of the provinces of the Russian Federation (Appendix to Chapter 6, page 7)).

Transforming the authority of the governing bodies serves the well-known process of centralization of power in policy-making related to numerically small indigenous peoples, and the link between policy and the conditions created by the Federal Laws of July 4, 2003 (#95-FZ) *On Incorporating Revisions and Amendments into Federal Law, On the General Principles of Organizational Structure of the Legislative and Executive Organs of the Federal Government of the Russian Federation* and the Federal Law of October 6, 2003 (#131-FZ) *On the General Organizational Structure of Local Self-Governments within the Russian Federation*. Here, the main idea is to get rid of redundant power structures and link them with funding sources.

At the same time, the changes of the Federal Law of August 22, 2004 on eliminating or transferring the authority of governing bodies:

- does not change the substance of national policies towards numerically small indigenous peoples and continues to recognize the responsibility of the Russian Federation, through its governing bodies, to guarantee the rights of these peoples, as prescribed by the Constitution of the Russian Federation;
- does not place issues related to the rights of numerically small indigenous peoples beyond the scope of the district and municipal authorities;
- does not invalidate or demand the annulment of laws already enforced or of other legal acts of the provinces of the Russian Federation, or of the legal acts of the municipal governing organs that protect the interests of the indigenous numerically small peoples, if these acts were created within the framework of the former legal authority of these bodies;
- does not transfer matters of governance, as defined by the Constitution of the Russian Federation, including the co-governance of the Russian Federation and its provinces, part of which includes protecting the rights and freedoms of individuals and protecting ethnic minorities; protecting the ancestral lands and traditional ways of life of the numerically small ethnic groups; issues of land ownership, management and use; subsistence; general cultural issues; coordination of health-care services; social security, etc. (Constitution of the Russian Federation, Part 1, page 72). Recognition of these matters as province to co-governance presumes that they are to be resolved by the organs of the federal government with the participation of the governing authorities of the administrative regions of the Russian Federation where the latter, naturally, must possess the necessary authority to address these matters. Inadequate power on the part of regional governments implies the virtual exclusion of certain matters from the sphere of co-governance, and this is contrary to the Constitution of the Russian Federation;
- does not, on the whole, change the way relationships are handled with regard to issues province to co-governance, which includes protecting the rights of the indigenous numerically small peoples. With regard to these issues specifically, the provinces of the Russian Federation:

  a) approve laws and other legal acts in compliance with the federal laws (Constitution of the Russian Federation, Part 2, page 78)
  b) have the right to govern according to their own legal policies prior to the enactment of a suitable federal law. Upon the enactment of such a federal law, all laws and other legal policies of the provinces of the Rus-

sian Federation must be harmonized with the federal law within three months (Chapter 2, Page 3, Federal Law of July 4, 2003)

c) have the right to apply their laws in order to provide the regional governing bodies with the necessary jurisdiction, to be carried out within the budgetary means of a province of the Russian Federation (with the exception of federal grants), provided this does not run counter to the Constitution of the Russian Federation and federal laws (Part 5, page 26.3, Federal Law of July 4, 2003), until the appropriate law is enacted

- must be interpreted alongside other sections of the Federal Law *On Guarantees of Rights of Numerically Small Indigenous Peoples of the Russian Federation*, as well as with the clauses of other federal laws and, in certain cases, of treaties and agreements that grant legal power to the governing bodies of the provinces of the Russian Federation and bodies of local self-government.

It is therefore the exclusive authority of the provinces of the Russian Federation to implement their laws in order to improve the socio-economic development and cultural growth of the numerically small peoples, to protect their ancestral lands, traditional ways of life and modes of production, and to establish quotas for representation of numerically small peoples in the legislative bodies of the provinces of the Russian Federation and of local self-government (page 13 FZ), while bearing in mind the following clauses of the domestic law and international treaties of the Russian Federation.

The Constitution of the Russian Federation affirms that:

- every citizen of the Russian Federation, within the boundaries of its territory, enjoys all the rights, freedoms and responsibilities defined in the Constitution of the Russian Federation (Part 2, page 6);
- all are equal under the law and in court. The State guarantees equality of rights and freedoms of human beings and citizens, regardless of nationality or circumstance (Parts 1-2, page 19);
- citizens of the Russian Federation have the right to elect and be elected to the bodies of national government and local self-government (parts 2, page 32).

The Constitution of the Russian Federation thereby applies common ground rules for all citizens, including numerically small peoples, by providing equal constitutional rights, including the right to elect and be elected to governing bodies. No exceptions whatsoever are provided by the Constitution in this regard.

Exceptions to this rule are possible, if the special status ascribed by the Constitution of the Russian Federation to numerically small peoples (page 69; Section *m*, Part 1, page 72) is taken into consideration. Since the regulation and protection of the human rights and freedoms of a citizen, as well as the regulation and protection of the rights of ethnic minorities, is province to the jurisdiction of the Russian Federation (Constitution of the Russian Federation Section v, page 71), a particular exception (for example, the setting of representational quotas for the numerically small indigenous peoples in governing bodies) can be addressed by federal law directly (Constitution of the Russian Federation, Part 1, page 76), by granting – via this law - certain legal authority to the administrative regions of the Russian Federation in order to independently resolve a given problem, while considering the unique circumstances of any specific situation . Currently, federal policy neither demands representational quotas for numerically small peoples within governing authorities nor sanctions the right of the regions to establish such quotas.

At the same time:
The Constitution of the Russian Federation also

- guarantees the rights of the indigenous numerically small indigenous peoples, in accordance with the recognised norms and principles of international policies and of international treaties of the Russian Federation (page 69),
- defines the legislative bodies as the representative ones (Part2, page 66; Part 1, page 77),
- provides the right to establish local self-governments in accordance with historical or other local traditions (Part 1, page 131);

The Convention on the Protection of Ethnic Minorities (ratified by the Federal Law of July 18, 1998

- obliges the Convention's participants to create the conditions necessary for the effective participation of individuals belonging to ethnic minorities in cultural, social and economic life, as well as in addressing relevant public matters (page 15);

The Federal Law of October 6, 1999 entitled *On the General Principles of Organizational Structure of the Legislative and Executive Organs of the Provinces of the Russian Federation*:

- defines a legislative body as one that is also an organ of representation,

- declares the autonomy of provinces of the Russian Federation to establish a regional network of governing bodies, including the power to establish legislative structures, taking into account the historical, cultural and other traditions of particular provinces of the Russian Federation;

The Federal Law of October 6, 2003 entitled *On the General Principles of the Organizational Structure of Local Self-Governments within the Russian Federation*:

- links the formation of local self-governments to the interests of the public, taking into account historical and other local traditions (Chapter 2, page 1);

The Federal Law of June 12, 2002 entitled *On Fundamental Guarantees of Voters' Rights and Right to Participate in Citizens' Referenda of the Russian Federation*:

- allows the laws of provinces of the Russian Federation to provide guarantees of voters' rights and a right to participate in Citizens' Referenda, which expands the scope of rights defined by the current Federal Law

In my view, the above noted regulations do, on the whole, provide the provinces of the Russian Federation with certain powers to establish representative quotas for the numerically small peoples within their legislative bodies and in the representative bodies of local self-government, should this be necessary. Representation of such kind must furthermore be born of reasonable need and not violate the principles of equality applied to the citizens' voting rights.

I should point out that representation of numerically small peoples within the governing bodies can be provided by means other than quotas within the framework of current voter legislation. One such example is the Assembly of Representatives of Numerically Small Indigenous Peoples in the Hanty-Mansi Autonomous Okrug, described elsewhere in this book. ❑

ANNEX

Recommendations

Of the International Round Table: «Indigenous Numerically Small Peoples of the North, Siberia and the Far East and the Parliamentary System in the Russian Federation: Reality and Prospects»[1]

Moscow
March 12-13, 2003

Recommendations for Creating the Conditions for a Real Contribution of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East to the Political Process

Preamble

Along with other peoples, the indigenous numerically small peoples of the North, Siberia and the Far East of the Russian Federation exercise power directly and also via state regulatory bodies and local governments. The Russian Federation Constitution takes the specific features of these peoples' lifestyles into account, treating them as a special group and guaranteeing their rights in accordance with international law. Among other things, this implies creating the prerequisite conditions for the effective participation of their representatives in public affairs, particularly issues of direct concern to them.

Russian legislation contains a number of provisions aimed at resolving the above problem. These provisions include the possibility of establishing constituencies in areas densely inhabited by numerically small indigenous peoples that are up to 30% smaller in terms of voter numbers than the standard stipulated in law. They also include quotas for representation in the legislative bodies of the Federation subjects and representative bodies of local governments, the rights of authorized representatives of these peoples and their public associations to participate in decision-making involving the rights and interests of indigenous peoples, and the right to monitor their achievement.

This legislation provides a framework for the involvement of indigenous peoples, their authorized representatives and organizations in the administration of state affairs. The Russian Association of Indigenous Peoples of the North, Siberia

and the Far East is invited to discuss the respective federal bills. In some provinces of the Russian Federation, quotas are established for representation on electoral committees (Yamal-Nenets Autonomous Okrug) and legislative bodies (Republic of Buryatia, and Hanty-Mansi and Yamal-Nenets Autonomous Okrug) and on some special bodies operating in regional parliaments (Assembly of Representatives of Indigenous Peoples of the North in the Hanty-Mansi Autonomous Region, Permanent Commission for the Nenets and other Numerically Small Indigenous Peoples of the North in the Nenets Autonomous Region, a representative of numerically small indigenous peoples of the North in the Sakhalin region). The attitudes of indigenous peoples are taken into consideration when holding referenda (Yamal-Nenets Autonomous Okrug) and their public associations are granted the right of legislative leadership (Sakhalin Region, Koryak, Nenets and Evenk Autonomous Okrugs).

And yet legislation on the rights of numerically small indigenous peoples with regard to public authorities is patchy, contradictory and interpreted by courts of law without taking the interests of these peoples into account. As a result, the State Duma (Parliament) has but a single representative of the indigenous peoples of the North; their number in the regional parliaments is declining and there is no system available for taking the opinions of indigenous peoples and their authorized representatives into account when formulating laws and other regulatory acts on issues directly involving indigenous peoples. In addition, mechanisms for their participation in monitoring the observance of such laws have not been worked out.

Given the positive experience of other Arctic countries and the different recognised models of self-governance in existence;

Confirming the Resolution of the Arctic Leaders Summit, Moscow, 15-18 March 1999, on establishing an Indigenous Parliament in Russia;

Referring to the experience gained in the field of legal regulation and practice in the provinces of the Russian Federation in terms of creating the conditions for the real participation of indigenous peoples in government decision-making,

In view of the above and in order to elaborate on the provisions of the RF Constitution, international legal norms and federal legislation, and also taking into account the available experience of legal regulation and the practice of the subjects of the Russian Federation, the Round Table participants find it expedient:

1. *With respect to formation of the representative bodies and local government to:*

a) attach universal meaning to the provision of the Federal Law of February 7, 2003. "*On interim measures for ensuring representation of the indigenous peoples of the Russian Federation in legislative (representative) bodies of the state power of the subjects of the Russian Federation*" and to make sure that, when forming constituencies in territories stipulated by the law of the subject of the Russian Federation as being where indigenous people reside in compact communities, the admissible deviation from the average normal representation in elections to regional bodies of state power and local governments should be established by the law of the respective subject of the Russian Federation;

b) eliminate the legal uncertainty and the provision of the Federal Law of April 30, 1999 "*On Guarantees of the Rights of the Indigenous Peoples of the Russian Peoples of the Russian Federation*" on quotas for indigenous peoples in the legislative bodies of the subjects of the Russian Federation and the representative bodies of local government (Article 13), to be elaborated on in the Federal Law of July 12 , 2002 «*On the guarantees of the electoral rights and the rights to participate in a referendum of the citizens of the Russian Federation*». It will be premised that reasonably guaranteed representation of indigenous peoples in elected bodies ensures peoples' representation in these bodies without violating the principle of equality;

c) to regulate the electoral system so that indigenous peoples are represented on electoral committees in areas where they reside in compact communities, and are also entitled to nominate candidates for deputies at their congresses (conferences) and, on behalf of their community, recommend persons to be included on respective party lists.

2. *To request the State Duma, the Federal Assembly of the RF, to consider the issue of establishing a Public Chamber of Indigenous Peoples under the State Duma.*

   To recommend that the Association of Indigenous Peoples of the North, Siberia and the Far East should prepare the appropriate proposals jointly with the committees of the State Duma.

   To request that the State Duma and the Council of Federation of the Federal Assembly, should include, in the standing order of the chambers and also in the acts determining operational procedures for their committees and commissions, provisions on participation of authorized representatives of the indigenous peoples when discussing issues of direct concern to them.

3. *To take into account the following possibilities in relation to the organization and activities of representative bodies of state power of RF subjects where indigenous peoples reside in compact communities:*

   à) to proceed from the concept that the RF subject is constitutionally entitled (in the charter) to envisage, in the structure of the respective parliament, a special body (Council, Assembly, Chamber) authorized to act on behalf of and in the interests of indigenous peoples. This implies that the given body will have, in accordance with the Constitution (Charter or Regional law), **the following structure and authority:**
   It will:

   - Comprise deputies whose nomination indigenous peoples have been involved in;
   - Have specific powers to fulfil the functions of representation of the indigenous peoples;

   b) where no special body is envisaged, to act on behalf of indigenous peoples and recommend the establishment of:

   - A commission of deputies for the peoples of the North, with a status to be determined by special provision;
   - A council (chamber) of representatives of indigenous peoples under a legislative body with consultation functions, comprising representatives of these peoples – former deputies, parliamentary candidates who failed to gain the required number of votes in an election and other persons authorized to act on behalf of the peoples concerned;

   c) To recommend that the subjects of the Russian Federation:

   - Endow the bodies acting in the interests of indigenous peoples within the parliamentary system (Assembly, Council of Representatives etc) with powers of legislative leadership, and also delegate these powers to public associations of the indigenous peoples concerned and their congresses (conferences);
   - Include in the standing orders of the legislative bodies norms determining the procedures for involving indigenous peoples and their authorized representatives in discussions on bills of laws, programs and other documents on issues of direct concern to them;
   - Regulate the procedure for the participation of indigenous peoples and their public associations in monitoring observance of the provi-

sions of the Constitution (charters), laws and other acts involving the rights and interests of the peoples concerned, providing indigenous peoples' public associations with the power to take their case to the constitutional (statute) courts;
- Envisage, in laws on referenda, provisions that enable indigenous opinions to be taken into account in cases where the motion being voted on affects the rights and interests of these peoples;
- Determine the status of authorized representatives of indigenous peoples – the individuals and organizations authorized to represent the interests of these people in state legislative bodies;
- Conclude agreements between legislative bodies and regional (public) associations of indigenous peoples, defining the manner and forms of interaction for the entire set of issues associated with indigenous peoples' participation in the legislative process, focusing on indigenous peoples' participation in the decision-making process via their representatives.

4. *To recommend that the Association of Indigenous Peoples of the North, Siberia and the Far East, RF:*

- Systematically disseminate and distribute, through mass media and the Internet, Russian and foreign experiences of involving indigenous minorities in parliamentary activities;
- Discuss the issue of holding a congress of deputies from all levels of representative bodies in order to exchange experiences;
- Issue recommendations (compile a manual) on the fundamentals of Parliamentarism for indigenous activists.
- Continue working with the State Duma and experts on developing drafts of federal laws ensuring indigenous representation in decision-making bodies.
- Develop an educational program for indigenous peoples' cadres including:
- Establishing an Indigenous Peoples' Department within the Russian Academy of Public Service (approach the RF government);
- Developing a training course on indigenous peoples' participation in electoral campaigns and parliamentary (MP) elections;
- Internships for Russian indigenous individuals within self-governance bodies in Arctic countries.

Note

1 These recommendations were adopted by the participants of the Round Table meeting and subsequently by the Coordinating Council of the Russian Association of Indigenous Peoples of the North (RAIPON) at its meeting in Hanty-Mansiisk, October 2003.

CONTRIBUTORS

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