

# THE RUSSIAN WAY OF SELF- DETERMINATION OF THE ABORIGINAL PEOPLES OF THE NORTH: HYPOTHESES FOR DEVELOPMENT

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Today aboriginal peoples in many countries are struggling for the right to participate in resolving political, economic and legal issues, the right to determine their present and future. They are proposing different methods to solve their problems. According to UN documents, taking first the International Convention on Economic, Social and Cultural Rights adopted in 1966, all peoples of the world have the right of self-determination and the right to dispose freely of their natural riches and resources. The Draft Declaration of the Rights of Indigenous Peoples of the World says that indigenous peoples have the right of self-determination (Article 3), one of the modes of implementation of this being the right to autonomy and self-government in issues related to their internal and local affairs, including the issues of culture, religion, education, information, mass media, health care, housing, employment, economic activities, land and resource use, environmental protection, and control of access by outsiders, as well as the means and methods of financing these autonomous functions (Article 31).

Current Russian legislation contains a certain legal basis for securing the status of small-numbered aboriginal peoples. In 1993 the rights of those peoples were for the first time stated at the Constitutional level (Articles 69, 72). In relation to the issue under discussion one should take into account the Constitutional provisions concerning Autonomous *Okrugs* as subjects of the Russian Federation (Article 65) and the protection of land and other natural resources in the Russian Federation as the basis of the life and activities of peoples living within certain territories (Article 9). The Law on the Basics of State Regulation of Social and Economic Development of the North for the first time defines the notion of small-numbered indigenous peoples

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of the North and provides for State regulation of their economic and cultural development (Article 1, Para. 11). Of great importance was the enactment of the Law on Wildlife (1995) that defines the right to priority in the use of wildlife (Article 49) and the right to employ traditional hunting methods (Article 48). A certain role in protecting aboriginal rights can be played by the Forest Code (1997) and the Law on Changes and Amendments to the Law on Subsurface Resources (1995) that define the participation of small-numbered indigenous peoples in resource use. Small-numbered indigenous peoples also have certain tax privileges and are exempt from land rent.

Nevertheless an analysis of those peoples' status shows that this is not enough. Today the main demands of aboriginals and their public organizations are for the legal securing of their rights to land and self-government. Only self-government can provide a chance for the survival and development of traditional cultures that are based on reindeer farming, hunting and fishing and that manifest an absolutely different approach to nature. It must be kept in mind that in their habitats aboriginals amount to between one and fifteen per cent of the total population and their rights cannot be fully protected by government bodies or existing mechanisms of the democratic state. Aborigines do not impose their way of life on other ethnic groups. They need self-government only for their own development, and for resolving community issues - which are primarily the issues of developing traditional economies and cultures and of providing social protection. The employment of self-organization mechanisms, preserved by many ethnic groups to a greater or lesser degree, would give the opportunity to improve State management of their development, and to organize a dialogue between indigenous Northern peoples, authorities and industrial companies. The conditions for developing aboriginal self-government and self-organization can be created only by giving them the right to participate in resource management and by securing legally their right to land.

It is apparent that for an anthropologist it is important to study the mechanisms for implementing those rights by different peoples and concrete examples of these, the political slogans of their leaders, the responses to those slogans in aboriginal hearts and minds, and legal guarantees provided by different States as to the exercise of those rights in practice. It is especially interesting to study legal aspects of those processes using the examples of the Russian State Duma and Khanty-Mansi Autonomous Area (*Okrug*) Government activities.

Even in one country, Russia, there may be different approaches to the provision of self-government for indigenous peoples that have original cultures and have preserved the forms of social structure and self-organization that distinguish them from the dominant population. The struggle for self-government and the attempts to achieve it sometimes become dramatic in this country, while arbitrarily interpreted 'state' interests are given priority. And all this happens despite the fact that the Constitution

of the Russian Federation recognizes the priority of human rights (including the right to live) which the aborigines can exercise only if their ways of life are preserved and developed.

I side with the many Russian scientists and politicians who believe that the Russian aboriginal community is diverse and that this gives rise to the necessity to adopt different policies. Probably for many aborigines today the issues of self-government are not vital and their cultural rights and interests can be implemented within the framework of current legislation. My analysis focuses on a small group of indigenous representatives in Khanty-Mansi Autonomous *Okrug* who advocate the so-called 'forest' way of life and thus need special protection from the State. This situation is reflected in the Constitution of the Russian Federation (Article 72) which states that the protection of traditional habitats and lifestyles of small-numbered ethnic communities is a special responsibility of the Russian federal and regional government bodies.

It would be interesting to see how aborigines view self-government, and in which ways they are proposing today to achieve self-government within the framework of a multi-ethnic society and the State. It is also important to analyze how important that right is for them, how nationality and self-identification are related in aboriginal societies and what modern communal self-government is - whether it is a reversion, a revival, or a possibility of exercising human rights to lead a certain way of life.

The Federal Council of Russia has recently discussed four draft laws to regulate different aspects of the life of indigenous peoples of the North. There are attempts to limit the State authority in resolving local communal issues and to contribute to the self-organization and self-development of those peoples. Those draft laws are: On the Legal Status of Small-Numbered Indigenous Peoples of the Russian North, On Reindeer Farming, On General Principles of Organizing Communes of Small-Numbered Indigenous Peoples of the North, Siberia and Far East, and On the Territories of Traditional Nature Use. Similar laws have been adopted by a number of subjects of the Russian Federation, but there is no single Federal law that could be used to meet fully the interests of aborigines and protect their rights guaranteed by the Constitution of the Russian Federation.

Despite having different approaches, during the 1990s, in a situation of rising self-consciousness and democracy, aboriginal leaders formulated basic program slogans - self-government and the right to land and other natural resources. As is reflected in the Draft Declaration of Rights of Indigenous Peoples, Russian aborigines, as other aborigines throughout the world, regard self-determination in the first place as self-government. One attempt to implement this right in legislation is the draft law Concerning General Principles of Organizing Communes of Small-Numbered

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Indigenous Peoples of the North, Siberia and Far East, developed with the active participation of V.M. Etylin and the author.

The specifics of our approach were reflected in the fact that the draft regards a commune as a self-governing body, an economic unit and a landowner. Furthermore, one of the articles of the draft is specially devoted to folk law:

Communes of small-numbered peoples of the North, in resolving issues of internal (that is to say, local) original development, have the right to use folk law norms according to the traditions and customs of the people in question that do not contradict the current Russian Federation legislation and do not infringe the interests of other citizens and peoples.

This approach found support among many aboriginal leaders and the Russian Association of Indigenous Peoples of the North (RAIRON). In 1996 members of the Steering Committee of that organization attended a session of the State Duma Committee for Nationalities Affairs and insisted that their right to self-government should be formalized in legislation. But at present the Federation Council does not have any deputies interested in passing such a law. This is confirmed by the discussion of all draft laws concerning aborigines.

Our draft law notes that a commune is not the only form of self-organization and self-government of indigenous peoples of the North, and that document applies only to a small part of the population that would unite into communes voluntarily. In our opinion, present communes do not represent a step back into the past. They are a form of social ordering voluntarily chosen by people if the arrangement is appropriate to their current situation and life conditions. Field research in Khanty-Mansi Autonomous *Okrug* shows that local aborigines have different views of self-organization forms, and that is why today their communes have differing status.

In 1995 Khanty-Mansi Autonomous *Okrug* passed the law On General Principles of Local Self-Government Organization. This legalized local self-government specifics in the territories inhabited by small-numbered indigenous peoples of the North. One of the forms of self-government is a commune (Articles 43-55). At the time of writing (1997) the *Okrug* is discussing a special law on communes, but without Federal legislation people encounter great difficulties both in registering communes and in resolving the many local issues related to social protection, cultural development and languages. And if rights to land are not determined, there is a possibility of land alienation and the relegation of aboriginals to special settlements.

In our opinion, the greatest problem is that only communes that have received rights

to land can regulate their relations with industrial companies operating in the *Okrug*. But even in those cases the situation is difficult. The author has had an opportunity to study the life of several communes in Khanty-Mansiisk Autonomous *Okrug*. Two examples will be sufficient.

We may take first the commune called *Karym* formed by the family of Vakhrushevs belonging to Kondinsk Mansi. The commune has united relatives, especially brothers and cousins and their families. They have been given 'clan lands' (according to the Status of Clan Lands adopted by the *Okrug* in 1992) and are engaged in hunting, fishing and gathering. The commune has a trade station that sells not only members' products, but also fish and other products received from dwellers of the nearby Shugur village. This year the commune, with the support of the State Committee for Northern Affairs (*Goskomsever*) has built a small meat and fish processing factory. Initially the *Karym* commune was organized as a company. Its chairman and other members said that it had been established for the purpose of survival. A year ago the chairman thought that they had no chance of establishing self-government. Today, in the sixth year of its existence, the commune is rather well-to-do and can confidently negotiate with oil men who are likely to operate within its territory. It is also time to think about self-government, for their relations with local and district authorities are becoming tense.

The other example is the *Khanto* commune of Eastern Khanty. A.S. Sopochna, author of the Commune Charter, explains why the commune had been established:

We accepted a national commune as a self-government body because:

- it gives us relative freedom in disposing of our lands, the territory of the commune;
- it provides us with a more stable position in relations with resource users, companies, organizations, administrations and any individuals or legal entities, because we are ourselves a legal entity;
- the commune as a self-governing body does not destroy the structures of our traditional life, because in our Charter we took into account folk law;
- it provides the commune with vast opportunities for work employing new economic methods and new technologies;

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- the commune as a self-governing body gives its members relative freedom from one another: every member of the commune can have his own household, his own camps, his own tools. Community members are allowed to unite for joint activities;
- if those activities are short-term, they can be agreed upon orally; long-term activities can be legalized as an enterprise;
- we can borrow money to finance our activities;
- every commune member can engage in his own work without giving all his time and assets to communal work;
- clan lands and all that grows and moves within them must be regarded as our or communal property;
- in joining the commune no member has the right to alienate, transfer or sell parts of clan lands.

The Khanto commune has existed for only two years, but its members want to develop their traditional economy based on reindeer farming. The stock is small as yet, but they have already twice purchased several reindeer and had them delivered by helicopter. One of the commune members (and a councilman, at that), is a Russian, but he is here because his grandfather was exiled to this place. He has a good command of the Khanty language and lives a traditional life, mainly hunting and fishing, but he intends to engage in reindeer herding. The commune has a folk art archive and is discussing the possibility of organizing its own school.

The author was present at a commune meeting when the issue of a geological survey within their territory was discussed. Two commune members had signed agreements for land allocation within their clan lands, but, since that issue was within the terms of reference of the commune, their decision was annulled and a new agreement was signed. Of course, that mechanism is not ideal and there is always a danger that the majority of commune members will desire to transfer their lands to oil men. But in the situation where the *Okrug*, especially its Eastern part, already has very little land for traditional economies, commune land ownership and self-government can help aborigines to satisfy their socio-economic and cultural needs.

The issue of the relationship between communes and local and State government bodies remains very complicated. Today the *Okrug* has very few self-governing communes, and the *Okrug* Administration opposes their registration. A.S. Sopochnina

describes the case of the Khanto commune:

The District and *Okrug* Administrations do not like it at all that there emerged a commune as a self governing body of aborigines who live traditional lives and claim their own historical ways that are unknown and frightening. The main argument of our opponents is what to do with those aborigines who do not live according to the traditions of their ancestors. We answer that a person joins the community of his own free will. If a person joins the commune, he must comply with its Charter. If a person, for one reason or another, does not want to join the commune, let him live according to local government laws. It is not our fault that there is a separation of our people into those who live the traditional life in clan lands and those who live miserable lives in towns and settlements.

A.S. Sopochina goes on to say that today in Khanty-Mansi Autonomous *Okrug* the necessity of aborigines uniting into communes is dictated first of all by the advance of oil industry into their lands. Here the author refers to the commune exactly as a self-governing body, because only in that case could it participate in resource management and enter into legitimate agreements for resource use.

At the same time, for many aborigines the negative experience of collectivization is an insurmountable obstacle to their uniting into communes. It also appears that it is very difficult to resolve the problem of self-government at an individual level for those aborigines who live different lives from the rest of the population and are a minority in the territories where they live.

Public opinion has been insistent in its view that the development of the North reflects State interests and that aborigines with their claims only impede that development. In that view aborigines are not regarded as citizens who have Constitutional rights. And even the question of State oil interests is becoming more and more problematic. This is confirmed by the transformation of former State-owned oil companies into joint stock companies with their permanent tax arrears, to say nothing of the damage they do to the environment, because they violate Federal environment protection legislation and pay only nominal fines. But the operations of oil companies are a different subject and require separate study. It can only be noted that oil men constitute the majority of the *Okrug* population, their interests are close to other population categories and their desires prevail with government bodies. If one adheres to the European model of democracy based on the opinion of the majority, it would appear that aborigines in the North cannot have real self-government recognized by the State and the rest of the population.

In real life the prospects for aboriginal self-determination are somewhat limited by their representation in government, which is primarily in legislative bodies. Today both the Duma of Khanty-Mansi Autonomous *Okrug* and the State Duma each have only two deputies representing indigenous peoples of the North. This is a complicated problem and many are unsure that it can be solved by formal representation. Probably a more efficient way for aborigines is to create their own organizations to protect their interests at the legislative level.

According to history and field studies, the problem of self-government in its modern understanding never existed for Western Siberian aborigines. The choice of the way to develop was pre-determined by natural conditions and the type of economy. Different ethnic groups (or communities) either engaged in barter trade or lived separately without interfering in the life of neighbors. During their long life in the North those peoples developed mechanisms of interrelationship between man and nature. Their folk law norms were based on agreement between neighbors and coordination of effort. It was exactly because of this that soon after the passing of the Status of Clan Lands Law in Khanty-Mansi Autonomous *Okrug* the aborigines who wanted to get land easily came to agreement with neighbors. Of course, this was the case only for those people who preserved a traditional life and folk law ethics. But those people need special legislation and the right for self-determination in the form of self-government, and their own choice must be respected.

In addition to commune self-government, aborigines propose other ways for self-determination, namely cultural ways, through their museums, folk art centers, educational institutions and traditional medicine. An important element of cultural activities are the Bear and other festivals, the care of sacred places, and traditional rituals. But it appears that the possibility of such cultural self-determination can be created only by a State-guaranteed right to land and self-government and by the grant of legal status to folk law. The latter can also be explained by the fact that aborigines often do not accept State laws or the necessity for written documents.

Unfortunately, folk law does not gain enough attention either in scientific studies or in practice. It is a changing cultural phenomenon that requires special attention. It cannot be imposed on anybody if it ceases to be a norm for a certain community. Today there are different interpretations of folk law, but at the same time there are certain norms reflected in international documents, and those norms are common for all aboriginals and distinguish them from the rest of the world. Special attention to the processes that take place in the fourth world, and to the fundamentals of aboriginal culture can help to develop special legislation concerning these peoples.