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# GETTING A SEAT AT THE TABLE: GIVING THE INDIGENOUS PEOPLES OF THE RUSSIAN FAR EAST CONTROL OVER LOCAL GOVERNMENT

Stephen R. King

*Abstract.* The traditional homelands of the indigenous peoples of Siberia and the Russian Far East harbor vast wealth in the form of timber, minerals, oil, and gas. Throughout much of the 20th Century, the Soviet Union used forced relocation of native peoples, expropriation of native lands, and other harsh means to gain access to these resources. The native peoples received little or no compensation for the vast natural wealth that the Soviet government took from their lands, and the government often left the land so polluted that it could no longer support the native people's hunting and herding ways-of-life. The Russian Federation currently has sovereignty over these native lands, and continues to extract resources as a way of supporting its distressed economy. Russian environmental laws are poorly enforced, and Russia's fluid political structure makes it difficult to determine which level of government controls these lands. To protect native lands and the indigenous peoples whose livelihoods and cultures depend on them, the Russian Federation must create native-controlled local governments.

## I. INTRODUCTION

For thousands of years, Siberia and the Russian Far East have been home to a number of indigenous peoples commonly referred to as the Northern Minorities.<sup>1</sup> These peoples have traditionally lived either by herding reindeer or subsistence hunting.<sup>2</sup> The reindeer herders are nomadic peoples, living in deer skin tents as they drive their herds between seasonal pastures.<sup>3</sup> The hunting peoples live in permanent villages or move within a

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<sup>1</sup> From 1925 on, the term "Northern Minority" was used in Soviet law to refer to the indigenous peoples of Siberia and the Far East. NIKOLAI VAKHTIN, *NATIVE PEOPLES OF THE RUSSIAN FAR NORTH* 7 (1992). Current Russian Legislation commonly refers to the Northern Minorities as "numerically small peoples." *E.g.* Akt Osnovy lesovodstva [Fundamentals of Forestry Act], RF Act No. 4613-1, art. 51, *translated in RusData Dialine-RusLegisLine*, Mar. 6, 1993, *available in LEXIS*, Intlaw Library, Rusleg File.

This Comment will limit itself to discussing issues relating to the twenty-six recognized Northern Minorities, and will not discuss the Sakha (Yakut) people. Although the Sakha are indigenous inhabitants of Siberia, their situation is different from the Northern Minorities for two significant reasons. First, they are much more numerous than the other indigenous peoples of the region, and second, they have their own autonomous republic within Russia in which they have considerable political power. VAKHTIN, *supra*, at 8. In contrast, the Northern Minorities are numerically few, and have little political power.

<sup>2</sup> While the Northern Minorities constitute at least 26 distinctive ethnic groups, they can be divided into two general categories: hunters and reindeer herders. VAKHTIN, *supra* note 1, at 7-8.

<sup>3</sup> Many of the herding people still live nomadic lives even though a significant percentage of the population is settled in permanent villages. Gail Osherenko, *Property Rights and Transformation in Russia: Institutional Changes in the Far North*, 47 *EUR.-ASIA STUD.*, 1077, 1083 (1995).

small area following their prey on a seasonal basis. In the north, some hunters go to sea, hunting for seals in the Arctic ocean, while further south, others hunt deer, bear, and fox in Siberia's thick taiga forests. While the Northern Minorities have always been few in number,<sup>4</sup> their historic homelands cover nearly all of Siberia and the Russian Far East.<sup>5</sup>

The Northern Minority lands are at the center of a controversy in Russia today. While these lands provide the Northern Minorities with grazing and hunting, they also contain a vast storehouse of natural resources including oil, natural gas, timber, diamonds, and gold.<sup>6</sup> The former Soviet government exploited these resources for decades, with disastrous consequences for both the people and environment of Siberia and the Russian Far East.<sup>7</sup> The Russian government is counting on the continuing extraction of these natural resources to support the country's floundering economy.<sup>8</sup>

The Russian Federation has passed legislation that attempts to balance its need for the region's natural resources against the needs of the Northern Minorities and the environment, but this has not been effective. The enforcement of Russian environmental laws has been lax,<sup>9</sup> and a long-promised law on Northern Minority rights has yet to be passed.<sup>10</sup>

This Comment will argue that, failing widespread political reform, the current Russian approach to protecting the people and environment of Siberia and the Russian Far East is impractical. A better way to protect the Northern Minorities and their lands is to create local governments controlled by the Northern Minorities. This approach would give control over the land to those

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<sup>4</sup> In 1926, the Northern Minority population was estimated at 124,625. VAKHTIN, *supra* note 1, at 8. By 1959, the population had grown only slightly to 131,436, and in 1989 there were 183,700 members of the Northern Minorities. *Id.*

<sup>5</sup> These lands constitute approximately 58% of the land area of the Russian Federation. *Id.* at 7.

<sup>6</sup> Siberia and the Russian Far East contain 25% of the world's supply of timber. Julia Levin, *Russian Forest Laws—Scant Protection During Troubled Times*, 19 *ECOLOGY L.Q.* 685, 687 (1992). They also contain 75% of Russia's silver, and some of the largest oil, natural gas and coal reserves in the world. Paul Stanton Kibel, *Russia's Wild East: Ecological Deterioration and the Rule of Law in Siberia*, 7 *GEO. INT'L ENVTL. L. REV.* 59, 61-62 (1994).

<sup>7</sup> See notes 42 to 54 *infra*, and accompanying text.

<sup>8</sup> Eugene Linden, *The Tortured Land: An Epic Landscape Steeped In Tragedy, Siberia Suffered Grievously Under Communism. Now the World's Capitalists Covet its Riches*, *TIME*, Sept. 4, 1995, at 42, 47 (referring specifically to Siberian timber). "Russia wants to realize income from the region's resources as fast as possible." *Id.* at 48.

<sup>9</sup> Kibel, *supra* note 6, at 60.

<sup>10</sup> This law was originally proposed during the late Soviet era. Yevgeny Belovitsjy, *Indigenous Residents of Sakalin Form Association*, *Itar Tass*, Feb. 2, 1990, available in LEXIS, News Library, Arcnws File; Lyudmila Yermakova, *International Small Ethnic Groups League-Meeting*, *Itar-Tass*, Oct. 23, 1992, available in LEXIS, News Library, Arcnws File. As of late 1995, such a law had still not been passed. Osherenko, *supra* note 3, at 1102.

with the greatest stake in preserving it. The hunting and herding peoples of the region depend on the land for the very survival of their cultures, and without native governments they are unable to participate in the political process of striking a balance between their traditional ways of life and the fruits of resource extraction that Russia needs to survive as a modern, industrial society.<sup>11</sup>

To support this proposition, Section II of this Comment first examines the history of the Northern Minorities and their lands under the Soviet Union. This examination will show the events that led up to the current situation and will also demonstrate that there is historic precedent for Northern Minority self-governments. Section III, which examines the current status of the Northern Minorities and their lands under the Russian Federation, will demonstrate that the current Russian system cannot adequately protect the Northern Minorities or their lands. Section IV shows that, considering Russia's current political situation, self-government offers the best possible protection of Northern Minority rights. Section V examines three possible forms—biosphere parks, reservations, and local government—that such a government could take. Section VI concludes by recommending that Russia create these governments based on the country's existing system of local governments rather than adopting a system of reservations or nature preserves. Native local governments, in contrast to a reservation system, will allow the Northern Minorities to stand up for their rights in Russia's fluid political climate.

## II. THE NORTHERN MINORITY UNDER SOVIET RULE

The period of Soviet rule over Siberia and the Russian Far East was a time of major transformation for the Northern Minorities. Up until the fall of the Russian Empire in 1917,<sup>12</sup> the Northern Minorities lived a hard but stable existence.<sup>13</sup> Though they were poor and their rights were often ignored by

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<sup>11</sup> The Inupiat people of Alaska represent a model of how such a government can help native peoples to balance their traditional way-of-life with the needs of a modern industrial society. When oil was discovered at Alaska's Prudhoe Bay, the Inupiat succeeded in creating a local borough (the equivalent of a county). This government was able to tax the oil production and allocate that revenue for the benefit of the local population. The Inupiat whaling culture and the oil drilling were able to coexist under this system. Osherenko, *supra* note 3, at 1096.

<sup>12</sup> COMPTON'S INTERACTIVE ENCYCLOPEDIA, RUSSIAN REVOLUTION (1994).

<sup>13</sup> VAKHTIN, *supra* note 1, at 10.

the Russians,<sup>14</sup> they were able to live in peace by retreating further into the wilderness as Russian settlers advanced.<sup>15</sup> Imperial officials often turned a blind eye to various spurious acts committed by Russian traders and colonists against the Northern Minorities, including seizure of native lands, acts of violence against native people, and trading vodka for native goods.<sup>16</sup>

In the years immediately following the Communist revolution, the Soviet government consolidated its rule over Siberia, but it generally ignored the Northern Minorities in this effort.<sup>17</sup> This benign neglect soon ended. By the 1930s the Soviet government began organizing the Northern Minorities into Tribal Soviets in an attempt to incorporate the native governments into the Soviet system.<sup>18</sup> At the same time that the Soviet government was attempting to assimilate the Northern Minority governments into the Soviet system, another chain of events unfolded which had an even greater effect on the lives of the Northern Minorities: Soviet industrial development.

#### A. *Northern Minority Lands and the Soviet Government*

While the Northern Minorities lived for generations by making sustainable use of the natural resources of their native lands to hunt, fish, and pasture their reindeer, the Soviet government desired to make more intensive use of this storehouse of natural wealth.<sup>19</sup> It could do so because private ownership of land and natural resources was not allowed in the Soviet Union.<sup>20</sup> The Soviet Constitution of 1918 declared that the state had exclusive ownership of all natural resources, including forest, water, and animals.<sup>21</sup> The various government ministries responsible for economic development were granted control over Siberia and the Far East in the 1930s and treated the region as if it were their property.<sup>22</sup> The ministries were free to ignore the Soviet laws pertaining to the developments that they

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<sup>14</sup> *Id.* In this Comment the term "Russian" refers collectively to the non-indigenous peoples of Russia and the USSR who have had contact with the Northern Minorities. This is actually a misnomer because approximately 20% of the incoming population of Siberia and the Far East are not Russian but are Ukrainians, Armenians, and Tatars, among others. *Id.* at 17.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; Osherenko, *supra* note 3, at 1081.

<sup>18</sup> VAKHTIN, *supra* note 1, at 10.

<sup>19</sup> In the 1930s the Soviet government began "an enormous industrialization programme" in Siberia and the Russian Far East. *Id.* at 15.

<sup>20</sup> Levin, *supra* note 6, at 693.

<sup>21</sup> *Id.*

<sup>22</sup> VAKHTIN, *supra* note 1, at 15.

undertook.<sup>23</sup> As one historical commentator noted: "A new mine or a new timber-cutting site could be started at any time, in any place, by a decision of the Moscow administration."<sup>24</sup> With this freedom from responsibility, the development in Siberia and the Far East occurred on a massive scale. This "avalanche of industrial development" continued from the 1950s until well into the 1980s.<sup>25</sup>

Because of the jobs available from this development, large numbers of Soviet citizens moved to Siberia and the Far East to work at the new state industrial, mining and timber harvesting operations.<sup>26</sup> This influx caused the native people to become a minority in their native lands even though the native population has remained relatively stable over the years.<sup>27</sup> In some areas, the Northern Minorities eventually constituted only three percent of the total population.<sup>28</sup>

While the Soviet government allowed the Northern Minorities to continue living on their traditional lands, the government often took tracts of land for industrial development and natural resource extraction without consulting or even informing the affected Northern Minority groups.<sup>29</sup> Any tract of native land that a government ministry wanted for development could be taken with a "stroke of the pen."<sup>30</sup> The government harvested the natural resources of these lands with little regard for the people who lived near or even within the harvest areas.<sup>31</sup> The income from this activity went to the Soviet government with little compensation going to the Northern Minorities.<sup>32</sup>

To add insult to injury, not only were the Northern Minorities denied just compensation for the government's use of their lands, they were also often denied jobs at the industrial facilities that had displaced them from their lands.<sup>33</sup> When members of the Northern Minorities were able to get jobs in

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<sup>23</sup> *Id.* at 24.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Linden, *supra* note 8, at 53; Osherenko, *supra* note 3, at 1082.

<sup>27</sup> *Khanti-Mansiysk—Problems of Russia's Ethnic Minorities*, Itar-Tass, Nov. 15, 1988, available in LEXIS, News Library, Arcnws File.

<sup>28</sup> *Id.*

<sup>29</sup> Vakhtin gives an example of a village which lost 450 square kilometers of its traditional hunting grounds to timber cutting. When the villagers complained to the government, they were told that the decision had been made in Moscow so nothing could be done to reverse it. VAKHTIN, *supra* note 1, at 24.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 24.

<sup>32</sup> Kibel, *supra* note 6, at 63.

<sup>33</sup> VAKHTIN, *supra* note 1, at 15-16.

the facilities, they were paid less than non-native workers, even if they were doing the same work.<sup>34</sup>

Along with exploiting native lands, the Soviet government also interfered with the Northern Minorities' traditional economic activities. One of the most serious economic hardships that the government inflicted on the Northern Minorities, aside from the expropriation of land, was the seizure of reindeer. Among the herding people, wealth is expressed in the number of reindeer that an individual owns.<sup>35</sup> If the Soviet government decided that an individual had too many reindeer, the excess number were claimed as State property.<sup>36</sup> After their herds were seized, the herdsmen were forced to work for the state on collective reindeer farms.<sup>37</sup>

The Soviet government later relocated many of the herding and hunting peoples from their villages into towns because larger collectives were easier to administer.<sup>38</sup> The Soviet state also established schools for the native children, but instruction was primarily in Russian, and the children were punished for speaking their native languages to one another at school.<sup>39</sup> These schools began as a way to educate the children of nomads who had no other access to formal education, but later, attendance became compulsory for all native children.<sup>40</sup> Eventually, the school system was converted to a series of boarding schools which children entered as young as age one.<sup>41</sup>

### *B. Environmental Destruction in Siberia and the Far East Under the Soviets*

While the Soviet Union's entry into Siberia and the Far East created a situation that has been described as an "ethnic catastrophe"<sup>42</sup> for the Northern Minorities, the environmental damage caused by Soviet development of the

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<sup>34</sup> *Id.* Soviet policy was to divide Siberian workers into two categories. The first category consisted of professionals, who were granted special privileges, such as pay bonuses and tax relief. Few, if any members of the Northern Minorities fit into this category. The second category consisted of all other workers. This group could also enjoy the special privileges granted to the professionals provided that the worker had come to Siberia from another part of the Soviet Union. *Id.*

<sup>35</sup> Osherenko, *supra* note 3, at 1088.

<sup>36</sup> *Id.* at 1082. Soviet officials based the number of deer to let each herder keep on the number of horses and cows that a European Russian would need (four or less), rather than the minimum herd of reindeer needed for subsistence (over 250). VAKHTIN, *supra* note 1, at 13.

<sup>37</sup> VAKHTIN, *supra* note 1, at 15-16.

<sup>38</sup> *Id.* at 18-19; Osherenko, *supra* note 3, at 1083.

<sup>39</sup> VAKHTIN, *supra* note 1, at 18.

<sup>40</sup> *Id.* at 22-23.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 7.

region is equally tragic. "The perverse genius of the Soviet system was its ability to maximize the problems associated with modern industrial societies without producing many of the benefits. Perhaps never has so vast a territory been so despoiled so rapidly."<sup>43</sup>

In total, the Soviets managed to destroy or degrade 35,000 square miles of Siberia.<sup>44</sup> One example of this is the Yamal-Nenets *okrug*,<sup>45</sup> located in north-central Siberia. This area had the misfortune of having considerable natural gas reserves. Development of one gas field resulted in the loss of nearly 1.5 million acres of pasture.<sup>46</sup> It is estimated that by the year 2000, the *okrug* could lose half of its pasture land and that salmon spawning grounds in the local rivers may completely disappear.<sup>47</sup> Environmental damage in other areas include serious radiation contamination,<sup>48</sup> thousands of tons of chlorides, nitric, and phosphate pollutants,<sup>49</sup> and rivers which are iridescent with oil.<sup>50</sup>

Possibly the saddest part of this entire situation is how much of these natural resources have simply been wasted. Estimates of the amount of Siberian timber left to rot after it was cut run from forty<sup>51</sup> to fifty percent.<sup>52</sup> The oil industry was similarly wasteful. The estimates of the oil and gas lost to spills or theft run into the millions of tons.<sup>53</sup> On the Yamal peninsula alone 150 million tons of oil were stolen in one year.<sup>54</sup>

### C. *The Effects of the Governing Structure on Northern Minority Rights*

Initially, the Soviet Union had considered creating reservations for the Northern Minorities similar to those created for Native Americans, but by the early 1930s, the government had rejected reservations in favor of integrating

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<sup>43</sup> Linden, *supra* note 8, at 46.

<sup>44</sup> *Id.* at 47.

<sup>45</sup> The term "*okrug*" translates as region.

<sup>46</sup> VAKHTIN, *supra* note 1, at 24. The value given in the text is approximately 600,000 hectares which equals 1.48 million acres.

<sup>47</sup> Leonid Leibzon, *Yamal: An Endangered Peninsula*, MOSCOW NEWS, Nov. 8, 1992, available in LEXIS, News Library, Arcnws File.

<sup>48</sup> Linden, *supra* note 8, at 52.

<sup>49</sup> Leibzon, *supra* note 47.

<sup>50</sup> Alexander Kravchenko, *The Tragedy of Small Nations*, MOSCOW NEWS, Dec. 1, 1995, available in LEXIS, News Library, Curnws File.

<sup>51</sup> VAKHTIN, *supra* note 1, at 24.

<sup>52</sup> Kibel, *supra* note 6, at 62.

<sup>53</sup> Leibzon, *supra* note 47.

<sup>54</sup> *Id.*



the Northern Minorities directly into Soviet society.<sup>55</sup> The government had two reasons for not wanting native reservations. First, allowing ethnic minorities to live separate from the rest of society ran counter to the government's Communist ideology of creating a unified, socialist people.<sup>56</sup> Second, setting aside large tracts of valuable land from development would slow the country's economic development—development that was a major priority for the Soviet government.<sup>57</sup>

Instead of creating reservations, the Soviet Union created local governments in many areas of Siberia and the Far East based on the nationality of a particular area's people.<sup>58</sup> The Soviet government structured these National *okrugs* (regions) and *Raions* (districts) to give each ethnic group control over the local government of their area.<sup>59</sup>

While creation of these areas was supposed to give the Northern Minorities the power to advocate for themselves and to allow them to retain some control over their traditional lands,<sup>60</sup> the result was quite different. The Soviet government never adequately funded the native governments, so they could not afford staffs to carry out governmental functions.<sup>61</sup> Though the Northern Minority governments were supposed to be able to protect native rights, the Soviet government cut funding for special programs to protect those rights.<sup>62</sup> The Northern Minorities were left with no advocate within the Soviet government and with no ability to advocate for themselves.

The limited power of the Northern Minority governments was reduced even further in 1980 by the Law on Autonomous Okrugs.<sup>63</sup> This law removed any mention of the Northern Minorities from the laws controlling the National Okrugs, in essence changing them from governments based on nationality to ones based on territory.<sup>64</sup> This policy effectively removed the Northern Minorities from the decision-making process within local government.

At the end of the Soviet period, the Northern Minorities stood in a weak position: their lands had been taken from them for industrial

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<sup>55</sup> VAKHTIN, *supra* note 1, at 11-12.

<sup>56</sup> See Osherenko, *supra* note 3, at 1082.

<sup>57</sup> Vakhtin characterized the Soviet Union as viewing "all other problems of Northern Asia [as] inevitably subordinate . . . to the possibility of future industrial development." VAKHTIN, *supra* note 1, at 11.

<sup>58</sup> *Id.* at 14; Osherenko, *supra* note 3, at 1084-85.

<sup>59</sup> VAKHTIN, *supra* note 1, at 14-15.

<sup>60</sup> Osherenko, *supra* note 3, at 1083-84.

<sup>61</sup> *Id.*

<sup>62</sup> Osherenko, *supra* note 3, at 1085.

<sup>63</sup> VAKHTIN, *supra* note 1, at 23.

<sup>64</sup> *Id.*

development; many of them had been forced to stop their nomadic ways-of-life and had been relocated to towns; their children had been taken by the state and placed in boarding schools; and the native self-governments, which the Soviet government offered as an answer to all of these injustices, were often under the control of non-natives.

### III. THE NORTHERN MINORITIES UNDER THE RUSSIAN FEDERATION

With the fall of the Soviet Union in 1991, the Russian Federation gained sovereignty over the lands of the Northern Minorities.<sup>65</sup> The end of communism has led to some notable changes for the Russian people in general, but this transition to a new form of government has resulted in little, if any, improvement for the Northern Minorities.

One major change that accompanied the transition from communism to a democratic form of government was Russia's economy. The transition from a centrally-planned communist economy to a capitalist free market has been a difficult road for Russia, one which has important implications for the Northern Minorities. Russian economic activity has virtually ground to a halt in recent years. Between 1992 and 1996, Russia's gross domestic product fell by twenty-eight percent, more than any other period in Russia's recent history, including both World Wars and the Bolshevik Revolution.<sup>66</sup>

Part of the problem is a lack of investment in Russia's economy. The total economic investment for 1996 was \$2 billion, even though it has been estimated that an annual investment of over \$10 billion was needed in the oil production sector alone.<sup>67</sup> Russian workers are owed approximately \$9 billion in back wages, one-fifth of that owed by the government to state employees.<sup>68</sup> The government also owes pensioners another \$3 billion.<sup>69</sup> Part of the reason that Russia cannot pay these politically explosive debts is that tax revenue currently runs at less than sixty-five percent of budgeted

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<sup>65</sup> Kibel, *supra* note 6, at 60.

<sup>66</sup> Viktor Rodionov, *What Cost the Course?*, THE MOSCOW TIMES, Mar. 13, 1997. During World War I the Russian GDP fell by 25%. During the Revolution it fell 23%, and during World War II GDP fell by 21%.

<sup>67</sup> Sujata Rao, *Firms Hope for End to Oil Law Feuding*, THE MOSCOW TIMES, Mar. 18, 1997.

<sup>68</sup> Chubais Tells Miners New Russian Govt Will Pay Up, Reuters Financial Service, Mar. 21, 1997, available in LEXIS, News Library, Curnws File.

<sup>69</sup> *Russia's Economic Crisis Could Trigger Social Explosion: Unions*, Agence France Presse, Mar. 19, 1997, available in LEXIS, News Library, Curnws File.

levels.<sup>70</sup> In response to this shortfall, the government has been forced to slash spending, including payments to state workers and pensioners.<sup>71</sup>

To extricate itself from this economic collapse, the Russian government in large part looks to the natural resources of Siberia and the Far East.<sup>72</sup> The rush to develop these areas has led to serious environmental damage in recent years. In fact, Russia's environmental record is nearly as bad as the Soviet Union's.<sup>73</sup> While the country's desperate need for income is a major cause of this environmental damage, two other reasons for Russia's poor environmental record deserve note. First, industrial facilities constructed during the Soviet era had few, if any, pollution controls.<sup>74</sup> Some of these plants still emit huge amounts of pollution. The Norilsk smelter complex in central Siberia continues to operate even though it is considered to be possibly the largest single source of air pollution in the world.<sup>75</sup>

A second reason for Russia's poor environmental record is the Federation's lack of oversight of existing local governments.<sup>76</sup> Under the Soviet Union, the central government maintained an iron grip over all levels of government.<sup>77</sup> The Federation loosened this control and now officially shares power with the lower levels of government.<sup>78</sup> Current Federation law gives local governments control over the lands within their territory.<sup>79</sup> This arrangement is of particular concern to the Northern Minorities because most of their lands are publicly-held, and are now under the direct control of local governments.

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<sup>70</sup> *Russia's Chubais, IMF's Camdessus to Meet - TASS*, Reuters Financial Service, Mar. 21, 1997, available in LEXIS, News Library, Curnws File. In a cruel twist, local governments are refusing to deliver Moscow's share of taxes collected in the regions because the central government has not paid workers, but the Federation needs the tax money to help pay the workers' wages. Michael Specter, *Willful Regions Out to Prove the Russian Center Cannot Hold Them*, INT'L HERALD TRIB., Mar. 26, 1997, at 5.

<sup>71</sup> *Russia's Chubais, IMF's Camdessus to Meet - TASS*, *supra* note 70.

<sup>72</sup> Linden, *supra* note 8, at 47 (referring specifically to Siberian timber).

<sup>73</sup> Kibel, *supra* note 6, at 60.

<sup>74</sup> *Id.* at 67.

<sup>75</sup> Linden, *supra* note 8, at 46. The facility releases over 2 million tons of sulfur annually. The effects of its emissions are felt as far away as Canada. *Id.*

<sup>76</sup> *Id.* at 49. This lack of oversight may not be intentional. Kibel characterized it as a "political vacuum" created by the collapse of the Soviet Union. Kibel, *supra* note 6, at 68.

<sup>77</sup> VAKHTIN, *supra* note 1, at 15; Linden, *supra* note 8, at 49.

<sup>78</sup> Article 12 of the Russian Constitution provides the fundamental legal basis for the existence of local governments under the Federation. It states that "[i]n the Russian Federation local self-government shall be recognized and guaranteed" and that local self-government "shall be independent within the limits of its authority." KONST RF [CONSTITUTION OF THE RUSSIAN FEDERATION] (1992), art. 12, translated in ECONOMIC LAW OF RUSSIA, available in LEXIS, Intlaw Library, Rflaw File.

<sup>79</sup> Article 130 gives local governments the power to independently manage municipal property. KONST. RF, art. 130, §1.

Local governments often ignore Federation laws in managing the lands under their jurisdiction.<sup>80</sup> Some local officials bend, or even break, the law to turn a personal profit from government lands.<sup>81</sup> For example, they use loopholes in the environmental laws to approve as many development projects as possible.<sup>82</sup>

Even those officials who are not personally profiting from the lack of supervision are more concerned with creating jobs and attracting investment to their regions than with protecting the land.<sup>83</sup> Approving a development project means more jobs for local workers as well as royalties for the local government. When a firm obtains the right to extract resources from public lands, it must pay royalties to the Federation,<sup>84</sup> and local governments receive a share of these royalties.<sup>85</sup>

The current Russian system of administering Northern Minority lands leaves the Northern Minority peoples unable to defend their rights to that land. At the very time that local governments are growing more powerful in Russia, the Northern Minorities are least able to use those governments to protect their rights because they constitute too small and poor a minority to be politically influential.

#### IV. HOW THE NORTHERN MINORITIES COULD PROTECT THEMSELVES AND THEIR LAND THROUGH SELF-GOVERNMENT

The Russian Constitution promises that the "recognition, observance and protection of the rights and liberties of man and citizen shall be the obligation of the State."<sup>86</sup> The Federation also acknowledges that it owes its indigenous citizens a special duty of protection above this general statement of rights.<sup>87</sup> In recognition of this special duty, the Federation has created

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<sup>80</sup> Linden, *supra* note 8, at 49.

<sup>81</sup> *Id.* at 49. This often takes the form of granting valuable timber concessions to friends and relatives. *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Kibel, *supra* note 6, at 73.

<sup>84</sup> Osherenko, *supra* note 3, at 1091.

<sup>85</sup> *Id.*

<sup>86</sup> KONST. RF, art. 2.

<sup>87</sup> The broadest and most general statement of the Russian government's intentions toward its indigenous citizens is contained in Article 69 of the Russian Constitution. It establishes a minimum level of indigenous rights by stating that "[t]he Russian Federation shall guarantee the rights of the indigenous small peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation." KONST. RF, art. 69.

exemptions and special conditions for the Northern Minorities in a number of areas of law ranging from taxation to natural resource management.

The Fundamentals of Forestry Act requires that forest boundaries in Northern Minority areas be set to "ensure conservation and maintenance of the conditions required for the life and traditional economic activity of these peoples and ethnic groups."<sup>88</sup> The Federation must regulate bodies of water to insure the "protection of the age-old habitat and traditional way of life of numerically small ethnic entities in the utilization of bodies of water."<sup>89</sup> The government also has to take into special account the economic interests of the Northern Minorities in the development of marine resources and the preservation of the marine environment.<sup>90</sup> In fact, the Northern Minorities have priority rights to utilize living marine resources.<sup>91</sup>

In the Subsoil Act, part of the money raised by the government through regulation of the subsoil in areas inhabited by the Northern Minorities "shall be used for the socioeconomic development of these peoples and groups."<sup>92</sup> The Federation Law on Employment of Population states that the Federation's policy is to assist the Northern Minorities to have "full, efficient and voluntarily chosen employment" in accord with their "national and cultural traditions and also their historically determined fields of employment."<sup>93</sup> Five percent of the shares of joint-stock companies created through privatization of state-owned oil operations will be set aside for sale to members of the "numerically-small peoples of the North" living in the region and to members of the work collectives of the joint-stock companies.<sup>94</sup>

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<sup>88</sup> Akt Osnovy lesovodstva [Fundamentals of Forestry] Act, RF Act No. 4613-1, art. 51, *translated in RUSDATA DIALINE-RUSLEGISLINE*, March 6, 1993, *available in LEXIS*, Intlaw Library, Rusleg File.

<sup>89</sup> RF Svod Zakonov o Vode [RF Water Code], RF Act No. 167-FZ, art. 65, Oct. 18, 1995, *translated in RUSDATA DIALINE-RUSLEGISLINE*, *available in LEXIS*, Intlaw Library, Rusleg File.

<sup>90</sup> RF Kontinentalnyi Akt [RF Continental Shelf Act], art. 6 (3), Oct. 25, 1995, *translated in RUSLEGISLINE*, *available in 1995 WL 843469*.

<sup>91</sup> *Id.* art. 11.

<sup>92</sup> Popravki i Prilozheniya K Aktu o Podpochve RF (Novaya Redaktsiya) [Amendments And Addenda To The RF Subsoil Act (New Wording)] RF Federal Act No. 27-FZ, art. 42], Feb. 8, 1995, *translated in RUSDATA DIALINE-RUSLEGISLINE*, *available in LEXIS*, Intlaw Library, Rusleg File.

<sup>93</sup> Popravki i Prilozheniya K Zakomu Rossiyskoi Federatsii "K Voprosu O Zanyatosti Naseleniya v Rossiyskoi Federatsii" Federalnyi Svod Zakonov Rossiyskoi Federatsii [Amendments and Addenda to Law of the Russian Federation "On Employment of Population in the Russian Federation". Federal Law of the Russian Federation] No. 36-FZ, ch. 1, clause 5 (2), March 22, 1996, *translated in RUSDATA DIALINE-RUSLEGISLINE*, *available in LEXIS*, Intlaw Library, Rusleg File.

<sup>94</sup> Privatizatsiya i Konversiya v Sovinestnye Predpriyatiya Gosudarstvennykh Predpriyatii Proizvoditelei i Issledovatelykh Assotsiatsii v Nefteperepabatvushchei promyshlennosti i postavkakh [Privatization and Conversion into Joint-Stock Companies of State Enterprises, Producer and Research Associations in the Oil and Oil-Refining Industry and in Oil-Product Supply]. RF President's Edict No.

The Northern Minorities are also exempt from a number of taxes. They do not pay taxes on any income except wages.<sup>95</sup> Profits from the manufacture of traditional crafts are tax-free, provided that indigenous peoples constitute at least seventy percent of the enterprise's workers.<sup>96</sup> No tax will be levied on assets used for housing and other municipal services in areas of "compact habitation of numerically small peoples."<sup>97</sup>

A. *The Current System Does Not Protect the Northern Minorities*

This broad range of special legal protections would seem to indicate that there is no need to create Northern Minority governments or to make any other special accommodations for them. But, there are three reasons that this is not so.

First, the Northern Minorities need additional protection because of the land management policies of Russia's local government. As noted above, the Federation has essentially given local politicians a free hand to manage the lands in their jurisdictions, and those officials have focused on public and private profits rather than on protection of native rights.<sup>98</sup>

Second, the difference between Russian law-as-written and Russian law-as-applied makes additional protection necessary.<sup>99</sup> In most modern democracies, there is an underlying assumption that once a law has been passed, it will be implemented as written. This idea is not part of Russia's legal tradition.<sup>100</sup> Russia inherited the Soviet tradition of laws being only

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1403, § 5(c), Nov. 17, 1992, translated in RUSDATA DIALINE-RUSLEGISLINE, available in LEXIS, Intlaw Library, Rusleg File.

<sup>95</sup> Prilozheniye k Aktou o Podohodnom Naloge dlya Fizicheskikh Lits (s popravkami ot 16 iulya 1992 g.), Gosoudarstvennaya Nalogovaya Aluzhba RF, Instruksiya [Application of RF Income Tax on Natural Persons Act (as amended on July 16, 1992), RF State Tax Service Instruction] No. 8, § 1(8)(ad), translated in RUSDATA DIALINE-RUSLEGISLINE, available in LEXIS, Intlaw Library, Rusleg File.

<sup>96</sup> Protsedura dlya Otsenki i Platezha v Budget Predpriyatiy Naloga na Pribyl, Instruksiyia N4#26 Gosudarstvennoy Nalogovoi Slouzhby RF [Procedure for Assessment and Payment into the Budget of Enterprise Profits Tax, RF State Tax Service Instruction No. 4, § 26], March 6, 1992, translated in RUSDATA DIALINE-RUSLEGISLINE, available in LEXIS, Intlaw Library, Rusleg File.

<sup>97</sup> Protsedura dlya Otsenki i Platezha v Budget Predpriyatiy Naloga na Pribyl, Instruksiyia N7#5 Gosudarstvennoy Nalogovoi Slouzhby RF [Procedure for Assessment and Payment into the Budget of Enterprise Profits Tax, RF State Tax Service Instruction No. 7, § 5], translated in RUSDATA DIALINE-RUSLEGISLINE, Mar. 6, 1992, available in LEXIS, Intlaw Library, Rusleg File.

<sup>98</sup> See notes 76 to 85 *supra*, and accompanying text.

<sup>99</sup> Kibel, *supra* note 6, at 65-66. This Comment takes the term "law-as-written" as referring to the actual text of the law, while the term "law-as-applied" is the way in which the law has been interpreted by administrators and politicians who operate without clear judicial interpretations of the law to guide them.

<sup>100</sup> *Id.* at 65.

guidelines for action, which can be altered to fit individual situations.<sup>101</sup> Under the current system, Northern Minority rights could be “interpreted” away if those rights conflicted with the plans of local government officials.

Third, the Northern Minorities are confronted with the weakness of the Russian judiciary system. Under the Soviets, the courts were widely regarded as subservient to the Communist Party, and they ruled on cases as they were ordered to by the Communist government.<sup>102</sup> This tradition of judicial weakness still survives in Russia today.<sup>103</sup> Both Federation and local governments are essentially free to apply the law as they see fit, with little or no judicial intervention. This practice illustrates again the point that Russian law-as-written is different from Russian law-as-applied. Russian law is what a local administrator believes it to be. If the Northern Minorities are excluded from participating in local governments, they lose much of their purported legal rights because those governments are the ones who define the scope of the Northern Minority’s rights.

#### *B. Possible Solutions to the Current Lack of Protection*

The current situation does not fully protect the Northern Minorities and their lands, but is the creation of Northern Minority governments the only way to insure those rights? There are several possible ways to address the three problems discussed above which stop short of the creation of new governments.

##### *1. Full Enforcement of Existing Laws*

The Northern Minorities’ lack of legal protection could be alleviated if Russia made the laws-as-applied conform to the laws-as-written. Even without passage of new legislation, existing laws would afford the Northern Minorities considerable protection if fully enforced.<sup>104</sup>

However, full enforcement of Federation law is dependent on local governments’ political will. The Federation must stop giving local governments carte blanche to interpret the laws as they wish. Uniform enforcement of the law throughout the country would create a sense of predictability and stability which is currently lacking in Russian law. Local

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<sup>101</sup> *Id.* at 66.

<sup>102</sup> *Id.* at 66-67.

<sup>103</sup> *Id.*

<sup>104</sup> See notes 88 to 97 *supra*, and accompanying text for a description of those laws.

administrators would be hesitant to allow questionable development schemes if they knew that the Federation government stood ready to invalidate those actions that went beyond the central government's interpretation of the law's intention.

While strong enforcement of the existing laws by the Federation itself would do much to protect the Northern Minorities, it is unlikely that the central government is able to play such a role.<sup>105</sup> The local and regional governments are determined to take as much power as possible from the central government, and it appears unlikely that the Federation is in a position to stop them.<sup>106</sup> In such a situation, it would be better to give the Northern Minorities their own governments so that they may participate in the broad new powers available to the regions rather than have them depend on the weakening central government.

## 2. *Using the Judiciary to Protect Minorities*

While the power struggle between the regions and the central government makes governmental protection of Northern Minority rights problematic, the Russian judiciary also has the potential to protect those rights. While Russia's courts are currently regarded as weak,<sup>107</sup> they have ample constitutional powers to enforce the laws protecting the Northern Minorities and their lands.<sup>108</sup> In spite of this constitutional mandate to interpret the laws of the country, Russia's judiciary system suffers from several key weaknesses which would hamper its ability to do so. First, the courts are badly underfunded, and lack adequate facilities, including almost

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<sup>105</sup> Russian President Yeltsin seems ready to enforce Federation law, stating that, "You have to abide by the law whether you like it or not. I have the willpower to make the whole country comply with the Russian Constitution." Specter, *supra* note 70. But, while President Yeltsin's words indicate a strong, or at least combative, central government, many of the country's regions now refuse to pay taxes to the central government and are openly ignoring President Yeltsin's decrees and the Federation's Constitution. Local leaders are publicly equating a strong central government to the old Communist system. *Id.*

<sup>106</sup> This dispute is not purely the central government against the regional governments. Many regional governments are disbanding city governments and taking their powers as well as attempting to take part of the Federation's power. *Id.*

<sup>107</sup> Kibel, *supra* note 6, at 67.

<sup>108</sup> Russia's judiciary system has jurisdiction to hear constitutional, civil, administrative, and criminal cases. KONST. RF, art. 118, § 2. The Russian Constitution established three types of courts: constitutional, general jurisdiction (the highest of which is the Supreme Court), and arbitration courts (the highest of which is the Supreme Arbitration Court). KONST. RF, arts. 125-27. Russia's Constitutional Court is charged by the Constitution with resolving the constitutionality of various governmental actions and laws. Its jurisdiction includes federation law, republican constitutions and laws, and agreements between the Russian Federation and its subject governments. KONST. RF, art. 125, § 2.



no computers, which are critical for effective court administration.<sup>109</sup> One commentator stated that: "It is doubtful that without substantial infusion of resources [the courts] could effectively perform the functions the constitution assigns to them."<sup>110</sup>

Even with adequate resources and facilities, the courts can still be ignored by those who disagree with its holdings. Such a situation exists in the Republic of Udmurtiya.<sup>111</sup> The Republic's regional Parliament passed a law disbanding independent city governments within the Republic. Russia's Constitutional Court found the law unconstitutional, but Udmurtiya's leaders ignored the court's finding.<sup>112</sup>

Considering the situation in Udmurtiya, the Russian judiciary may be unable to protect the Northern Minorities or their lands from local and regional governments. If a court's decision runs counter to a government's interests, what would stop the local or regional administrator from following Udmurtiya's lead and simply ignoring the court? The courts do not have the power to enforce their decisions, and under the current circumstances President Yeltsin's government would find it difficult to enforce the court's decisions as well. This weakness of the courts and the central Federation government, and the growing strength of the regional and local governments, argue for giving the Northern Minorities a voice in the one forum in which they can protect themselves: local government.

### C. *Northern Minority Governments Offer the Best Solution*

The previous section of this Comment established that the Northern Minorities cannot rely on existing legislation, Federation intervention, or the Russian judiciary to protect their rights. In light of these limitations, the establishment of Northern Minority self-governments is superior to the three options discussed earlier. While a democratic society takes as a fundamental tenet that all citizens should be equally represented by the government,<sup>113</sup> there are valid reasons to allow and even encourage separate governments for the Northern Minorities.

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<sup>109</sup> William W. Schwarzer, *Civil and Human Rights and the Courts Under the New Constitution of the Russian Federation*, 28 INT'L LAW. 825, 833-34 (1994).

<sup>110</sup> *Id.* at 834.

<sup>111</sup> Specter, *supra* note 70.

<sup>112</sup> *Id.*

<sup>113</sup> KONST. RF, art. 6, § 2.

### 1. *Sustainable Land Use and Development*

The creation of Northern Minority governments overcomes many of the problems inherent in the current Russian system of managing native lands. This is not to say that the creation of Northern Minority governments would solve all of the problems described above, but rather that such governments would allow the Northern Minorities to survive in Russia's current imperfect political system.

If Russia is not able to make its laws-as-applied conform with those laws-as-written, then allowing Northern Minority governments to interpret the laws that pertain to them is inherently more fair than having non-natives interpret those laws. Currently, local administrators interpret Russian environmental and land use laws to maximize either personal profit or economic development.<sup>114</sup> While Northern Minority government officials would also face the pressure to make profits and create jobs, they would face a countervailing social pressure to preserve the lands upon which their native cultures depend.

This need to preserve the land does not mean that a Northern Minority government would necessarily attempt to stop or even limit development. Siberia and the Russian Far East constitute such a vast area that development and native cultures can coexist, if coexistence is a priority of those in positions of power.<sup>115</sup> Giving the power over development to Northern Minority governments would help insure that such considerations were part of the decision-making process. The fact that Russia's local governments are acting without supervision from Moscow would be less of a problem if those governments consisted of people whose cultural values require balancing development with preserving the environment.

### 2. *Protection for Politically Powerless Minorities*

A Northern Minority government could protect its citizens from the illegal actions of other private citizens through regulations or the use of Russia's laws-as-applied without the need to turn to the courts, thereby circumventing the intractable problem of Russia's weak judiciary. In the event of an action by some higher level of government against a Northern

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<sup>114</sup> See notes 80 to 85 *supra*, and accompanying text.

<sup>115</sup> Evidence from Alaska and Canada shows that giving native peoples significant political and property rights does not stop development, but that it causes the development that does occur to be more economically and socially sustainable. Osherenko, *supra* note 3, at 1096.

Minority government, the native government would have a seat at the table for negotiating a settlement. Without a government of their own, any Northern Minority legal victory in the courts could simply be ignored by those governmental entities who dislike the decision.

Creation of Northern Minority governments would give a political voice to those who are currently marginalized in the political process. The democratic way for citizens to influence their government is to support a candidate for office and then to vote for that candidate. Neither of these actions will significantly aid the Northern Minorities in protecting their rights because they are both financially poor and numerically few.<sup>116</sup> They can offer a politician little financial support and few votes in return for advocating their position. Setting aside rural or wilderness areas inhabited mainly by the Northern Minorities for self-rule would give the Northern Minorities a political voice without infringing on the political rights of the more numerous Russian citizens.

### 3. *Preservation of People and Culture*

Along with the pragmatic political reasons for creating Northern Minority self-governments, these governments may also be the best chance the Northern Minorities have of keeping their people alive. There are indications that without some form of intervention to reverse the effects of the "conquest of the north," many of the Northern Minority peoples will simply cease to exist.<sup>117</sup> Living conditions for the natives in many areas are much

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<sup>116</sup> In 1989 there were 183,700 members of the Northern Minorities. VAKHTIN, *supra* note 1, at 8. In comparison, Russia's total population for 1995 was approximately 150 million. U.S. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK (Country: Russia) (1995), available in LEXIS, World Library, Wofact File. This means that the Northern minorities make up only one-tenth of one percent of Russia's population. The Northern Minorities small population is an especially important problem because of Article 130 of the Russian Constitution. This article states that "[l]ocal self-government shall be exercised by citizens through a referendum, election, other forms of direct expression of the will of the people, through elected and other bodies of local self-government." KONST. RF, art. 130, § 2.

Along with being such a small percent of Russia's population, the Northern Minorities are among the poorest members of Russian Society. Their income is often less than half of that of other Russians, and in some areas they earn less than 10% of what other Russians make. VAKHTIN, *supra* note 1, at 26.

<sup>117</sup> Leibzon places the blame for the plight of the Northern Minorities on the wide-spread industrial development and environmental destruction commonly referred to as the "conquest of the north." Leibzon, *supra* note 47. On the Taimyr Peninsula, the last vestiges of the Nganasan people exist. Only 90 individuals remain of this people, and all but two of them drink. An ethnographer referred to a project to record their folklore as "mummification," and stated that "they are dying." Kravchenko, *supra* note 50. The Khant and Mansi peoples have been described as being on the verge of extinction. Their traditional ways-of-life have been all but destroyed, and the people suffer from illness, alcoholism, unemployment and pollution. Leibzon, *supra* note 47.

worse than that of the average Russian citizen.<sup>118</sup> The average life expectancy for members of the Northern Minorities is forty to forty-five years, more than sixteen years less than the average for the rest of the Russian Federation's population.<sup>119</sup> Some Northern Minority groups have tuberculosis rates five times higher than that of the general population.<sup>120</sup> Out of wedlock births also run as high as three out of four in some areas.<sup>121</sup>

The creation of native governments alone would not bring an immediate end to such deprivation, but giving the native peoples access to the land so that they could continue their traditional ways-of-life would counter some of the despair that many of the Northern Minority people feel over their current situation.<sup>122</sup> Another way in which Northern Minority governments could help their peoples is to direct government spending toward social programs targeted to address Northern Minority problems. Currently, when an enterprise obtains the right to extract resources from public lands, the industry must pay royalties to the government.<sup>123</sup> Local governments receive a share of these royalties, but it is often spent for the needs of the entire community.<sup>124</sup> Giving the Northern Minorities control over these lands would allow this money to be used for social programs to aid the native population.

Aside from remedying the poor health and living conditions of many Northern Minority groups, the creation of native self-governments would aid the Northern Minorities culturally as well. Both the Northern Minorities' ways-of-life and their religions are tied to their traditional lands. Hunting and reindeer herding both require large tracts of relatively undisturbed land to support the native peoples who depend on them for survival. It takes

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<sup>118</sup> VAKHTIN, *supra* note 1, at 27.

<sup>119</sup> *Id.* at 22. Accurate statistics on Northern Minority life expectancy prior to the wide-spread industrial development of Siberia and the Russian Far East in the 1950s are hard to obtain because the KGB tried to prevent scholars from conducting such research. *Id.*

<sup>120</sup> *Id.* The rate for the Chukotka people is 225 per 100,000 while the rate for the USSR was 42 per 100,000. *Id.*

<sup>121</sup> *Id.* The 75% out-of-wedlock birth rate was for the period 1975 to 1979 among Eskimo mothers under the age of 24 in Sireniki. Of all Eskimo mothers in Sireniki under age 30, the rate was 66%. *Id.* "The high proportion of young unmarried mothers can partly be explained by traditionally more liberal sexual mores. However, to a large extent this is now due to the disintegration of the traditional family and social structures . . ." *Id.*

<sup>122</sup> Vakhtin describes being present in 1980 when a group of Eskimos from Chukotka learned of a rumor that oil had been discovered near their home. They all had looks of horror on their faces at the news, and one man said, "This is the end, we'll be finished very soon now." *Id.* at 25.

Leibzon recounts looking at pictures drawn by Northern Minority children which consisted of "ravaged forests, oil derricks with burning torches, pipes dumping something black into the rivers, fires, and occasionally—idyllic landscapes with an inscription, 'the way it was before.'" Leibzon, *supra* note 47.

<sup>123</sup> Osherenko, *supra* note 3, at 1091.

<sup>124</sup> *Id.*

seventy-five square miles of forest lands to support an average hunter,<sup>125</sup> and on the Yamal Peninsula herders drive their reindeer as far as 340 miles between summer and winter pastures.<sup>126</sup>

Control over the land would also help preserve the Northern Minority religions because many of them have beliefs tied to particular locations, such as a sacred grove of trees or a certain hill.<sup>127</sup> The new Russian Constitution recognizes the rights of the peoples of the Russian Federation to practice their religions<sup>128</sup> and the obligation of the government to protect cultural and historic sites,<sup>129</sup> but Russia has a new, untested form of government. The native peoples are only one of many competing voices in the political arena deciding the fate of the land. It is unclear whether a non-Northern Minority local government would feel compelled to protect a sacred site located on valuable land, or if the Northern Minorities could compel the government to do so. It would be better for the Northern Minorities to be able to directly protect their religious rights by controlling local governments rather than relying on others to protect them.

#### V. WHAT FORM NORTHERN MINORITY GOVERNMENTS SHOULD TAKE

Having established that Russia's Northern Minorities can best protect their lives, cultures, and lands through self-government, this section of the Comment examines three possible models for native self-government: biosphere parks,<sup>130</sup> reservations, and conventional local governments.

##### A. *Biosphere Parks*

Russian officials have recently revived the idea of creating biosphere parks in which the Northern Minorities could live their traditional lives without interference from non-native peoples.<sup>131</sup> This idea was first proposed

<sup>125</sup> Linden, *supra* note 8, at 53.

<sup>126</sup> Osherenko, *supra* note 3, at 1092. The figure given in the text is 550 kilometers which converts to 341.75 miles.

<sup>127</sup> Kravchenko, *supra* note 50.

<sup>128</sup> KONST. RF, art. 28.

<sup>129</sup> KONST. RF, art. 72, § 1(e).

<sup>130</sup> Biosphere parks are not an actual form of self-government, but they are included in the discussion because they have been suggested by some commentators as a way of giving the Northern Minorities lands for their exclusive use. VAKHTIN, *supra* note 1, at 30, 33; *Meeting on Arctic Problems*, Itar-Tass, Mar. 31, 1989, available in LEXIS, News Library, Arcnws File.

<sup>131</sup> VAKHTIN, *supra* note 1, at 30.

in the 1920s, but was rejected at the time as anti-Soviet and seditious.<sup>132</sup> Periodically, various Russians have attempted to bring back the idea, but it was not until 1982 that the first, and only, such park was established.<sup>133</sup> Although biosphere parks have been proposed as a solution to the Northern Minorities' problems for over seventy years, there are three reasons to reject them as a solution.

First, Russia has had a less than exemplary track record in managing its other national parks.<sup>134</sup> These lands are under the control of the Federation's Ecology Ministry, but management of the parks has been inadequately funded.<sup>135</sup> If new biosphere parks are placed under the control of the Ecology Ministry, there is no reason to expect that they will be any better managed than existing parks. Regardless of which Federation ministry oversees such a park, it would be difficult to adequately fund such parks given Russia's current budget shortfalls.<sup>136</sup>

Second, biosphere parks would be subject to the power struggle between the Federation and local governments.<sup>137</sup> Some local governments have declared their authority over those parks which are within their jurisdictions.<sup>138</sup> Under local control, these parks could receive no more protection than any other forest lands. Current plans for development within existing parks include logging operations and housing developments.<sup>139</sup> In Russia's oldest park, the Losina Ostrov, 35,000 trees were lost to one pipeline alone.<sup>140</sup>

The third problem with creating biosphere parks is that, unlike a true reservation, the inhabitants of a park would not have the right to manage the park's lands or to govern themselves. Drilling for oil or harvesting timber within a Russian park is not allowed.<sup>141</sup> This prohibition protects the Northern Minorities and their lands from exploitation, but it would also prevent the Northern Minorities from allowing limited resource extraction to

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<sup>132</sup> *Id.*

<sup>133</sup> As of 1992, no other parks had been created, and all hunting (an integral part of Northern Minority culture) was completely forbidden in the one existing park's core area. *Id.*

<sup>134</sup> Levin, *supra* note 6, at 708.

<sup>135</sup> Kibel, *supra* note 6, at 71.

<sup>136</sup> See notes 67 to 71 *supra*, and accompanying text.

<sup>137</sup> See notes 76 to 85 *supra*, and accompanying text.

<sup>138</sup> Levin, *supra* note 6, at 708.

<sup>139</sup> *Id.* at 709.

<sup>140</sup> *Id.*

<sup>141</sup> Actually, some limited development is allowed as long as it is consistent with the maintenance of the protected area. *Id.* at 712.

finance health care and other social services.<sup>142</sup> The Northern Minorities would still be dependent on the Russian Federation for social services, much as they are now.

With the Federation government able to offer so little protection to its existing parks, and with the real possibility that local governments could take control over those parks, the creation of biosphere parks for the Northern Minorities is not a viable solution to the Northern Minorities' need for self-government.

### B. *Northern Minority Reservations*

An alternative to biosphere parks would be the establishment of Northern Minority reservations modeled on North American Indian reservations.<sup>143</sup> This system would offer a way for the Northern Minorities to live apart from, but equal to, the rest of Russia's peoples. The chief weakness of this approach to native self-government in Russia is that the United States system places almost exclusive control over Native Americans and their lands in the hands of Congress.<sup>144</sup> Considering the current weakness of Russia's central government, and the growing power of the regional governments, making the Northern Minorities almost solely dependent on the Federation for protection of their rights is problematic at best.

In the United States, indigenous peoples are considered to be dependent, sovereign nations.<sup>145</sup> As such, they have an innate power to govern themselves,<sup>146</sup> but Congress has broad constitutional authority to

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<sup>142</sup> Because the Federation government would still control the land, it is likely that any funds from resource extraction would go to the Russian treasury rather than to the Northern Minorities.

<sup>143</sup> This idea was first proposed in the 1920s but was abandoned in favor of the creation of Northern Minority self-government. VAKHTIN, *supra* note 1, at 11.

While the United States and Canada both have reservations for their native populations, this section of the Comment uses the United States reservations within the lower 48 states as a model because the United States has granted its indigenous population substantially more self-governing powers than has Canada. Jean M. Silveri, *A Comparative Analysis of the History of United States and Canadian Federal Policies Regarding Native Self-Government*, 16 SUFFOLK TRANSNAT'L L. REV. 618, 656-57 (1993). A separate system of self-government exists for native Alaskans under the United States system. Most native Alaskan peoples are not recognized by the United States government as sovereign, but, under the Alaska Native Claims Act, they do hold title to their lands through native corporations. Patricia Thompson, *Recognizing Sovereignty in Alaska Native Villages After the Passage of ANCSA*, 68 WASH. L. REV. 373, 377-80 (1993).

<sup>144</sup> Silveri, *supra* note 143, at 629-30.

<sup>145</sup> *Id.* at 625-26.

<sup>146</sup> *Id.* at 619.

control native affairs.<sup>147</sup> This power includes the ability to modify the status of native tribes,<sup>148</sup> abrogate the terms of treaties,<sup>149</sup> and control native lands.<sup>150</sup>

While the powers of the U.S. Congress over Native American lands are broad, they are limited by the United States Constitution and the judicially-created requirement that Congress act as a fiduciary when managing Native American lands.<sup>151</sup>

Applying such a system to Russia's Northern Minorities would not be an appropriate way of instituting native self-government. While Russia's Constitution does require the Federation to protect the rights of indigenous peoples,<sup>152</sup> giving the Russian government powers over the Northern Minorities that are as broad as the powers that the United States government has over Native Americans should not be done for three reasons.

First, the Russian government is experiencing fiscal problems, and the country's economy is unsteady.<sup>153</sup> The government's expectation of using Northern Minority lands to prop up its sagging economy could lead the Federation to "modify" its relationship with the Northern Minorities to the point that resource extraction proceeds as it did under the Soviets.<sup>154</sup>

Second, in the United States a strong judiciary is able to narrow Congress's power over the tribes.<sup>155</sup> Considering the weak state of Russia's judiciary, it seems unlikely that it could perform a similar function. This would make it possible for the Federation to make such changes in an existing

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<sup>147</sup> *Id.* at 629. The source of this power is the Commerce Clause of the United States Constitution and Congress's treaty making power. *Id.* at 637.

<sup>148</sup> Judith Resnik, *Multiple Sovereignities: Indian Tribes, States, and the Federal Government*, 79, JUDICATURE 118, 119-20 (1995).

<sup>149</sup> *Id.* at 120-121.

<sup>150</sup> Silveri, *supra* note 143, at 637.

<sup>151</sup> *Id.* at 637-38.

<sup>152</sup> KONST. RF, art. 69.

<sup>153</sup> See notes 66 to 71 *supra*, and accompanying text.

<sup>154</sup> In 1887, the United States government made a similar "modification" of its relationship with the Native Americans living in the Indian Territory (now part of the state of Oklahoma). The 60,000 square-mile territory was converted from native control to government control. Some commentators have identified economic factors as the chief reason for this change. Yuanchung Lee, Book Note, *Manifest Destiny Through Court Reform?*, 105 YALE L.J. 2013, 2013 (1996) (reviewing JEFFREY BURTON, *INDIAN TERRITORY AND THE UNITED STATES, 1866-1906: COURTS, GOVERNMENT, AND THE MOVEMENT FOR OKLAHOMA STATEHOOD* (1995)).

<sup>155</sup> See Silveri, *supra* note 143, at 618-19 (comparing United States and Canadian relations with their respective indigenous populations). The United States and Canadian governments have very similar constitutional grants of power over native affairs, but the United States Supreme Court's interpretation of that relationship has led to the United States' native population having greater self-governing powers. *Id.*



relationship with a Northern Minority people as the Federation felt necessary, including taking and developing Northern Minority lands.

The third problem with creating reservations for the Northern Minorities is that a reservation is simply another tract of Federation land. Local or regional governments could attempt to take control of the reservation as they have attempted to take control over other pieces of valuable Federation property.<sup>156</sup>

### C. *Conventional Local Governments*

A solution to the Northern Minorities' problems that has a better chance of remedying the current situation is to establish local Northern Minority-controlled governments within the existing Russian system. Such a government would have all of the powers necessary to fully protect the rights of the Northern Minorities, including the power to levy taxes, set local budgets, and manage local lands.<sup>157</sup>

Because such a Northern Minority local government would be essentially the same as any other local government, except for the ethnicity of the people living within its territory, it would be a valid government under Russia's Constitution.<sup>158</sup> Although the structure of a Northern Minority government may differ from that of other local governments, the Constitution is very flexible about the way in which a

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<sup>156</sup> See notes 80 to 85 *supra*, and accompanying text.

<sup>157</sup> Article 132 of the Russian Constitution explicitly gives local governments the power to raise taxes and set budgets. KONST. RF, art. 132, § 1. Article 72 sets out the joint jurisdiction of the Russian Federation and its subject governments. These include several which would pertain particularly to the Northern Minorities:

c) issues of the possession, use and disposal of land, subsoil, water and other natural resources; d) delimitation of state property; e) nature utilization, protection of the environment and ensuring ecological safety; specially protected natural territories; protection of historical and cultural monuments; . . . g) coordination of issues of health care, protection of the family, maternity, paternity and childhood; social protection including social security; . . . j) . . . land, water, and forestry legislation; legislation on subsoil and environmental protection; . . . l) *protection of traditional living habitat and of traditional way of life of small ethnic communities.*

KONST. RF, art. 72, § 1 (emphasis added).

Article 3 allows the peoples of the Russian Federation to exercise their power through local governments. KONST. RF, art. 3, § 2. This implies that a local government would have jurisdiction over those areas delineated in Article 72.

<sup>158</sup> Article 12 of the Russian Constitution states that local governments shall be recognized. KONST. RF, art. 12. The Constitution does not mention any criteria necessary for such recognition except that the citizens shall exercise local government through elections and bodies of legal government. KONST. RF, art. 130, § 2.

local government is organized.<sup>159</sup> Also, the Constitution does allow for the creation of new local governments, but it does not specify a method for doing so except to say that it would be carried out in accordance with Federation law.<sup>160</sup> While it appears that it would be constitutional to create a Northern Minority government by taking part of the territory of an existing local or regional government, this action would require the consent of the affected government.<sup>161</sup>

The creation of Northern Minority local governments is constitutional, and it would help the Northern Minorities by giving them representation at the level of government that is best able to improve their lives. It would also allow the Northern Minorities to negotiate directly with industries wanting to develop their lands, and insure a balance between environmental concerns and the needs of the local economy.

Perhaps the most important reason for creating Northern Minority governments is the ability of these governments to manage the lands within their jurisdictions. Officially, local governments have wide discretion to manage these lands,<sup>162</sup> but, unofficially, that power has been broadened even further. Using such power to limit and control development and to reestablish and support traditional land uses would allow the Northern Minorities to return to their traditional cultures and ways-of-life. Of course, if all members of a people went back to herding or hunting, there would be no native people left to run the native government, but simply giving the majority of the people the ability to practice their traditional culture would help to preserve it.

The creation of Northern Minority governments would also give the Northern Minority peoples the ability to raise taxes which could be used locally. There are problems with Russia's current tax structure: local governments are not sending tax revenue to Moscow because those

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<sup>159</sup> Article 131 states that "[l]ocal self-government shall be administered in urban and rural settlements and in other areas with the consideration of the historical and other local traditions. The structure of local self-government bodies shall be determined by the population independently." KONST. RF, art. 131, § 1. Essentially, any form of local government that is acceptable to the voters appears to be constitutional. A Northern Minority people could give the power of local government to a tribal council, a group of elders, or any other traditional self-government system that they wish.

<sup>160</sup> "The admission to the Russian Federation and the creation in it of a new subject shall be carried out according to the rules established by the federal constitutional law." KONST. RF, art. 65 § 2. A subject of the Russian Federation is some governmental sub-unit of the Federation. KONST. RF, art. 5, § 1.

<sup>161</sup> "The status of a subject of the Russian Federation may be changed upon mutual agreement of the Russian Federation and the subject of the Russian Federation and according to the federal constitutional law." KONST. RF, art. 66, § 5.

<sup>162</sup> KONST. RF, art. 132, § 1.

revenues are not being spent on necessary services, but Moscow cannot fund those services because the regions will not pay their share.<sup>163</sup> If the Northern Minorities remain dependent on the central government, it is unlikely that they would ever receive the funds necessary to address their needs. While giving the Northern Minorities the power to collect taxes directly from those industrial facilities located in their territories would not fix Moscow's tax problems, it would offer a chance to deliver needed social services to the local population.

The creation of Northern Minority governments would help to solve a number of the Northern Minorities' problems, but it does not solve them all. Regional governments, which would be required to give up valuable lands when the Northern Minority governments are formed, may be reluctant to transfer these money-making resources to a native government. Another problem is that regional governments may allow the Northern Minority governments to be created and then attempt to dominate them. A third, and very real, problem is the potential inability of the Northern Minorities to manage the lands and money that come with governmental power. Considering their politically marginalized history, giving the Northern Minority essentially unlimited access to so much power may open the door for corruption, mismanagement, and exploitation at the hands of outsiders.

While the regional governments' desire to retain valuable lands would have to be handled on a case-by-case basis (perhaps through some form of income-sharing to reimburse these governments for the loss of income) this problem does not seem insurmountable. Furthermore, the Northern Minorities' lack of experience in government might be solvable through something as simple as assigning experienced administrators or outside consultants to work with them in the beginning.

## VI. CONCLUSION

The creation of native governments offers the best hope of insuring that the wrongs done to the Northern Minorities in the past are not repeated in the future. The industrial development of Siberia and the Russian Far East all-but destroyed their ancient cultures and ways-of-life. Their lands were taken and often polluted beyond further use. They have been reduced to living in poverty because the land can no longer support

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<sup>163</sup> Specter, *supra* note 70.

them and they cannot find employment in the new Soviet industries which took their lands.

While Russia's new political system offers the Northern Minorities a number of legal protections for their rights, and also offers them hope for a more just and equitable future, their quality of life has not improved under the new system, and in many ways has gotten worse. Continuing the Northern Minorities dependence on the Federation is not a viable answer because of the growing weakness of Russia's central government. In Russia's fluid political climate, to assure the protection of their rights, the Northern Minorities must speak for themselves directly through local governments.

