

RECONSTRUCTION OF PRE-MODERN TRADITIONS IN KYRGYZSTAN:
LEGAL PLURALISM AND WOMEN

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ABSTRACT

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This study examines the reinvention of ancient traditions of Kyrgyz people in terms of *aksakal* courts which are aspects of legal pluralism in Kyrgyzstan and women's position with respect to *aksakal* courts' judgments. From a historical perspective, this thesis aims to analyze how the pre-Soviet identities and traditions mutated, adapted and survived until today, forming modern state institutions and social practices. In this study, it is argued that the current pluralist legal system brought with the establishment of *aksakal* courts, which were designed to serve as an alternative judicial authority to state courts, is an outcome of the decentralization of state authority and nation building efforts that emphasized the traditions as a unifying tool. It is asserted that the reviving and evolving of traditions were also embraced by the society and a rare form of marriage practiced in the past was reinvented in the form of nonconsensual bride kidnapping. Within this context, this study attempts to find out the effects and outcomes of the reconstructed traditions of *aksakal* courts and bride kidnapping practices. These two aspects of reconstructed traditions are discussed in conjunction with each other and analyzed within the scope of women's rights.

Keywords: *aksakal* courts, bride kidnapping, identity, women's rights, human rights.

ÖZ

KIRGIZİSTAN'DA MODERNİTE ÖNCESİ GELENEKLERİN YENİDEN İNŞASI: HUKUKİ ÇOĞULCULUK VE KADIN

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Bu çalışma, modern Kırgızistan'da hukuki çoğulculuğun unsurları olan aksakal mahkemeleri ve bu mahkemelerin kararları yönünden kadının konumu bağlamında, Kırgızların kadim geleneklerinin yeniden inşasını incelemektedir. Bu tez, tarihsel bir bakış açısıyla, Sovyet öncesi kimliklerin ve geleneklerin nasıl değiştiğini, yeni koşullara nasıl adapte olduğunu ve günümüze kadar ayakta kalarak nasıl modern devlet kurumlarını ve sosyal pratikleri şekillendirdiğini çözümlemeyi amaçlamaktadır. Bu çalışmada, devlet mahkemelerine alternatif bir yargı mercii olarak tasarlanan aksakal mahkemelerinin kurulmasıyla getirilen mevcut çoğulcu hukuk sisteminin, gelenekleri birleştirici unsur olarak vurgulayan yerinden yönetim ve ulus inşası çabalarının bir sonucu olduğu savunulmaktadır. Geleneklerin yeniden inşası olgusunun toplum tarafından da benimsendiği ve eski çağlarda nadir görülen bir evlilik şekli olan, ancak yeniden yorumlanan, rızası hilafına kız kaçırmanın, bir gelenek olarak yeniden icat edilerek yayıldığı ileri sürülmektedir. Bu kapsamda, bu çalışma, aksakal mahkemeleri ve kız kaçırma uygulamaları şeklinde karşımıza çıkan, yeniden yapılandırılan gelenekler ile bunların etki ve sonuçlarını ortaya çıkarmaya çalışmaktadır. Bu iki yeni gelenek, birbiriyle bağlantılı olarak ele alınarak kadın hakları çerçevesinde incelenmektedir.

Anahtar Kelimeler: aksakal mahkemeleri, kız kaçırma, kimlik, kadın hakları, insan hakları

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CHAPTER 1

INTRODUCTION

Traditions are long term customs and conventions developed under the influence of religious, social, economic and cultural practices of the society. The Cambridge Dictionary of Sociology defines tradition as: “Understood generically as customary ways and beliefs handed down (usually by oral communication, ritual, and/or imitation) from the past for present action; tradition is an integral component of every family, group, organization and nation.”¹ Traditions are a part of identity formation process and they can change by time and encountering new cultures.² As the territories of Central Asia had been a homeland to many civilizations throughout the history, every society lived in or passed through the region; i.e. Turks, Persians, Mongolians, Indo-Arians, Middle Eastern people contributed a lot to its culture. The region has always been the melting pot of Western and Eastern values³ and several religions, faiths and practices such as Zoroastrianism, Buddhism, Manichaeism, Christianity, Islam, shamanism, animism, witchcraft and paganism flourished in Central Asia. The mix of all these distinctive cultures restated the culture of Central Asia and Kyrgyz in particular. Moreover, the long lasting pastoral nomadic culture of Kyrgyz was a significant determinant of the Kyrgyz way of life: nomadism led to the organization of the society in groups such as clans and tribes, and shaped their socio-economic and political structure. The patriarchal extended families were the core of the society where the fathers and lineage elders were respected and obeyed. In such a society, women

¹ Bryan S. Turner, ed., *The Cambridge Dictionary of Sociology* (New York: Cambridge University Press, 2006), 636.

² Judith Beyer and Peter Finke, “Practices of Traditionalization in Central Asia,” *Central Asian Survey*, vol.38, no.3, (2019): 314, <https://doi.org/10.1080/02634937.2019.1636766314>.

³ Sally N. Cummings, *Understanding Central Asia: Politics and Contested Transformations*, (London: Routledge, 2012), 17.

were in a secondary position after men and they were married off to make alliances with other families or clans. The conflicts between the family or clan members were mediated and resolved by the respected lineage elders called *aksakals* according to the customary laws. This way of life was adapted and transferred to the current day with new interpretations and people are still committed to them.⁴

As Hobsbawm suggests, on many occasions, traditions are constructed on the basis of the historical customary practices.⁵ Due to the cementing power of traditions on the society, they are often used for the consolidation and legitimization of power, as was the case in the Kyrgyz nation building process. As Weber argues, legitimacy of authority partly comes from the belief that it has always existed. The commands of the leader are perceived legitimate when they are in conformity with the customs.⁶ This was exactly what Akaev did in the Kyrgyz nation building process. The history was rewritten, the myths were recreated and traditions were reconstructed in order to consolidate national identity and legitimize the new president. Thus, the clan identities revived in the socio-economic and political sphere; *aksakal* courts were established as new state institutions referring to the ancient way of resolving the disputes. Yet, these courts appeared as the new interpretation of traditions which work in a different way, forming an aspect of legal pluralism in Kyrgyzstan.

In parallel with the government's discourses emphasizing traditions, the citizens also turned back to the history seeking for ancient traditions that would make up their identities. However, most of the ancient beliefs and traditions were suppressed by either in the Tsarist administration or under the Soviet rule. The clan identities and religious identities survived the oppressive periods and revived with the dissolution of the Soviet Union, former socio-cultural practices reemerged, albeit with a new interpretation. One such example is bride kidnappings, which occurred rarely in the pre-Soviet era and mostly based on the consent of both bride and groom. After the

⁴ Rafis Abazov, *Culture and Customs of the Central Asian Republics*, (USA: The Greenwood Pres, 2007), 60-61.

⁵ Eric Hobsbawm, "Inventing Traditions," in *The Invention of Tradition*, ed. Eric Hobsbawm and Terence Ranger, (Cambridge: Cambridge University Press, 2012), 1.

⁶ Reinhard Bendix, *Max Weber: An Intellectual Portrait*, (New York: Routledge, 1960), 298.

dissolution of the Soviet Union, these practices were reinvented and reconstructed in the form of nonconsensual bride kidnappings, which severely damages women's rights in the modern Kyrgyzstan. Today, still the *aksakal* courts as official instruments representing the reconstructed traditions are responsible for resolving family disputes including the bride kidnappings, which is another manifestation of the reconstructed traditions.

Within this context, the main goal of this thesis is to understand the dynamics behind the reconstruction of traditions in Kyrgyzstan with a specific focus on legal pluralism and women's position in this process. The main research problem of this thesis is to examine the current pluralist legal system brought with the establishment of *aksakal* courts and at what costs this system is still maintained with regards to women's rights. The study demonstrates how the ancient traditions were converted and adapted to the socio-cultural, economic and political systems in Kyrgyzstan throughout the history and how they were used as unifying tools in the identity and nation building processes by both the government and the society itself. In addition, the study attempts to find out the effects and outcomes of the reconstructed traditions in the form of *aksakal* courts and bride kidnapping practices. These two aspects of reconstruction or reinvention of traditions, first of which was constructed by the first president and second of which was reinvented by the society are discussed in conjunction to each other and analyzed in terms of the damage they cause in terms of women's rights.

The examination of identities that existed in Kyrgyzstan throughout the history is crucial, as these identities are the main elements that constitute the sociological make-up of today's Kyrgyzstan, its institutions and everyday practices. The main supranational and subnational identities which had been shaped around the multi layered culture created by various inhabitants of the Kyrgyz territory still prevail in the socio-political structure of Kyrgyzstan. The supranational identity of being Muslim and subnational identity of being a clan member have never lost their importance until today. The clan affiliations played the leading role in the assignment of the first president of the independent Kyrgyz Republic and in the nation building process he

launched.⁷ Thus, the legal pluralism, particularly *aksakal* courts emerged as a need to preserve the clan powers. Religious practices revived with the establishment of independent Kyrgyzstan and found their place in the *aksakal* courts, which are the implementers of customary laws based on the Islamic *adat* law.⁸ The perception of women as well as the legal pluralism in Kyrgyzstan owes to these supranational and subnational identities, which are inseparable components of reconstruction of tradition. Clan powers and *adat* law are determinants of women's position particularly in the rural areas of Kyrgyzstan.

For the purposes of this thesis, legal pluralism provides us a very relevant conceptual framework. Legal pluralism can be simply defined as coexistence of more than one legal orders in a society.⁹ First comprehensive discussions on legal pluralism was brought forward by John Griffiths with his article "What is Legal Pluralism".¹⁰ Griffiths uses the term "legal centralism" as an opposite concept to "legal pluralism" and defines it as a system where there is a systematic state law which is uniform for all people.¹¹ He emphasizes that legal centralism is an imaginary conception and an illusion whereas in the real legal world, pluralism is the fact.¹² Indeed, many social scientists argue that law is not limited to rules, orders and certain practices of the state organs or court decisions, but it is also a living organism developing autonomously in the society. Thus, the concept of law can be broadly understood as the formation and continuation of normative rules that will ensure social order in a social field such as a village, ethnic group, institution or a state etc. However, Merry discusses that it is debatable whether the social norms of a society can be seen as an element of legal pluralism and argues that this should be evaluated considering the cultural, social and

⁷ Kathleen Collins, *Clan Politics and Regime Transition in Central Asia*, 125-127.

⁸ *Adat* law refers to the customary laws influenced by Islam.

⁹ John Griffiths, "What is Legal Pluralism," *The Journal of Legal Pluralism and Unofficial Law* vol.18 no.24 (1986): 2; Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review*, vol. 7, No. 4 (Summer, 1973): 745; Sally Engle Merry, "Legal Pluralism," *Law & Society Review*, vol. 22, No. 5 (1988): 870.

¹⁰ Griffiths, "What is Legal Pluralism," 1-55.

¹¹ *Ibid.*, 3.

¹² *Ibid.*, 4.

ideological structure of the society and the concept of legal pluralism should be refined.¹³ On the other hand, Moore defines a “semi-autonomous social field” which is a small field that can “generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded”.¹⁴ Such kind of legal structures may be within or outside of the state laws or may be partially in parallel with the state laws. Moore gives the example of Chagga as a semi-independent tribe which has successfully provided its social order and produced rules for the continuity of this order, without the need for state law and jurisdiction.¹⁵ Pospisil categorizes such kind of social rules produced by the semi-autonomous social fields as law.¹⁶ Moreover, Merry suggests that the state law is in itself plural: Since the state law cannot regulate every field and foresee every unique incident, the law on the books and law in action can differ in a certain extent.¹⁷

In the case of Kyrgyzstan’s *aksakal* courts however, legal pluralism is established by the constitution and state laws. Yet, the state laws only draw the framework of the proceedings of these courts and leaves the designation of the customary laws, which these courts will apply, their jurisdiction process and qualification of their decisions, to the *aksakal* courts. The ambiguous term of “customary law” which the *aksakal* courts take as a basis for their judgements creates not only a deviation from the state law but also it contains different interpretations in itself. This leads to the emergence of multiple legal orders in Kyrgyzstan which deeply affects women’s rights.

In this respect, this thesis consists of five parts: The first chapter makes an introduction to the research problem and research question of the thesis and defines the aim and main topic of the study. The second chapter focuses on the identities flourished in Kyrgyzstan throughout the history. In order to understand the formation of these

¹³ Merry, “Legal Pluralism,” 889-891.

¹⁴ Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” 720.

¹⁵ *Ibid.*, 729-742.

¹⁶ Leopold J. Pospisil, *Anthropology of Law*, (New York: Harper and Row, 1971), chapter 4.

¹⁷ Merry, “Legal Pluralism,” 890.

identities, a brief socio-cultural history in the pre-Soviet era is presented. Following this, supranational and subnational identities in Kyrgyzstan are examined in detail to present an overview of the dynamics incorporated in the post-Soviet transformation. Furthermore, the identity construction in the Soviet period, creation of national identities by the Soviet Union and how the Soviet Union confronted the pre-Soviet identities are explained. Soviet efforts to eradicate the subnational and supranational identities -i.e. clan affiliations and religious practices- and how these identities survived in the Soviet era are discussed in this chapter. In the third chapter, the post-Soviet transformation of the Kyrgyz Republic is examined by focusing on the inauguration and presidency of the first president Askar Akaev with an emphasis on subnational identities -clan affiliations. The new state organs and powers established by the first constitution of the Kyrgyz Republic are examined to understand the legal basis of the *aksakal* courts. Afterwards, the establishment of *aksakal* courts as an alternative to state courts which are elements of legal pluralism in Kyrgyzstan is analyzed and these courts are mentioned as new institutions built for satisfying the resilient clan powers in the processes of decentralization of state authority and nation building. As the *aksakal* courts were referred to be an extension of the ancient traditions by Akaev, I examine how they work today in the rural and urban areas to highlight how in fact they were reconstructed and reinterpreted by authorities in relation to ancient traditions. In the fourth chapter, I present Kyrgyz women's position with an emphasis on the Soviet efforts to emancipate women along with the outcomes of these Soviet policies. I argue that even though the Soviet project contributed a lot to the emancipation of women, they are still oppressed particularly in the rural areas. In this chapter, I analyze another aspect of the reconstructed traditions -the bride kidnapping practice in terms of its antiquity. Consequently, violation of women's rights, particularly the bride kidnapping incidents in Kyrgyzstan and competency of *aksakal* courts to judge these cases were discussed. It is argued that the *aksakal* courts which work for reconciliation of the parties on the basis of customary laws are insufficient to resolve the disputes in a legitimate or lawful way. The bride kidnapping incidents which are perceived as tradition became widespread particularly in the rural parts of Kyrgyzstan and the *aksakal* courts mostly try to appease the women victims instead of delivering a just judgement. In the last chapter, the main findings and considerations on the *aksakal* court system as an aspect of legal pluralism are

presented, and on the basis of their judgements on cases involving violence against women, the role of these courts in contemporary Kyrgyzstan is discussed.

In this thesis, the data and evidence are collected from the relevant literature as well as Kyrgyz legislation. The research is based on the books and articles in addition to online sources, news and reports. The case studies conducted by the scholars are analyzed and their findings on the operation of *aksakal* courts and bride kidnappings were used as a basis for the arguments of this thesis. The data in such studies are evaluated and reinterpreted to compose the main arguments and research questions of the thesis.

CHAPTER 2

PRE-INDEPENDENCE PERIOD

History of Kyrgyz dates back to the ancient times. The place where we call Kyrgyzstan today have been the homeland for many peoples and civilizations throughout the history. The culture enriched by the interaction between several peoples contributed to the flourishing of various identities in the region. These identities shaped around numerous beliefs, religions, traditions and relationships between the inhabitants and some of the most spread and valued ones were brought until today with certain adaptations. These well-maintained identities have been at the center of power relations throughout the Kyrgyz history and politics. In the pre-Soviet era, for centuries, these identities had been serving as a basis for the social structure and everyday life; however, there was no room for them within the Soviet Union's modernization endeavors. While the Soviet ideology intended to eradicate these identities and discharge the pre-modern social structure of the Kyrgyz people, they managed to survive the Soviet repression.

When the Soviet Union collapsed, these identities were still effective in both in social life and in politics and even played a determining role in the presidential elections as the first president of Kyrgyzstan came to power with the proposal and support of prominent clan leaders. The efforts on balancing the interests among different identity groups was common in the politics of the newly independent Kyrgyzstan. In the state building process, these identities maintained their importance and some traditions, which made up these undergoing identities were adapted to the new system, creating the new Kyrgyz identity. Some state institutions were built upon the deep-rooted culture of Kyrgyz people ignoring the purpose of democratization with the discourse of a Kyrgyz model of democracy. The legal pluralism and *aksakal* courts, which

appear to be a parallel law system subsisting together with the democratic state laws, were a consequence of sustention of the pre-Soviet identities of Kyrgyz people.

Within this context, scrutinizing the emergence and evolution of identities is crucial for understanding the state institutions and social structure of today's Kyrgyzstan. In this chapter, firstly, a brief socio-cultural history of Kyrgyz in the pre-Soviet period will be presented and secondly, an overview of the intertwined identities and their transformation will be discussed in the light of historical events.

2.1. A Brief Socio-Cultural History of Kyrgyz People in the Pre-Soviet Era

Roots of Kyrgyz people go deep in the ancient times. There are pre-historical proofs that people lived even 200.000 to 300.000 years ago in the area we call Kyrgyzstan now.¹⁸ Yet, keeping records of history began after the invention of writing, and the earliest information about Kyrgyz society are based on Chinese chronicles which reveal that Kyrgyz tribes inhabited the upper Yenisey River in southern Siberia. Their predecessors were a combination of Turkish and Mongolians.¹⁹ Kyrgyz tribes, which consisted of Turkic-speaking people, started to come forward between the 6th-10th centuries, and lived a nomadic life moving according to the political fluctuations in the atmosphere within Altai, Xingjiang and Tien Shan.²⁰ With the collapse of the Uighur Khanate in 840, Kyrgyzs spread to Central Asia where they attained new territories. In the 9th century the Kyrgyzs proceeded forward to the area where they are now settled in.²¹

According to the Chinese chronicles, the word “Kyrgyz” comes from “Ha-Kia-sze”, a word which indicates the connection of Kyrgyzs with the “Hakas” living around the

¹⁸ Geoffrey Wheeler, *The Modern History of Soviet Central Asia*, (USA: Greenwood Press, 1964), 9.

¹⁹ *Ibid.*, 9.

²⁰ Abazov, *Culture and Customs of the Central Asian Republics*, 11-12.

²¹ Güljanat Kurmangaliyeva Ercilasun, “Uygur Kağanlığının Yıkılması ve Kavimler Göçü: Doğu Kazakistan ve Altay Bölgesinde Kırgız ve Kimekler,” in *Turkic Civilization Studies-I*, ed. İlhan Şahin and Güljanat Kurmangaliyeva Ercilasun (İstanbul: İstanbul Esnaf ve Sanatkarlar Odaları Birliği, 2015).

Yenisey River.²² On the other hand, the Russian sources (N. N. Kozmin), assert that the name “Kyrgyz” might have been come from “Karakas” which was one of the three tribes living in the Yenisey area in the medieval age.²³ In addition to this, some Chinese researchers indicate that according to the Kyrgyz legends passed orally for centuries, and also a part of the Epic of Manas translated into Chinese in 1961 indicate that the name comes from “Kyrk Kyz” which means “forty girls”.²⁴ Another theory on the name “Kyrgyz” brings forward that it comes from “kyrk” (forty) and “yz” (tribes) and means forty tribes, and Manas is the hero uniting these forty Kyrgyz tribes.²⁵

Kyrgyz were traditionally pastoral nomadic, and they had been living in the form of clans and tribes for a long time. Because of the nomadic culture, they mostly didn’t leave any cities or architectural structures or written records behind and this makes it very hard to trace their ancient way of life.²⁶ However, we know that their nomadic life style shaped their traditions, social structure and values as most part of those have survived until today.²⁷

Kyrgyz were traditionally pagans and they began to converting to Islam in the 17th century. Central Asia was the cradle of many religions and practices for centuries such as Zoroastrianism, Buddhism, Manichaeism, Christianity, shamanism, animism, witchcraft and paganism. Kyrgyz already had a compound belief and value system and their nomadic society had little opportunity to access to the written work of great

²² Juli Hudyakov, “Енисей Кыргыздарынын Тарыхы,” in *Кыргыздар*, ed. Тузген Кенеш Жусунов, (Bishkek: Кыргызстан басмасы, 1991), 119.

²³ *Ibid.*, 121.

²⁴ Hu Zhenhua, “Kırgız Milletine Ait ‘Kırkkız’ Efsanesi,” accessed November 6, 2021, <https://www.ayk.gov.tr/wp-content/uploads/2015/01/ZHENHUA-HU-KIRGIZ-M%c4%b0LLET%c4%b0NE-A%c4%b0T-KIRKKIZ-EFSANES%c4%b0.pdf>.

²⁵ Emmanuel Karagiannis, *Political Islam in Central Asia: The Challenge of Hizb ut-Tahrir*, (London: Routledge, 2010), 33.

²⁶ Abazov, *Culture and Customs of the Central Asian Republics*, 25.

²⁷ Aizat Aisarakovna, “Globalization and Kyrgyz Traditional Culture”, in *Central Asiatic Journal*, vol. 54, no.1, (2010), 2.

thinkers, to religious education and clergy.²⁸ This might be the reason why they kept their old beliefs such as the ancestor cult, belief in holy spirits of mountains and belief in the universe as a deity even after adopting Islam.

In the late-19th century, all Kyrgyz lands became a part of the Russian Empire. Russian and Ukrainian inhabitants settled in the Kyrgyz lands. In 1916, Turkic peoples (and Kyrgyz) started a rebellion against the Russian administration, due to the heavy military measures and bribes Russians officials took, national hostility against Russians, religious feelings, the restriction of Kyrgyz life by seizing lands, acquisition of the most important products of Kyrgyz at extremely low prices during the war years by Russians, high taxes of the Russian government and starvation of Kyrgyz people.²⁹ In 1917, The Bolshevik Revolution broke out and in 1924, the Kara-Kyrgyz Autonomous Region was created by the Soviet Union. In 1925 it was renamed as Kyrgyz Autonomous Republic and later in 1936, it became Kyrgyz Soviet Socialist Republic.³⁰

2.2. Identity Question in Kyrgyzstan

Defining the term “identity” is implicitly a philosophical as well as a sociological problem; therefore, it is not easy, or even possible to give a shortcut definition of it. Yet, through adding supplementary adjectives in front of the word “identity” such as “communal”, “national”, “religious”, “ethnic”, “linguistic” etc., the generality of the word “identity” is partly avoided. Within this context, one can roughly say that identity is the roles an individual or a group play in the society, their set of meanings, qualities, beliefs and values that distinguish them. It defines who a person is and their sense of belonging to a particular group.³¹ In the case of Central Asia, which is an extremely complex region in terms of its geographical features, historical background and

²⁸ Rafis Abazov, *Culture and Customs of the Central Asian Republics*, 60.

²⁹ Saadettin Yağmur Gömeç, *Kırgız Türkleri Tarihi*, (Ankara: Berikan, 2014), 147.

³⁰ Brill Olcott, “Kyrgyzstan,” 112.

³¹ Peter J. Burke and Jan E. Stets, *Identity Theory*, (New York: Oxford University Press, 2009), 3.

cultural elements, a lot of identities exhibit a multi-layered structure that is intertwined with each other.³²

The history provides an insight regarding the stratified structure of Kyrgyz society. Many peoples interacted with the Kyrgyz people throughout the history; several religions, ethnic groups, languages passed by the Kyrgyz lands left their traces in the Kyrgyz society and culture. Various identities developed within these circumstances in Kyrgyzstan and some of them still affect the social, political and legal structure. These identities can be grouped as supranational, national and subnational identities. In the next part, supranational and subnational identities will be examined in order to understand the dynamics which called forth the social structure and *aksakal* courts operating today as an element of legal pluralism. Subsequently the national identity construction of the Soviet Union will be handled with the discussion of whether the new Soviet identity wiped out the pre-existing identities or not.

2.2.1. Supranational Identities in Kyrgyzstan

The term “supranational identity” points to vast amounts of individuals linked each other with a sublime value, one that is higher than national bonds. In this context, Islamic identity can be indicated as the most prominent supranational identity connecting all the Central Asian peoples together.³³

After the Battle of Talas in 751, Islamic legacy began to spread throughout the Silk Road. Karakhanids were the first Turkic state to adopt Islam and their ruler Abdulkerim Satuk Buğra Khan fought against non-Muslim Turks.³⁴ Most of the inhabitants of Central Asia began to become Muslim in the following years however, some Kyrgyz did not adopt Islam immediately.³⁵ Most of the scholars are of the

³² Pınar Köksal, “Orta Asya’da Tarihsel Kimlikler ve Çatışma,” *Uluslararası Suçlar ve Tarih / International Crimes and History*, 21 (2020): 44.

³³ *Ibid.*, 29.

³⁴ Reşat Genç, “Karaahanlılar Döneminde Kırgızistan,” *Manas Üniversitesi Sosyal Bilimler Dergisi*, vol.7, no:14 (2005): 1.

³⁵ John Glenn, *The Soviet Legacy in Central Asia*, (New York: St. Martin’s Press, 1999), 63-65.

opinion that the nomadic life style of Kyrgyz people lie behind the late spread and less effectiveness of Islam among these people.³⁶ Nevertheless, pan-Islamism have been a uniting factor among the Central Asian people and was used by some groups in order to connect them together both in pre-Soviet times and in the Soviet era.

In the first years after the Bolshevik revolution, the Bolshevik propaganda of atheism was targeted towards the Orthodox Church and there was a relatively liberal policy towards the Muslim. However, from the mid-1920s, Islam became the object of suppression.³⁷ Islam was seen as a problem for the Soviet notion; it was a sign of primitiveness and backwardness. Hence, the Soviet government tried to restrain it by establishing religious institutions under the control of the government. National delimitation policies were introduced as a modernization process and the method was the “divide and rule” policy, which would also remove the “threats” of pan-Islamism and pan-Turkism.³⁸ As soon as Soviets came to power, they embarked upon abolishing the Islamic institutions and practices and shut down the shariah courts and mosques. However, these attempts were soon to be proven ineffective as the religious practices subsisted secretly. Even though the Soviet government were closing down the mosques and people were gathering at home or other places to pray and secret Sufi societies were arising. Underground Islam³⁹ was kept alive in the private spheres endured this process. Consequently, the religion also nationalized to a certain extent: some religious rites and customs were being practiced even in the party cadres of Central Asia, in the guise of “intensifying national feelings.”⁴⁰

With Gorbachev’s *perestroika*, Islam came to surface again and maintained its power. By 1991, there were 39 mosques only in Kyrgyzstan. A survey conducted in 1993

³⁶ Köksal, “Orta Asya’da Tarhisel Kimlikler ve Çatışma,” 30.

³⁷ Galina M. Yemelianova, ed., *Radical Islam in the Former Soviet Union*, (New York: Routledge, 2010), 21.

³⁸ William Fierman, “The Soviet ‘Transformation’ of Central Asia,” in *Soviet Central Asia: The Failed Transformation*, ed. William Fierman (Boulder: Westview Pres, 1991), 17.

³⁹ It is a term used for the persisting Islamic practices. Ahmet Rashid Jihad, *the Rise of Militant Islam in Central Asia*, (New Haven: Yale University Press, 2002), 40.

⁴⁰ Glenn, *The Soviet Legacy in Central Asia*, 92.

revealed that 96% of the people in Kyrgyzstan were Muslim.⁴¹ Today, around 89% of Kyrgyzstan's population is Muslim.⁴² In other words, Islam is still an effective supranational identity and everyday life is mostly shaped around the Islamic customs in Central Asia in general; however, Kyrgyzstan is relatively secular.⁴³

Another significant supranational identity was Turkic identity in Central Asia. Pan-Islamism and pan-Turkism went hand-in-hand in the region since the great majority of the Muslims were the people speaking Turkic languages.⁴⁴ *Jadid* movement was a good example to the attempts to unite Central Asian people under the umbrella of pan-Turkism, emphasizing the common roots of Turkic languages all these people were speaking. *Jadids* founded “new method schools” (*usul-i jadid schools*) where the education was given in Turkish and both modern and religious education was provided. *Jadids* published the journal *Terjüman* in Turkish to unite all the Tatars, Central Asian people who speak Turkic languages and people living in the Ottoman Empire under pan-Turkism. Theirs was a modernization project having striking similarities to the Soviet Union's project, with a divergence of emphasis. On the other hand, *Jadids'* pan-Turkic arguments were centered around Islam soon it appeared to bear a pan-Islamic character.⁴⁵ Soviets took action against the pan-Turkic ideals with the national delimitation and language policies and assigned new meanings to these identities as it will be discussed under the construction of national identities.

The supranational identities of Islam and Turkism can still be observed in Kyrgyz identity and particularly in the formation of *aksakal* courts. Establishment of *aksakal* courts was a reinterpretation of the *aksakals* in Kyrgyz history who were wise elders

⁴¹ Collins, “The Political Role of Clans in Central Asia,” *Comparative Politics*, 35, no.2, (2003), 173-189.

⁴²http://globalreligiousfutures.org/countries/kyrgyzstan#/?affiliations_religion_id=0&affiliations_year=2020®ion_name=All%20Countries&restrictions_year=2016 (accessed June 25, 2021).

⁴³ Abazov, *Culture and Customs of the Central Asian Republics*, (USA: The Greenwood Pres, 2007), 70-72.

⁴⁴ Roy Oliver, *The New Central Asia: The Creation of Nations*, (London: I.B. Tauris, 2000), 37-38.

⁴⁵ Arne Haugen, *The Establishment of Republics in Soviet Central Asia*, (New York, Palgrave Macmillan, 2003), 52-69.

giving advice on everyday life issues according to the customary laws shaped by the Islamic laws. Adapting this historical concept to the current legal system evokes the Islamic and Turkic roots of Kyrgyz people and maintains these identities.

2.2.2. Subnational Identities in Kyrgyzstan

Subnational identities refer to the sense of belonging to a group in which the members are tied to each other with bonds below the national level. Max Weber asserted that clans as primitive political organizations were a common form of social structure for the nomadic people of Eurasia. Furthermore, he anticipated that construction of modern states and institutions would wipe out these pre-modern structures.⁴⁶ However in the case of Central Asia, Weber's prediction proved wrong: The strong clan ties and regional affiliations dating back to the pre-Soviet period are still effective in everyday life and even in politics and economics, and this is the most primary element of subnational identities in Central Asia.⁴⁷

In Central Asia, the extended patriarchal families have been the core of the social life and kinship have played an incredibly significant role in the society throughout the history. Extensive vocabulary used in referring the kin relations in the Turkic languages of Central Asia demonstrates the importance of the families in social life.⁴⁸ In the pre-Soviet period, the extended families typically consisted of hundreds of people and could be enlarged by marriages.⁴⁹ Since then, Kyrgyz have the tradition of exogamy for centuries which requires the couple not to be related by blood at least for 7 to 10 generations.⁵⁰ This kind of a progeny with blood and marital ties was called *aul* (kin village) which could be extended with fictive kinship bonds. Members of

⁴⁶ Max Weber, *Economy and Society*, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), XLIV.

⁴⁷ Köksal, "Orta Asya'da Tarihsel Kimlikler ve Çatışma," 38.

⁴⁸ Collins, *Clan Politics and Regime Transition in Central Asia*, (USA: Cambridge University Press, 2006), 25.

⁴⁹ *Ibid.*, 26.

⁵⁰ Coşkun Üçok et. al., *Türk Hukuk Tarihi*, (Ankara: Savaş Yayınevi, 2002), 13.

historically allied families and even people which share the same neighborhood (*mahalla*), village or region, or went to school or worked together could define each other as “relatives”.⁵¹ In the pre-Soviet period, coming together of these *auls* formed clans and a group of clans formed the tribes. The higher social group was tribal confederation which also can be called as ethnic communities whose members shared common history and characteristics.⁵² Boundaries of these associations were not static, they were changing by military alliances and conquests which created new links between different groups.⁵³ However a major division was found in the Kyrgyz society i.e. *Sol Kanat* and *Ong Kanat* (left wing and right wing) which is still affective in Kyrgyz political life (even in the civil rebellions in 2005 and 2010, the power struggle of these tribes played a role).⁵⁴ Considering the complex nature of the divisions between the different solidarity groups, in this thesis, I will refer all these structures by the term “clan” as Collins did: recognizing the differences between the multifaceted social networks at various levels and the difficulty of classifying them in certain categories, the term “clan” captures the kin and fictive kin ties which are still pertinent in Central Asia.⁵⁵

Charrad explains the process of a kin group formation in patriarchal societies and indicates that the “man” is typically at the center of the group and all the kinship links are established around him. Women can be included to these groups however still the bonds are established through the men, for instance through the husband and brother of the bride. When a problem occurs, males who are related to each other within five degrees of patrilineal relationship would come to help.⁵⁶ Considering that every man is a junction point of such kind of kin based networks, one can imagine how wide these web of relations can stretch out.

⁵¹ Collins, *Clan Politics and Regime Transition in Central Asia*, 26, 72.

⁵² Glenn, *The Soviet Legacy in Central Asia*, 50.

⁵³ Collins, *Clan Politics and Regime Transition in Central Asia*, 36.

⁵⁴ Köksal, “Orta Asya’da Tarhisel Kimlikler ve Çatışma,” 40.

⁵⁵ Collins, *Clan Politics and Regime Transition in Central Asia*, 27.

⁵⁶ Mounira M. Charrad, *The State and Women’s Rights*, (Berkeley: University of California Press, 2001), 72.

Male elders have had a significant role in this complex structure of the clans. Respect for the elders have always been a central value throughout the Kyrgyz history. This tradition partly comes from the ancestor cult. Ancient Kyrgyz believed that their ancestors would protect them if they obeyed the customary rules. They still give the credit to their ancestors when they achieve a success, and maintain the rituals of burying the dead near their ancestors to protect the dead.⁵⁷ Also Kyrgyz still have the practice to be able to count their ancestors of seven generations.⁵⁸

Importance of elders for Kyrgyz can also be deduced from the traditional Kyrgyz Epic of Manas. In the epic, the main character of the legend -Manas says: “I inquired and learned from all of our counselors and *Aksakals* what our ancestors did and their way of action.”⁵⁹ Another statement in the Epic of Manas is: “One day, Aziz Khan said the following words to his son in front of him: ‘My son, my dearie, Almambet, I am old, I have become a white-bearded sage [*aksakal*]. There are many people who applied for me for my judgment. From now on, you shall hear the cases of these plaintiffs!’.”⁶⁰ In the Epic, also there are other “old wise man archetypes” in the roles of a leader, a hero, a doctor or a savior.⁶¹ Also, Persian manuscripts from 10th century confirm that only men older than 40 years old could become a leader in the Kyrgyz society.⁶²

The respected elders in the Kyrgyz society were called *aksakals* (which literally means white-beard) and the *aksakal* councils in the history of Kyrgyzstan were the authorities where the complicated, tough conflicts were solved by customary law shaped by sharia law. This tradition was transferred to the modern law system of Kyrgyzstan by the first

⁵⁷ Mayramgül Dıykanbayeva, *Kırgızlarda Atalar Kültü*, (Konya: Kömen, 2016), 59, 62.

⁵⁸ Abazov, *Culture and Customs of the Central Asian Republics*, 12.

⁵⁹ Abdülkadir İnan (trans.), *Manas Destanı*, (İstanbul: Milli Eğitim Basımevi, 1992), 19.

⁶⁰ *Ibid.*, 26.

⁶¹ Gülşah Durmuş, “Campbell’in Monomit Kuramı Bağlamında Manas Destanı: Bir Kahramanın Sonsuz Yolculuğu,” *Fırat University Journal of Social Science* Vol: 25, No.2, (2015): 71.

⁶² Vasiliy V. Barthold, *Kırgızlar*, Ufuk Deniz Aşçı (trans.), (Konya: Kömen, 2002), 38-40.

president Askar Akaev in the nation building process; however in a different way which will be discussed in the following chapters.

The Soviet Union aimed to eradicate this social structure; they dismantled the nomadic tribes in most parts of Central Asia.⁶³ Collectivization policies introduced in 1928-1932 with the first Five-Year Plan aimed to create large scale agricultural production with an underlying intention of destroying the traditional Central Asian social structure, eradicating nomadism, providing urbanization and establishing a central control mechanism on the people living on the vast lands of the region. Hence the Soviet Union divided the lands to particular units called *kolkhoz* and reorganized the arable lands in order to divide the solidarity groups. With the new collective farms, private property would be transferred to state ownership, some of the income acquired from the farms would be sent to the central government and the remainder would be distributed among the villagers. With this aim, first of all, the property, animals and lands of the people were confiscated and expropriated. Those who resisted or opposed this decision (*kulaks*) were arrested and exiled or sent to the concentration camps.⁶⁴ The collectivization policies run together with the sedentarization campaigns were implemented forcibly in Central Asia and led to destruction of 200,000 to 300,000 individuals.⁶⁵

On the other hand, the development of agricultural infrastructure and new farming technologies introduced to the *kolkhozes* improved the life standards of local people.⁶⁶ On the contrary to Soviets' purposes, clan structures revived again within the *kolkhozes*: a few clans or *mahallas* fitted in a solidarity group under the *kolkhoz* and the *kolkhoz* itself became an economic and social unit.⁶⁷ Soviets once again intended

⁶³ Gregory J. Massel, *The Surrogate Proletariat: Moslem Women and Revolutionary Strategies in Soviet Central Asia, 1919-1929*, (Princeton: Princeton University Press, 2015), 12-13,15-17.

⁶⁴ Güljanat Kurmangaliyeva Ercilasun, "Kazakistan ve Kırgızistan'da Kollektifleştirme: Sözlü Tarih Çerçevesinden Bir Bakış," *Gazi Türkiyat*, vol.19 (Güz 2016): 12.

⁶⁵ Rafis Abazov, *Historical Dictionary of Kyrgyzstan*, (Oxford: Scarecrow Press Inc., 2004), 107.

⁶⁶ *Ibid.*, 107.

⁶⁷ Oliver, *The New Central Asia: The Creation of Nations*, (London: I.B. Tauris, 2000), 85-87.

to break these groups and combined a few *kolkhozes* under new *sovkhoses* which were administrated by managers appointed by the state.⁶⁸ The managers were supposed to account for the Soviet administration and spread and enforce Soviet's rules to the most remote corners of the Union. However, Soviets gave the *kolkhoz* leaders broad authority and clan leaders (as leaders of the *kolkhozes*) disregarded the Soviets' political agenda and continued to pursue their own economic and political interests rather than the Soviets', distributing the resources however they would like to.⁶⁹

Eventually, the collectivization policy led to radical changes in the nomadic Kyrgyz society, and caused tremendous harm to the people rather than increasing the welfare level of the people and the development of the country.⁷⁰ Moreover, the collectivization policies ended up strengthening the clan structures. The informal self-governing structure of the clans disabled the Soviet government's control. Collins explains how the clans preserved their power under the Soviet rule:

Clans were able to adapt and persist because (1) state repression of the religion fell short of physical destruction of the social system and the extended family structure; (2) the clan organization provided a cultural identity that could become a basis of resistance; (3) from the 1920s onward, clans had access to state resources that fostered their survival.⁷¹

As a result, even though the Soviet administration opposed to these subnational identities on ideological grounds in theory, in practice it consolidated their dominance in the region by using these identities for its own benefit. Extended families still were the building blocks in the *kolkhoz* and most of the clan elders i.e. *aksakals* subsequently became *kolkhoz* leaders.⁷²

⁶⁸ Ibid., 87-88.

⁶⁹ İdil Tunçer Kılavuz, *Power, Networks and Violent Conflict in Central Asia: A Comparison of Tajikistan and Uzbekistan*, (United Kingdom: Routledge, 2014), 52.

⁷⁰ Kurmangaliyeva-Ercilasun, "Kazakistan ve Kırgızistan'da Kollektifleştirme: Sözlü Tarih Çerçevesinden Bir Bakış," 20.

⁷¹ Collins, *Clan Politics and Regime Transition in Central Asia*, 63.

⁷² Judith Beyer, "Revitalisation, Invention and Continued Existence of the Kyrgyz *Aksakal* Courts: Listening to Pluralistic Accounts of History", in *The Journal of Legal Pluralism and Unofficial Law*, 38:53-54, (2006), 170.

The subnational identities still persist in the Kyrgyz society and also in the form of *aksakal* courts. The tradition of consulting *aksakals* as wise elders in the history was carried over to the present day as *aksakal* courts which still keeps the clan culture and structure alive.

2.2.3. Identity Construction in the Soviet Period

Kyrgyz did not have distinct administrative units during most of the 19th century. Lands were demarcated by the clan administrators and conflicts between the clans were solved by *aksakals* according to the customary laws.⁷³ Clans and tribes were ethnically mixed as some of them could exist in the three of Kazakh, Kyrgyz and Uzbek ethnic groups all together.⁷⁴ Also there were no clear language boundaries among Kyrgyz and some of the other Central Asian people due to the shared Turkic roots and absence of literary language.⁷⁵ Hence, nationality was not a fully comprehensible idea for the Central Asian people since, for instance, they could not determine whether they were Kyrgyz or Kazakh. The identities were shaped around the clan affiliations on the subnational level, and Islamic culture on the supranational level.

When Bolsheviks came to power, they enunciated the equality, sovereignty and self-determination of all peoples with the Declaration of Rights of the People of Russia.⁷⁶ Lenin pioneered in the creation of a federation which would be a voluntary alliance bestowed the right to secede. The construction of the federation would involve the processes of *rastvet* (flourishing), *sblizhenie* (coming together) and *sliyanie* (merging) of the nations.⁷⁷ Lenin's ideas on federation was stated as:

⁷³ Abazov, *Historical Dictionary of Kyrgyzstan*, 14.

⁷⁴ Glenn, *The Soviet Legacy in Central Asia*, 61.

⁷⁵ *Ibid.*, 56-58.

⁷⁶ Lenore A. Grenoble, *Language Policy in the Soviet Union*, (New York: Kluwer Academic Publishers, 2003), 36.

⁷⁷ Glenn, *The Soviet Legacy in Central Asia*, 74.

[There should be] absolutely no privileges for any one nation or any one language; the solution of the problem of the political self-determination of nations, that is, their separation as states by completely free, democratic methods; the promulgation of a law for the whole state by virtue of which any measure (rural, urban or communal, etc., etc.).⁷⁸

Yet, soon Stalin took over the leadership and in his period, the Turkic people of Central Asia were reterritorialized with the rationalizing discourse of economic and industrial development. Many people were sent to the concentration camps and many other were settled in the *kolkhozes* in order to increase the agricultural production, with an underlying intention of destroying the clan based structures. In 1926, Kyrgyz started the Naryn riot because of the Soviet repression; however with the Russification policies, Kyrgyz were assimilated to a certain extent.⁷⁹

On the other hand, Stalin proceeded to nation building project and declared the definition of nation in the Soviet sense in his famous essay “The National Question and Leninism” as: “a historically evolved, stable community arising on the foundation of common language, territory, economic life, and psychological make-up, manifested in a community of culture.”⁸⁰ The Soviet modernization project centered on eradicating all the former supranational and subnational identities and creating a new inclusive supranational identity, a new well-educated, secular Soviet socialist person: *Homo Sovieticus*. However this was not an easy task to overcome, the ethnic groups were intertwined with each other, no natural separation was possible and the Islamic culture was predominant in the region, therefore the distinction had to be done artificially.

The Soviet policy on Central Asia grew into divide and rule policy with the discourse of “nationalist in form, socialist in content”. As soon as the Soviet power was consolidated, they immediately got down to work on distinguishing the ethnic

⁷⁸ Vladimir Lenin, *Questions of National Policy and Proletarian Internationalism*, (Moscow: Progress Publishers, 1964/1977), 15.

⁷⁹ Gömeç, *Kırgız Türkleri Tarihi*, 155-156.

⁸⁰ Glenn, *The Soviet Legacy in Central Asia*, 73.

identities. The Soviet Union demarcated the Kyrgyz lands and today, Kyrgyz official history records the Soviet era as the first steps to unite the dispersed Kyrgyz peoples. In 1924, Kara-Kyrgyz Autonomous Region was created as a part of the Russian Federation which is also considered by some Kyrgyz scholars as the success of Kyrgyz activists endeavoring to bring together the ethnic Kyrgyz peoples.⁸¹ Until that time, Kyrgyz had been identifying themselves as Muslims, Turks, Turkistanis and members of distinctive clans. Now, a new identity, a national one was emerging with the delimitation of the Kyrgyz lands and people were adapting this new division. In 1925, with the new Russian constitution, Kyrgyz region was upgraded to the status of Kyrgyz Autonomous Soviet Socialist Republic. Finally, in 1936, it became a union republic - Kyrgyz Soviet Socialist Republic and one year later adopted its new constitution.⁸²

Moreover, folkloric symbolism, national histories, languages and borders had to be created to differentiate the peoples of Central Asia.⁸³ In accordance with Stalin's nation definition, a common language, a shared history, culture and myths were needed in order to create the feeling of national unity and cement the nations. The history of each new nation was rewritten for the benefit of Russians based on the extensive academic research on Central Asian culture, a new version of the Kyrgyz epic of Manas was created.⁸⁴ Reciters of Manas and players of the traditional instruments such as *komuzchi* became famous in the Kyrgyz republic. Kyrgyz also started to develop their own art culture and produced their own opera and theatral works.⁸⁵

For the creation of a common language, different dialects and literary languages were designated to each of the ethnic groups to separate them from each other; a couple of alphabet shifts (from Arabic to Latin and then Cyrillic) were made in order to eradicate the old Islamic and Turkic identities, new vocabulary was acquired to the literary

⁸¹ Morozova, "Nation Building in Central Asia: Creating New State Mythologies," 79.

⁸² Abazov, *Historical Dictionary of Kyrgyzstan*, 21.

⁸³ Gül Berna Özcan, *Building States and Markets: Enterprise and Development in Central Asia*, (Great Britain: Palgrave Macmillan, 2010), 15.

⁸⁴ Glenn, *The Soviet Legacy in Central Asia*, 86-87.

⁸⁵ W.P. and Zeldia K. Coates, *Soviets in Central Asia*, (New York: Greenwood Press, 1969), 165.

languages, and spread by the exponential expansion of education and literacy rates.⁸⁶ Scientific atheism was promoted, mosques and madrasas were shut down and education was strengthened.⁸⁷

In the meantime, to prove that the Soviets were not a successor of the Tsarist Russian chauvinism, the *korenizatsia* (nativization of the cadres) policy was initiated, the Soviet cadres were filled with indigenous well-educated Central Asians and required to work in the local languages.⁸⁸ These local cadres were occupied by the former clan leaders and the regions where these tribes were traditionally strong developed economically during the Soviet period.⁸⁹

On the other hand, to destroy the pan-Turkic ideology, Russification policy was carried out in the spheres of language, education and culture.⁹⁰ Recruitment of Russians were high above the number of recruitment of titular nations' representatives⁹¹ and even though the people occupying the indigenous cadres had to learn Russian language, Russians barely learned the titular languages.⁹² Russians settled in the urban areas whereas the indigenous unqualified Central Asians were hired as workers mostly in the construction projects and consequently, the urban population was mostly not from the indigenous nationalities, the region was Russified.⁹³

Nativization of the cadres gained momentum under the Brezhnev administration in 1960s and 70s, due to the policies of stability of the cadres, and clan based regional

⁸⁶ William Fierman, "*Identity, Symbolism and the Politics of Language in Central Asia*," 125-129.

⁸⁷ Svat Soucek, *A History of Inner Asia*, (New York: Cambridge University Press, 2000), 229-231.

⁸⁸ Fierman, "*Identity, Symbolism and the Politics of Language in Central Asia*," 130.

⁸⁹ Köksal, "Orta Asya'da Tarhisel Kimlikler ve Çatışma," 39.

⁹⁰ Fierman, "The Soviet 'Transformation' of Central Asia," 17.

⁹¹ Richard Sakwa, *Soviet Politics in Perspective*, (London: Routledge, 1989), 250.

⁹² Fierman, "*Identity, Symbolism and the Politics of Language in Central Asia*," 130.

⁹³ Irina Morozova, "Nation Building in Central Asia: Creating New State Mythologies," in *Towards Social Stability and Democratic Governance in Central Eurasia*, ed. Irina Morozova (Netherlands: IOS Press, 2005), 72.

identities flourished within the cadres.⁹⁴ After Brezhnev, Central Asians did not want to abandon the political autonomy gained with Brezhnev period, and thus, Moscow couldn't achieve success in its centralization objective.⁹⁵ Gorbachev purged the cadres with *perestroika* initiated in 1985 with the aim of providing economic liberalization and decentralization; but in addition to this, occupants of the cadres of titular nationalities were accused by corruption.⁹⁶ Although the Soviet "modernization" discourses labeled the clan elites in the national cadres with corruption, clientelism and mafioso, they did not actually make a real effort to cope with them.⁹⁷ In a few years, clans adapted to the changes in the Soviet administration; managed to reach a compromise with Gorbachev and reconsolidated their power. The *aksakal* councils restructured in the party cells where kinship and clan identity still played an important role.⁹⁸ Edgar writes: "While these nominal communists continued to dominate their villages in their traditional roles as aksakgals, or elders, the party cell often existed only on paper."⁹⁹

Eventually, Soviets created new national identities which never existed before. However neither the nativization policy as one of the most significant component of the Soviet nation building process could wipe away the power of clan leaders, nor the Islamic attachments could be erased. Adapting all the changes throughout centuries and evolving within the new circumstances, once again clan structure preserved its existence and reached until today.

⁹⁴ As stated under the supranational identities sub-heading, the term clan here is used for people who are tied to each other with both kinship bonds and other fictive bonds such as education and work networks, inter-familial relationships and regional affiliations etc.

⁹⁵ Chida Tetsuro, " 'Trust in Cadres' and the Party-Based Control in Central Asia During the Brejnev Era," in *Development in Central Asia and the Caucasus: Migration, Democratization and Inequality in the Post-Soviet Era*, ed. Sophie Hohman et. al. (New York: I.B. Tauris, 2014), 72.

⁹⁶ Abazov, *Historical Dictionary of Kyrgyzstan*, 210-211.

⁹⁷ Collins, *Clan Politics and Regime Transition in Central Asia*, 102.

⁹⁸ Morozova, "Nation Building in Central Asia: Creating New State Mythologies," 73.

⁹⁹ Adrienne Lynn Edgar, *Tribal Nation: The Making of Soviet Turkmenistan*, (USA: Princeton University Press, 2004), 107.

CHAPTER 3

POST-SOVIET TRANSFORMATION AND LEGAL PLURALISM

The term “transformation” in this thesis refers to the “third wave of democracy” which indicates the worldwide changes; one of which was the collapse of the Soviet Union. The political and economic changes, privatization, establishment of market economy, rule of law and civil society are some remarks of transformation. In this sense, for the Central Asian population, transformation was not unfamiliar; they had already coped with the changes brought with the Soviet ideology and adapted to them in many ways.¹⁰⁰ Even earlier, they oriented themselves first to the Tsarist Russia’s administration, and then to Lenin’s ideology, which was followed by Stalin’s policies and then the attitudes of other administrators of the Soviet Union. They had been surviving in a continuously changing environment, maintaining their core values and characteristics while evolving with the flow to a certain extent.

The transformation of Central Asia started in 1988-91 and the Soviet Union was disintegrated in 1991. In the post-independence period, the identity construction process was a difficult one. The nation building process developed on the basis of criticism of the Soviet Union.¹⁰¹ However, former religious and pan-Turkic identities couldn’t be used as a basis for the new nations since the traditional Islamic institutions were demolished by the Soviets and the new states had to distinguish themselves from the other Turkic rooted nations. The regional identities were still strong, kinship ties were still at the core of the society and the new presidents of the new states were

¹⁰⁰ Judith Beyer, “Rhetoric of ‘Transformation’: The Case of the Kyrgyz Constitutional Reform,” in *Realities of Transformation, Democratization Policies in Central Asia Revisited*, eds. Andrea Berg and Anna Kreikemeyer, (Germany: Nomos, 2006), 43-49.

¹⁰¹ Sergei Abashin, “Nations and Post-Colonialism in Central Asia: Twenty Years Later,” in *Development in Central Asia and the Caucasus Migration, Democratization and Inequality in the Post-Soviet Era*, ed. Sophie Hohman et. al. (New York: I.B. Tauris, 2014), 82-87.

brought to power by the support of clan based system; yet, the subnational structures were not suitable for the nation building project. They had to regenerate the national identities.¹⁰²

With this objective, the newly independent states pitched into creating and consolidating their national identities attributed by the Soviet policies in the first place. Alongside of developing a new political and economic system, the new states embarked upon creating new histories, myths, symbols and bonds in cooperation with historians and philologists. New institutions were formed which would conduct research on “the golden past” of the countries such as the History of National Academy of Science in Kyrgyzstan.¹⁰³ Having an ancient history was considered important for the consolidation of the new regime and the contest for finding the oldest roots began. Kyrgyzstan celebrated the 1000th birthday of the Epic of Manas, whereas other nations found their own ancient stories.¹⁰⁴

National symbols were identified by the elites of Central Asia and the personalities of the presidents represented the legitimacy of the ideology. First presidents of the newly independent states were seen as the embodiments of the new character of the nations. In the case of Kyrgyzstan, the president was seen as a national hero receiving the majority’s support. Thus, broad powers were provided to the presidential post in the constitution. The president, as the founder of the new national identity endeavored to unite all the peoples in the republic with a liberal democratic approach. However, he mostly imitated the former Soviet Union’s discourses. Democratization, human rights, multiculturalism and diversity were emphasized once again in order not to stimulate regional conflicts, since the entire society was built upon local identities.¹⁰⁵

¹⁰² Morozova, “Nation Building in Central Asia: Creating New State Mythologies,” 75-77.

¹⁰³ Ibid., 77.

¹⁰⁴ Ibid., 78.

¹⁰⁵ Diana T. Kudaibergenova, “National Identity Formation in Post-Soviet Central Asia: The Soviet Legacy, Primordialism, and Patterns of Ideological Development Since 1991,” in *Social and Cultural Change in Central Asia*, eds. Şevket Akyıldız and Richard Carlson, (London: Routledge, 2013), 162-167.

3.1. The Role of First President Askar Akaev in the Establishment of Legal Pluralism

In 1990, due to the social and ethnic disorders created by Gorbachev's *glasnost*, *demokratizatsiia* and *perestroika*, political debates about the Soviet Union's future were culminating and republics demanded more independence.¹⁰⁶ After the summer riot in Kyrgyzstan, the question of who would become the new political leader gained much more importance. No results came out of the first two rounds of election.¹⁰⁷ The conflicts between the clan based regional groups and ethnicities were aggravated, and Masaliev, who was one of the most powerful candidates was seen as the promoter of these disorders. Other candidates also were not found legitimate by the Kyrgyz Supreme Soviet. After long discussions, Chingiz Aitmatov, a powerful elite (besides being a politician, an author, a journalist and a translator) in Kyrgyzstan called for the "council of elders" which was the old way of solving problems in the Kyrgyz society. The elders chose Askar Akaev upon Aitmatov's recommendation and Aitmatov suggested Akaev to Gorbachev in a meeting in person. The parliament immediately introduced a law, establishing presidency post and in the end, Askar Akaev was elected as the president of Kyrgyzstan on 27 October 1990.¹⁰⁸

The strong kinship ties were the reason behind the rise of Akaev. He was born as a farmer's son in 1944. He was a member of the strongest tribe in the northern Kyrgyzstan called Sary Bagysh and also through his wife, he was related with the Talas elite who were the nobleman of another strong tribe.¹⁰⁹ He was a physicist who spent almost twenty years in Leningrad Polytechnical Institute away from Kyrgyzstan and the head of Academy of Sciences for one year. He was not even a Party member, didn't have much political experience and wasn't pro-independence. However,

¹⁰⁶ Abazov, *Culture and Customs of the Central Asian Republics*, 50.

¹⁰⁷ Gregory Gleason, *The Central Asian States: Discovering Independence*, (Boulder: Westview Press, 1997), 60.

¹⁰⁸ Collins, *Clan Politics and Regime Transition in Central Asia*, 125-127.

¹⁰⁹ Lori Handrahan, "Gender and Ethnicity in the Transitional Democracy of Kyrgyzstan," *Central Asian Survey* 20/4, (2001): 473.

considering the positions of other candidates in the inter-ethnic turbulences, Akaev was seen as impartial and legitimate.¹¹⁰

In the late 1980's, Ashar -a group protesting the social and economic conditions which was provoked by Gorbachev's policies, was formed. After the summer riots in 1990, Ashar movement grew gaining elites' support. On the other hand, the Asaba (Banner) movement was posing an opposition to the Soviet regime, demanding the protection of ethnic Kyrgyz culture and a higher degree of nationalization and sovereignty, most importantly, a new land reform. Moreover, a new opposition group, Democratic Movement of Kyrgyzstan emerged with many political organizations and non-governmental organizations on their side. Within this atmosphere, in order to consolidate his power and legitimacy, Akaev had to tread a fine line between the opposing groups, each of which supported Akaev's leadership.¹¹¹

As soon as he was elected, Akaev soothed these groups by recognizing them. He also worked on the land reform brought forward by the Asaba movement and adopted a law regulating this area with the aim of "defending the rights and freedoms of all citizens, including the minorities". Most of the collective farms were privatized keeping the balance between clans and did not dislocate any villagers.¹¹² Akaev researched on how to get rid of the centralist economic system and develop a liberal one, transferring the power from the party to the government. He started his project by enforcing various laws; however, he could not complete the changes he intended to make due to the August Coup in 1991, which resulted in the dissolution of the Soviet Union.¹¹³ Akaev disapproved the discourses of the coup leaders and defended the law of the Kyrgyz Republic rather than the Soviet Union's.¹¹⁴ After the coup, Akaev

¹¹⁰ Collins, *Clan Politics and Regime Transition in Central Asia*, 125.

¹¹¹ *Ibid.*, 130-144.

¹¹² Collins, *Clan Politics and Regime Transition in Central Asia*, 145.

¹¹³ Mehmet Saray, *Kırgız Türkleri Tarihi*, (İstanbul: Nesil, 1993), 83.

¹¹⁴ Regine A. Spector, "The Transformation of Askar Akaev, President of Kyrgyzstan," *Berkeley Program in Soviet and Post-Soviet Studies Working Paper Series*, (Berkeley: University of California, 2004), 10.

resigned from the Communist Party of Kyrgyzstan, banned the Party and held a national, popular presidential election in which he took 94,6% of the votes. He was seen as a national hero like Manas in the Kyrgyz Epic who united forty Kyrgyz tribes.¹¹⁵

On 31 August 1991, Kyrgyzstan declared independence. Indeed neither Kyrgyzstan nor other Central Asian republics demanded the dissolution of the Soviet Union. They had to leave the Union as it did not exist anymore. Akaev was not a separatist from the beginning, and had supported Gorbachev's *glasnost*, *perestroika* and *demokratizatsiia* for a modern Soviet socialist society. After the collapse of the Soviet Union, he went beyond Gorbachev's policies for the sake of liberal democracy.¹¹⁶ He believed that privatization and a strong civil society with ethnic harmony would carry Kyrgyzstan to the state of liberal democracy.¹¹⁷

It was the first time that Kyrgyz were an independent nation in the history. The pre-Soviet Kyrgyz culture was a pastoral nomadic one and after the Soviet identity, a new national consciousness had to be created. There were ethnic divisions and conflicts among the population and a division of labor among the ethnicities: Russians were occupying the technical and engineering positions whereas some Kyrgyz were in bureaucratic vocations and others were engaged in agriculture or cultural assignments. A balance between those groups was needed and Akaev listened the representatives of all these groups in councils and assemblies.¹¹⁸ He aimed to create a civic nationalism by establishing institutions such as the Assembly of the Peoples to get the support of regional powers and unite all the Kyrgyz citizens.¹¹⁹

¹¹⁵ Collins, *Clan Politics and Regime Transition in Central Asia*, 179.

¹¹⁶ *Ibid.*, 176-177.

¹¹⁷ John Anderson, *Kyrgyzstan: Central Asia's Island of Democracy?*, (Amsterdam: Harwood Academic Publishers, 1998), 24.

¹¹⁸ Spector, "The Transformation of Askar Akaev, President of Kyrgyzstan," 12.

¹¹⁹ Eugene Huskey, "An Economy of Authoritarianism? Askar Akaev and Presidential Leadership in Kyrgyzstan," in *Power and Change in Central Asia*, ed. Sally N. Cummings (London: Routledge, 2002), 78.

Akaev was working for the consolidation of democracy and expressed this intention using the metaphor of “Switzerland of Central Asia” for the Kyrgyz Republic.¹²⁰ The newspapers also were defining the new Kyrgyz Republic as the “island of democracy.” New economic reforms were needed and they had to come from the bottom, from the local leaders, in order to protect the regional interests and provide legitimacy.¹²¹ Moreover, for the new economic program, Akaev received support from international institutions. In 1993, he entered in the IMF stabilization program and foreign experts visited the capital Bishkek to help for the implementation of a new economic program. In May 1993, the Kyrgyz *som* was introduced as the first national currency in the Central Asian republics.¹²² Furthermore, the privatization process was supported by the U.S. aids and the newly independent country soon gathered strength in transition to market economy. The clan structures also supported Akaev’s economic and democratic agenda with a hope to draw advantage of the current and upcoming international aids.¹²³ Thus, the clan tensions were once again relieved.

The new state needed new bonds and myths that would create the feeling of belonging to one nation. In the summer of 1995, millennium celebration of the Kyrgyz Epic of Manas took place and this was interpreted as “the replacement of Marxism with Manasism”. Manas was presented as the written proof of national history and Kyrgyz heroism; whereas Akaev was attributed to the role of Manas, the hero playing the leading role in the epic. Another much-used discourse of Akaev was the “Diplomacy of Silk Road”, as an endeavor to establish a bridge between the European and Eastern nations.¹²⁴ In his inauguration, Akaev was blessed by the Mufti of Kyrgyzstan and he was also prepared to associate Islam within Kyrgyzstan’s political culture for the sake of creating a deep rooted bond among the Kyrgyz people.¹²⁵ He attended Islamic

¹²⁰ Spector, “The Transformation of Askar Akaev, President of Kyrgyzstan,” 13.

¹²¹ Pauline Jones Luong, *Institutional Change and Political Continuity in Post-Soviet Central Asia: Power, Perceptions, and Pacts*, (Cambridge: Cambridge University Press, 2002), 114.

¹²² Collins, *Clan Politics and Regime Transition in Central Asia*, 188.

¹²³ Collins, *Clan Politics and Regime Transition in Central Asia*, 189-190.

¹²⁴ Huskey, “An Economy of Authoritarianism?” 79.

¹²⁵ Karagiannis, *Political Islam in Central Asia*, 33.

rituals in public even though he was a secular Soviet ideology supporter. However the Wahhabi section of Islam was not still not welcome; Akaev was reaching the followers of “non-threatening” Islam.¹²⁶

Moreover, the newly independent Kyrgyz Republic needed urgent law reforms in order to navigate the post-Soviet transformation and create a democratic rule of law with a market economy. A new constitution determining the basic roles and functions of the newly independent state was required as a foundation. Even though the western constitutional systems were to be a model for coding the new Kyrgyz constitution, the Kyrgyz socio-political and socio-cultural dynamics also had to be taken into consideration. Thus, the Akaev administration took account of the intrinsic character of the Kyrgyz society when constituting the new judicial system. Eventually, *aksakal* courts, an alternative court system coexisting with the ordinary state courts emerged as a part of the legal system.

Akaev was a charismatic authority and his unifying discourses facilitated the public acceptance of new policies. He was cooperating with the civil society keeping away from harsh oppositions. For instance, he established a network of “monitoring elders” and gave them the power of representing the presidential rule.¹²⁷

On the other hand, the Akaev regime could be seen as authoritarian in some degree. Although he was a liberal democrat, certain aspects of his administration and policies were incompatible with notions of democracy. This can be inferred from Akaev’s attempts to silence the opposing criticisms and media; and also from the provisions of the constitution delegating supreme powers to the president.¹²⁸

Within the perspective of this thesis, however, the real importance of Akaev is his emphasis on the *aksakal* courts which introduced legal pluralism in the country having

¹²⁶ Ibid., 80.

¹²⁷ Ibid., 81.

¹²⁸ Ibid., 85.

an indirect impact on the situation of women in Kyrgyzstan. All the other presidents after Akaev continued this practice of legal pluralism by maintaining these courts.

3.2. Legal Pluralism: Reinvention of *Aksakal* Courts

As explained in chapter two, extended families have always been the core of Kyrgyz society. In the pre-Tsarist era, disputes within and between the families, villages or clans were resolved by the elders of the society according to the customary law. Due to the absence of written records, we don't have much information on how this law was implemented. Nevertheless, this traditional practice was seen as a unifying structure in the post-Soviet nation building process by Akaev. As a leader who came to power with the support of the clan elites and council of elders, he knew that the dynamics of power were shaped by the clan affiliations. Akaev had to satisfy the clan based regional powers and support their subnational identities while consolidating the national identity and settling the foundation of the new state and provide legitimacy.

Taking these dynamics into consideration, Akaev codified a new constitution which also included the provisions that formed the basis for the establishment of the *aksakal* courts as the embodiment of legal pluralism. In order to comprehend this legal pluralism and how it was officialized in Kyrgyzstan, first, the 1993 Kyrgyz constitution will be examined as the foundation of the new state institutions, and then *aksakal* courts will be assessed in more detail.

3.2.1. New Constitution

Constitutions are the source of the states' legitimacy. They designate the states' power and distribute this power to the executive, legislative and judiciary branches. In the post-Soviet states, the new constitutions were the builders of the new states providing legitimacy to the new regime and actions of the new elites. In the case of Kyrgyzstan, having a president who was a liberal democrat aiming to build a modern state, the western constitutional systems seemed to be an appropriate model and they were examined by the Constitutional Committee as a model for the Kyrgyz constitution. In 1992, three drafts were prepared and by the end of the year, one of the drafts were sent

for public discussion to which many political parties, social organizations, ethnic groups etc. took part.¹²⁹ The new constitution was adapted on 5 May 1993.

The constitution was defining the Republic of Kyrgyzstan as “a sovereign, unitary, democratic republic built on the basis of a legal, secular state.”¹³⁰ As Kovalskii asserted, the state was designed to be a democratic parliamentary system giving the president strong powers and it was also based on freedom of the people with the assurance of the laws.¹³¹

With the new constitution, the country’s name changed from Kyrgyzstan to “Republic of Kyrgyzia” and even though the official language was Kyrgyz, other languages were also protected by the constitution. Akaev removed the nationalist clauses from the constitution, and provisions on non-discrimination appeased the ethnic conflicts.¹³² Akaev made the following statements about the new constitution:

One of the main ideas of the Constitution is that a person as an entity is superior to the state, as a subject is primary, with the state in relevance to him (her) being secondary, also that any human rights, liberties are rooted in Man’s nature and granted to him from above. According to our Constitution the state must acknowledge them, ensure their full implementation, but it can in no case deprive a person of these rights since it was not the state that had given them to the individual.¹³³

Thus, Akaev was placing the citizens of the Republic of Kyrgyzia in the first place, granting the human rights and freedoms. The “Kyrgyz citizenship” was emphasized in the constitution in order to unite the ethnic diversities and basic human rights and

¹²⁹ Collins, *Clan Politics and Regime Transition in Central Asia*, 179-180.

¹³⁰ Constitution of the Kyrgyz Republic (1993), art. 1, accessed September 18, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/1/10?cl=ru-ru> .

¹³¹ V. F. Kovalskii, “Democratic Declarations and Political Realities,” in *Central Asia: Political and Economic Challenges in the Post-Soviet Era*, ed. Alexei Vassiliev, (London: Saqi Books, 2001), 235.

¹³² Collins, *Clan Politics and Regime Transition in Central Asia*, 181.

¹³³ Askar Akaev, *Kyrgyzstan on the Way to Progress and Democracy*, (Ankara: Ahmet Yesevi Foundation, 1995), 25-26.

freedoms were granted to every citizen and protected by international treaties and laws in addition to the constitution.¹³⁴

In the constitution, separation of executive, legislative and judiciary powers were under constitutional guarantee as a necessity of a state governed by law.¹³⁵ In this way, a balance and control mechanism between the three branches of the state power would be provided as it was in the modern western countries. In the parliamentary systems granting the separation of powers, legislative power is the power of enacting general, objective and persistent laws and legal regulations performed by the parliament. Judicial power is the power of enforcing the laws by the means of independent state courts operated by independent and objective judges. Lastly, executive power is the power of public administration performed by the president and the ministers. In this system, the liability of the executive and legislative powers to the judicial power and independency of the courts shall be fundamental principles. However, in contrast with Akaev's discourses and democratic provisions of the 1993 constitution of the Kyrgyz Republic, these principles were not exactly reflecting the case.

3.2.1.1. Executive and Legislative Powers

Chapter Three of the 1993 constitution was regulating the executive power performed by the president and the government. The president, as the head of the state, was vested with broad powers such as appointing the prime minister, appointing the members of the government and heads of regional and city state administrations upon the prime minister's presentation, determining the structure of the government, initiating legislation and vetoing the laws passed by the parliament.¹³⁶ The president also could issue decrees within his which were binding for the whole country and could not be repealed even by the parliament.¹³⁷

¹³⁴ Constitution of the Kyrgyz Republic (1993), art. 15 and 16.

¹³⁵ Constitution of the Kyrgyz Republic (1993), art. 7.

¹³⁶ John Anderson, "Constitutional Development in Central Asia," *Central Asian Survey*, 16:3, (1997): 307.

¹³⁷ Constitution of the Kyrgyz Republic (1993), art. 48.

Although it was a democratic constitution regulating the separation of powers, it gave the president significant powers in the executive branch whereas the government became more dependent on the president's decisions. The president became more of a "republican monarch who serves as the guarantor of the constitution and 'the leading and guiding force in society'".¹³⁸ On the other hand, the government was responsible to the parliament as a necessity of the rule of law. The parliament, as the legislative power, had the authorization to amend and change the constitution, to adopt and amend laws and exercise control over their fulfillment, to determine the monetary system etc.¹³⁹ The government needed the parliament for legitimacy and the vote of confidence, and the parliament also had some power of monitoring the president's acts; however, the president's authority was much broader than both the parliament and the government.

3.2.1.2. Judicial Power

In the new constitution, judicial changes were secondary for Akaev, since the executive and legislative power were more urgent for building a new state system. The legislative power was seen as the protector of rule of law and judiciary power was rather seen as the implementation of the legislative power's decisions. Although some deputies offered revising the whole judicial system according to the western legal systems, other deputies and Akaev did not accept this due to the absence of sufficient number of qualified judges. The court system was the same since the Soviet Union, and the judges were mostly associated with local clans. However, it seems that Akaev did not do much to change this situation.

The preamble of the 1993 constitution demonstrates the character of the new state while at the same time giving a sign of commitment to the ancient values such as the ancestor cult which paved the way for the establishment of court of elders:

¹³⁸ Huskey, "An Economy of Authoritarianism?" 83.

¹³⁹ Constitution of the Kyrgyz Republic (1993), art. 58.

We, the people of Kyrgyzstan,
Striving to ensure the national revival of the Kyrgyz, the protection and development of the interests of representatives of all nationalities, forming together with the Kyrgyz the people of Kyrgyzstan, guided by the precepts of the ancestors to live in unity, peace and harmony; reaffirming our commitment to human rights and freedoms and the idea of national statehood; determined to develop the economy, political and legal institutions, and culture to ensure a decent standard of living for all; proclaiming our adherence to universal human moral principles and moral values of national traditions; desiring to establish ourselves among the peoples of the world as a free and democratic civil society; in our role as authorized representatives, we accept this Constitution.¹⁴⁰

As the preamble indicates, the Kyrgyz Republic was envisioned to be founded on the ancestors' perceptions, and in addition to the principles of human rights, moral values and national traditions. Moreover, under the section of "The Rights and Freedoms of the Individual", the constitution was stating that the state should encourage the folk customs and traditions unless they are not in contradiction with the constitution and human rights.¹⁴¹ Thus, once again the unifying power of the traditions was invoked, this time by the constitution.

In the new constitution, court system of the Kyrgyz Republic was designated. The only innovation in the judiciary system was the establishment of the national Constitutional Court:

Article 79. (1) Justice in the Kyrgyz Republic shall be administered only by the courts.
(2) The courts of the Kyrgyz Republic are the Constitutional Court of the Kyrgyz Republic, the Supreme Court of the Kyrgyz Republic, the Supreme Arbitration Court of the Kyrgyz Republic and local courts (courts of regions, Bishkek city, districts, cities, regional arbitration courts, military courts, as well as aksakal courts and arbitration courts).¹⁴²

Constitutional Court was the highest body of judicial power, having the authority to examine the constitutionality of the laws and its decisions were final.¹⁴³ The Supreme Court was the appellate court in the sphere of civil, criminal and administrative court

¹⁴⁰ Constitution of the Kyrgyz Republic (1993), preamble.

¹⁴¹ Constitution of the Kyrgyz Republic (1993), art. 15/5.

¹⁴² Constitution of the Kyrgyz Republic (1993), art. 79.

¹⁴³ Constitution of the Kyrgyz Republic (1993), art. 82.

actions.¹⁴⁴ The Supreme Economic Court on the other hand, was the appellate court for the decisions of regional economic courts.¹⁴⁵ These courts can be considered as the judicial institutions of a democratic rule of law to a certain extent, since their existence show that the laws were under judicial control and they provide a legal certainty. However the president had the authority to appoint and remove the judges of these Constitutional and Supreme Courts.¹⁴⁶ This broad authority of the president demonstrates that the courts were not independent on the contrary to the principle of rule of law.

Furthermore, the constitution provided the legal basis for the establishment of the local courts. In particular, the *aksakal* courts gained constitutional guarantee in the new Kyrgyz Republic as a part of judiciary power. Article 85 explains the status of the *aksakal* courts in more detail:

Article 85. (1) By the decision of a meeting of citizens, local keneshes or other representative body of local self-government, in the territory of ails, settlements, citizens from aksakals, other citizens enjoying respect and authority, aksakal courts and arbitration courts may be established.

(2) Aksakal courts and arbitration courts shall consider property, family disputes and other cases provided for by law, transferred by agreement of the parties for their consideration, in order to achieve reconciliation of the parties and make a fair decision that does not contradict the law.

(3) Decisions of the aksakal courts and arbitration courts may be appealed to the respective courts of districts and cities of the Kyrgyz Republic.¹⁴⁷

Thus, the *aksakal* courts' jurisdiction was limited with a few spheres including the family disputes. Their verdicts could be appealed in the district or city courts whereas the verdicts of the modern state courts of the republic were appealed in the Supreme Court of the Kyrgyz Republic.

¹⁴⁴ Constitution of the Kyrgyz Republic (1993), art. 83.

¹⁴⁵ Constitution of the Kyrgyz Republic (1993), art. 84.

¹⁴⁶ Constitution of the Kyrgyz Republic (1993), art. 80 and 81.

¹⁴⁷ Constitution of the Kyrgyz Republic (1993), art. 85.

Thus, the foundations of legal pluralism in Kyrgyzstan was laid. The courts of elders were designed as an alternative to the state courts dealing with more “minor” disputes such as family issues. As Beyer puts it, elders were seen as the “guardians of cultural knowledge and they were supposed to resolve the conflicts based on “customary law, kinship relations, proverbs and stories”.¹⁴⁸ For the purposes of this thesis, the courts of elders (*aksakal* courts) will be examined in more detail with a historical and socio-political perspective in the next part.

3.2.2. *Aksakal* Courts

The 1993 Constitution planted the seeds of *aksakal* courts; however it was not until 1995 that the *aksakal* courts were established as an official separate state organ coexisting with the ordinary state courts. In 1995, Akaev introduced the “Law on Aksakal Courts” which was designed to be a dispute settlement mechanism that would work as an alternative to the state courts according to the customary laws. It was a part of the nation building process, particularly, decentralization efforts and local self-government principle. Today, *aksakal* courts are still an official body of the state resolving the cases according to the moral norms, customs and traditions of the Kyrgyz people which actually limit the citizens’ rights to apply to a court operating within the boundaries of modern rule of law.

The culture and identities of Kyrgyz which called forth today’s *aksakal* courts were examined in chapter two in order to provide an understanding of Kyrgyz social structure. Here, a historical perspective of the *aksakal* courts will be presented in terms of resilience of the subnational identities as the *aksakal* courts are representations of the strong clan networks. Followingly, how the customs and traditions were reconstructed to form the official *aksakal* courts in Kyrgyzstan will be examined; and lastly, how *aksakal* courts work today as an alternative to the state courts establishing legal pluralism in Kyrgyzstan will be demonstrated.

¹⁴⁸ Judith Beyer, “Customizations of Law: Courts of Elders (*Aksakal* Courts) in Rural and Urban Kyrgyzstan,” *Political and Legal Anthropology Review*, Volume 38, Issue 1, (May 2015), 55.

3.2.2.1. Influence of *Aksakals*

In order to understand the *aksakal* courts in the post-Soviet era, we first need to look at the *aksakals* and their influence on the customs of the Kyrgyz people from a historical perspective.

Customs have been interwoven with the religious and clan based regional identities in Kyrgyzstan throughout the history. As the everyday life of the nomadic ancestors of Kyrgyz was regulated with the customary laws, these practices have been internalized such deeply to the society's identities that these customs have kept the clan based subnational identities alive and conveyed them to the present day.

As explained in chapter two, in the pre-Tsarist era, the extended families were the core of the social structure. These families formed clans and bigger encampments and the kinship relations were the most important element of almost every aspect of life. Clan elders in Kyrgyzstan were considered as wise men and authorities especially in the village life. These elders were called *aksakal* (white bearded) however not all the old men with white beards could have the distinct honor of being referred as *aksakal*. This title was used as a sign of respect, authority and wisdom.¹⁴⁹ It indicated that a man is old and wise enough to be experienced in various aspects of life, knows very well about old traditions, customs, how social life should be conducted and the conflicts should be resolved.

As a necessity of Kyrgyz peoples' pastoral nomadic social lives, *aksakals* were regarded as the memory of the Kyrgyz society. They were asked for advice on many issues such as the history of the people, fighting strategies, legal conflicts, moral issues and customary laws. They were also mediators dealing with settling of disputes according to the customary laws of their region and their verdicts were the most significant and obeyed rules that regulated the social life. Kyrgyz attributed importance to their clan leaders' (*aksakals*') orders and commands even more than

¹⁴⁹ Ibid., 159.

their clergymen.¹⁵⁰ The most important positions were occupied by the *aksakals* in the Kyrgyz society, and they have been a symbol of the clan based social structure.

In addition to *aksakals*, *biis* who were the leaders of broader clans or tribes were also involved in the dispute management system as judges. Moreover, there were *kazis* at the southern regions of today's Kyrgyzstan who were elected judges settling the disputes according to sharia law. Another group of mediators were *Manaps* who were rich landlords and local leaders. In other words, there were various dispute settlement mechanisms and actors in the pre-revolutionary times in Kyrgyz society which were transformed and evolved with the following political changes.¹⁵¹

In 1867, Tsarist Russia organized an administrative structuring in the villages or encampments and each of those units would elect an *aksakal* who would carry out the management of the village for three years.¹⁵² In 1868, Russian administration enforced another regulation regarding the dispute settlement system which authorized the courts of *biis* to resolve minor conflicts according to the customary laws. Verdicts of these courts could be appealed in the ordinary courts and annulled by the Russian Empire. The courts of *biis* soon appeared to be corrupt, favoring the kin groups which the judges belong to, and also violence at the elections of the judges were rampant. This system was applied in the northern regions of today's Kyrgyzstan and at the southern parts, the nomads were more often appealing to *kazis* for the resolution of conflicts according to sharia laws. On the other hand, people were avoiding the courts recognized by the Russian administration, including the courts of *biis*, and they were rather trying to settle their disputes with the help of *aksakals* who were more trusted as compared to the corrupt courts of *biis*.¹⁵³

¹⁵⁰ Abdülkadir İnan (trans.), *Manas Destanı*, (İstanbul: Milli Eğitim Basımevi, 1992), vii.

¹⁵¹ Beyer, "Revitalisation, Invention and Continued Existence of the Kyrgyz Aksakal Courts," 159.

¹⁵² Judith Beyer, *The Force of Custom: Law and the Ordering of Everyday Life in Kyrgyzstan*, (USA: University of Pittsburg Press, 2015), 25.

¹⁵³ Beyer, "Revitalisation, Invention and Continued Existence of the Kyrgyz Aksakal Courts," 161-162.

With the regulations of 1867 and 1868, the Tsarist Russia also started examining the Kyrgyz customs and tried to codify them to be used for the local *bii* courts. Every social unit in the Kyrgyz society usually had more or less similar customary rules; however; at some points they differed significantly. Russians did not recognize all distinct units' or groups' customs as they worked in a restricted area and codified the customary law of a particular group. Martin argues this as an “invention” of the customary laws. Because Russians ignored the distinctions between the customs of different ethnic groups and attributed all these groups same customs expecting them to apply the same codified customary rules.¹⁵⁴

When the Soviet Union was established, in order to consolidate the new ideology, it strived at wiping out the clan based feudal structures by weakening the power of landlords, *biis* and *Manaps*. Customary law was abolished in 1927 and with the collectivization and sedentarization policies, the Soviet administration seized the assets of these regional leaders and forced the nomads to settle. Thus, the legal power of these regional leaders would be eliminated. The Soviet Union also founded comrades' courts in each *kolkhoz*, which would serve as peace-keepers and mediators in the villages. Their members were chosen by the Party among the most powerful people in the *kolkhozes* and these courts had no authority to resolve the disputes, they were only mediators of the villagers' conflicts. Moreover, the Soviet administration stood out against Islam as a backward practice and imposed atheism which in the mean time would serve the purpose of weakening the authority of *biis*, *kazis* and *Manaps*. Spiritual Administration of the Muslims of Central Asia (SADUM) was established in order to regulate and control the Islamic practices and distinguish them from the customary practices on the grounds that coming together of these two types of rules that regulate the Central Asian social life would pose a threat to the Soviet ideology. SADUM was issuing *fatvas* (religious recommendations) in line with the Soviet policies which would serve as a consolidator of the Soviet ideology.¹⁵⁵ *Aksakals*, on the other hand, were not seen much related with the Islamic practices -although the customary law they applied was mostly shaped by Islamic laws and practices-, rather

¹⁵⁴ Ibid., 161.

¹⁵⁵ Ibid., 31.

they were seen as old men who had no function in the Soviet system. They were not recognized by the Union, they had no official duties in the Soviet *kolkhozes* (even though it is known that they were mostly the *kolkhoz* leaders and elites) therefore it seems that they flew beneath the radar of Soviet administration.¹⁵⁶

Although the Soviet Union aimed to erase the clan based structures it didn't endeavor too much to destroy it completely. It changed the balance of powers among the clans, destroyed some traditional ones and produced new ones. The *kolkhozes* became new tribes consolidating the power of the clan leaders as *kolkhoz* leaders, and *aksakals* maintained their respected positions in the *kolkhozes*. During Brezhnev years, clan patronage networks enhanced and clans were modernized as a side effect of his decentralization policies.¹⁵⁷ Moreover, with Gorbachev's *perestroika*, clans claimed power on the cadres of the republic putting forward their own candidates instead of Gorbachev's which eventually paved the way for Akaev's presidency.¹⁵⁸

After the Soviet Union collapsed, the semi-feudal structure of social relations together with the religious practices revived and once again, organizing as clans and encampments regained high importance. One difference of these new communities from the older ones is that they were not only based on kinship now, they were rather regional organisms incorporating a larger group of people tied to each other with more enhanced fictive bonds. Affiliation of a high degree statesman to the clan increased the authority of the clan, and the removal of that statesman decreased the authority of that clan.¹⁵⁹

Akaev, as a president who rose on the grounds of his powerful clan affiliations, preserved these clan networks and as stated by Collins, he "governed a tight-knit, kin-

¹⁵⁶ Beyer, "The Force of Custom," 30-31.

¹⁵⁷ Collins, *Clan Politics and Regime Transition in Central Asia*, 131.

¹⁵⁸ Collins, "Clans, Pacts, and Politics in Central Asia," *Journal of Democracy*, vol.13, no.3 (2002): 144.

¹⁵⁹ Emine Yavaşgel, Narmamatova Topçugül, Uğur Ünal, "Farklılık Siyaseti Üzerinden Bağımsız Kırgızistan'da Çokkültürlülük ve Çokdilli Eğitim Politikaları", *İdil Dergisi*, Vol.2, No.7, (2013), 91.

based pact” with regional powers.¹⁶⁰ In the 1994 elections, Collins observed that local elders voted for twenty or thirty closest relatives which was not even considered as a fraud by the elders or the election monitors. As a result, only 20% of the seats went to the members of political parties and the rest went to the independents.¹⁶¹ This way, the oppositions were silenced substantially.

The “pacts” made with the clan powers were centered around the distribution of the economic resources and the control of the most significant economic institutions and assets were also in the hands of persons who have kin ties with Akaev.¹⁶² This was a collusion from which both the government and the strong clans within the society benefited. The supporters of the president were awarded with certain privileges such as tax exemptions or luxury cars for themselves and their relatives.¹⁶³ The clan elites also gained a lot from the international aid packages donated for the democratic political and economic reforms of Akaev and in return they supported Akaev. Thus, Akaev’s policies were shaped around satisfying the clans’ expectations.¹⁶⁴

Furthermore, the clan affiliations leaked in to the government institutions and all branches of power during Akaev’s presidency. The state almost became a family business: Akaev’s relatives were appointed to the highest positions of the state’s institutions which were also providing legitimacy to the president. Even the head of the Constitutional Court was his distant kin, his daughter was the supervisor of the presidential party, his son was the owner of big companies and all the industry was in the hands of Akaev family. An economist, Anders Aslund estimated that the Akaev family obtained about one billion US Dollars throughout his presidency.¹⁶⁵

¹⁶⁰ Collins, “Clans, Pacts, and Politics in Central Asia,” 145.

¹⁶¹ Collins, *Clan Politics and Regime Transition in Central Asia*, 1.

¹⁶² Collins, “Clans, Pacts, and Politics in Central Asia,” 146.

¹⁶³ Collins, *Clan Politics and Regime Transition in Central Asia*, 228.

¹⁶⁴ Collins, *Clan Politics and Regime Transition in Central Asia*, 189.

¹⁶⁵ Azamat Temirkulov, “Kyrgyz ‘Revolutions’ in 2005 and 2010: Comparative Analysis of Mass Mobilization,” *Nationalities Papers: The Journal of Nationalism and Ethnicity*, vol:38, no:5 (2010): 591-592.

The Akaev family and clans related with Akaev gained so much power that the other clans felt excluded and the clan tensions escalated. The democratic ideals promised seemed to be lost, “the island of democracy” was collapsed and even some of the international support were cut off.¹⁶⁶ Soon people reacted to this and accused him with nepotism. In response, Akaev took authoritarian measures such as attacking the oppositional leaders and closing of newspapers, filing lawsuits and putting the opposition in prison.¹⁶⁷ After the parliamentary elections in 2005, different opposing groups united and demonstrated against Akaev. It was a mass mobilization called the Tulip Revolution which overthrown Akaev. Even though the political parties, NGOs and human rights defenders were in the revolting groups, their power was insufficient and the revolution was mainly guided by patronage networks. *Aksakal* councils were once again involved legitimizing and authorizing the mobilization.¹⁶⁸ As a result Akaev resigned, fled from the country and Bakiev came to power. Some scholars consider that ousting of Akaev was not an indicator of the strength of the civil society but the weakness of the state.¹⁶⁹ For a strong civil society, there has to be functioning state institutions implementing laws within a well-established legal infrastructure.¹⁷⁰ Yet, the state was weakened by Akaev’s nepotism, corruption, clan oppositions and contested elections.

In 2010, another mass mobilization took place due to the nepotism, corruption and oppression of the opposition and media under Bakiev. However, the Bakiev government took more violent measures: journalists were killed, opposition groups and leaders were imprisoned, former head of president’s administration who joined the opposition party was found burned to death. Bakiev was trying to cope with the economic crisis by increasing tariffs and increasing taxes. As a result, a mass

¹⁶⁶ Collins, “Clans, Pacts, and Politics in Central Asia,” 149.

¹⁶⁷ Temirkulov, “Kyrgyz ‘Revolutions’ in 2005 and 2010,” 592.

¹⁶⁸ *Ibid.*, 593.

¹⁶⁹ Donnacha Ó Beacháin and Rob Kevlihan, “Imagined Democracy? Nation Building and Elections in Central Asia,” *Nationalities Papers*, vol.43, no.3 (2015): 506.

¹⁷⁰ Anna Matveeva, “Exporting Civil Society: The Post-Communist Experience,” *Problems of Post-Communism*, vol.55 no.2 (2008): 6.

mobilization occurred; however this time, it was unorganized. People spontaneously came together opposing the Bakiev regime, mostly because of the murders¹⁷¹

After Bakiev, various kinds of clan-based tensions increased again during the presidency of Otunbayeva, Atambayev and Jeenbekov. The clan identity still persists in modern Kyrgyzstan since the clan structure has benefitted both elites and nonelites: non-elites need the elites (clan elders/*aksakals*) to provide a social network for finding jobs, getting education, getting loans etc. whereas the elites need a community, a network to support them in the political and economic life.

Moreover, *aksakals* as elders of the community still have a role in the political arena: They still wear their *kalpaks* (a hat which symbolizes *aksakals* as wise elders of the society) as an indicator of being committed to the traditions, come together to discuss everyday problems especially in the rural areas and give recommendations to the community.¹⁷² They are also still called for the celebration events to give their blessings which makes the community feel that the occasion is legitimate according to the customary laws.¹⁷³ In addition to that, political candidates prefer to be side by side with *aksakals* and they also wear *kalpaks* to show that they respect the values of the Kyrgyz society.¹⁷⁴ Furthermore, *aksakals* receive gifts and money from the regional politicians and thus on the one hand, politicians respect *aksakals* and on the other hand, *aksakals* respect the politicians as heads of the community.¹⁷⁵

Furthermore, *aksakals* as clan elders also still act as mediators bringing together parties together for economic transactions, settling disputes implementing the customary law,

¹⁷¹ Temirkulov, “Kyrgyz ‘Revolutions’ in 2005 and 2010,” 595-597.

¹⁷² Judith Beyer and Aijarkyn Kojobekova, “Women of Protest, Men of Applause: Political Activism, Gender and Tradition in Kyrgyzstan,” *Central Asian Survey*, vol. 38, no. 3 (2019): 331, <https://doi.org/10.1080/02634937.2019.1631258> .

¹⁷³ *Ibid.*, 332.

¹⁷⁴ *Ibid.*, 333.

¹⁷⁵ Judith Beyer and Felix Girke, “Practicing Harmony Ideology: Ethnographic Reflections on Community and Coercion,” *Common Knowledge*, vol. 21, no.2, (April 2015): 208, Doi 10.1215/0961754X-2872343 .

and provide security to the clan.¹⁷⁶ They constitute the *aksakal* courts as a part of the legal system established by law.

3.2.2.2. Reconstruction of Traditions: *Aksakal* Courts

After the collapse of the Soviet Union, Akaev and Kyrgyzstani elite worked towards building the new nation state, and rewrote the history and find myths which would bind the citizens of the new republic together. Akaev frequently referred to Manas as the national heritage and emphasized the traditions and customs of the Kyrgyz people. As a leader who came to power with the support of elites of regional power groups, he did not want to disturb the clan dynamics. This aim was reflected in the local self-government system Akaev built. It was a decentralization effort with the purpose of getting away from the Soviet legacy and bringing legitimacy to the new state. One aspect of the decentralization was the establishment of *aksakal* courts with the 1993 Constitution, which would apply the “traditional” customary laws. The provisions on *aksakal* courts have been transferred to all the subsequent versions of Kyrgyz constitution and these courts are still operating today as an alternative to the state courts.

The motive of Akaev behind introducing the *aksakal* courts was actually creating an easily adoptable structure that would serve as a means to disengage from the Soviet legacy and build a new decentralized, self-governing nation. As *aksakals* were traditionally the respected elders working as mediators, the Kyrgyz people could easily be persuaded as the system of *aksakal* courts were their national value for about two thousand years. Akaev connected these *aksakal* courts to the *aksakals* mentioned in Manas emphasizing the strong tradition which was carried out “uninterruptedly” to the current day. In a speech in 2005, Akaev addressed the *aksakal* court members as follows:

While I was writing my book Kyrgyz Statehood and the National Epos “Manas” I had to read and review the history of the Kyrgyz people through the whole 2,200 years of its existence. I determined that Kyrgyz people were a united force back then. They not only built on their spiritual nomadic civilization, but also knew how to govern them

¹⁷⁶ Collins, *Clan Politics and Regime Transition in Central Asia*, 29.

selves. The Kyrgyz aksakals and their courts played a big role in this regard. This becomes clear when reading Kazybek's poem. He said: "One word was said to those who overstep the limits. There were not any courts and no police, just aksakals working together, admonish-ing each other."... Since last year we have been working on local self-governance. This does not mean that we are copying Western countries, as some people think. These principles of self-governance were in the history of the Kyrgyz people. There have never been aksakal courts in the history of other countries.¹⁷⁷

The *aksakal* courts as an official part of the state's judiciary system were set up from above by Akaev as an alternative to state courts inspired from Manas and the ancient traditions. Although Akaev linked directly the ancient traditions to the modern day institutions, it is debatable to what extent these courts were traditional. There have been *aksakals* as lineage elders in the villages throughout the Kyrgyz history and they have been mediating disputes between clans and clan members. However, the *aksakal* councils were not naturally formed as a court working according to certain customary laws but they were trusted assemblies that gave advice for everyday life problems and their decisions were obeyed since they were the wisest people in the villages and they were the implementers of sharia law. With Akaev, for first time in the history they became official courts whose verdicts were recognized by the state and could be appealed against before the state courts. However they were far from being modern state institutions. In 1995, after founded guilty by the *aksakal* courts, a person was stoned to death by other people; furthermore some *aksakal* courts sentenced citizens to whipping.¹⁷⁸ Hence, immediately a specific Law on Aksakal Courts was enacted which called forth the establishment of *aksakal* courts in every village. Thus, "every tenth person over the age of seventy has been turned into a 'wise elder'" says Beyer.¹⁷⁹

The Kyrgyz constitution still mentions the *aksakal* courts. However, while in the 1993 Constitution of the Kyrgyz Republic, *aksakal* courts were regulated under the "Courts and Justice" section, in 2003, the provisions on *aksakal* courts were moved under the "Local Government" section. Thus, the *aksakal* courts became a dispute resolution body that is not part of the judicial system, but a part of local self-governance system.

¹⁷⁷ Beyer, *The Force of Custom*, 33-34.

¹⁷⁸ *Ibid.*, 61.

¹⁷⁹ *Ibid.*, 33.

On the other hand, the establishment and tasks of *aksakal* courts remained untouched and they continued to resolve the property and family disputes and other cases transferred to them by the agreement of the parties, in order to achieve reconciliation and make a fair decision that does not contradict the laws.¹⁸⁰ The new constitution of 2006 once again relocated the specific provisions on *aksakal* courts, this time they were put under the section of “Citizenship, Citizen's rights and obligations”¹⁸¹ and the *aksakal* courts remained under this section until today. The current constitution of 2021 concludes: “In the Kyrgyz Republic, citizens have the right to establish *aksakal* courts. The procedure for the establishment of *aksakal* courts, their powers and activities are determined by law”.¹⁸²

Thus, today, the *aksakal* courts are a part of the local self-governance instruments established by the population in the region with the procedure determined by law. The 2021 constitution refers to the law determining the establishment, powers and activities of *aksakal* courts. The “Law on Aksakal Courts” was first adopted in 1995 and took the place of “comrade courts” which were referred in the Civil Procedure Code.¹⁸³ The Law on Aksakal Courts was amended a few times until today. The final version of the law states that the *aksakal* courts can be established on a voluntary basis by the decision of a meeting of citizens. Besides women can also work as a judge in these courts.¹⁸⁴ Article 2 of the law concludes that the *aksakal* courts shall operate according to common consciousness, personal convictions, morality and ethics in the light of historically formed customs and traditions of the peoples of Kyrgyzstan, and the verdicts shall not contradict the legislation of the Kyrgyz Republic. Judges cannot

¹⁸⁰ Constitution of the Kyrgyz Republic (2003), art. 92, accessed September 18, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/1/10?cl=ru-ru> .

¹⁸¹ Constitution of the Kyrgyz Republic (2006), art.38 and art.78, accessed September 18, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/1/60?cl=ru-ru> .

¹⁸² Constitution of the Kyrgyz Republic (2021), art. 59, accessed September 18, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru> .

¹⁸³ Natalya B. Alenkina, “Aksakal Courts: Legitimization of Traditional Values of Kyrgyz Society,” *Herald of the Euro-Asian Law Congress*, Is. 1 no.3 (2019): 26.

¹⁸⁴ Law on Aksakal Courts (2017), art. 1, accessed September 18, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/1070#:~:text=Суды%20аксакалов%20-%20это%20создаваемые%20на,рассматривать%20уголовные%20дела%2C%20и%20их.>

participate in the cases of their close relatives and recusation is possible.¹⁸⁵ Article 15 designates which cases the *aksakal* courts can hear as such: property and family disputes; disputes over failure of parents and other family members to fulfill their responsibilities for the upbringing of the children, failure of adult children to fulfill their obligations to support disabled parents or persons who raised and supported them in the prescribed manner; payment for work performed under an employment agreement, watering between land users; lightly punishable crimes and crimes related to family violence if there is not a material evidence that the defendant committed the crime.¹⁸⁶ These “minor” issues are sent to *aksakal* courts by the police or state courts and the legal rights of the citizens are trampled down.¹⁸⁷

Aksakals can give the following decisions: issue a warning, oblige to bring a public apology to an injured party, announce public reprimand, oblige the guilty party to compensate for the material damage caused, impose a monetary fine. The court does not have the right to decide on punishments against human dignity.¹⁸⁸ The main method of *aksakal* courts in settling the disputes are persuasion, public influence, reconciliation of the parties and passing a fair decision that does not contradict the laws and other normative acts of the republic.¹⁸⁹ The proceedings in *aksakal* courts are free of charge,¹⁹⁰ the verdicts shall be in written¹⁹¹ and verdicts can be appealed to the district or city court established in the same territory. Appellate court can cancel the decision of the *aksakal* courts and return the case materials for reconsideration or it can terminate the proceedings.¹⁹² This shows that the state courts as appellate courts

¹⁸⁵ Law on Aksakal Courts (2017), art. 13. However, Beyer asserts that this rule was not applied in the *aksakal* courts in the villages (Beyer, “Customizations of Law,” 56).

¹⁸⁶ Law on Aksakal Courts (2017), art. 15.

¹⁸⁷ Beyer, “Customizations of Law,” 56.

¹⁸⁸ Law on Aksakal Courts (2017), art. 28.

¹⁸⁹ Law on Aksakal Courts (2017), art. 3.

¹⁹⁰ Law on Aksakal Courts (2017), art. 23.

¹⁹¹ Law on Aksakal Courts (2017), art. 27.

¹⁹² Law on Aksakal Courts (2017), art. 30.

cannot take over the cases *aksakal* courts concluded as the court of first instance. Even if the verdict of *aksakal* courts is found illegal, they either cancel it or send it back again to the of *aksakal* courts for reconsideration. This fact is a typical characteristic of modern law systems; when the decisions of courts of first instance are overturned, the case documents are sent back to the courts of first instance for reconsideration. The courts of first instance can obey the appellate courts decision or can resist the appellate court's decision. Here it appears that this significant authority is also given to the *aksakal* courts as the courts of first instance. This means that the parties have no choice other than accepting the *aksakal* courts' final verdicts if the appellate court cancels the first verdict.

Today, the *aksakal* courts are a part of the plural legal system but they also have the status of a public body. The state can delegate any other functions to them. Thus, on the one hand *aksakal* courts resolve the property and family disputes, and on the other hand, *aksakal* courts can impose administrative fines in cases within their competence which means that they have a public body function.¹⁹³ Indeed, in 2021, a draft “Law on Aksakal Courts” which aims to improve the organizational and legal framework of the *aksakal* courts and increase the efficiency of their activities was drawn up. District and city courts, prosecutor's offices, internal affairs bodies and local self-government bodies positively assess the activities of the *aksakal* courts and consider it possible to legislatively transfer a number of cases from their work sphere to the *aksakal* courts. The draft law gives a new status to the *aksakal* courts and states that they are special bodies called upon to resolve disputes between citizens to achieve reconciliation, as well as to consider other materials sent by local courts and executive bodies of local self-government, within the framework of their powers.¹⁹⁴ Thus the Republic of Kyrgyzstan plans to broaden the scope of authority and the increase the power of the *aksakal* courts. Yet, even though the draft law was prepared at the beginning of the year 2021, it still has not entered into force.

¹⁹³ Alenkina, “Aksakal Courts: Legitimization of Traditional Values of Kyrgyz Society,” 29-30.

¹⁹⁴<https://kabar.kg/news/sudu-aksakalov-planiruiut-dat-novyi-status-kakie-dela-oni-budut-rassmatrivat/>

The *aksakal* courts today, operate both in the countryside and the urban areas as dispute settling public bodies. Beyer explains that the state courts are expensive for the rural people whereas the judgement of *aksakal* courts is free of charge; moreover this way, the case is kept within the families and villages, leaving no room for rumors in other villages. The judges of *aksakal* courts accept that they do not know state laws, the *aksakal* courts serve as an alternative to the state courts and they often say “We don’t have a state here anymore.”¹⁹⁵

In 2004, *aksakal* courts were established in the urban areas and the courts in urban differ from the ones in the rural areas in terms of organization. In the urban, it is clearly observed that the *aksakal* courts are a part of local self-government. In Bishkek, there are four districts and many micro-districts under each district each of which have an *aksakal* court whose members are elected for three years by the society. The activities of these courts are being reported to the district courts through local councils established under micro districts. These councils inform the Sector for Coordination of Local Councils and this organism conveys the information to the district courts. The judges of urban *aksakal* courts have a special identity card and they also have a monthly salary. The most striking difference between the urban and rural *aksakal* courts is that in the urban, there are many female judges who are not of Kyrgyz ethnic background.¹⁹⁶ Whereas the title *aksakal* is still used as white-bearded wise men in the rural areas, women serve as *aksakal* judges in the urban.

The urban *aksakals* are trained by the district judges regularly on the state laws however, the case studies Beyer done demonstrate that the *aksakals* in the urban also act as experts, witnesses and establish intimacy with the complainants and defendants which is inconsistent with the state laws. Some of them don’t have the competency to understand the district judges’ trainings on laws and they refer to the judges they see in the broadcasts on TV. Moreover, Beyer stresses that even though the *aksakal* courts were established in order to judge according to the customary laws, the *aksakals* in urban don’t look for guidance of *aksakals* in the rural, instead they turn to state courts

¹⁹⁵ Beyer, “Customizations of Law,” 59-60.

¹⁹⁶ Ibid., 61.

for guidance.¹⁹⁷ In the urban, the state judges usually say that the cases which *aksakal* are authorized don't concern them, and when the citizens apply to the state courts, they send such cases to the *aksakal* courts. Thus, the *aksakals* are left on their own in especially family and property issues trying to solve the problems not according to justice but on the base of reconciliation.¹⁹⁸

The examination of *aksakal* courts today reveals that the *aksakal* courts established by Akaev have only a slight similarity to the ancient traditional practice of *aksakal* councils. These courts were established as a tool in the nation building process with the aim of creating a national identity, cementing the groups together under the nation and legitimizing the government. Akaev introduced the *aksakal* courts as a transmitter of ancient tradition of mediation between families and clans. However, as Hobsbawm asserts: "'Traditions' which appear or claim to be old are often quite recent in origin and sometimes invented."¹⁹⁹ Especially the urban *aksakal* courts prove that neither the judges are traditionally white-bearded wise Kyrgyz men (*aksakals*), nor the laws applied to the disputes have a connection with the customary laws. Today's *aksakals* in the urban mostly conclude the cases according to the "common sense" depending on personal relations with the parties, maybe in the light of the state laws they heard from the state judges in the trainings, but not according to the traditions. Hobsbawm's definition of invented tradition fits this situation quite well:

'Invented tradition' is taken to mean a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact, where possible, they normally attempt to establish continuity with a suitable historic past.²⁰⁰

One can infer from this quote that the ancient Kyrgyz traditions of respect for elders and consulting *aksakals* for the mediation of disputes were reinvented by Akaev in the

¹⁹⁷ Ibid., 64.

¹⁹⁸ Ibid., 65

¹⁹⁹ Hobsbawm, "Inventing Traditions,"1.

²⁰⁰ Ibid., 1.

form of officially recognized *aksakal* courts with some distortion of the past. Even the Kyrgyz customs and customary laws *aksakal* courts apply can change over time and differ from one village to another. The non-ethnic Kyrgyz *aksakals* in the urban who have only a slight idea of Kyrgyz customs cannot be expected to operate according to what Akaev called traditional.

On the other hand, some publications consider the *aksakal* courts as “reinforced” or “revived”²⁰¹ whereas Beyer states that this is a wrong perception since this stance only reflects the official discourses of Akaev.²⁰² These courts were introduced by Akaev as national heritages and a continuation of ancient traditions. Some villagers also consider the *aksakal* courts as an ancient Kyrgyz tradition reached up to today according to the fieldworks of Beyer; however she states that when the same villagers are asked directly about the *aksakal* courts operating today, they say that the institution is new. Moreover, the villagers make a distinction between the *aksakals* who are the lineage elders acting as mediators when necessary, and *aksakals* who are the judges which coexist together and intertwined with each other.²⁰³ A villager talking about the *aksakals* in the Soviet times in an interview says: “In any case *aksakals* would solve the problem first. (...) My younger brother killed someone in a car accident. There was no *aksakal* court at that time, but we obeyed the *aksakals*. (...) They would decide how much money and cattle had to be given to make up for the dead body.”²⁰⁴ This statement shows that the *aksakal* courts are seen as new in some ways by the villagers. Furthermore, we see that people were consulting the *aksakals* as the lineage elders not only for the “minor” issues such as family and property law, but also for the cases involving death of a person. In Beyer’s another interview on *aksakal* courts, the head of an *aksakal* court stated that he consults with other *aksakals* who are not the member of their court when necessary.²⁰⁵ This makes the distinction between the lineage elders

²⁰¹ Handrahan, “Gender and Ethnicity in the Transitional Democracy of Kyrgyzstan,” 478.

²⁰² Beyer, “Revitalisation, Invention and Continued Existence of the Kyrgyz Aksakal Courts,” 150.

²⁰³ Ibid., 164.

²⁰⁴ Ibid., 166.

²⁰⁵ Ibid., 168.

and judges of *aksakal* courts clearer. Not all the *aksakals* are official *aksakal* court judges today but still consulted as a continuation of tradition in the villages. And not all *aksakal* court judges are *aksakals* (lineage elders) especially in the big cities.

Inferring from these evaluations, one can conclude that the *aksakals* have existed throughout the Kyrgyz history as respected, consulted and mediating lineage elders. In the Soviet times the society adapted to the changes and *aksakals* continued to be effective in the kolkhozes as leaders and important persons. However, under Akaev, the ancient traditions were reconstructed as a national symbol and *aksakal* courts were “reinvented” as if they did not exist as official institutions before. Besides, as discussed above, these modern *aksakal* courts work in a completely different way compared to the previous versions.

CHAPTER 4

AKSAKAL COURTS' INVOLVEMENT IN CASES REGARDING WOMEN'S RIGHTS

In order to understand better how the *aksakal* courts in the post-Soviet era make their decisions on cases regarding women in general and bride kidnapping in particular, we first need to briefly mention the position of women in Kyrgyz society from a historical perspective.

Kyrgyzs had been pastoral nomadic peoples for centuries until the sedentarization policies of the Soviet Union. This culture and late adoption of Islam provided the Kyrgyz women to be freer as compared to the women living in other regions of Central Asia. However, arranged marriages, *levirate*,²⁰⁶ *sororate*,²⁰⁷ and bride kidnappings have been a part of Kyrgyz women's lives.²⁰⁸ Since the ancient times, the marriages were seen as an opportunity to create fictive kinship bonds. As explained in chapter two, the extended families and clan identities were the core of Kyrgyz social and political structure, and marriages were significant means of extending the families further which also led to empowerment of the clans. New bonds established by the marriages of two different clan members would mean the kinship network is doubled in an instant. As all dynamics of the social life, economic and political power have been dependent on the clan affiliations, marriages also appear as a political issue in the Kyrgyz society. Marriages could be arranged even before the children were born in

²⁰⁶ Levirate is an old tradition which was prevalent among the Turkic-rooted people. This tradition necessitates a widow to marry her dead husband's brother.

²⁰⁷ Sororate is the tradition that necessitates a widower to marry his dead wife's sister.

²⁰⁸ Kleinbach and Lilly Salimjanova, "Kyz ala kachuu and Adat: Non-Consensual Bride Kidnapping and Tradition in Kyrgyzstan", *Central Asian Survey*, 26(2), (June 2007), 220.

order to make a latent pact of peace and cooperation between the families.²⁰⁹ These practices were based on customary laws and also endorsed by the sharia law. Today, effects of these traditions are still visible, especially in the rural areas. The consensual or nonconsensual bride kidnappings seen as a limb of these traditions are a part of some Kyrgyz societies. However it will be discussed in this chapter whether this practice is really a tradition in the light of women's rights in Kyrgyzstan and Central Asia in general. Aim of this chapter is to look over the development of women's rights in the history of Central Asia and discuss the violation of women's rights with a particular emphasis on the *aksakal* courts' judgements on the bride kidnapping cases. Within this scope, first, a brief history of women's position in the pre-Soviet and Soviet periods will be examined; later, the bride kidnapping issue as a frequent practice especially in the rural Kyrgyzstan will be explained, and lastly, the *aksakal* courts decisions on women's issues and bride kidnappings in particular will be discussed in the context of human's rights and freedoms.

4.1. Women in the Pre-Soviet Period

Women in Central Asia lived an oppressive and conservative environment in the pre-Soviet period, especially in the 19th century. As Freeman puts it, women had five masters: "God, the emir, the landowner, the mullah and the husband".²¹⁰ In fact there were more masters than those; since women were considered as property of their parents and relatives. Marriages were arranged by the family, brides had no say in this and they could be sold to anyone who pays the highest *kalym* (price for the bride) to marry them. Early marriages (10 years old girls could marry) and *levirate* marriages were prevalent and once married, the ownership of the girls passed to the husbands who were the guardians of their wives' dignity and they guarded it jealously: Women were veiled, kept at home and weren't permitted to speak to any other man; or else they could be stoned to death.²¹¹

²⁰⁹ Ibid., 220.

²¹⁰ Jacqui Freeman, "The Emancipation of Women in Soviet Central Asia from 1917 to 1940", in Şevket Ayyıldız and Richard Carlson (eds.), *Social and Cultural Change in Central Asia: The Soviet Legacy*, (United Kingdom: Routledge, 2014), 34.

²¹¹ Abazov, *Culture and Customs of the Central Asian Republics*, 216.

Captivity of women was not limited to those practices. They also had to work as a servant to their families and specifically their mothers-in-law. Considering the structure of the families, the workload was excessive. Families were large and extended, that is, women had several children and two to three generations were living together. New brides were entrusted with the task of doing housework and taking care of the elders and the children. Women's education was not even an issue and polygamy of men was also frequent.

However, in the nomadic societies of Central Asia, women were relatively more free. In the Kyrgyz society, women were not isolated as the women in the sedentary societies, or they were not obliged to veil themselves and they could communicate with men in the society and travel as a necessity of the nomadic lifestyle. But still women's main role was to perform their duties arising from being married such as having children and take care of the people in the family. Moreover they were responsible for the household work, installing and deinstalling the yurt, fireplace construction, cooking, taking care of the elder people in the family.²¹² Also they had no say in choosing their husbands; the marriages were arranged in order to maintain the peace and alliance between the clans. Oppositions of the clan leaders, economic or political circumstances between the clans were determinant of the destiny of the women and the fathers would have the final word on their daughters' marriages. In these circumstances a man could abduct a girl without the girl's consent to marry her which is called *kyz ala kachu* -literally "to take a girl and run away" also known as bride kidnapping.²¹³ However it was a rare occasion in the pre-Soviet times.

According to the customary laws in the pre-Soviet era, women's testimony was valid if a male relative confirmed her. The punishment of killing a woman was the half of the punishment of killing a man. The women had no property rights and they were in

²¹² Bermeta G. Tugelbaeva et. al, "Is there a revival of patriarchal traditions in Kyrgyzstan?" accessed June 19, 2021, https://webcache.googleusercontent.com/search?q=cache:e8kDX_vIAeQJ:https://dialnet.unirioja.es/descarga/articulo/7361118.pdf+&cd=1&hl=tr&ct=clnk&gl=tr .

²¹³ Ibid., 217.

the custody of their husbands or fathers.²¹⁴ On the other hand, Abazov states that women could divorce when they bring a proper proof before the local courts where the jurisdiction is based on customary law (*adat*) which was influenced by Islamic laws (shariah). Yet, those courts were not official; they were council of elders -*aksakals*. In case of a conflict, *aksakals* gathered and formed a council to solve the dispute.²¹⁵ Hence, it is debatable to what extent the women's words were taken into account by these councils against the men's testimony.

As can be inferred from the abovementioned practices, women were perceived as the "second sex" in Central Asia in the pre-Soviet period. As a matter of fact, they were even not perceived as human beings sometimes, but a property. Fortunately, the Bolshevik ideal of modernization included an egalitarian view of women.

4.2. Soviet Project of Emancipation of Women

Bolshevik revolution emerged as a defiance to the Tsarist regime. It was a utopian project of transforming all aspects of life (politics, economy, social life, identities, beliefs etc.) and creating a modern multiethnic and multicultural Soviet world where all citizens are equal and united under the Soviet ideal. Hence, as soon as the Bolshevik regime was consolidated, they adopted several policies and laws accordingly. In line with the Marx's, Engel's and Lenin's views, they initiated the social engineering project and women's emancipation policies were a significant part of this project.

Firstly, "Codes of Laws on Acts of Civil Status and on the Law of Marriage, Family and Guardianship" was introduced in 1918. It gave men and women equal rights concerning marriage, divorce and alimony, determined the age of marriage, gave women the right to choose the place of residence etc.²¹⁶ In the following years, new laws which provided all citizens -regardless of gender or nationality- with equal rights

²¹⁴ Tugelbaeva et. al, "Is there a revival of patriarchal traditions in Kyrgyzstan?."

²¹⁵ Beyer, "Revitalisation, Invention and Continued Existence of the Kyrgyz Aksakal Courts," 159.

²¹⁶ F.J.M. Feldbrugge, ed., *The Emancipation of Soviet Law*, (Boston: Martinus Nijhoff Publishers, 1992), 36.

regarding voting, property, work and education.²¹⁷ In a nut shell, Soviet emancipation project was supposed to provide legal and political equality, compulsory education and high literacy, economic independence and sexual freedom for the women.²¹⁸

In addition, specific female emancipation policies were launched for the Muslim women in Central Asia. In fact, those policies were put into effect as a means of achieving Soviets' main goal in Central Asia: eradicating Islam.²¹⁹ Firstly, Islamic institutions and practices were banned: Shariah courts were abolished; polygamy was banned, customary law (*adat*), Islamic wedding ceremonies (*niqah*) and *kalym*, underage marriages and marriages without bride's consent were outlawed.²²⁰ Thus, the "anachronic" traditions of the Muslim world would be extinguished. Yet those laws were falling short of transforming the social life since the old habits were extremely resilient and difficult to change.

To put the Soviet female emancipation laws into practice, *Zhenotdels* (Women's Section of the All-Union Communist Party) were established in 1919.²²¹ The goal was to incorporate women into the Communist Party and to involving them in the public sphere through this membership. They conscientized and politicized women, encouraged them to become economically and socially independent.²²² They also dealt with the low literacy levels in both rural and urban areas. They established "red-corners" which served as support centers for women and as literary classes. With the same purpose, for nomadic women, they set up "red tents" which would travel between the clans and tribes spending two or three months with each group.²²³

²¹⁷ Yvonne Concoran-Nantes, *Lost Voices: Central Asian Women in Transition*, (New York: Zed Books, 2005), 39.

²¹⁸ Freeman, "The Emancipation of Women in Soviet Central Asia from 1917 to 1940", 33.

²¹⁹ Concoran-Nantes, *Lost Voices: Central Asian Women in Transition*, 38.

²²⁰ Abazov, *Culture and Customs of the Central Asian Republics*, 218.

²²¹ Freeman, "The Emancipation of Women in Soviet Central Asia from 1917 to 1940", 32.

²²² Concoran-Nantes, *Lost Voices: Central Asian Women in Transition*, 49-50.

²²³ *Ibid.*, 52.

Zhenotdels also played a significant role in *Hujum* (literally means “attack”) which was a campaign initiated in 1927 to unveil the Muslim women.²²⁴ Veiling was considered as a symbol of oppression, ignorance, injustice, inequality and degradation of women. Anti-veiling ceremonies were organized by the Communist Party and thousands of women burned their veils in public squares with a big celebration. It was an indicator of interiorization of Soviet values by the Central Asian women.²²⁵ *Hujum* campaign also provided women to enter public spheres. Number of Central Asian women recruited in the Communist Party increased. Thus, public perception of women started to change. Education became prestigious for women.²²⁶ Hence, there was a progress in participation of women in education and labor force. However, a new categorization occurred regarding the study and working fields of women. Certain fields of education and labor began to be considered as more appropriate for women and this situation caused de-facto inequalities among men and women.²²⁷

4.2.1. Gap between Theory and Practice

Whether the female emancipation policies and campaigns of Soviet Union succeeded is a controversial issue. Considering the increased number of literate, educated, working and politicized women, one can infer that those policies were successful. However, it is certain that this success cannot compete with what the Bolsheviks had in mind at the beginning of the revolution.

The reasons of this partial success are diverse. Firstly, female emancipation policies were not demanded by the women who were fed up with the oppression, on the contrary the policies were imposed by Soviet Union for the most part, against the Central Asian women’s will. Soviet ideals were in contradiction with the Muslim

²²⁴ Elizabeth A. Constantine, “Practical Consequences of Soviet Policy and Ideology for Gender in Central Asia and Contemporary Reversal”, in Jeff Sahadeo and Russel Zanca (eds.), *Everday Life in Central Asia: Past and Present*, (Bloomington: Indiana University Pres, 2007), 119.

²²⁵ Freeman, “The Emancipation of Women in Soviet Central Asia from 1917 to 1940”, 36.

²²⁶ Abazov, *Culture and Customs of the Central Asian Republics*, 220.

²²⁷ Concoran-Nantes, *Lost Voices: Central Asian Women in Transition*, 63-105.

traditions and values. As a result, the new rules and practices were encountered by resistance and ignorance either by the women themselves which were subject to these policies or by their family members or the Muslim clergy.

Central Asian people refused to obey the new Soviet laws concerning personal matters such as marriage because they were in contradiction with the sharia laws. Thus, they found ways of bypassing the laws. For example, the indigenous officials provided false certifications regarding the health and age of young women who were about to get married.²²⁸ Moreover, the Muslim community ignored the state courts' decisions regarding divorces and continued to consider the divorced women married to their ex-husbands.²²⁹

Additionally, there was a significant backlash in *Hujum* campaign. Women who enthusiastically burnt their veils in the public squares, forced to wear the veil again the next day, since the Muslim clergy initiated a "counter campaign" to "win back" the women and depending on this counter campaign, women were even beaten, raped and murdered. Some women voluntarily wore back their veils since it was their old habit and they felt naked without it. In response, *Zhenotdel* abandoned its old discourses and admitted that unveiling was not the most essential move towards the Soviet ideal in Central Asia.²³⁰ Besides, most of the activists of *Zhenotdel* were Russian and Central Asian women couldn't establish an authentic bond with those activists and their discourses.²³¹

Furthermore, gender equality requires economic independence since a woman can consider emancipating herself and divorce only under the condition that she earns enough money for herself and for her children. Women in Central Asia had already been working in the agricultural sector. The development of cotton production and textile industries as a result of the collectivization policy required more labor force,

²²⁸ Ibid., 40.

²²⁹ Ibid., 42.

²³⁰ Freeman, "The Emancipation of Women in Soviet Central Asia from 1917 to 1940", 37-38.

²³¹ Ibid., 34.

thus, women were recruited in those fields. Moreover, with the encouragement of the Soviet regime, women began to participate in other fields such as white-collar jobs, management and even tractor driving.²³² However this created a double burden for women: on the one hand, women had to do the housework and take care of their children; on the other hand, they had to work under the same -sometimes worse- conditions with men. Indeed, the women were disadvantageous in most fields of work. For example, average wages of women were significantly lower than the wages of men doing the same job and men could get a promotion more easily.²³³ The wages were higher in the industrial sector, especially in the heavy or dangerous jobs in which mostly men were recruited. There was protective legislation for women regarding these jobs but this ended up with men working in the mines with a high salary and women cleaning the mines from hazardous chemicals and being paid less. Exposure to these chemicals caused serious health problems for women.²³⁴ Likewise, women working in the agricultural sector were also exposed to hazardous chemicals due to the extensive use of toxic materials to disinfect the crops.²³⁵ This attitude consolidates the view that female emancipation policies were not put into effect to liberate women; rather it was a means of achieving Soviets' main economic goal in Central Asia: increasing the cotton production.²³⁶ New cotton fields and developing industries which use cotton and silk as raw material required more workers and women would provide the needed labor force. However, women weren't educated or independent enough to work in those fields or factories, so they had to be emancipated and trained to serve the Soviets' purposes.

²³² Concoran-Nantes, *Lost Voices: Central Asian Women in Transition*, 88-92.

²³³ *Ibid.*, 82-84.

²³⁴ *Ibid.*, 85.

²³⁵ *Ibid.*, 89.

²³⁶ Freeman, "The Emancipation of Women in Soviet Central Asia from 1917 to 1940", 40.

4.2.2. Success or Failure?

The Soviet modernization project was multidimensional. On the one hand, the Soviet administration tried to create ideal Soviet citizens who were educated, purified from the anachronistic beliefs and practices, deeply bound with the eximious Soviet values, participating in public and economic life equally, and enjoying equal rights regardless of gender, nationality, ethnicity and language. On the other hand, Soviet's intention was not a naive one since its main priority was not liberating women but economic development of the state. All the economic and social policies were carried out to serve this purpose. As explained in chapter three, the Soviet policies tried to drain the clan structures with various policies in order to consolidate the Soviet identity and establish a centralized economy; however, the clan identities survived the Soviet period adapting to the new conditions. The position of women was also affected by this fact; their roles in the clan based society prevailed despite the Soviet policies. Moreover, the gender inequality in Central Asia was considered by the Soviet administration to be a result of Islam and other "anachronistic" beliefs and practices and Soviet Union attacked on the Islamic institutions and practices. Yet, Islam came through the Soviet attempts and managed to persist until today. Islam also contributed a lot to the preservation of the clan identities, bringing the Muslim elites together.²³⁷ Consequently, with the dissolution of the Soviet Union, both the clan the clan identities and Islamic practices revived.

Regardless of the purpose behind these policies, one thing is almost certain: It was a modernization and social engineering project. At this point, it is necessary to define what modernization is. With respect to women's rights, there is a tendency among scholars to consider the educated, working, independent women as "modern" and the opposite as "traditional". However, Constantine suggests that this is the point of view of Western "developed" societies; thus, success of Soviet policies shouldn't be assessed based on Western parameters. She asserts that, evaluation of success could be made more accurately by questioning whether the expectations of society had been met or not. One should keep in mind that women are not only passive objects but

²³⁷ Rashid, *the Rise of Militant Islam in Central Asia*, 42.

subjects who are capable of self-determination; yet, the Central Asian women didn't demand the changes Soviets made for the sake of modernization.²³⁸ However, where there is no knowledge and awareness, one cannot speak of a voluntary choice. That is to say, Central Asian women didn't choose the "backward" lifestyle and they didn't demand emancipation; yet, they didn't know that they could. Consequently, it cannot be denied that the Soviet policies contributed a lot to the women's literacy, education and awareness in Central Asia. However, it cannot be asserted that the Soviet fully succeeded in those areas of life.

On the other hand, awareness of women regarding their position increased with the Soviet emancipation policies and this led to women's rejection of the conditions to which they were subjected. Some of them began to oppose the social rules imposed by the patriarchal mentality, the demands of women for divorce increased, enduring violence of men was no longer a necessity; women could seek their rights before the judicial bodies. However, at this point, *aksakal* courts as dispute settling public bodies were involved in resolving the family issues based on reconciliation. Within this context, the effects of *aksakal* courts on women's rights issues will be discussed in the following parts of the thesis. Yet, in order to understand the effects of *aksakal* courts judgements, first we need to look at women's position in post-Soviet Kyrgyzstan in terms of violence and bride kidnapping in particular.

4.3. Women in Post-Soviet Kyrgyzstan

The disintegration of Soviet Union led the newly independent republics to create new links that bind the indigenous people to each other: nationalism. The new republics knuckled down to building nation states and with this purpose, they adopted a number of laws and policies and rewrote their histories. The national values were promoted to cement the citizens and (existed or invented) traditions were presented as national heritages. The family and gender relations also had their share from this pattern. The new discourse of the independent states regarding the women and family issues was

²³⁸ Constantine, "Practical Consequences of Soviet Policy and Ideology for Gender in Central Asia and Contemporary Reversal," 116.

quite the opposite of the Soviet's discourses: the new approach was in favor of traditional values.²³⁹ The metaphor of "being a family" was used for defining the nations and the citizens were positioned under the auspice of the president as the patriarch.²⁴⁰

The 1993 Constitution of the Kyrgyz Republic stated that family would be the fundamental unit of the society²⁴¹ and courts of elders would be in charge of resolving the family disputes.²⁴² All citizens were equal before law and the courts, and no person would be subject to any kind of discrimination, violation of rights and freedoms on the ground of sex and other conditions.²⁴³ However, in practice, this was not the case. Old "traditions" came to surface with the enthusiasm of getting out of the Soviet "oppression" which led to regression of the women's rights once again in the social sphere. The practices of *kalym* paying, *levirate*, *sororate* revived in a more vigorous way and even though bride kidnapping was rare in the ancient way of Kyrgyz life, it became widespread after independence.

On May 5, 2021, a new series of amendments in the constitution were made (which also brought the system of presidential government). According to the constitution -as it was in the previous constitutions- the state supports the folk customs and traditions on the condition that they are not in contradiction with human rights. Also respect for elders and caring for the family is under constitutional guarantee.²⁴⁴ This provision is a sacrifice from the women's rights, since the traditions have not always been for the benefit of the women in Kyrgyz society as mentioned above.

²³⁹ Deniz Kandiyoti, "The Politics of Gender and the Soviet Paradox: Neither Colonized, Nor Modern?", *Central Asian Survey*, 26(4), (December 2007), 610.

²⁴⁰ *Ibid.*, 614.

²⁴¹ Constitution of the Kyrgyz Republic (1993), art. 26.

²⁴² Constitution of the Kyrgyz Republic (1993), art. 85.

²⁴³ Constitution of the Kyrgyz Republic (1993), art. 15.

²⁴⁴ Constitution of the Kyrgyz Republic (2021), art. 37.

Today, Kyrgyz women still live in a patriarchal world similar to the pre-Soviet times. They are still living with their extended families especially in the rural areas and subordinated to their husbands and mothers-in-law. Women are responsible from the housework, taking care of the children and elders. In an ordinary Kyrgyz family, women are perceived as the “homemaker” having equal rights with the men. Consensual marriages are common, yet the consent of the father and payment of *kalym* -although prohibited- is still important as a custom. Even though the state only recognizes the monogamic marriages sanctioned by the registry office, religious marriages which are not registered are still prevalent. And as a result, polygyny is common, as a matter of fact, 70% of men in the south have multiple wives. Since polygamy is prohibited by law, women as second wives have no legal rights when they divorce or no right of succession from the husband. Also the children of the second wives cannot inherit the father’s wealth if they are not registered to the government office by both the father and mother’s signatures.²⁴⁵ All these practices are so called “traditions” which contribute to the subordination of women. Furthermore, violence against women including domestic violence is very common in today’s Kyrgyzstan: General Prosecutor’s Office has recorded 2,141 violence cases just in the first quarter of 2021 and %79 per cent of these cases were dismissed. The violence involves physical, psychological, economic and sexual abuse of women and police usually doesn’t provide protection for the victims of violence.²⁴⁶

Moreover, the transfer of family disputes to the *aksakal* courts especially in the rural areas lead to oppression of women more. The verdicts based on reconciliation deprive women of the right to seek their legal rights. This is also connected with the rampancy of domestic violence in Kyrgyzstan. A group called “Forum of Women” is established

²⁴⁵ “[Kyrgyzstan, Independence.](https://family.jrank.org/pages/1030/Kyrgyzstan-Independence.html)” accessed June 6, 2021, <https://family.jrank.org/pages/1030/Kyrgyzstan-Independence.html> .

²⁴⁶ Mehrinisa Sulaimanova, “Kyrgyzstan: What to Do and Where to Go in Case of Domestic Violence?,” accessed on October 9, 2021, <https://cabar.asia/en/kyrgyzstan-what-to-do-and-where-to-go-in-case-of-domestic-violence> .

by the parliament members in order to fight against domestic violence which also worked for prohibition of bride kidnapping and early marriages.²⁴⁷

The current constitution of the Kyrgyz Republic prohibits gender discrimination and states that men and women have equal rights and freedoms and equal opportunities for their implementation. Indeed, women in Kyrgyzstan are active in the political arena and there have been a significant number of women working in the NGOs. However, they are under-represented in the higher positions of the government. According to the latest data, only 17% of the parliament members are women.²⁴⁸ And although women can receive the same education with the men and participate in the labor force (except for rural women), the leadership roles are still occupied by men and housework and child care are still considered to be women's duty.²⁴⁹ According to the 2019 Gender inequality index of United Nations, Kyrgyzstan is ranked 82 out of 189 countries.²⁵⁰ Moreover, the practices considered as traditions, which were revived with the collapse of the Soviet Union, are still carried on in contradiction with the state laws and human rights. One of these practices is the bride kidnapping (*kız ala kachuu*).

4.3.1. Reconstruction of Traditions: Bride Kidnapping

Imagine that a young woman is walking home by herself as she does every day. Suddenly a couple of men appear behind her, grab her and push her into a car. The woman screams as she realizes she is being kidnapped and resists with all her might. But the men are stronger and keep her still. They bring her to the main kidnapper's home where they are welcomed with a big celebration. In the Kyrgyz society, particularly in the rural areas, if a girl spends a single night out of her home, her

²⁴⁷“Forum of Women Members of Parliament in Kyrgyzstan Takes On Domestic Violence,” accessed June 10, 2021, <https://www.ndi.org/our-stories/forum-women-members-parliament-kyrgyzstan-takes-domestic-violence> .

²⁴⁸ “Proportion of seats held by women in national parliaments (%) - Kyrgyz Republic,” accessed June 16, 2021, <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=KG>

²⁴⁹ Martha Brill Olcott, “Women and Society in Central Asia”, in William Fierman (ed.), *Soviet Central Asia: The Failed Transformation*, (Boulder: Westview Press, 1991), 235.

²⁵⁰ United Nations Development Programme, Human Development Reports, “Gender Inequality Index (GII),” accessed June 29, 2021, <http://hdr.undp.org/en/content/gender-inequality-index-gii> .

reputation is damaged, they are no more assumed as virgin; therefore the abducted girl is locked in a room with the female relatives of the kidnapper to prevent her from escaping. Thus, the psychologic pressure begins. The relatives try to cover the girl's head with a white scarf (*jooluk*) which means that the marriage with the kidnapper is settled. The coercion does not end until the girl accepts to be covered by the white scarf. Sometimes the girl is even raped in order to speed up the process of persuasion to marriage; since once raped, the woman is "tainted" and she should be ashamed to go into public. The only thing she can do is to surrender to her fate and marry her kidnapper to save her dignity. Lastly, the girl must write a letter of consent to her family. If the kidnapped girl does not give her consent, her family usually forces her to marry the kidnapper, it is a dishonor for the girl and for her family to return back home from the kidnapping. On the other hand, if the girl gives her consent, the kidnapper and his family have to apologize from the kidnapped girl's family and present their gifts to the bride's family. Thus, the families settle upon the marriage and usually a religious wedding (*niqah*) is followed even if the girl does not have a consent.²⁵¹

These girls and young women are experiencing severe trauma. A survivor of a bride kidnapping occurred 25 years ago says: "“You will never be a victim of bride kidnapping in the past. It stays with you for the rest of your life”."²⁵² This bride kidnapping story is a common practice especially in the rural areas in Kyrgyzstan. Every year 16% to 23% of women in Kyrgyzstan become a victim of bride kidnapping.²⁵³ Statistics demonstrate that between 1991 and 2001, half of the marriages ethnic Kyrgyz marriages involved bride kidnapping and approximately two thirds of these were non-consensual.²⁵⁴ Although bride kidnapping was outlawed in

²⁵¹ Ryan Muldoon and Ursula Casabonne, "Gender Norms in Flux: Bride Kidnapping and Women's Civic Participation in the Kyrgyz Republic," (Washington: World Bank, 2017), accessed June 20, 2021, <https://openknowledge.worldbank.org/handle/10986/28989>.

²⁵² Ibid.

²⁵³ Lin Taylor, "One in five girls and women kidnapped for marriage in Kyrgyzstan: study," accessed June 20, 2021, <https://www.reuters.com/article/us-kyrgyzstan-women-bride-kidnapping-idUSKBN1AH5GI>.

²⁵⁴ Russel Kleinbach, Mehriqul Ablezova and Medina Aitieva, "Kidnapping for marriage (*ala kachuu*) in a Kyrgyz village", *Central Asian Survey*, 24(2), (June 2005), 198.

1994 and early marriages were banned in 2016, each year nearly 12.000 young women and girls are kidnapped to be a bride;²⁵⁵ and one eleventh of Kyrgyz girls aged 15 to 19 years old are married.²⁵⁶

This is claimed to be a longstanding tradition called *kız ala kachuu*. However, it is a controversial issue among scholars whether non-consensual bride kidnapping is really a tradition or not. Kleinbach and Salimjanova argue that non-consensual kind of bride kidnapping was extremely rare in the pre-Soviet period. They provide a variety of evidences indicating that it was considered as an offense against the bride's family; it caused serious conflicts and violence between tribes and it was punished by fine.²⁵⁷ On the other hand, Karimova and Kasybekov suggest that the bride kidnapping in the pre-Soviet era was actually a form of elopement arranged by the marrying couple when the parents don't give consent to the marriage.²⁵⁸ Indeed, in Kyrgyz tradition, -as in the other Islamic cultures- parents got the final word in their daughters' marriage. That means that a couple could not get married in a proper way without their parents' consent. This phenomenon led to elopement which was also the method used by the groom and/or his parents not to pay the *kalym*. Sometimes, even though parents of both sides agreed on marriage of their children, in order to avoid the celebration costs, they secretly could arrange a kidnapping.²⁵⁹

Consensual bride kidnapping was not approved by the Islamic laws and it occurred infrequently in pre-Soviet times; besides, when it happened, the kidnapper and his family had to apologize from the bride's family.²⁶⁰ On the other hand, non-consensual bride kidnapping was considered as a serious offence and violation of dignity of the

²⁵⁵ Taylor, "One in five girls and women kidnapped for marriage in Kyrgyzstan: study."

²⁵⁶ Aiperi Alymbekova, "I never said 'YES'," Accessed June 20, 2021. <https://www.unicef.org/eca/stories/i-never-said-yes> .

²⁵⁷ Kleinbach and Lilly Salimjanova, "Kız ala kachuu and Adat: Non-Consensual Bride Kidnapping and Tradition in Kyrgyzstan", *Central Asian Survey*, 26(2), (June 2007), 221-223.

²⁵⁸ Muldoon and Casabonne, "Gender Norms in Flux: Bride Kidnapping and Women's Civic Participation in the Kyrgyz Republic,"7.

²⁵⁹ Kleinbach and Lilly Salimjanova, "Kız ala kachuu and Adat," 220-221.

²⁶⁰ *Ibid.*, 221.

bride's family, therefore it was rare in pre-Soviet times. Hence, contrary to the popular belief, bride kidnapping was not a Kyrgyz "tradition".

In the Soviet times, marriages and all kinds of gatherings had to be in conformity with the Soviet ideology, children were entitled to equal treatment regardless of their sex according to the Soviet discourses and arranged marriages were banned. Therefore, bride kidnappings were out of sight. However, after the Soviet Union collapsed, non-consensual bride kidnapping cases increased as a reinterpretation of the consensual elopement practices occurred rarely in the pre-Soviet era. Thus, the bride kidnapping "tradition" was reconstructed by the people of the new Kyrgyz Republic as a reaction to Soviet's "restrictive" ideology on so called Kyrgyz "customs" and began to be perceived as an ancient tradition.²⁶¹ Kleinbach and Salimjanova argue that with the enlightenment the Soviet gender equality policies brought, women began to choose their spouses against the parents' wills and they began to arrange their own kidnappings as elopements. First, this practice became legitimate but then, the non-consensual types of kidnappings also began to appear. Pre-Soviet practices and customs such as arranged marriages, payment of *kalym* and patriarchal wedding rituals also contributed a lot to the emergence of non-consensual kidnappings.

Similarly, Borbieva suggests that the current socio-economic conjuncture in Kyrgyzstan leads to proliferation of bride kidnapping. For elder people, marriage was a functional institution which provides new alliances and networks, it raised the statuses of parents and couples (because it was considered as a success), it was also an indicator of wellbeing of the couple, and most importantly it was a means of fulfilling the sacred duty: having children.²⁶² However, neo-liberal economic shifts changed the mindset of new generations: With the foreign influences, young people began to desire a western style romantic love and they found the solution of (consensual) kidnapping.²⁶³

²⁶¹ Ibid., 230.

²⁶² Noor O'Neill Borbieva, "Kidnapping Women: Discourses of Emotion and Social Change in the Kyrgyz Republic", *Anthropological Quarterly*, Vol.85, No:1 (Winter 2012), 154.

²⁶³ Ibid., 158.

On the other hand, for Handrahan, the reason behind the reemergence of bride kidnapping in a new form as a common practice in Kyrgyzstan is that; after the dissolution of Soviet Union, Kyrgyzstan embarked upon nation building and people had to find their cultural identity and define themselves. Thus, they reinvented traditions such as bride kidnapping and these so-called traditions increased the men's power and violence.²⁶⁴ Recently, a young woman was killed in a bride kidnapping case. This is not an exceptional situation; it can be seen particularly when the abducted woman resists the kidnapping. The president of Kyrgyzstan, Sadyr Japarov said that the incident "should be the last bride kidnapping in history."²⁶⁵ However, although bride kidnapping was outlawed 1994, convictions are rare and the cases are not reported. The *aksakal* courts, which are authorized by the constitution and the state laws to resolve the family disputes, play their roles in the bride kidnapping disputes and women cannot demand justice but usually reconciled and encouraged to marry their kidnappers by the *aksakals*. Within the scope of this thesis, *aksakal* courts' decisions regarding women's issues and bride kidnapping in particular requires a further examination which will be presented under the next heading.

4.3.2. Aksakal Judgements Regarding Women's Rights

As examined above, constitution of the Kyrgyz Republic states that the Kyrgyz Republic is a social state governed by the rule of law. Human rights and freedoms are secured by Article 24 of the constitution which indicates that the Kyrgyz Republic ensures all persons the protection of their rights and freedoms; no one can be discriminated against on the basis of sex, ethnicity, religion etc.; everyone is equal before the law and the courts and men and women have equal rights and freedoms and equal opportunities. In addition to this, in 1992, Kyrgyzstan signed "The United Nations Charter" which promotes and encourages respect for human rights and for fundamental freedoms.²⁶⁶ Moreover, there are plenty of laws regulating the

²⁶⁴ Lori Handrahan, "Hunting for Women", *International Feminist Journal of Politics*, 6:2, (2004), 212.

²⁶⁵ "Kyrgyzstan: Fury Over Death of 'Bride Kidnapping' Victim," accessed June 6, 2021, <https://www.bbc.com/news/world-asia-56675201>.

²⁶⁶ Lori Handrahan, "Implications of International Human Rights Law and Bride Kidnapping in Kyrgyzstan", *Praxis, The Fletcher Journal of Development Studies*, 16, (2000), 97-114.

fundamental rights and freedoms and how they can be protected; and particularly there are various laws and regulations regarding protection of women from different kinds of violence which will be examined below. However, different types of violence such as domestic violence and bride kidnapping are still very common in Kyrgyzstan.

Why is violence against women so prevalent even though it is clearly in contradiction with the laws? The answer is to be found in pluralistic legal system of Kyrgyzstan. As a modern state governed by the rule of law, Kyrgyzstan regulated fundamental rights and freedoms by laws. However Akaev as the first president, established *aksakal* courts as a part of the nation building project and de-centralization efforts presenting an alternative to state's authority of jurisdiction. Within this framework, *aksakal* courts became responsible for resolving the "minor" conflicts²⁶⁷ such as family disputes based on so called customary law.

The *aksakal* courts are working as a substitute for the state courts involving in the legal pluralism of Kyrgyzstan, yet, the *aksakals* particularly in the rural areas usually have no idea about the state laws and they decide by their conscience and personal convictions by taking into consideration the so-called customary laws which are usually not genuine and mostly invented in the post-Soviet times as an identity-maker in the nation building process. The rules are not clear and the most valued way of solving the disputes is reconciliation. Often *aksakals* associate their courts with the state courts and even they claim that the "state judges don't know a lot." Beyer states that "a couple of years ago the villagers were disappointed when their cases were sent back from the state courts to the *aksakal* courts, today they do not even try to go to..." the state courts.²⁶⁸ The state courts' judges have not been not eager to give legal education to the *aksakals* in the villages as they promised at the beginning and the state courts have become unreliable for the villagers and they say, "there is no state here." They are used to taking care of their problems themselves and *aksakals* have a growing acceptance particularly in the villages. However, the *aksakal* courts' involvement in

²⁶⁷ Beyer, *The Force of Custom*, 68.

²⁶⁸ *Ibid.*, 78.

the cases regarding women's rights come to mean legitimizing a violent practice as they often resort to reconciliation of the parties.

Of course the families have the right to have their case considered in the state courts, however, this way is not usually chosen, since the customary laws indicate that it is "inappropriate to engage non-kin in one's problems." The families want to keep the dispute inside preventing any gossips in the village. Also the villagers associate the state courts with imprisonment between dark walls which leads death. In addition to this, the *aksakal* courts are free of charge and villagers cannot afford the judgements in the state courts. Moreover, the police and the state courts usually transfer the family disputes to the *aksakal* courts since they are perceived as "minor" conflicts and fall under the jurisdiction of *aksakal* courts according to the laws.

The "Law on Aksakal Courts" designates the main method of *aksakal* courts in settling the disputes as persuasion, public influence and reconciliation of the parties.²⁶⁹ These methods lead to more subordination of women as they cannot seek their rights before an independent court. According to an OSCE report issued in 2021, functioning of the *aksakal* courts is problematic in a few ways: First of all, these courts cannot guarantee a fair trial for the parties and their judgements can have a negative impact on women. Moreover, the OSCE report concludes that reconciliation is usually achieved at the expense of women's protection, therefore this method should not be used in the cases which involve criminal dimension such as domestic violence.²⁷⁰

Yet, *aksakal* courts are involved in all kinds of disputes regarding women's issues. The state transfers its jurisdiction authority partly to the *aksakal* courts which also means "less work for the state courts and the police". Women are directed to the *aksakal* courts by the police and the state courts according to the Law on Aksakal

²⁶⁹ Law on Aksakal Courts (2017), art. 3.

²⁷⁰ European Commission for Democracy Through Law, OSCE Office for Democratic Institutions and Human Rights, *Kyrgyzstan, Joint Opinion on the Draft Constitution of the Kyrgyz Republic*, 19 March 2021, no.1021/2021, OSCE/ODIHR Opinion No. CONST-KGZ/398/20214, Strasbourg/Warsaw, 25.

Courts.²⁷¹ In fact, the police can refer the cases to the *aksakal* courts only by the approval of the prosecutor; however usually the police does not obey the legal rules and procedures when referring the cases to the *aksakal* courts.²⁷² Moreover, especially in the rural areas, the villagers have no choice other than applying to the *aksakal* courts if they want to have their cases resolved by an official body.²⁷³ After all, the *aksakal* courts conclude the cases in 15 days, the consideration of the disputes is free of charge and villagers can better communicate with the judges of the *aksakals* courts due to the linguistic and cultural accessibility.²⁷⁴

In 2003, the “Law on Social-Legal Protection from Domestic Violence” was adopted with the pressure of women’s rights groups.²⁷⁵ The law aimed to create a social and legal system for protecting the life and health of family members from violence and provide victims from domestic violence based on the international human rights standards. The law was replaced with a new law in 2017 and lastly in 2020, the Law on Safeguarding and Protection against Domestic Violence was adapted.²⁷⁶ The law defines domestic violence as: “deliberate acts of a physical, psychological, economic nature or their threat, as well as a disdainful attitude, committed by one family member against another family member” and lists the state organs responsible for preventing or taking action against domestic violence.²⁷⁷ The latest version of the law improves protection measures and fills the implementation gaps. According to the new law, not

²⁷¹ Judith Beyer, “There is this law . . .”Performing the State in the Kyrgyz Courts of Elders,” in *Ethnographies of the State in Central Asia: Performing Politics*, ed. Madeleine Reeves, Johan Rasanayagam, Judith Beyer, (Indianapolis: Indiana University Press, 2013),107.

²⁷² Human Rights Watch, “Call Me When He Tries to Kill You: State Response to Domestic Violence in Kyrgyzstan,” (2015), accessed November 13, 2021, https://www.hrw.org/report/2015/10/28/call-me-when-he-tries-kill-you/state-response-domestic-violence-kyrgyzstan#_ftn337 .

²⁷³ Judith Beyer, “Imagining the State in Rural Kyrgyzstan: How Perceptions of the State Create Customary Law in the Kyrgyz *Aksakal* Courts,” *Max Planck Institute for Social Anthropology Working Papers*, no.95 (Halle/Saale: Max Plank Institute, 2007), 9.

²⁷⁴ Alenkina, “Aksakal Courts: Legitimization of Traditional Values of Kyrgyz Society,”27-28.

²⁷⁵ Human Rights Watch, *Kyrgyzstan: Reconciled to Violence: State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan*, 2006, vol.18, no.9 (D), 36.

²⁷⁶ Law on Safeguarding and Protection against Domestic Violence (2020), accessed September 25, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/111570> .

²⁷⁷ Law on Safeguarding and Protection against Domestic Violence (2020), art.1.

only the victim of domestic violence, but everybody who knows about the violence can file a complaint for criminal prosecution. Moreover, the law regulates protection orders which can be used as an alternative tool to the criminal prosecution. According to the law, crisis centers were established in Kyrgyzstan to protect and shelter women from domestic violence; however their numbers are not enough to save all the women who are victims of domestic violence.²⁷⁸

Penal Code of the Kyrgyz Republic adopted in 2017 was also amended several times in 2019, 2020 and 2021 to better protect the rights and freedoms of individuals and society.²⁷⁹ Adoption of the latest laws was a step for preventing the growing rates of domestic violence: During the Covid-19 lockdown, domestic violence in Kyrgyzstan increased tremendously (%60)²⁸⁰ since it wasn't classified as an "essential" issue during the pandemic and the shelters and crisis centers were closed; they only gave online service.²⁸¹

On the other hand, Criminal Procedural Code of the Kyrgyz Republic, which was adopted in 2017 and amended several times in 2019, 2020 and 2021, introduces new provisions to better protect the victims of domestic violence.²⁸² Still, 9000 domestic violence cases were registered in 2020 which is 3000 cases more as compared to the registered cases in 2019.²⁸³ The authorities state that there are hundreds of unregistered

²⁷⁸ Asylai Akisheva, "Women Face-to-Face with Domestic Abuse during COVID-19 Lockdown: The Case of Kyrgyzstan," accessed November 19, 2021, <https://www.centralasiaprogram.org/women-face-face-domestic-abuse-covid-19-lockdown-case-kyrgyzstan> .

²⁷⁹ Penal Code of the Kyrgyz Republic (2021), accessed September 25, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/111527> .

²⁸⁰ United Nations Human Rights Office of the High Commissioner, "In Dialogue with Kyrgyzstan, Experts of the Committee against Torture Commend Legislative Progress against Domestic Violence, and Ask about Assistance for Victims of Gender-based Violence," last modified November 11, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27800&LangID=E> .

²⁸¹ Human Rights Watch, "World Report 2021, Kyrgyzstan," accessed November 6, 2021, <https://www.hrw.org/world-report/2021/country-chapters/kyrgyzstan#ce2d83> .

²⁸² Criminal Procedural Code of the Kyrgyz Republic, 2017 (with amendments in 2019, 2020 and 2021), accessed November 6, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/111530/50?cl=ru-ru> .

²⁸³ Farangis Najibullah, "Kyrgyz government takes steps to address growing incidence of domestic violence," last modified January 27, 2021, https://central.asia-news.com/en_GB/articles/cnmi_ca/features/2021/02/18/feature-01 .

domestic violence cases more which weren't sent to the courts as the women withdrew their complaints.²⁸⁴

This was because the provisions of Criminal Procedural Code were not fully enforced by the police or the *aksakal* courts and such crimes continued to remain unpunished.²⁸⁵ The police can disregard the domestic violence on the grounds that there were no witnesses or no complaints from the victim.²⁸⁶ Some domestic violence victims express that when they tried to file a complaint, the police turned them away or pressured the women to endure violence.²⁸⁷ In an interview concluded by the Human Rights Watch, an *aksakal* asserts: "There is no law that allows us [police] to punish a husband for beating his wife." The police tell us [aksakals], "If he kills you or kills her, then we will come."²⁸⁸

In another interview on a domestic violence case involving serious physical harm and causing a permanent physical and psychological damage, an *aksakal* judge indicate that reconciliation was the best solution since the woman has three children and she cannot work due to the physical damage and in case of a divorce, the husband would not pay a compensation even if it was required by the court, on the basis of cultural norms of the society.²⁸⁹

Furthermore, human rights activists claim that the *aksakal* courts often render a verdict obliging the offender to do community service or pay an administrative fine of \$350; however usually this high amount of fine is not taken from the offender himself but

²⁸⁴ Farangis Najibullah, "Kyrgyzstan Seeks To Stop Wives From Staying In Abusive Marriages At All Costs," last modified January 27, 2021, <https://www.rferl.org/a/kyrgyzstan-abusive-marriage-tradition-reconciliation/31071481.html> .

²⁸⁵ Human Rights Watch, World Report 2021.

²⁸⁶ Najibullah, "Kyrgyz government takes steps to address growing incidence of domestic violence."

²⁸⁷ Human Rights Watch, "Kyrgyzstan: End Barriers to Help for Domestic Violence Victims," (2015), Accessed November 19, 2021, <https://www.hrw.org/news/2015/10/28/kyrgyzstan-end-barriers-help-domestic-violence-victims> .

²⁸⁸ Human Rights Watch, *Call Me When He Tries to Kill You: State Response to Domestic Violence in Kyrgyzstan*, 2015.

²⁸⁹ Ibid.

from his family. Moreover, usually the women as the victims of domestic violence end up with having to pay the administrative fine imposed to their offenders.²⁹⁰

The Kyrgyz Republic plans to amend the Law on Safeguarding and Protection against Domestic Violence once again to bring harsher punishments for domestic violence. A new bill banning the reconciliation of the parties in domestic violence cases has been passed by the Kyrgyz parliament in the beginning of 2021 waiting for the signature of the president in order to enter into force.²⁹¹ According to the law in force, when the victim takes her complaint back, the police drops the case. However, in case the new bill enters into force, police will have to investigate the case even if the complaint has been withdrawn.

Aksakal courts are also involved in property issues which also affect women: Beyer writes about a divorce case heard by an *aksakal* court (although the *aksakal* courts' judgements regarding divorce cases have to be approved by the state courts, *aksakal* courts can initiate the process and consider the conflicts regarding the division of the property): The husband brings another bride before divorcing his official wife and since his wife is claimed to be mentally ill, her family opens the divorce case. The wife's sister comes to the *aksakal* court in on behalf of her since her brother was not at home at the time of the hearing (the time of the hearing was not announced in advance publicly or to the parties). The hearing does not start at a court, but the *aksakals* suddenly decide to go to the husband's home and persuade him to come to the court by threatening him to send the case to the state courts. Thus, the husband and his new bride were taken from their home as well as the wife's sister by *aksakal* judges and brought before the *aksakal* court without any prior notice. During the hearing, the *aksakals* often raised their voices and even shouted at the parties. They also demanded a payment even though such a law provision doesn't exist.²⁹²

²⁹⁰ Najibullah, "Kyrgyz government takes steps to address growing incidence of domestic violence."

²⁹¹ Ibid.

²⁹² Beyer, "There is this law . . ."Performing the State in the Kyrgyz Courts of Elders," 106-115.

This example shows how far from legal predictability and fair trial the jurisdiction of the *aksakal* courts is: First of all, the woman's family can apply the *aksakals* to open a divorce case on behalf of her without an official appointment of a legal guardian or a procurator. *Aksakals* accept this application just because "everybody knows" that the woman is mentally ill. At first, the *aksakals* call the woman's brother to the court but when they learn that the brother is not available, the woman's sister comes to the court on behalf of her. Secondly, the *aksakals* demand a money for the trial which has no place in the state laws. Lastly, the *aksakals* try to frighten the parties by saying that if they don't come, the case will be transferred to the state courts. None of these methods are in compliance with the laws of Kyrgyz Republic and also human rights. Universal Declaration of Human Rights concludes that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".²⁹³ These are the principles of a fair trial; however, *aksakal* courts usually don't seem to be impartial or independent since they fulfill the duties of the judge, the experts and the witnesses when needed. Furthermore, the hearings are not announced in advance and even the parties of the dispute don't know that they have a hearing on that day; instead they are taken from their homes and brought before the courts by *aksakals*.

Beyer highlights another finding from the case studies she concluded on *aksakal* courts and asserts that when a disagreement occurs between the parties or between the *aksakals* themselves during the *aksakal* courts' judgements, *aksakals* often refer to the constitution even though such a provision does not exist in the constitution. She states that such kind of references create a faith and trust to the *aksakals* consolidates the power of the *aksakal* judges as state officials.²⁹⁴

Another significant type of case regarding women's issues which falls under the jurisdiction of *aksakal* courts is the bride kidnapping *-kyz ala kachuu-* cases. Article 16 of the Universal Declaration of Human Rights indicates that "Marriage shall be

²⁹³ Universal Declaration of Human Rights, art.10.

²⁹⁴ Judith Beyer, "Constitutional Faith: Law and Hope in Revolutionary Kyrgyzstan," *Ethnos*, vol.80, no.3, (2015): 333, Doi: 10.1080/00141844.2013.841270 .

entered into only with the free and full consent of the intending spouses.” In parallel, Article 177 of the Penal Code of the Kyrgyz Republic asserts:

Coercion of a woman into marriage, continuation of marriage cohabitation, or kidnapping for further marriage contraction against her will, as well as preventing a woman from contracting marriage shall be sentenced by fine of category V or imprisonment of category I.²⁹⁵

In the light of this provision, bride kidnapping is clearly illegal and it is a violation of human rights. However, it is considered as a family dispute, not a practice against the human rights since the practice is viewed as a tradition and a cultural value. As Handrahan puts it, villagers have gone so far as to stone women who have escaped from kidnapping.²⁹⁶ Moreover, the state also sees this practice as a family dispute and transfers its jurisdiction regarding bride kidnapping cases to the *aksakal* courts.

Thus, bride kidnapping is still a stubborn fact in Kyrgyzstan. Each year thousands of bride kidnappings occur even though it is a criminalized practice since 2013.²⁹⁷ Today although it is sometimes protested in the streets, it is still portrayed as a romantic practice in the Kyrgyz pop culture and television.²⁹⁸ Most of the bride kidnapping cases go unreported. The victims usually don't complain or the complaining women are persuaded to stay in the marriage on the grounds that returning home is shameful for both the woman and her family.²⁹⁹

This year a bride kidnapping case which resulted in murder of the victim and suicide of the perpetrator caused great public outrage. Aizada Kanatbekova, a 27 year old

²⁹⁵ Penal Code of the Kyrgyz Republic (2021), art.177.

²⁹⁶ Handrahan, “Implications of International Human Rights Law and Bride Kidnapping in Kyrgyzstan”, 97-114.

²⁹⁷ Radio Free Europe / Radio Liberty, “Four Men To Face Trial In Deadly Bride-Snatching Case In Kyrgyzstan,” last modified May 4, 2020, <https://www.rferl.org/a/kyrgyzstan-bride-kidnapping-four-men-trial/31237443.html> .

²⁹⁸ Bermet Talant, “Conservative Kyrgyz Tabloid Addresses Women’s Rights,” last modified October 19, 2021, <https://eurasianet.org/conservative-kyrgyz-tabloid-addresses-womens-rights> .

²⁹⁹ Radio Free Europe / Radio Liberty, “Kazakh Victim of Attempted 'Bride Kidnapping' Fights For Justice,” last modified April 21, 2021, <https://www.rferl.org/a/kazakhstan-bride-kidnapping-victim-fights-for-justice/31215297.html> .

Kyrgyz woman was kidnapped on a Bishkek street by several people on April 5, 2021 and after two days of search, the police found her and her perpetrator's dead bodies in a car at a remote part of the city.³⁰⁰ 12 hours after the kidnapping, the victim managed to phone both mother and her aunt and the mother immediately called the investigator; however, the official investigator said "don't worry, you will celebrate a wedding party soon".³⁰¹ Although everything including the car model, number plate and people passing by doing nothing about the violence were recorded by the surveillance cameras, the officials did not do much to prevent the death. Upon the discovery of the dead bodies, a criminal investigation regarding "possible official negligence" was launched and demonstrations at the street where the kidnapping took place broke out. The police chief of Bishkek was dismissed, several other senior officers were punished over this kidnapping case and 40 officials were reprimanded.³⁰²

This example shows the perception of the Kyrgyz people and even the officials regarding the bride kidnapping cases. Even though the police knew about the kidnapping and the violence, they regarded it as a marriage celebration. This is usually seen as a "legitimate" way of getting married by the officials and also by the *aksakals*.³⁰³ As the bride kidnappings are perceived as another "tradition" of the Kyrgyz society, the *aksakal* courts' judgements also consist of persuading the bride to be and her family into the marriage. On the other hand, *aksakal* courts do not have the authority to issue protective orders or arrest the culprit when a violence occurs. Thus, instead of securing the justice, they endeavor to resolve the conflict by convincing the parties and making sure that they keep quite in the society.

³⁰⁰ Radio Free Europe / Radio Liberty, "Kyrgyz Erupt In Protest After Bodies Found In Suspected 'Bride Kidnapping'," last modified April 8, 2021, <https://www.rferl.org/a/kyrgyz-protests-bride-kidnapper-deaths/31192805.html> .

³⁰¹ Radio Free Europe / Radio Liberty, "Kyrgyz Prosecutors Open Negligence Case After Killing of Kidnapped 'Bride'," last modified April 9, 2021, <https://www.rferl.org/a/kyrgyzstan-bride-kidnapping-murder-suicide/31194866.html> .

³⁰² Radio Free Europe / Radio Liberty, "Bishkek Police Chief Fired, Officers Punished Over Killing Of Kidnapped 'Bride' In Kyrgyzstan," last modified April 11, 2021, <https://www.rferl.org/a/bishkek-police-chief-fired-bride-kidnapping/31197460.html> .

³⁰³ L.M. Handrahan, "International Human Rights Law and Bride Kidnapping in Kyrgyzstan," February 2, 2000, <https://eurasianet.org/international-human-rights-law-and-bride-kidnapping-in-kyrgyzstan> (accessed on November 20, 2021).

The Kyrgyz Republic acceded the United Nations “Convention on the Elimination of All Forms of Discrimination against Women” on 10 February 1997 and the Committee on the Elimination of Discrimination against Women issued a report in 2018 which officially recommend that the state shall “Ensure that cases of bride kidnapping are under no circumstances referred to alternative dispute resolution procedures such as Aksakal courts or mediation”.³⁰⁴ Indeed, in a questionnaire conducted by the UNDP on impartiality of the *aksakal* courts, 84% of the respondents ranked *aksakal* courts as a “1” on a 1-5 scale where 1 point was the lowest impartiality rate.³⁰⁵ The *aksakal* courts’ methods and verdicts in line with the “customary laws” are incompatible with the human rights and the rule of law. The legal pluralism brought by these courts paves the way for ignoring and even approving violence against women. However, family disputes and women’s issues continue to be an object of the *aksakal* courts’ patriarchal existence.

From 2015 to 2019, the *aksakal* courts have resolved 117,377 cases regarding family disputes and the number of applications to *aksakal* courts by women have been increasing exponentially every year.³⁰⁶

Another discussion concerning the *aksakal* courts appertaining to women’s rights, is about their name. Feminists have been standing up for changing the name of the *aksakal* courts for a while indicating that the state and justice should not be gender discriminative. Last year at a constitutional meeting, renaming *aksakal* courts taking into account gender equality was proposed. At the meeting, Doctor of Historical Sciences, Cholpon Koichumanova said that many of the cases the *aksakal* courts

³⁰⁴ United Nations Committee on the Elimination of Discrimination against Women, “Report of the inquiry concerning the Kyrgyz Republic under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,” last modified September 18, 2018, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KGZ/CEDAW_C_OP-8_KGZ_1_8755_E.pdf .

³⁰⁵ United Nations Development Program, “Access to Justice for Vulnerable Groups in the Kyrgyz Republic,”2014, https://www.kg.undp.org/content/kyrgyzstan/en/home/library/democratic_governance/access-to-justice-for-vulnerable-groups-in-the-kyrgyz-republic.html (accessed on November 6, 2021).

³⁰⁶ Inna Aksenova, “Divorce and Alimony: What Do Women in Kyrgyzstan Struggle for in Courts?,” Last modified June 6, 2020, <https://cabar.asia/en/divorce-and-alimony-what-do-women-in-kyrgyzstan-struggle-for-in-courts> .

consider domestic problems related to women and women can be a part of the *aksakal* courts, but there are very few of them. She added that in Azerbaijan and Uzbekistan, the public body is called the council of elders or the council of justice.³⁰⁷ However, these discussions seem to continue. I argue instead, the need for *aksakal* courts should be evaluated considering the incapability of *aksakal* courts of giving lawful verdicts regarding women's rights.

³⁰⁷ Gulmira Makanbai Kuzy, “Суды аксакалов предлагают переименовать с учетом гендерного равенства,” last modified December 10, 2020, https://24.kg/vlast/176203_sudyi_aksakalov_predlagayut_pereimenovat_suchetom_gendernogo_ravenstva/ .

CHAPTER 5

CONCLUSION

This study focused on the reflections of reconstruction of traditions in Kyrgyzstan with regards to the legal pluralism brought by *aksakal* courts and women's position with a specific focus on bride kidnapping. The reconstruction and reinvention of traditions were based on revival of clan affiliations and religion which occurred as a means of cementing the citizens in the nation building process in Kyrgyzstan.

Historically, Kyrgyz peoples were nomads who had been living in clans and tribes which consisted of extended families. This structure was embedded in the Kyrgyz culture such deeply that the clan affiliations have never lost its significance in the Kyrgyz society. With the proliferation of Islam among the Kyrgyz in the 19th century, the Muslim culture also contributed much to the Kyrgyz way of life. Thus, the wise lineage elders known as *aksakals*, who were mediating the family and property disputes according to the customary laws in the ancient times, also began to incorporate the shariah laws to the rules they implemented in the dispute resolving process, in parallel to the changing customary laws and culture. Kyrgyz women's position in the late Tsarist era was also a reflection of the Islamic identities combined with the clan politics which utilized marriages as a means of creating kinship ties and strengthening the clans. Women were perceived as the second sex who did not have a say in their life or marriages. They were subject to the demands of the patriarchal culture and customs applied by the *aksakals* when a dispute occurred.

The Bolsheviks came to power with an exact opposite agenda. They were promising equal rights to all citizens and women with a modern state based on scientific atheism. The clan-based identities and Islamic culture was soon appeared to be threatening for the Soviet Union and they attacked all such kind of structures. To prevent the pan-

Islamic identities, Soviet Union abolished all Islamic institutions along with the *sharia* courts and replaced the Muslim identity with secular national identities. With the delimitation policies, the ethnic groups were demarcated on the basis of language or dialect which was not initially a distinctive feature for the peoples of Central Asia: the nations were created artificially by the Soviet Union. Under Gorbachev's *perestroika* and *glasnost* policies, the restrictions relaxed and underground Islam survived the Soviet period. Furthermore, the collectivization and sedentarization policies which aimed to eradicate the clan identities, eventually strengthened the clan powers in the form of *kolkhozes*. On the other hand, emancipation policies of Soviets brought gender equality to a certain extent; however, women were still working for lower wages than men and the new jobs of women created a double burden on women who were also playing their roles as homemakers, child and elder caretakers in the patriarchal families.

After the collapse of the Soviet Union, national intelligentsia created by the Soviet Union who lacked democratic political tradition were left alone and the most consolidative instrument for the new nation was regarded to be ethnic nationalism. While the first president of independent Kyrgyzstan, Akaev, aimed to build a democratic state, he used ethnicity as a cementing tool and rewrote the myths and history emphasizing the deep rooted traditions of the Kyrgyz people. Ethnicity and religious identities were interpenetrating issues in Kyrgyzstan and the Islamic revival was inseparable from the national revival. The ethnic Kyrgyz dresses, dishes and holidays became a national heritage which were also perceived as part of the Muslim culture.³⁰⁸ Islamic identities reemerged and religious practices came to surface again. Salmorbekova and Yemelianova assert: "in 1991 in Kyrgyzstan there were 39 mosques, a few *madrasahs* and no Islamic universities, or institutes. By the mid-1990s there were already over 2,000 mosques, 42 *madrasahs*, one Islamic academy and seven Islamic institutes."³⁰⁹ The interconnection of these religious, ethnic and national

³⁰⁸ Cummings, *Understanding Central Asia*, 101-102.

³⁰⁹ Zumrat Salmorbekova and Galina Yemelianova, "Islam and Islamism in the Ferghana Valley," in *Radical Islam in the Former Soviet Union*, ed. Galina M. Yemelianova (New York: Routledge, 2010), 219.

identities in the Kyrgyz Republic was also reflected on the human rights and freedoms which were guaranteed in the constitution.

The democratization processes have always been difficult for the countries where there are ethnic, religious, tribal and clan divisions in the state.³¹⁰ The ethnic make-up, regional identities and sociocultural traditions should stay out of the transition process in a democratic state building.³¹¹ Hence, Akaev started with researching on the Western democratic systems to build the democratic Kyrgyz Republic and in the first years, the state was considered as an “island of democracy” in the international arena. However, in the long term, a liberal democratic rule of law ensuring equal rights for every citizen and relying on individual merit and not much cognizant of the ethnic and clan identities became disadvantageous for the Kyrgyz administration.³¹² An independent judiciary system as an essential part of a rule of law was threatening for Akaev, as it would restrict the control of autocratic rule of the president and remove the tools employed to stay in power.³¹³ Thus, separation of powers remained on paper as the heads of the highest state courts were appointed by the president. Moreover, as a president who came to power due to his broad kinship ties, Akaev had to satisfy the expectations of the powerful clan members, yet in the following years, he has become more and more power-hungry with the clan elites’ pressure and extravagated his efforts of favoring the strong clans. As a result, he attracted much opposition and had to resign from presidency. However, one of his most important legacies which also served to preserve the clan identities continue to exist: the *aksakal* courts. The *aksakal* courts were designed by Akaev for the sake of creating new myths and bonds in the nation building and decentralization processes to work as an alternative to the state courts. They also have been utilized as a means of securing the potency of the president

³¹⁰ Ibid., 24.

³¹¹ Thomas Carothers, “The End of the Transition Paradigm,” *Journal of Democracy*, vol.13, no.1 (2002): 8.

³¹² Anatoly Kazanov, “Authoritarianism and its Consequences in Ex-Soviet Central Asia,” in *Ethnicity, Authority, and Power in Central Asia*, ed. Robert L. Canfield and Gabriele Rasuly-Paleczek, (London: Routledge, 2011): 21.

³¹³ Thomas Carothers, “How Democracies Emerge: The ‘Sequencing Fallacy’,” *Journal of Democracy*, vol.18, no.1 (2007): 16.

and the elites, as the *aksakals* of the strong clans were providing legitimacy to the political power. Yet, they were presented as a revival of ancient traditions, as the *aksakals* in the history were respected lineage elders who knew the customary laws and whose advices were listened and mediations were needed to resolve the conflicts in the villages or clans.

However, the customary law itself is an ambiguous term since the customs have slowly but continuously changed in the Kyrgyz history. For example, the ancient customs were replaced with the Islamic ones after the proliferation of Islam among the Kyrgyz. In a state founded on a secular ground, Islamic practices had no place in the state organs. Yet, as the *aksakal* courts were established, they became the conveyer and implementer of Islamic *adat* laws. During this period, pre-modern verdicts which were not complying with human rights were observed. With the adaption of the Law on Aksakal Courts in 1995, the scope and boundaries of *aksakal* courts' judgements were drawn more clearly. According to this new system, which is still valid today, *aksakal* courts are public bodies created on a voluntary basis and on the grounds of electivity and self-government. They are designed to review materials sent to them in accordance with the established procedure by the court, the prosecutor, other law enforcement agencies, which have the right to consider criminal cases, and their officials. Furthermore, not only the respected elders but also other citizens who enjoy respect and authority, serve as a judge in the *aksakal* courts concluding property and family disputes. For other disputes allowed by laws, the parties can make an agreement to bring their cases to the *aksakal* courts. Disputes which *aksakal* courts are authorized to resolve are seen as secondary issues that can be settled by goodwill provided that the verdicts do not contradict with the law and the decisions of *aksakal* courts may be appealed before the state courts.³¹⁴

Today in Kyrgyzstan, there is a dual structure in the *aksakal* court system: on one hand, the *aksakal* courts in the urban areas are quite different than the traditional *aksakal* councils with their non-ethnic Kyrgyz (occasionally women) judges employed with a monthly salary and receiving training on state laws from the judges as they merely

³¹⁴ Constitution of the Kyrgyz Republic (2021), art. 92.

have the notion of customary law. On the other hand the *aksakal* courts in the villages don't have much connection with the state and operate in a more similar way to the ancient *aksakal* councils on the basis of customary laws. The *aksakal* courts in the urban are not very well connected with the Islamic or other kinds of customary laws, mostly deciding according to the personal convictions and common sense. In case judges of the urban *aksakal* courts are hesitant in the decision to be made, they consult the state judges to resolve the dispute according to the state laws, instead of taking advice from *aksakals* in the villages who have a deeper understanding on the customary laws.

Currently, the Kyrgyz villagers think that the *aksakal* courts are ancient traditional structures, yet they also acknowledge that these courts are new national institutions. Indeed, even though the roots of *aksakal* councils go back deep in the Kyrgyz history, the *aksakal* courts operating today as a part of the state's judiciary system are not the same with the ancient *aksakal* councils. Their structure, members, laws applied and recognition as an official instrument have changed substantially throughout the history.³¹⁵

The *aksakal* courts today appear to be manifestations of the pluralist legal system in Kyrgyzstan which are not part of the democratic rule of law. The principle of rule of law requires "measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."³¹⁶ However, both the foundation of *aksakal* courts and customary laws they apply are in significant contradiction with the rule of law principle and human rights. These courts can be considered as a demise of judicial power of state courts. Customary laws applied in these courts -particularly in the rural areas- ignore the state law which is supposed to be the assurance of fundamental rights and freedoms. This is particularly apparent in the verdicts of

³¹⁵ Beyer, "Revitalisation, Invention and Continued Existence of the Kyrgyz Aksakal Courts," 164.

³¹⁶ United Nations, Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*, 23 August 2004, S/2004/616, 4.

aksakal courts on the cases regarding women's rights and particularly on bride kidnapping cases. Reconciliation as the main procedure *aksakal* courts apply in the cases involving violence against women is a clear indicator of female subordination. The women need legal protection in case of domestic violence or bride kidnapping instead of being appeased by *aksakals'* verdicts.

The bride kidnapping in Kyrgyzstan can also be regarded as a reconstruction or reinvention of ancient traditions. As the de-Sovietization efforts sparked off, the forgotten pre-Soviet and Islamic practices and traditions reemerged as it was the case in the foundation of *aksakal* courts. Alongside with the government's incline on the traditional values, being freed from the Soviets' constraints, people also became more firmly attached to their traditions. This process involved the "tradition building" transforming the ancient practices of Kyrgyz people. As Kleinbach and Salimjanova clearly set forth, bride kidnapping practice in Kyrgyzstan had never been a tradition; yet, as Handrahan asserts, it emerged as a part of nation building after the collapse of Soviet Union.³¹⁷ Bride kidnappings in the history were rare practices in the pre-Soviet era and they mostly appeared as consensual abductions arranged not to pay *kalym* or to marry against the will of the parents. In the Soviet era, even the arranged marriages were outlawed and the kidnappings were still unusual. However, after 1991, bride kidnappings occurred in Kyrgyzstan as the reinvention of ancient traditions and became prevalent. The criticism of Soviet emancipation policies and promotion of old values in the nation building processes was one of the reasons behind the emergence of bride kidnappings which was a roll back to the pre-Soviet perception of women. It has been regarded as a tradition by particularly the rural Kyrgyz people since the end of the Soviet sovereignty. Not only the *aksakal* courts approve it as a cultural heritage, also the women accept it as a destiny. It is striking that even the kidnapped women are not fully aware how this practice violates their fundamental rights. Bride kidnapping

³¹⁷ Kleinbach and Salimjanova, "Kyz ala kachuu and adat: non-consensual bride kidnapping and tradition in Kyrgyzstan", 221; Handrahan, "Hunting for Women", 208-209.

became so internalized that opposing to this so-called tradition is considered as treason against Kyrgyz ethnicity.³¹⁸

Furthermore, entrusting the *aksakal* courts with the bride kidnapping disputes in modern Kyrgyzstan is still an obstacle for the emancipation of women which is required to form a genuine modern rule of law. Women should be emancipated from the actual or created patriarchal “traditions” imposed on them; yet, this can be achieved only if women recognize the boundaries set on them (or realize their internalized boundaries) which is nowadays much more possible through the medium of the positive effects of social media.

The *aksakal* courts are problematic in the sense that their decisions are far from implementing the laws on gender equality and human rights particularly in the rural areas. Some scholars argue that the state’s justice system does not reach to the rural parts of Kyrgyzstan and state courts’ expenses cannot be covered by the villages, therefore the existence of *aksakal* courts is better than nothing. However, the lack and cost of judicial infrastructure and state courts in the rural areas, are subjects which can be solved in a state claiming to be a democratic one with the rule of law. Thirty years have passed since the nation building project began in Kyrgyzstan and the *aksakal* courts which emerged as the representative of the ancient traditions to strengthen this project have already fulfilled their duties. In the modern Kyrgyzstan the need for *aksakal* courts should be questioned as their cementing role lost its meaning, and their pre-modern functioning contradicts the modern rule of law principle.

³¹⁸ Cynthia Werner, “Bride abduction in post-Soviet Central Asia: marking a shift towards patriarchy through local discourses of shame and tradition”, *The Journal of the Royal Anthropological Institute*, Vol. 15, No. 2 (June, 2009), 314.

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APPENDICES

A. TURKISH SUMMARY

Bu tezde, çok eski zamanlardan beri var olduğu düşünölen bazı geleneklerin, nasıl yeniden inşa edildikleri ve bu yeni halleriyle Kırgız devlet kurumları ve sosyal yaşamında nasıl etkilerini sürdürdükleri incelenmektedir. Gelenekler, toplumun dinî, sosyal, ekonomik ve kültürel uygulamalarının etkisi altında gelişmiş ve genellikle sözlü iletişim, ritüeller ve sürekli tekrarlanma yoluyla sonraki nesillere aktarılan uygulamalardır. Ailelerin, çeşitli toplumsal grupların ve ulusların yapılandırılmasında gelenekler birleştirici unsur olarak önemli bir rol oynamaktadır. Orta Asya, tarih boyunca birçok topluma ve dine ev sahipliği yapmış, doğu ve batı değerlerinin bir potada eridiği bir bölge olduğundan, buradaki gelenekler de bu çok kültürlölükten etkilenmiştir. Tarih boyunca özellikle Türkler, Persler, Moğollar, Hint-Aryanlar olmak üzere bu bölgede yaşamış halklar, Orta Asya kültürüne pek çok zenginlik katmış; bunun yanında Zerdüşçölük, Budizm, Maniheizm, Hristiyanlık, İslam, Şamanizm, Animizm, Paganizm gibi dinler de Orta Asya’da serpilmiştir. Kırgız kültürü ve geleneklerini de bu kültür karışımı oluşturmuştur. Buna ek olarak, Kırgızların göçebe yaşamının getirdiği geniş aile yapısı ile klanlar ve kabileler halindeki sosyal yapılanma da onların temel yaşam biçimlerini belirleyici bir faktör olmuş; sosyoekonomik ve politik düzenlerini şekillendirmiştir. Bu düzende, ataerkil geniş aileler, toplumun temelindeki yapı olarak ortaya çıkmış ve ailenin babası ve yaşlıları saygı duyulan, sözleri dinlenen bireyler olarak toplumda söz sahibi olmuştur. Böylesi bir toplumda, kadınlar daha ikincil planda kalmış ve evlilikleri, diğer aileler veya kabilelerle ittifaklar kurabilmek amacıyla bir araç olarak kullanılmıştır. Aile veya kabile üyeleri arasında ve kabilelerin kendi aralarında çıkan uyuşmazlıklar, ailenin saygı duyulan yaşlı erkek üyeleri olan “aksakal”lar tarafından örf ve adet hukukuna göre çözümlenmiş ve karara bağlanmıştır. İşte bu hayat şekli, yeniden yorumlanarak ve

değiştirilerek günümüz Kırgız hayatına aktarılmış olup bugün, insanların bu yeniden yaratılan geleneklere oldukça sıkı bir şekilde bağlı olduğu görülmektedir.

Gelenekler, çoğunlukla tarihi örf ve adetlere göre inşa edilmektedir. Toplumu birleştirici güçleri göz önünde bulundurulduğunda gelenekler, sıklıkla iktidarı meşrulaştırmak ve sağlamlaştırmak için kullanılmaktadır. Kırgızların ulus inşası sürecinde de durum böyle olmuştur. İktidarı elinde bulunduranların emir ve söylemleri örf ve âdete uygun olduğu sürece genellikle meşru bulunmuştur. Kırgız ulus inşası sürecinde bu, Akaev'in de başvurduğu bir yöntem olmuştur. Akaev göreve geldiğinde, kendi iktidarını meşrulaştırmak ve ulus kimliğini sağlamlaştırmak için yollar aramıştır. Bu çerçevede tarih yeniden yazılmış, efsaneler yeniden yaratılmış ve gelenekler yeniden yapılandırılmıştır. Böylece, klan ve kabile kimlikleri, sosyoekonomik ve politik alanda yeniden canlanmış ve uyuşmazlıkların çözümlenmesi ile ilgili tarihî bir gelenek olarak sunulan aksakal heyetleri, yeni düzende devlet mahkemeleri (aksakal mahkemeleri) olarak ortaya çıkmıştır. Söz konusu mahkemeler bugün Kırgızistan'da halen görev yapmakta olup, tarihte saygı duyulan yaşlı aile üyeleri olarak uyuşmazlıkları çözüme kavuşturan aksakallardan farklı şekilde yapılanmış ve farklı şekilde çalışmakta olduklarından, esasında tarihî geleneklerin bir yeniden yorumudur ve günümüzde Kırgızistan'daki hukuki çoğulculuğun bir ögesidir. Nitekim hukuki çoğulculuk, devlet içerisinde birden fazla hukuk sisteminin varlığı anlamına gelmektedir. Kırgızistan'daki bu hukuki çoğulculuk, devletin anayasası ve kanunları ile kurulmuş bir sistemdir. Kırgız Anayasası ve Aksakal Mahkemeleri Hakkında Kanun, yerinden yönetim ilkesi çerçevesinde oluşturulan bu mahkemelerin aile davaları, mal davaları gibi bazı uyuşmazlıklarda ilçe/bölge bazında kurulan ve toplumda saygı duyulan kimselerden oluşan aksakal mahkemelerince karara bağlanacağını öngörmektedir. Öte yandan bu mahkemeler, örf ve adet hukukuna göre karar vermekte ve kanundan kaynaklanan temel yöntem olarak da, davanın taraflarını uzlaştırma yoluna gitmektedirler. Dolayısıyla devlet içerisinde iki temel hukuk sistemi bulunmakta olup bunların birincisi devletin kanunlarının devlet mahkemeleri eliyle uygulanmasına; ikincisi ise örf ve adet hukukunun aksakal mahkemelerince uygulanmasına dayanmaktadır.

Kırgız hükümetinin geleneklerden yana söylemleri ve bu çerçevede Akaev tarafından kurulan aksakal mahkemelerinin yanı sıra, Kırgız halkı da bağımsızlık sonrasında geleneklerine dört elle sarılmış ve kimliklerini bu şekilde oluşturmaya çalışmışlardır. Zira bağımsızlık öncesi Sovyet ve Çarlık Rusyası döneminde tüm eski gelenek ve kimlikler bastırıldığından, bağımsız Kırgızistan kurulduğunda tüm eski sosyokültürel uygulamalar gün yüzüne çıkmış ve yeniden yorumlanmıştır. Bunun bir örneği, Sovyet öncesi dönemde çok nadir görülen kız kaçırma olaylarıdır. Sovyet öncesinde kız kaçırma uygulamaları, gelin ve damadın karşılıklı kararıyla, başlık parası ödememek için veya evliliğe rıza göstermeyen ebeveynleri atlatabilmek için yapılan evlilikler iken; bağımsızlık sonrasında bu uygulama bir gelenek olarak yeniden canlandırılmış, fakat gelinin rızası olmadan kaçırılması şeklinde değiştirilmiştir. Bu durum, kadın haklarını ciddi şekilde zedelerken, diğer taraftan aksakal mahkemelerinin aile uyuşmazlıkları ile görevlendirilmesi nedeniyle kız kaçırma olayları da aksakal mahkemeleri tarafından çözümlendiğinden, kadınlar devletin hukuk kurallarına uygun şekilde adalet talep etme hakkından mahrum bırakılarak aksakal mahkemelerine ve örf ve adet hukukuna yönlendirilmekte; kararlar ise genellikle tarafların barıştırılması ve aile yapısının korunması şeklinde ortaya çıkmaktadır.

Bu bağlamda, bu tezin temel amacı, Kırgızistan'da geleneklerin yeniden inşasında rol oynayan dinamikleri, hukuki çoğulculuğa ve kadının bu süreçteki konumuna odaklanarak incelemektir. Bu tezin temel araştırma sorusu, aksakal mahkemelerinin kurulmasıyla getirilen mevcut çoğulcu hukuk sistemini ve bu sistemin kadın hakları açısından ne pahasına sürdürüldüğünü keşfetmektir. Çalışma, Kırgızistan'da tarih boyunca kadim geleneklerin sosyokültürel, ekonomik ve politik sistemlere nasıl adapte edildiğini ve uyarlandığını, kimlik ve ulus inşası süreçlerinde hem devlet hem de toplum tarafından nasıl birleştirici araçlar olarak kullanıldığını ortaya koymaktadır. Ayrıca aksakal mahkemeleri ve kız kaçırma uygulamaları şeklinde yeniden inşa edilen geleneklerin etkileri ve sonuçları tespit edilmeye çalışılmıştır. Geleneklerin, ilki cumhurbaşkanı tarafından inşa edilen ve ikincisi toplum tarafından yeniden icat edilen bu iki yönü, birbiriyle bağlantılı olarak ele alınmakta ve kadın haklarına getirdikleri tahribat açısından incelenmektedir.

Bu tezde Kırgızistan'da tarih boyunca var olmuş kimliklerin incelenmesi de, bu kimliklerin günümüz Kırgızistan'ının, onun kurumlarının ve gündelik pratiklerinin sosyolojik yapısını oluşturan temel unsurlar olması nedeniyle önem taşımaktadır. Kırgızistan topraklarında yaşayan çeşitli halkların oluşturduğu çok katmanlı kültür etrafında şekillenen temel ulus üstü ve ulus altı kimlikler, Kırgızistan'ın sosyopolitik yapısında halen varlığını sürdürmektedir. Bir ulus üstü kimlik olarak Müslümanlık ve ulus altı kimlik olarak kabile üyelikleri, günümüzde halen önemini korumaktadır. Bağımsız Kırgız Cumhuriyeti'nin ilk cumhurbaşkanı Akaev'in atanmasında ve onun başlattığı ulus inşası sürecinde kabile aidiyetleri başrolü oynamıştır. Böylece hukuki çoğulculuk ve özellikle de aksakal mahkemeleri, temel olarak, kabile güçlerini koruma ihtiyacından ortaya çıkmıştır. Bağımsız Kırgızistan'ın kurulmasıyla birlikte dinî uygulamalar yeniden canlanmış ve İslami âdete dayalı örf ve adet hukukunun uygulayıcısı olan aksakal mahkemelerinde yerini almıştır. Kırgızistan'da kadın algısı ve hukuki çoğulculuk da, varlıklarını, geleneğin yeniden inşa sürecinin ayrılmaz bileşenleri olan bu kimliklere borçludur. Kabile üyelikleri ve adet hukuku, özellikle Kırgızistan'ın kırsal kesimlerinde kadınların konumunun belirleyicileridir.

Bu çerçevede, bu tez beş bölümden oluşmaktadır: Birinci bölüm, bu tezin araştırma problemine ve araştırma sorusuna bir giriş yapmakta ve çalışmanın amacını ve ana konusunu tanımlamaktadır. Buna ilaveten tezin teorik çerçevesini çizmek amacıyla hukuki çoğulculuk hakkında literatürdeki tartışmaları incelemektedir.

İkinci bölüm, Kırgızistan'da tarih boyunca gelişen kimliklere odaklanmaktadır. Bu kimliklerin oluşumunu anlamak için öncelikle Sovyet öncesi dönemin kısa bir sosyokültürel tarihi incelenmektedir. Bu tarih incelemesi ile Kırgız toplumunun katmanlı yapısı gösterilmekte; bu yapıda ortaya çıkan kimlikler hakkında bir önsezi sağlanmaktadır. Ardından, Kırgızistan'daki ulus üstü ve ulus altı kimlikler ayrıntılı olarak ele alınmaktadır. Bu bağlamda, Kırgız coğrafyasında ortaya çıkan en önemli ulus üstü kimlikler olan Müslüman ve Türk kimlikleri incelenmiş; bu kimliklerin halen aksakal mahkemelerinin yapısında gözlemlenebildiğine değinilmiştir. Buna ilaveten, ulus altı kimliklerin de bugünün Kırgız toplumundaki etkisini anlayabilmek için Kırgızlardaki geniş aile yapısı ve kabile kimlikleri incelenmiş; bugünün aksakal mahkemelerine ilham veren, tarihteki aksakal heyetlerinin bu ulus altı kimliklerinin

bir uzantısı olduğu ortaya konmuştur. Müteakiben, Sovyet sonrası dönüşümün dinamiklerine genel bir bakış sunulmuş; Sovyet dönemindeki kimlik inşası, Sovyetler Birliği'nin ulusal kimliklerini nasıl oluşturduğu ve Sovyetler Birliği'nin Sovyet öncesi kimliklerle nasıl yüzleştiği anlatılmaktadır. Sovyetlerin ulus altı ve ulus üstü kimlikleri, diğer bir deyişle kabile güçlerini ve dini uygulamaları ortadan kaldırma çabaları ve bu kimliklerin buna rağmen nasıl hayatta kaldığı gösterilmektedir. Bu bağlamda Sovyetlerin tarımsal üretimin artırılması amacıyla başlattığı Kollektivizasyon politikalarının temelinde, Orta Asya'nın geleneksel toplum yapısını bozmak, göçebeliği engellemek ve şehirleşmeyi sağlayarak merkezi bir kontrol sistemi getirmek amaçlarının da bulunduğu ortaya konmuştur. Öte yandan, Orta Asya halklarının bu politikalara adapte olduğu ve toplum yapısını bozmadan dönüştürmenin yolunu bulduğu açıklanmış, kabile yapısının *kolkhoz*lar içerisinde sürdürülmeye devam edildiği ve ulus altı kimliklerin Kırgız toplum yapısında halen gözlemlenebildiği ifade edilmiştir. Diğer taraftan, Sovyet dönemindeki kimlik inşası sürecinden bahsedilmiş; böl-yönet ve yerileştirme politikaları kapsamında Orta Asya halklarına verilen yeni kimlikler incelenmiştir. Sonuç olarak Sovyet yönetiminin, daha önce var olmayan kimlikler yarattığı, Orta Asya'da yeni uluslar tanımlayarak her birine farklı diller, semboller, ulusal tarihler belirleyerek sınırlar çizdiği anlatılmıştır.

Üçüncü bölümde, Kırgız Cumhuriyeti'nin Sovyet sonrası dönüşümü, ilk Cumhurbaşkanı Askar Akaev'in göreve başlaması ve cumhurbaşkanlığı dönemi, ulus altı kimlikler, yani kabile kimliği bakış açısıyla ele alınmıştır. Kırgız Cumhuriyeti'nin ilk anayasası ile kurulan yeni devlet organları ve yetkileri, aksakal mahkemelerinin hukuki zemininin anlaşılması için incelenmiştir. Daha sonra Kırgızistan'da hukuki çoğulculuğun unsurları olan aksakal mahkemelerinin, devlet mahkemelerine alternatif olarak kuruluşu araştırılmış ve bu mahkemelerin, yerinden yönetim ve ulus inşası sürecinde güçlü kabile baskılarını tatmin etmek için inşa edilen yeni kurumlar olduğu öne sürülmüştür. Aksakal mahkemeleri, Akaev tarafından eski geleneklerin bir uzantısı olarak sunulduğundan, tarihte bilge kişiler olarak görülen aksakalların, günümüzdeki aksakal mahkemelerinin yapısına etkileri değerlendirilmiştir. Buna ilaveten, aksakal mahkemelerinin günümüzde kırsal ve kentsel alanlardaki farklı çalışma biçimleri ayrı ayrı incelenmiş ve sonuçta, bu kurumların Akaev tarafından eski

gelenekler üzerine yeniden yorumlanarak inşa edildiği ve geçmiştekinden çok farklı şekilde görev yaptığı ortaya çıkmıştır.

Dördüncü bölümde, Kırgız toplumunda kadının tarihsel konumu incelenmiş; bu çerçevede kadınların Sovyet öncesi dönemde Orta Asya'da ataerkil ve baskıcı bir ortamda buldukları; Kırgızlar gibi göçebe Orta Asya topluluklarında kadının durumunun bir nebze daha iyi durumda bulunduğu ancak yine de ataerkil yapının kadına yüklediği rollerin kadınların yaşamında temel rolü oynadığı belirtilmiştir. Ardından, Sovyetlerin kadınları özgürleştirme çabaları vurgulanarak Kırgız kadınlarının Sovyet tarihindeki konumu incelenmiş ve bu konudaki Sovyet politikalarının sonuçları tartışılmıştır. Sovyet projelerinin kadın haklarına büyük katkı sağladığı, ancak özellikle kırsal kesimde kadınların hala baskılandığı iddia edilmiştir. Sovyet sonrasında kadınların durumu, Kırgız anayasasındaki temel hak ve özgürlükler bakımından değerlendirilmiş; modern hukuki düzenlemelere rağmen bugün kadınların halen Sovyet öncesi dönemdekine benzer bir baskıcı dünyada yaşadıkları ifade edilmiştir. Bu anlamda, tarihsel gelenekler olarak görülen bazı uygulamaların, yasal engellere rağmen halen devam ettiği, kadına yönelik şiddetin arttığı ve resmî makamlarca bu vahim durumun etkili şekilde ele alınmadığı belirtilmiştir. Ayrıca bu bölümde, yeniden inşa edilen geleneklerin bir diğer yönü olan kız kaçırma, tarihselliği ve gelenek niteliği açısından değerlendirilerek bunun da toplum tarafından bağımsızlık sonrasında yapılandırılan yeni bir uygulama olduğu, tarihsel uygulamaların bir devamı olmadığı gösterilmiştir. Daha sonra, aksakal mahkemelerinin kadın hakları ile ilgili uyuşmazlıklarda verdikleri kararlar değerlendirilerek Kırgızistan'daki, kadınlara karşı şiddet içeren olaylarda, özellikle hane içi şiddet ve kız kaçırma vakalarında aksakal mahkemelerinin bu davalara bakmaya hukuken elverişli olup olmadığı tartışılmıştır. Kadınlara uygulanan şiddete ilişkin davalarda tarafların örf ve adetlere göre uzlaştırılması yönünde çalışan aksakal mahkemelerinin, uyuşmazlıkları hukuka ve uluslararası düzeyde belirlenmiş insan haklarına uygun bir şekilde çözmediği ileri sürülmüştür. Kırgızistan'ın özellikle kırsal kesimlerinde gelenek olarak algılanan kız kaçırma olaylarının ve ayrıca hane içi şiddet vakalarının giderek yaygınlaştığı ve aksakal mahkemelerinin hukuka ve insan haklarına uygun bir hüküm vermek yerine, mağdur kadınları teselli etmeye ve barıştırmaya çalıştığı belirtilmiştir. İnsan hakları ve kadın hakları gruplarının baskılarıyla kadına karşı şiddetin ve hane içi şiddetin önüne

geçilmesi için birçok yasal düzenlemenin getirildiği; ancak bu düzenlemelerin polis ve aksakal mahkemelerince tam olarak uygulanmadığı; bu tür vakalarda aksakal mahkemelerinin tarafları barıştırma yoluna gitmesi sonucunda, bazı durumlarda fail için belirlenen tazminat tutarlarının dahi şiddet mağduru kadının kendisi tarafından ödenmek zorunda kalıldığı gibi hususlar açıklanmıştır. Aksakal mahkemelerinin aynı zamanda mal paylaşımı davalarında da görev yaptığı belirtilerek örnek bir dava ile aksakal mahkemelerinin hukuki öngörülebilirlik ve adil yargılama prensiplerinden ne kadar uzak kararlar verdiği ortaya konmuştur. Konuya ilişkin iddialar, uluslararası örgütlerin rapor ve çalışmaları ile desteklenmiştir. Öte yandan, aksakal mahkemeleri ile ilgili olarak gündeme gelen diğer bir husus olan, bu mahkemelerin ismi ile ilgili tartışmalardan bahsedilmiştir. Feminist aktivistlerin, kadınlar ile ilgili davalara bakan ve kadın üyeleri de bulunan aksakal mahkemelerinin adının, kadınları da kapsayacak şekilde değiştirilmesi yönündeki taleplerine değinilmiştir.

Son bölümde ise hukuki çoğulculuğun bir boyutu olarak aksakal mahkeme sistemine ilişkin temel tespitler ve değerlendirmeler sunulmuş ve kız kaçırma davalarına ilişkin kararlarından hareketle modern Kırgızistan'da bu mahkemelerin varlığının gerekliliği tartışılmıştır.

Sonuç olarak, aile içi uyuşmazlıklar konusunda devlet mahkemelerine başvuran insanların polis ve hâkimler tarafından genellikle aksakal mahkemelerine yönlendirildiği; öte yandan devlet mahkemelerinin pahalılığı ve özellikle kırsal bölgelerdeki insanların olayların büyümesini istememeleri nedeniyle uyuşmazlıklarını aksakal mahkemelerine taşıdığı; bu mahkemelerde davaların çözümünde devletin kanunlarının uygulanması yerine örf ve adet hukuku gereğince hüküm verildiği; iradeleri dışında kaçırılan veya şiddet uygulanan kadınların itirazları durumunda, aksakal mahkemelerince uzlaştırma, ikna etme ve aile birliğinin sağlanması yönünde kararlar verildiği; bunun ise insan hakları ve hukuk devleti ilkesi ile bağdaşmadığı ileri sürülmektedir. Dolayısıyla, ulus inşası sürecinde geleneklere bağlılık göstergesi ve yerinden yönetim ilkesinin bir uzantısı olarak kurulan aksakal mahkemelerinin, bugünkü çoğulcu hukuk sistemindeki yerinin sorgulanması gerektiği iddia edilmektedir.

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