Local Institutions that Enforce Customary Law in the Kyrgyz Republic

and their Impact on Women’s Rights

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March 2002
This paper was produced the Gender & Rural Development Thematic Group of the Rural Development Family of the World Bank. It is intended to inform the development community of findings from research and analysis sponsored by the group. The findings, interpretations, and conclusion expressed here are those of the author(s) and do not necessarily reflect the views of the Board of Executive Directors of the World Bank or the governments they represent.

Bibliographic citation:

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Foreword

A previous study of women’s rights to land in rural Kyrgyzstan, conducted in 2000, found that there is considerable overlap between formal (or codified, written) law and customary law and that customary law and the institutions that enforce it vary between Kyrgyz and Uzbek communities. Customary law influences the application and implementation of legal rules regarding land rights, the resolution of local disputes, and the extent of villagers’ observance of the written law.

To explore further the depth to which customary law guides and influences rural life and to which villagers take recourse to local institutions that enforce such customary law, a second field study was undertaken in the summer of 2001 by two women researchers, Renée Giovarelli and Cholpon Akmatova. Their findings, as summarized in this report, confirm that village-level institutions are respected by the local people and are responsible to their constituents. Villagers trust their village leaders and elders and their local institutions, and they turn to them to resolve disputes and to guide community interactions. This is an important finding, and one that should be taken into account when designing projects that seek to support and strengthen rural communities’ capacity for self-help.

For rural women, the institutions that enforce customary law are particularly important. It is more difficult – and involves greater social stigma – for women to take a grievance to the formal courts. Nevertheless, women generally have a better chance of protecting their legal rights when there are women on the local court of elders or other local institutions. In many villages, members of the local women’s council are invited to participate in cases involving women, providing an important and effective voice of support for women seeking redress to a grievance.

Finally, the study confirmed that protecting one’s legal rights, be it under formal or customary law, depends on having access to adequate information – both by the person seeking his or her right and by those who are asked to render a judgment. Today, most village leaders and members of the local courts of elders lack basic legal training and information. It would be most useful, therefore, to provide assistance to them in this regard. A recent World Bank grant provided under the Development Marketplace framework to a partnership of Kyrgyz and external supporters of women’s legal rights in the Kyrgyz Republic will help make a start in this direction by training a number of rural persons in legal advocacy for their fellow villagers.

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Acknowledgements

This study was undertaken with the assistance of many organizations and individuals. We would like to thank Götz Schreiber, Lead Economist in the World Bank’s Europe & Central Asia Region, for conceiving and guiding this project and securing a grant to pursue this research; Mohinder S. Mudahar, Head of the World Bank’s office in Kyrgyzstan, and his staff for their assistance when we were in Kyrgyzstan, and especially Asyl Undeland. We also thank the funders of this project, the Gender and Development Thematic Group of the World Bank.

The field research in the south was arranged by Jyldyz Suleimanova, Gender Advisor in the Rural Advisory and Development Services Foundation (RADSF) office in Osh. In the north, field research was arranged by Damira Abdykadyrova, a local pediatrician and women’s movement activist. Both women provided valuable insight into the regions where we conducted field research and into the customs and workings of local institutions.

Our deepest gratitude goes to all the women who consented to be interviewed and who took valuable time from their busy schedules to answer our questions. We hope their families and communities will benefit from this project.
## Glossary of Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Aksakal sotu</td>
<td>Court of elders</td>
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<tr>
<td>Aïyl Okmotu</td>
<td>Village Government</td>
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<tr>
<td>Ashar</td>
<td>Community works of volunteers</td>
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<tr>
<td>Koz achyk</td>
<td>Clairvoyant/fortune teller</td>
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<tr>
<td>Mahallya</td>
<td>Neighborhood</td>
</tr>
<tr>
<td>Oblast</td>
<td>Administrative region; a constituent part of the Kyrgyz Republic</td>
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<tr>
<td>Otyncha</td>
<td>Uzbek women who know the Qur’an and sharia.</td>
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<tr>
<td>Qadi</td>
<td>Islamic judge</td>
</tr>
<tr>
<td>Qur’an</td>
<td>Sacred book on which Islam is based</td>
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<tr>
<td>Rayon</td>
<td>Administrative district; a constituent part of the oblast</td>
</tr>
<tr>
<td>Sharia</td>
<td>The Sharia is the revealed and the canonical laws of the religion of Islam</td>
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Executive Summary

This paper summarizes the findings of field research conducted in Naryn Oblast in northern Kyrgyzstan and Osh Oblast in southern Kyrgyzstan that looked at local village institutions that enforce customary Kyrgyz and Uzbek law and the impact of these institutions on women’s rights.

Customary law in the Kyrgyz Republic influences the application and implementation of recently reformed legal rules regarding land rights, influences how disputes are resolved, and influences whether or not villagers will value the written law. The framework governing people’s conduct in the Kyrgyz Republic is a mix of religions, customs and western style laws and ideals, all of which affect women’s everyday lives. Women and men have a very strong sense of their roles and actions vis-à-vis the community as a whole and not just themselves or their families.

The results of the field research indicate that village-level institutions are democratic in that officials and court members are elected and are responsible to their constituents. Village members generally trust their village leaders and elders. However, village leaders and court members lack basic legal training and information, and therefore cannot always take into account written law even though they want to do so.

While it is not customary for women to hold high-level positions within a village, when women are on the court of elders or in the village or rayon government, other women generally have better access to services and a better chance of securing and protecting their legal rights. In many villages, women on the women’s councils are invited to participate in court cases involving women.

Disputes are resolved at the family level whenever possible and are only brought to the court of elders or neighborhood committee when they cannot be resolved within the family. Resolution of disputes at the village level involves the entire family and often other village members as well. The community, not just the court, responds to and monitors conflicts. Much of customary law is derived from the community norms for behavior that cause either shame or respect.

Women’s ability to enforce their legal rights depends on their level of knowledge and information regarding those rights, the availability of assistance from another woman (one who is either in a high-level position or is educated), and the willingness of the woman, in some cases, to contravene customary law.
Research Objectives

This report presents the findings and recommendations of field research undertaken in the summer of 2001 in the Kyrgyz Republic on local institutions that enforce customary law and the effect of these institutions on women’s rights, and particularly to agricultural land.

The objectives of the research were as follows:

1. Customary law is mainly observed and adhered to in rural areas. The research looked at how institutions at the village level, including the village administration, village heads, court of elders (aksakal sotu), women’s councils, and religious leaders assist women in solving their problems, including legal problems.

2. In rural areas, the court of aksakals is becoming powerful and dispositive in dispute resolution. It is responsible for enforcement of official law as well as of customary law in certain key areas. The research focused on whether the court of aksakals is a viable institution for meeting women’s needs for dispute resolution and property distribution or whether it is an impediment to an equitable resolution of such issues for women.

Introduction and Background

The Kyrgyz Republic, one of the former Soviet republics in Central Asia, declared its independence in August 1991 after the break-up of the Soviet Union. Kyrgyzstan is a mountainous country with an area of 199,900 km² and a population of about 4.8 million people. Approximately 60 percent of the population lives in rural areas.

The Kyrgyz economy is predominantly agricultural, with about 45 percent of GDP, 50 percent of employment and 30 percent of exports originating in the agriculture sector. Since independence, the country has pursued a determined policy of privatization and market development. In the agricultural sector, this is reflected in the privatization of land ownership and the abolition of state and collective farms, a process that will be completed this year. Land ownership and farm management have been distributed to more than 60,000 small private farms, 1,700 new cooperative or corporate farms, and several hundred thousand private plots of less than a hectare. The few remaining state-owned research and breeding farms contribute only 2% to gross agricultural output and are also being restructured.

Peasant and cooperative farms account for about 40% of agricultural GDP, household plots for close to 50%, and reorganized cooperative or corporate farms for the rest.

Geographic and demographic characteristics distinguish the north and the south of Kyrgyzstan. In the north, wheat is the primary commercial crop grown on the 887,000 hectares of arable land, but much of this is in the flat and irrigated Chui valley bordering on Kazakhstan. In the mountainous parts, including Naryn Oblast, cropping opportunities are limited by geography and climate, and livestock herding, mainly sheep, is the main agricultural activity. The bulk of the population of the South lives along the fringes of

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the Ferghana Valley that is shared with Uzbekistan and Tajikistan and provides fertile soil and an
excellent climate for tobacco, cotton, fruits, and vegetables. The south has only 415,200 hectares of
arable land (less than half of that in the north). Over one half of the country’s total population lives in
the south, resulting in arable land per capita of only 0.19 hectares, compared with 0.53 hectares in the
north.

The field research was conducted in Osh Oblast in the south and Naryn Oblast in the north. Osh has a
population of 1,176,000 and Naryn’s population is 249,100. In 1999, the rural population in Osh was
three times larger than the urban population; in Naryn, the rural population was 4.5 times as large. Over
40 percent of the population in Osh Oblast are ethnic Uzbeks. The population of Naryn oblast is
predominantly Kyrgyz (over 90 percent).

The Kyrgyz Republic is a secular state. The predominate religion is Islam, and over 85 percent of the
population is Muslim including: Kyrgyz (66 percent), Uzbeks (14 percent), Dungans (1 percent), Uigurs
(1 percent), Tajiks (1 percent), and Kazakhs (1 percent). Non-Muslims, who are more likely to reside in
urban areas, include Russians (13 percent), Ukrainians (1 percent), and Koreans (less than 1 percent).
Since independence, there has been a notable increase in religious practice. This is most evident in the
increase of mosques in the country. At present nearly every village has its own mosque or church
(1,500), while during the Soviet rule there were only 33 mosques. The share of the Muslim population is
increasing in Kyrgyzstan while the non-Muslim populations are decreasing. For example, Russians,
Ukrainians, and Germans made-up 31.9 percent of Kyrgyzstzan’s population in 1979, and in 1999 were
only 13.9 percent of the population.

Each of the Muslim ethnic groups has a deep and long tradition of customary law, in some cases
influenced by Islam, which affects the application and implementation of recently reformed legal rules.
The ethnic Kyrgyz have also preserved pre-Islamic traditions and customs. Therefore, Kyrgyzstanis’
lives are regulated by secular written laws, Islam, and customary law.

Historically, the Kyrgyz people were nomadic, and women were more independent than other Central
Asian women. They generally are not veiled and are not segregated from men. Soviet rule also
contributed greatly to the development of Kyrgyz women: of 1,000 women, 806 have secondary and
university education; and women constitute 59 percent of Ph.D. holders. Since the break-up of the Soviet
Union, the Kyrgyz Government has been in the forefront of gender legislation in Central Asia. In 1996 it
ratified the Covenants on the Elimination of All Forms of Discrimination Against Women; on Political
Rights of Women; on Consent to Marriage, Marriage Age and Registration; on Civil Rights of Married
Women; and on Safety of Motherhood.

However, economic depression and lack of social safety programs for low-income people have had a
negative impact on women's health. Over 50 percent of women employed in agriculture work in tobacco

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2 Id.
4 Anara Tabyshalieva, Social Realities of the South of Kyrgyzstan, section 2 (1999).
and cotton production, which in many cases is harmful for their health. In 1996, the mortality rate for women and children in Kyrgyzstan was the highest among the Central Asian republics.\(^6\)

Moreover, Kyrgyz society is moving away from gender equality as promoted by the Soviet State and espoused in its own laws. There has been a sharp decrease in the number of women in the Kyrgyz Parliament and in all management levels in various sectors of the economy. Women constitute only 6 percent of the members of Parliament and 11 percent of Government officials at the national level, compared to Soviet times when over 35 percent of Parliament and the Government were women. One woman-candidate for Parliament said: "It is difficult to break through the iron wall of men's political unity. Elections openly discriminate against women."

Life in the Kyrgyz Republic is regulated by a mix of religions, customs, and western style laws and ideals, all of which affect women’s everyday lives. It is critical to keep in mind, however, that women and men have a very strong sense of their roles and actions \textit{vis-à-vis} the community as a whole and not just their individual family. Individual actions become community statements.

**Methodology**

In May 2001 a team consisting of one Kyrgyz sociologist and one US American lawyer conducted 10 days of field research in two regions of the Kyrgyz Republic: Osh \textit{Oblast} in the south and Naryn \textit{Oblast} in the north. For five days, in each \textit{oblast} the team used Rapid Rural Appraisal techniques to interview groups of rural women, village administrators, village heads, members of the court of \textit{aksakals}, \textit{mahallya} committees, women’s councils, women’s NGOs, mullahs, schoolteachers, clan leaders, and judges.\(^7\) Women were interviewed in groups of usually 5-15 women. Group interviews allow men to be excluded without difficulty and encourage women to talk to one another and to the interviewers. Women in Kyrgyzstan appear to be much more comfortable answering questions in a group than they do alone in their own homes where a male is more likely to be present. Approximately 60 women were interviewed in each \textit{oblast}. Men were interviewed in groups or as individuals and were chosen based on their position within customary institutions. A questionnaire/checklist is attached as Appendix B.

In Osh \textit{Oblast} interviews were conducted both in predominantly Uzbek and Kyrgyz settlements of the multinational Uzgen, Aravan and Nookat \textit{rayons} and the predominantly Kyrgyz \textit{rayon} of Alai. Within each \textit{rayon}, usually two or three villages were visited.

In Naryn \textit{Oblast} interviews were conducted in Naryn, At-Bashy and Ak-Talaa \textit{rayons}. In Naryn, the \textit{rayons} are much larger in terms of distance, with fewer villages, but on average 2-3 villages were visited in each \textit{rayon}. There were also interviews with law professors at Kyrgyz-Slavic University, women’s NGO leaders in Bishkek and the only female chair of a court of \textit{aksakals} in Kyrgyzstan in Belovodskoye, Moscow \textit{rayon}, Chui \textit{oblast}.

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\(^6\) \textit{Year 1996—Year of Women}, Bishkek, Kyrgyzstan, 1996.

\(^7\) Rapid Rural Appraisal involves semi-structured interviews with rural people who have valuable knowledge regarding issues that affect their lives. Carried out appropriately, such appraisal not only provides efficient and rapid identification of problems and issues, but also provides a relatively thorough, comprehensive, and insightful framework in which to analyze issues.
Findings

There are a number of different institutions that enforce customary law in villages. Some of these institutions are informal, and some have been legally formalized. While none of the institutions that enforce customary law exclude women, a woman is much more likely to interact or be affected by an institution if it is (a) within her sphere of activity and relationships, and/or (b) if there is a woman decision-maker within the institution. Women’s grievances were generally related to intra-household issues, including domestic violence, polygamy, divorce, division of property after divorce, and drug and alcohol abuse by their husbands. These types of grievances are customarily handled within the extended family. When women go outside of the family, they are most likely and will most often go to village leaders or the court of aksakals. Women rarely go beyond to the rayon court or the aiył okmatu.

The goal of this review of institutions is not to make sociological statements about Kyrgyz culture, but rather to inform policymakers and technical advisors about the role of customary law institutions in regard to legal reform and drafting, legal education, and the exercise of legal rights.

Aiył okmotu (Community Government)

The aiył okmotu is the rural government administration at the level above the village head. There may be from one to 12 villages or settlements under an aiył okmotu. The aiył okmotu were established by the Kyrgyz Government in 1996 as bodies of local self-governance responsible for economic and social development of the designated area: land and water management, maintenance of physical infrastructure, organization of land lease auctions, agricultural input supply, collection of taxes and fines, organization of elections and referendums and others. The head of the aiył okmotu is appointed by the head of the rayon administration upon agreement of the chairman of the rayon council (parliament). In the fall of 2001, aiył okmotus have been elected for the first time by the people of the area. Activities of the aiył okmotu and its staff are paid from its own budget, which is generated by tax revenues, land lease payments, and water fees.

People go to the aiył okmotu with issues that cannot be resolved by the village head. Land disputes that arise from the land distribution or the Land Redistribution Fund must be resolved at the level of the aiył okmotu. Very often, where there is more than one village under an aiył okmotu, residents of villages other than the one where the aiył okmotu office is located feel neglected. Residents complained that both government and aid-funded assistance is usually administered through the aiył okmotu and often does not reach them. One village is located eight kilometers away from the village where the aiył okmotu office is located, and this distance was too far to travel. Traveling to the neighboring village to resolve issues with the aiył okmotu is expensive and time consuming for the cash-restrained rural population.

The heads of aiył okmotus are usually male, although there seem to be more female heads and deputy heads of aiył okmotus than female village heads. Generally, women do not go to the aiył okmotu unless they are from the village where the aiył okmatu sits. Many women do not travel outside of their home

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9 The ownership of agricultural land has been privatized, following a national referendum in August 1998.
10 The Land Redistribution Fund, comprising 25% of the former collectively owned land, has been held back during the land privatization in order to provide room to redress inequities.
area to any great extent, and there is social pressure not to do so. Moreover, the aiylokmotus’ primarily handle issues that male heads of households would traditionally be responsible for, land and water management, leasing of land, and economic development. However, residents of those villages where aiylokmotu heads are women noted that women leaders pay more attention to women and that women’s councils are more active in such villages.

Village Head

The village head is a government official at the lowest level. The position is paid from the aiylokmotu budget. Village heads may have a deputy who is also paid. According to the Regulations for the aiylokmotu of April 24, 1996, village heads may be established with the approval of the Village Kenesh (legislative body) to facilitate management of separately located villages in those Aiylokmotu that cover more than one village.11 Village heads were found in every village visited during fieldwork.

Village heads are democratically elected, and villagers stated unanimously that the village heads are trusted and respected because they are democratically elected within a transparent process. After family members, the village head is the first person Kyrgyz villagers go to with land and agricultural disputes. The leaders usually have agricultural or other college degrees. Village heads together with the aiylokmotu may decide on distribution of land from the Land Redistribution Fund. They also assist individual farmers with lease of agricultural machinery during planting and harvest seasons and distribute seed loans to farmers. They organize distribution of water and solve water disputes.

Some, but not all, village heads advocate for villagers with the aiylokmotu. Although the village heads have a strong sense of responsibility regarding the people of their village, they often do not feel like they are in a position to contradict the aiylokmotu who organizationally has authority over them.

Village heads are predominantly men. During the field visits to villages not a single female village head was encountered. In a Kyrgyz village of Uzgen rayon, Osh oblast, a deputy village head insisted that women could not cope with the job of a village head because it requires a tough character and physical strength. While the main tasks of a village head are primarily related to agriculture, the village head is a part of the community and considered to be respected. Therefore, women do go to the village head with disputes or concerns that cannot be handled within their extended family. Women most frequently request assistance for family issues, including family violence, alcoholism and other addictions, disputes with in-laws, or disputes with neighbors.

Mahallya Committee

Mahallya committees exist primarily in rayon centers of predominantly Uzbek populated areas of the south, such as Uzgen and Aravan rayons in Osh. Maala is the Kyrgyz word for neighborhood, and mahallya is the Uzbek word for the neighborhood committee. Kyrgyz villages in the south may have a maala committee, but they are much more loosely organized and relate more to clans than neighborhoods.

Quarter committees were Soviet institutions that were responsible for sanitation, order, and domicile registration in the designated quarter of the city. Each quarter in the south has several mahallyas, and these mahallyas perform the functions previously provided by the quarter committee plus more traditional

11 Id. at Art 1(2).
functions of the *mahallyas* as they exist in Uzbekistan. *Mahallyas* are customary for Uzbek villages, and in Uzbekistan they are developed and supported by the State.

The *mahallyas* deal with all issues of the neighborhood, including sanitation, disputes, festivities, roads, and cleanliness. They work closely with the court of *aksakals*, the women’s councils, and the village leader. *Mahallya* committees are elected and may have up to nine members. The positions are not paid; their revenues are fees they charge residents for providing letters of proof of residence or of the number of children in the family (to secure social benefits). The *mahallyas* report to the *aiyl okmotu* or the city administration.

The *mahallya* leaders are sometimes willing to fight for rights and privileges for their residents. The leader of the committee may go to the *aiyl okmotu* to advocate for land leases, or otherwise advocate for residents in relevant government or administrative bodies. The committee also provides assistance to poor and handicapped residents and collects money from wealthy families to distribute to poor families. They even control mosques to prevent Islamic extremist groups from spreading propaganda. In every *mahallya* there are elders who have the informal position of Master of Ceremony. The Master of Ceremony gives directions to families on how to arrange weddings, funerals and other festivities, including what type of food should be offered, the number of animals that should be slaughtered, and other features.

Uzbek villages, which are predominately located nearer to the *rayon* center, appear to be more systematized than remoter Kyrgyz villages. In Uzbek villages, *mahallya* committees, women’s councils, and courts of *aksakals* rigorously enforce the regional governments’ policy on festivities, religion, and cleanliness of streets and homes. If wealthier families do not abide by the strictures and limits imposed, the *mahallya* committee chair is sometimes powerful enough to stop people from attending the festivity. One *Mahallya* committee chair stated that every family should be regulated in terms of festivities and gifts. If all families within the *mahallya* cannot give gold to their future daughter-in-law, then even a family that can should not.

Uzbek women stated that if they had a conflict (family, land, others) they would first go to the *mahallya* committee after talking with a family member. The *mahallya* leaders are a part of the community and operate within the same realm as women in that they deal with household cleanliness, family festivities, family disputes, poverty, the disabled and other household concerns. If a woman approaches the *mahallya*, the women’s council is invited to participate at the first meeting, so that women are more comfortable explaining their concerns.

On the other hand, the *mahallya* committee is fairly patriarchal, and often male members take responsibility for female morality. Moreover, the head of the *mahallya* committee has a great deal of power, and his view of women would greatly affect women’s ability to have their concerns handled in a fair and just manner.

**Aksakal Sotu Court of Elders**

After independence, a new institution, the court of *aksakals* (elders), emerged in rural areas. This institution was created in response to an increase in petty crimes such as livestock stealing or non-payment of debt. The court of *aksakals* is at present responsible for enforcement of customary law along with written laws. Rural people often cannot afford to appeal to the *rayon* court because the courts are generally far from rural villages and require fees, and the court is not highly trusted. In Central Asia,
elders have always been respected as holders of wisdom. Hence, the court of aksakals was institutionalized in 1995 by a Decree of the President of the Kyrgyz Republic. The main focus of the institution is enforcement of legal and moral norms that are based on historical customs and traditions that do not contradict the existing legislation. The court works through persuasion and social pressure, and the goal of the court proceedings is peaceful resolution of the problem. The court services are free of charge.

Most often there is a court of aksakals in each village, but if the aiyl okmotu is small, there might be one court of aksakals for the entire aiyl okmotu. In cities there would be one for every micro-rayon, mahallya, or quarter committee. The court of aksakals is most often elected by a general village meeting, but may be elected by the village kenesh (parliament). By law, the term of office of court members is four years, but in most cases they serve a life term or are re-elected repeatedly. There may be from three to nine members of the court according to the Regulations, and the number must be odd. While this provision is generally followed, in some villages visited there were four and 10 members in the court. The members of the court of aksakals are unpaid.

Court members are respected community members who have been or are in a high position at the village level: heads of collective farms, members of village government (aiyl okmotu), schoolmasters, or policemen. Many court members are retired schoolteachers. In some cases there are mullahs on the court of aksakals as well. Members do not have to be elders, although for the most part they are. One member interviewed was a woman in her thirties.

People generally go to the village heads and court of aksakals following an unsuccessful attempt to resolve the conflict within the family. Issues that people bring to the court of aksakals include: land boundary disputes, divorces and property division, spousal abuse and drunkenness, livestock stealing, water disputes, and other local disagreements. The regulation lists a broad range of issues that the court of aksakals can hear. The decisions of the court of aksakals may be appealed at the rayon court within 10 days. The court of aksakals may impose fines to be paid to the aiyl okmotu budget, but most often they impose other types of sanctions, including behavioral changes, which are then monitored by community members. The court of aksakals cooperates with the local police.

Interviewed court members have meetings either when they have complaints or on a regular schedule (every Friday, for example). Most courts require written complaints to start proceedings, have Registration Journals, and send copies of their decisions to the court and police office. Where there are very few cases, there is limited paperwork regarding the cases. In 2000, better organized courts, such as Belovodskoye court of aksakals (Chui), had 67 complaints, and Koshoy court of aksakals (At-Bashy rayon, Naryn Oblast), had 40 cases. There were only four cases in Kyzyl-Kyrman village (Uzgen rayon, Osh Oblast).

Women most often go to the courts of aksakals because of serious domestic violence or in the event of a divorce for property division. While women can legally go to the rayon courts for division of property

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13 Id. at Art. 5.
14 In practice the elders are usually elected at a village meeting, but the law does allow for the local kenesh or another local self-government body to choose. Id. at Art. 1.
15 Id. at Art. 7.
16 Id. at Art. 9.
upon divorce, they very rarely do so. Rayon courts are usually much farther from the village than the court of aksakals, and they are unfamiliar. Moreover, women are ashamed to go to the formal court because it is considered a shame on the family. Women are more likely to assert their rights to property and go to the court of aksakals if one of the members of the court is a woman or if the women’s council members are asked to be involved. If there is a woman on the court, women generally feel that the result will be fair because a woman court member will more articulately explain the woman’s case to the court than she can herself.

Women’s Council and Women’s Congress

Women’s councils are Soviet institutions that continue today although they are not funded from the State budget. The women’s councils are now non-governmental organizations (sometimes called women’s congress), and they survive on membership fees and small grants. All positions are unpaid. There is a women’s council under each ayl okmotu, mahallya committee, and the rayon administration. While the women’s councils are non-governmental organizations, they are loyal to and cooperate with the ayl okmotu. For this reason women’s councils often choose to limit their scope of work.

Where women’s councils are active, women go to the council for help, and board members are usually involved with women’s problems in the village. In many cases, the councils work in conjunction with the courts of aksakals, although the councils themselves do not have dispute resolution authority or the authority to divide property when a family breaks up. However, there are villages where there are no women’s councils and no non-governmental organizations.

In one rayon in Osh, one woman, a hajji\textsuperscript{17} who recently returned from Mecca, presides as the chair of all women’s councils within the mahallyas in that rayon. She stated that the committee of councils contributes to the national women’s program, the “Ayalzat.” She is very involved in the lives of women in the rayon and often meets with women and provides both customary and religious advice. She also goes to women’s homes to speak with husbands who are abusing their wives or not providing for them.

In At-Bashy rayon, the women’s council organizes workshops for women, advocates for women, and provides small grants to women. The rayon head of the women’s council often shelters women from abusive husbands or goes to houses to counsel couples who are involved in disputes and abuse. In both the rayon center and each ayl okmotu, there are women’s councils. The ayl women’s councils hold meetings when there is a need to discuss women’s improper behavior or divorces.

Women who are members of the women’s council are more likely to be against forced bride stealing, spousal abuse, and subjugation of women. Women’s councils are often involved in decisions made by the courts of aksakals, and this involvement increases women’s comfort level with the court of aksakals. The potential for the women’s councils to have a positive impact on the lives of village women should be further explored. Training of council members in both substantive information and how to function as a non-governmental organization would have a great impact.

\textsuperscript{17} A person who has performed the Islamic pilgrimage to Mecca.


**Religious or Spiritual Leaders**

There has been a revival of Islamic practices since independence in Kyrgyzstan. For the most part religious leaders deal only with issues of religion and do not reach out to communities, but rather offer services to those who come to the mosque.

We were able to interview a *mufti* in the south and a *qadi* in the north, in addition to *mullahs* and *imams*. A *mufti* is an Islamic legal authority who gives a religious edict (*fatwa*) in answer to an inquiry by a private individual or judge. A *qadi* is a judge in Islam, whose responsibility is restricted to issues connected to religion. A *qadi* does not have as much authority as a *mufti* but has greater authority than a *mullah* or an *imam*. An *imam* is the head of the Muslim community (local level), and *mullahs* are religious leaders, teachers in religious schools, those versed in the canon law, leaders of prayer in the mosques (*imams*), or reciters of the *Qur'an*. There are no formal requirements for acquisition of the title, but normally persons called by it have had some training in a *madrasah*, or religious school.

Women are usually not allowed in the mosque. Friday prayers can include women, but they are screened from men, and we have no verification that women attend. The *qadi* (Islamic judge) does see women regarding family problems, but generally women said they do not seek out religious leaders.

In some villages, especially in the south of Kyrgyzstan, there are women *otyncha* (Uzbek) who know the *Qur'an* and *sharia*. They educate other women about Islamic practices and offer spiritual treatment for small payment.

Many women visit the numerous *koz achyktar* (healers or fortunetellers) who apply to Muslim spirits and pray as Muslims. The *koz achyktar* are mainly women, and the majority of their clients are women as well. They generally take payment in-kind.

**Extended Family and Clan Leaders**

Women uniformly stated that they first turn to their family for help with any type of problem. Women generally talk to their older sisters, mothers, or sisters-in-law. Family plays an enormous role in the lives of both Kyrgyz and Uzbek people. Very often, in both ethnic groups, an extended family of three or four generations lives in one household. Even when the family members live separately, the role of the extended family remains great. In many cases the extended family makes decisions about marriage, weddings, divorce, the number of children, funerals and other important life events.

Customs and traditions are taught in the family. Women are much more aware of their customary rights and the limitations to their rights than they are aware of their formal legal rights. Families teach that not following traditions will bring shame to the family. Shame and its counterpart, respect or dignity, are powerful tools for social control in village life. In most cases there is no specific ramification of shame, no public punishment or shunning, but nonetheless shame is to be avoided at all cost because with it comes a loss of respect to the individual and to the family as a whole. Elderly, middle-aged and young women all stated that customs and traditions are kept because to do otherwise would be shameful and would not show respect.

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18 A *fatwa* usually requires knowledge of the Qur'an and Hadith (narratives concerning the Prophet's life and sayings), as well as knowledge of exegesis and collected precedents, and might be a pronouncement on some problematic legal matter.
While customs are taught by all members of the family, women have the greatest impact on their children in this regard. Whenever we interviewed a family who did not follow customary law in one form or another, it was always because the woman of the family chose not to follow the custom. While women are responsible for all of their children, they play an even greater role in the lives of their daughters. Daughters learn from their mothers how to behave as a woman and what is shameful and what is not.

The extended family in Kyrgyz villages includes the clan leaders (elders), who in some cases are democratically selected by a village meeting, but are almost always male. The clan leaders see their role as one of maintaining the peace and unity of the community and preserving and restoring the Kyrgyz customs and traditions after 70 years of Soviet rule. In Kyrgyz villages, clan leaders also regulate festivities of clan families (how many animals to slaughter at funerals, how much money to spend on food, who should be invited, and other features).

Analysis and Discussion

The role of community

Kyrgyz culture is shaped by the historic nomadic lifestyle, by the tribal customs, and by Islam, as well as by many other factors. The ethnic Kyrgyz people interviewed, both male and female, simultaneously value independence and freedom, but also their place in the family and community, conformity, and peacefulness. This independence yet interdependence has a clear affect on dispute and conflict resolution.

Interdependence takes three obvious forms and is common to both Uzbek and Kyrgyz villages. First, community members watch and monitor one another. One role of the extended family, including clan leaders, is to “regulate people so that they live in friendship.” In one village, the clan leader stated that there are 21 poor families, and the clan leaders monitor the lives of these families weekly to try to assist them. One religious leader stated that she monitors what the otyncha are doing to assure that they are not spreading Islamic extremists’ propaganda. For the most part, problems are solved within the community. Families are brought together to discuss what needs to be done about alcoholism or abuse, for example, and then the community (elders, family members) monitors the behavior of the offender to assure that he or she is following the advice of the elders or the court of aksakals.

The second way interdependence is manifest is that, in both religious and traditional teachings, peacefulness is a key value. The Mufti stated: “Both Islamic law and customary law are interested in maintaining peace, and in not complaining.” Many people interviewed, including women’s groups, religious leaders, and elders, stated that the community’s goal is to live peacefully and that uprisings are totally out of the question. Patience is stressed, and the notion of groups of people standing up against the aiył okmotu or other government officials is foreign and unwelcome.

A third way interdependence is expressed is that decisions are generally made by groups of people. In one village, when a divorce occurs, a commission of the village deputy, the aiył okmotu, the rayon deputy, and a representative of the women’s council decide how the property should be divided. In many villages, the head of the village, the court of aksakals, and the women’s council decide cases together. Other elders may join as well. Community decisions appear to carry more weight and spread the responsibility of enforcement.

“We try to solve our problems quietly and independently and try not to have uprisings.”
(Village woman)
The broader community’s involvement in monitoring the behavior and decisions of village members in relation to village norms is a powerful dispute resolution and enforcement mechanism. Disputes resolved in court are decided based on legislation thought to be fair and just for all involved. However, court cases are usually adversarial and the court’s decision may be difficult to enforce. The resolution of a dispute at the village level involves: many people, including those who are participants and those who are respected, arbitration and problem solving, and ongoing monitoring of the agreement. While village level dispute resolution is less formal than the rayon court would be, it has the advantage of being able to both resolve a dispute and monitor the outcome of the resolution.

Within this framework of interdependence, there are differences between northern and southern Kyrgyzstan in terms of the independence of individuals. The notion of community organizing to achieve a specific goal is mostly unfamiliar and unappealing to Kyrgyz villages, especially in the north. Women do not appear to have a strong sense of the value of organization to achieve economic or social gain. They lack information about ways to improve their lives through cooperation with other women, and they are slightly suspicious about the idea of cooperation, if money is involved. When the notion of organizing to achieve a specific economic goal was raised, women and men alike stated that they prefer to work alone with their own family and do not want to depend on others. One village head in Naryn tried to organize villagers to purchase bulk seed for the village, but no other villagers agreed to participate.

At the same time, the Kyrgyz have a word, ashar, which means the community work of volunteers. Women work together to produce shirdaks (felt rugs) for example, and this is referred to as ashar. Those within one tribal group help each other if they need to do something collectively, for example funerals, weddings or other celebrations, or even construction of a house. So, at the same time the Kyrgyz we interviewed wanted to take care of their own family’s well-being, there was cooperation for tasks that required more hands.

The notions of independence and interdependence co-exist in Kyrgyz villages, and villagers do not perceive any tension between them. For example, the economic well-being of a family is usually not dependent on non-relatives. However, a lack of harmony within a family is a threat to the village harmony, and it is therefore discussed, resolved and monitored among many members of the village.

In contrast, mahallyas were often organized, for example, to fund a specific improvement project such as repairing a road. Southern villages appear to have a strong respect for authority and for the authority of one leader and a strong desire for cohesiveness and sameness within the village. The mahallyas assert much more rigid control over the daily lives of village members, including cleanliness requirements and requirements for contribution to the social fund than Kyrgyz clan leaders. Often in such neighborhoods, the poor will work for the well off.

Donor-funded dispute resolution programs should take into account the community structure for dispute resolution that already exists and work within that structure. Programs should be tailored to the cultural values of the members of the community. For example, community decision-making and enforcement procedures should be encouraged and strengthened by legal education and public awareness programs. Pursuit of individual rights allowed under formal law should not be blindly advocated by projects that do not take into account interdependence within the village.

Donor projects that encourage community organization and cooperation must be sensitive to the value placed on independent action by the Kyrgyz. Projects must take the time to explain and educate about the value of cooperative action (like purchasing seeds or fertilizers or organizing marketing efforts) and note
the problems and pitfalls of such action. Development of, and education about, ways to protect individual rights while still enjoying the fruits of cooperative action should be undertaken.

**The role of shame and respect**

Interwoven into all interactions between family and community members are the dual concepts of shame and respect. Shame and respect create the parameters for interactions and create the framework for customary law. One reason that customary law is more often used than written law in relation to family and community relations is that it embodies the notions of shame and respect.

For example, respect for the elderly is a powerful norm in Kyrgyz villages, and the age of the parties to a dispute under customary law affects the outcome of the dispute. In one instance, when two families quarreled over land, and one head of household was older than the other head of household, the court of *aksakals* convinced the younger head of household that he should respect the older one. The merits of the argument were not considered.

Even customs that are an economic burden on the impoverished rural population are difficult to change because of shame and respect. In research on women’s rights to land in the Kyrgyz Republic conducted in 2000, women indicated that, above all, the custom they would like to change is that of slaughtering two or three animals at funerals. Recently, regional administrations have been trying to enforce initiatives of *Oblast Governors* reducing expenses at festivities, but the initiatives have had only a marginal impact among most Kyrgyz. According to Kyrgyz tradition, if anyone in the community exceeds the standards, all others must also -- or it is a shame on the family. The number of animals slaughtered indicates the amount of respect held for the person who has died. Most Kyrgyz expect that change will occur slowly. They stated that the number of livestock slaughtered at festivities has been lessening over the years and eventually would be affordable and eliminate the need for loans and large sacrifices.

Those who more closely follow Islam rather than customary law (generally in the South), allow three days following the death of an individual where no food is prepared by the family who is in mourning. Therefore, much less food is prepared overall and costs are lower. In these communities, the initiatives limiting the funeral repast are more easily accepted and followed because there is no loss of respect shown. It is clear from this example that legal rules do not automatically change or override customary law. Rather, legal rules support change and the desire for change, but real change will only occur when it is no longer shameful or disrespectful to behave in the manner mandated by the legal rule.

One question presented by this analysis is how does customary law change? To understand how change occurs in a concrete way, we asked about attitudes and changes in the custom of forced bride stealing. Forced bride stealing occurs when a man steals a woman from her home or the street and takes her to his family home to be married against her will. Bride stealing is common and customary in Kyrgyzstan, but much of it is “consensual” stealing. Consensual stealing is when a woman agrees to be stolen and has chosen the man herself. Consensual stealing is really a form of elopement. Forced bridestealing is formally illegal, but the formal law is not enforced.

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19 The Gender in Development Programme of the UNDP is a good model for community development in Kyrgyzstan.

20 Renee Giovarelli et al., *Women’s Rights to Land in the Kyrgyz Republic* (World Bank, 2001).

21 The initiative was started by the Osh *Oblast Governor* and was later picked up by the other Governors.

22 Uzbeks do not practice bride stealing.
Traditionally, it was a shame if a girl who was “stolen” left the family of the man who kidnapped her. A girl who is stolen is pressured physically and emotionally to have intercourse with the man who stole her as soon as possible. Most of this pressure comes from his mother. Once a girl has intercourse her status would be greatly reduced if she left, and she may have difficulty marrying someone else.

Bride stealing and the stolen girl’s shame are closely connected to respect for the elderly. One reason girls do not leave the house to which they were stolen is that they are subjected to enormous pressure from the older women of that household to stay. Respected older women of the house say: “If you overstep this house, you overstep me.” It is the older woman’s role to put a scarf on the head of the stolen woman, which means that she is a “woman” even if she is still a virgin.23 Usually the grandmother or oldest woman in the family will put the scarf on the girl. While the girl is allowed to fight this, she is subjected to verbal pressure to stay.

Girls who are stolen are faced both with the desire to respect their elders, as they have been taught, and to avoid bringing shame on their own family. While family is critical to village life, females are considered a guest in their own families because they will leave and reside with their husband. Girls grow up with this understanding, and there is some fear of not being welcomed back to their family of origin because of the shame that will be brought with them. In most families, girls are taught to stay if they are stolen. Girls are taught a Kyrgyz saying: “If a girl cries at her new home, she will be happy later.”

Female college students interviewed in Naryn rayon, the oblast center of Naryn, all stated that they do not want to be stolen against their will. However, most of them said that they would stay if they were stolen because of the shame that would be brought to their family. The college students’ opinions varied very little from those of their mothers and grandmothers in the village. In fact, the shame of being unmarried after age 30 appears to be more intolerable than to be stolen because traditional society is cruel to unmarried women and men.

Some changes are occurring, however. This was mainly noted in women who were educated at university and are now leaders in the community and are unconcerned about the shame associated with having a daughter return home. They stated that they are against forced bride stealing and would teach their daughters to come home if they did not want to stay. Other mothers give their daughters specific instructions about how to behave if they are stolen against their will. For example, in one family the plan is for the sister-in-law to come to protect the girl and ensure that she is untouched until she decides whether to stay or not. Women who were interviewed are aware of cases where a girl left the family of the person who stole her and was taken back by her family and the family did not suffer long-term consequences. One village elder stated that the reason for so many divorces now is that elders convince girls to stay when they have been stolen, and then later there is a divorce.

Another change to customs that is not considered positive in local communities is the trend of female traders leaving their families to earn money. They are becoming breadwinners in the family, and husbands feel challenged by this change. Women who become traders are no longer within their customary roles

“The customs are in our blood. Maybe, our children and grandchildren will be able to ignore these old customs but we have to follow them.” (Student at the University in Naryn)

“We want more equality, but life will show us. We have plans, but life will show us.” Teenagers at University in Naryn

23 This is the first step in making it shameful for the girl to return home. While it is not as serious as intercourse, it does have ramifications.
and become too independent to live in the village any longer. A member of the court of aksakals in Alai rayon (Osh Oblast), attributed the increase of divorces compared to Soviet times to this reason.

Still, where conflicts exist between customary law and written law, customary law generally prevails in the villages because written law often fails to reflect the reality of the villagers’ lives. For example, existing law has the notion of common property (individuals owning land in common) but does not have the notion of family property or household property (where the land is held by whoever is in the family at that time). Certainly, when land disputes are resolved by the courts of aksakals or by family members, the notion of family property predominates over the notion of individual property rights.

Interestingly, the Naryn Oblast court is not concerned with disputes that are resolved based on customary law rather than written law, as long as they are peacefully resolved. There is a provision in the Code of Civil Procedure stating that if two parties agree and settle through peaceful means, any settlement of a dispute is possible. Judges use this provision to sanction customary law over written law.

Kyrrgyz women who have thought about this issue suggest that change to customary law will come only from and at the local village level and not through legislation. At present, local communities are organized under the principal of co-existence of different clans. Communities have traditionally been organized around one clan only. These women believe that the new, emerging communities could change customary law because they will have to take into account different understandings of the same customs.

The norms of shame and respect affect the implementation of formal law. Formal law cannot and should not attempt to embody these concepts. However, the value and strength of these cultural norms should not be disregarded by policy makers and legal drafters. Without an understanding of these fundamental norms of behavior, formal law will not be embraced and will be irrelevant.

**The role of Islam**

Religious leaders and villagers both stated that religious leaders deal only with issues of religion and do not get involved with issues related to land or property disputes at all. Mullahs do not preside over activities outside of the mosque, such as funerals or other rituals, except as they have a religious role to play.

This is not to say there is no relationship between Islam and customary law. Many village meetings that are called to decide issues related to village governance occur in a teahouse near the mosque after prayer and therefore do not include women because women are not permitted to pray in the mosque. (In one case we heard that women were allowed to pray in the mosque on Fridays.) In Osh, representatives of every mahallya pray 5 times a day (it is an unwritten requirement for the representatives), so the mosque is an excellent meeting place for village heads. (It should be noted that prayer does not have to occur in a mosque.) Elections for mahallya committee members are held in the teahouse (chaihana) near the mosque and women are reluctant to go there because it is like a “men’s club” in southern Kyrgyzstan. Few women are elected to mahallya committees.

Women are particularly unlikely to seek help from male religious leaders because they are generally not allowed in the mosque. Even for Friday prayers, only elderly women attend. Kyrgyz women are not taught extensively about Islam and those we interviewed seemed generally uninterested in religious concerns. However, Uzbek women are much more religious than Kyrgyz women are because, as the religious leaders stated, Uzbek customs more directly match Islamic law than do Kyrgyz customs. The Mufti we interviewed in Osh stated that youths without religious education are attracted to fundamentalist sects, as are Uzbek women who are very religious and at home with no outside social interaction.

Much has been written about Islam and women’s treatment and role. According to the religious leaders interviewed, the status of women is very high in Islam. However, Soviet-imposed ignorance of religion means that most girls do not know their rights under Islam. According to these religious leaders, women are not limited by Islam, rather they have different functions than men based on physical ability.

But one difficulty for women is that they live “within three-dimensional sets of laws: traditional/national, religious, and new European laws. In the south more importance is placed on religious laws and in the north more importance is placed on European and customary laws.”25 Religious leaders do not approve of all customs. Some customs, like bride stealing, are against Islam. But neither do they interfere with such customs. A mullah will religiously marry a couple, even if the bride has been stolen.

Village Elections and Women in Civil Society

Kyrgyz women generally do not participate in village meetings, not even when there will be an election for a member of the court of aksakals or the village head, because women do not see a role for themselves in the general village meetings. Women stated that they would come to a village meeting that directly related to them (for example, if there were a meeting about land being made available for their children who were born after January 1, 1996). In only one Kyrgyz village was the number of women voters marked (40 percent). The Kyrgyz women we interviewed stated that they could go to meetings if they wanted to, and that their husbands would not oppose them. However, women stated that they are too busy, that someone has to watch the children, and that they discuss who or what their husbands will vote for with him before the meeting so that his vote is his wife’s vote as well. Many women feel that their voices are heard even though they do not directly participate and that it is the “custom” for men to engage in such meetings but not for women.

In contrast, in a Russian village in Chui Oblast, 80 percent of the people who come to the general meetings are women. In this village, three women and four men are on the court of aksakals, and the head of the court is a woman. Women in the Russian village are very active both in terms of voting and in terms of using the court of aksakals.

25 Interview with Mufti.
In both Kyrgyz and Uzbek villages, women who are teachers are more likely to be engaged in community life. They are more likely to attend meetings and vote, and they are more likely to be elected to a position. Teachers in secondary schools are often involved on the Women’s Council. Many women and men stated that if you want to get information and advice to women, you should do it through the secondary school teachers. In rural areas, teachers are usually responsible for distributing information and education to a neighborhood, especially during elections and other public campaigns.

Often we found that the idea of women being involved in meetings, politics, or holding a position within the community (elder, village head, etc.) had never even been considered by women or men. When the idea was presented in our interviews, it was greeted as a new and interesting concept. On consideration, most people thought it would be a good idea to have more balanced representation.

Women are generally convinced that if women were more involved in meetings and elections, more women would be elected. One woman, the chairperson of a rayon council, believes that women had helped to elect her. In every village where either a court member is a woman or someone in the village or rayon administration is a woman, women state that things are better for them because of this.

**Court of Aksakals**

The members of the court of aksakals we interviewed are uniformly educated, thoughtful, forward thinking, and caring. In every case but one, they were elected by a general meeting of the village and they talked at length about their responsibility to the community. The regulations are unclear about how to dismiss an acting court member, but all court members stated that they would be voted off the court if they did not uphold the standards of the community. In a Kyrgyz village, usually each clan is represented on the court of aksakals. Court members are not paid and receive no gifts.

The biggest problem faced by the court of aksakals is lack of training and lack of legal information. In most cases the elders do not even have access to basic codes and are frustrated by their inability to have enough information to make the “right decision.” Most also want further legislation related to the court of aksakals to clarify their role and the reach of their authority. When we discussed the issue of lack of information with a Naryn Oblast judge, she stated that while she agrees that the court of aksakals needed assistance, even as an oblast judge, she uses her own funds to buy laws. Laws that do arrive at the oblast court are at least one month late.

While the courts of aksakals are most often all men, in many cases the members interviewed are open to the idea of a woman member, but had never considered it before because the term “aksakal” means white beard. Often, even though women are not on the court of aksakals, women from the women’s councils are present when women are involved in the case. However, when women are directly on the court, a notable increase in the number of cases brought by women is noted. In the Belovodskoye court of aksakals in Chui Oblast, where the chair is a woman and three of the seven members are women, most cases brought to the court are initiated by women. In another village, the sole
woman on one court of aksakals (four men and one woman) said she was proposed by the women of the village, and ever since she has been a member women come to the court more often. In another village, the sole female member of the court of aksakals specializes in family issues. She investigates the case and reports to the court.

Women judges generally think that having a female on the court is important, but only if she is qualified. A female member of the court in At-Bashy rayon, Naryn Oblast, thinks that the two women on their court are “sufficient to persuade men to take the right decision, and that a woman must be wise and experienced to be a member of the court.” A chair of the women’s council in Nookat rayon, Osh oblast, approves of the fact that courts of aksakals are predominantly male, because women as mothers might be “soft” and make inadequate decisions on cases of theft and other offenses.

Most often the courts of aksakals see women related to domestic violence and division of property when there is a divorce. Women do not bring cases of land disputes to the courts of aksakals (only property division cases). Customs and traditions in many cases preclude women from exercising their legal rights to property by going to the rayon court. The court of aksakals can be helpful in terms of assuring that women are treated fairly, but women need to be better educated about their basic legal rights so that they can effectively represent themselves.

The court of aksakals deal with land boundary disputes between individuals (heads of families) but do not deal with situations in which an individual brings a complaint against the aiyol okmotu or other government official. The elders act within the village, and the aiyol okmotu has authority over them. The courts of aksakals see themselves as part of the aiyol okmotu, and therefore would not consider acting against the aiyol okmotu. Villagers have no recourse against government officials that are higher than their village heads, and do not know how to effectively advocate for themselves or others with these government officials.

The one area of dispute resolution where there is still an enormous need is between individuals and government officials. It may be possible to encourage the courts of aksakals to get involved if their role were defined more clearly and to include such cases. Moreover, the court of aksakals legislation (which is temporary) should be reviewed and revised to include the experience of the courts over the past six years.

An earlier survey done by USAID, in which the Rural Development Institute participated, indicated that 100 percent of all disputes related to land boundaries that were not resolved by the individuals themselves were resolved by the courts of aksakals.26 The courts of aksakals are also very involved in disputes related to the break-up of families. Since the court clearly plays a significant role in resolving land disputes, it is in the best interest of all if they are trained and have access to necessary legislation.

Divorce and Division of Property

The rules for division of property upon divorce differ between written law and customary law. Women generally go to the court of aksakals to request property division rather than the rayon court. While the court of aksakals wants to follow the written law as well as customary law, the courts generally did not know what the written law required of them.

26 Renee Giovarelli, Executive Summary of Surveys: Lifting the Moratorium Survey (Farmers); Dispute Resolution and Land Use Survey (Farmers); Land Use Survey (Officials) (March 2001) (on file with the Rural Development Institute and the USAID Commercial Law Project.)
In written law a marriage may be dissolved by divorce based on a statement of one or both spouses. As a general rule, the dissolution of a marriage is executed judicially, but in some cases, when the parties do not have children or property disputes, by the state registry office. When considering marriage dissolution cases, the court is obliged to establish causes for the marriage dissolution, to take measures for the spouses’ reconciliation, and, consequently, to set a term for reconciliation. The marriage is dissolved if the court establishes that the continuation of the common life of the spouses and preservation of the family would be impossible. When making a decision on marriage dissolution, the court, if necessary, takes measures to protect the interests of under-age children and disabled spouses. If there is a dispute between spouses over child custody and support, the court will also establish, simultaneously with the settlement of the divorce case, which parent the children will stay with and which parent will assume financial responsibility for the children. At the request of one or both spouses, the court is obliged, simultaneously with the settlement of the divorce case, to divide the common joint property.

Under written law, in dividing the common joint property, the shares of spouses are generally considered to be equal. In certain cases, the court may depart from this principle of equality after taking into consideration the interests of under age children and the interests of one of the spouses. A share of one of the spouses might be increased if the other spouse has evaded work or has wasted common property and damaged the interests of the family.

While dividing the common joint property, the court will transfer property to each spouse. When the value of property transferred to one of the spouses exceeds his/her share, the other spouse has a right to ask for a corresponding monetary reimbursement. As mentioned earlier, property owned individually by either spouse before getting married remains the individual property of the owning spouse after marriage. Property received individually as a gift or by inheritance during marriage is also individual property. In some cases the property that would otherwise be considered individual property would be considered common joint property if it is established that during the marriage there were joint property inputs that considerably increased the value of the property. However, this is very difficult to prove in Kyrgyzstan, especially given the customary practice of the husband’s family providing the land and house to their son.

The person who applies for property division to the rayon court (almost always the woman) must pay the state fee. If property is worth 500 to 10,000 soms, the plaintiff must pay 5 percent of the value of the property; if the property is valued at over 10,000 soms, the plaintiff must pay 10 percent of the value of the property. Article 102 of the Civil Code provides that the court can exempt payment, and poor women often do pay less than the above stated percentages. However, the amount must be paid in advance and it provides grounds for the commencement of the judicial procedure. The full burden for payment falls on the person requesting the property division.

Customary law, like written law, does not encourage divorce. Extended families, village elders, and the village government make an effort to keep the family together. Often, a “cooling-off” period is required by local leaders before a divorce will be allowed.

However, if a divorce occurs, generally in rural areas the land and house stays with the husband unless the husband leaves the village to marry another wife because the house and land are considered to be the husband’s portion of his family’s wealth. The wife most often takes the children and returns to her family. Although exceptions clearly exist, most women stated that it is not traditional for women to ask for the land or house. In fact, it is considered shameful to take a share of the land. This perception is

27 Civil Code art. 275(2).
28 Law of the Kyrgyz Republic “On State Duties” art. 4.
based on the notion that the land belongs to the household and not to the individuals that make-up the household.

Customary law does not give women access to land upon divorce. Some exceptions exist if the couple has children and the husband leaves the house. However, if women go to court seeking divorce and property division, the written law is generally enforced. However, women who petition the court must provide proof of their investment in the house, and are compensated for that investment and few Kyrgyz women are able to do this. The court generally does compensate women for their portion of the household land share if their name appeared on the land share certificate.

Many women stated that it is much better for women if there is a woman involved with their case when division of property occurs. The courts of aksakals have great influence over women’s rights to land upon divorce especially since the rayon courts are generally not accessible. Members of the courts of aksakals need training in the written law and women’s councils need training as well.

**Conclusion**

The primary question of this research was--Do customary institutions in Kyrgyzstan impede women’s legal rights? And the answer is not black or white. In fact, village level customary institutions are democratic, and women can vote and participate. On the other hand, women often do not vote or participate and this is related, in great part, to traditional customs and norms. When women participate in the process, and when women become leaders in the community, all women within the community have better access to the courts and government officials, and are more able to exercise their rights.

Customs are slowly changing, but customs are more important than law in the villages. New legal institutions and new legislation must reflect an understanding of customs to be effective. The community plays a central role in both limiting and enforcing individual rights, and should not be ignored when designing projects related to women’s rights or land rights or other individual legal rights.
Recommendations

1. Donor funded dispute resolution programs should take into account the community structure for dispute resolution that already exists and work within that structure.

2. Legal education and public information programs should focus on village-level institutions.

3. Legal literacy should be increased among rural women (women’s councils) and men. Rural women seldom know their legal rights and therefore follow customary law even when it is not in their best interest.

4. Education and information should be provided to villagers about the value of cooperative economic action.

5. The cultural context in which written law will be implemented should be considered when drafting legislation. Rules should be considered that allow customary law to be followed if all parties agree.

6. Women should be encouraged to run for election as village head or as a part of the aiyl okmotu or court of aksakals.

7. Legal training should be provided to courts of aksakals and women’s councils, as should copies of current legislation and regulations.

8. Advocacy training should be supported in rural areas so that people are better able to claim and secure their rights.

9. The legislation controlling the courts of aksakals should be amended so that the role and duties of the courts of aksakals is better defined.

10. Information should be provided to women through the secondary schools and secondary school teachers.
Appendix A   Institutions in the Kyrgyz Republic

- Raion Court
- Raion Administration
- Aïyl Okmotu
- Village Leader
- Kyrgyz
  - Court of Elders
  - Women’s Council
  - Mahallya Committee
  - Clan Leaders
  - Extended Families
  - Religious Leaders
  - Byubyu
- Uzbek
  - Court of Elders
  - Women’s Council
  - Extended Families
  - Religious Leaders
Appendix B. Fieldwork Questions on Local Institutions that Enforce Customary Law: Questions for Women

Background/warm-up

- Who are the members of your household and what are their ages and marital status (including yourself)?
- What is the education level of the members of your household (including yourself)?
- How does your family’s income compare to others in the village?
- How much and what type of land does your family farm?
- What crops do you grow?
- Do you grow anything on your household plot?
- Do you have livestock?
- What are you responsibilities in the household (related to farming, animals, food etc)? In your village?
- What do you do in a typical day? Winter? Summer?

Disputes

- In your village who do women turn to resolve disputes (court of elders, mullah, maila committees, court)? (may be more than one)
- Have you personally ever gone to that body/person to resolve a dispute yourself?
  - If so what was the dispute and how was it resolved?
  - Were you pleased with the result? If not, did you appeal the decision?
- Do you know anyone else who has gone to this body to have a dispute resolved?
  - What was the dispute and how was it resolved?
  - Where they happy with the result? Did they appeal the decision?
- Do many women go to this body?
  - If so, do they speak for themselves? Does a male relative or lawyer help them or go with them?
• Do you think this body treats women fairly? Why or why not?

For the body(ies) given above

☐ Who and how many are part of this body?
☐ How are the members chosen?
☐ How often does membership change?
☐ In your village are any women on this body? Could a woman be a member of this body?
☐ What is the process like when this body hears a case and resolves it?
  • Is the process transparent?
  • Are both sides given the opportunity to speak and present their case?
  • On what basis do they make their decision?
☐ Do people appeal the decision of this body if they are unhappy with it?
  • Where is the decision appealed?
  • How often do people appeal such decisions?

Inheritance

☐ Do you know what the laws are in regard to inheritance of land, livestock and farm machinery?
☐ Who are customarily the heirs of land? The Civil Code says that land will be divided between the spouse, children, and parents of the deceased. Is this practice generally followed in the village?
  • If not, what rules/customs/practices are more commonly followed?
☐ Who decides how property (house, houseplot, arable land, pasture land right, livestock, machinery) will be divided upon death?
  • What is the decision-making process like? Is it public? Do both sides get the chance to speak?
  • What is the decision based on?
  • Is the decision written?
☐ Do women in this village ever ask for/demand their inheritance share under written law?
  • If they do, do they receive it?
  • If they don’t ask, why don’t they ask for their inheritance right under written law?
Marriage/Divorce

- Does divorce happen in this village?
- What is the process? Who decides if a divorce will be granted? How long does it take? On what grounds will the divorce be granted? Is the decision written?
- Can women initiate divorce? Must both parties agree to the divorce?
- Do women in this village ever go to the rayon court to get a divorce or to seek maintenance or child support?
- Do women ever ask to keep all or a portion of: house, house plot, livestock, arable land, pasture land etc?
  - Who decides how the land, house and personal items will be divided? On what basis is this decided? Is it written?
  - Who do the children go with? On what basis is this decided? Is it written?
  - Are women ever paid maintenance by their ex-husbands? On what basis is this decided? Is it written?
  - Are women granted child support? On what basis is this decided? Is it written?
- What do women do if they are awarded property/maintenance/child support but do not receive it?

Questions for village elders/religious leaders

- How did you become a village elder?
- How long have you been in this position?
- Do women ever bring disputes to you?
  - What type of disputes (inheritance, divorce, abandonment, land disputes etc.)?
  - How often?
- If women rarely come to you why do you think that is?
  - Do they usually come with a lawyer, male relative, woman friend, or by themselves?
  - What is your decision-making process like?
  - Is each side given the opportunity to speak?
  - Is the process public?
  - How is the final decision made?
• Is the final decision written?

☐ What do you base your decision on? Written law? Tradition/custom?

**Questions for judges**

☐ Do women ever bring disputes to you?

☐ What type of disputes (inheritance, divorce, abandonment, etc.)?

☐ How often? If few women come to you why do you think that is? (expense, fear …)

☐ Do they usually bring these disputes to you first, or do they sometimes “appeal” the decision of a village body to you?

☐ Do they usually come with a lawyer, male relative, woman friend, or by themselves?

☐ What do you base your decision on? Do you ever change a decision because it conflicts with written law?

☐ Do you issue written decisions?