A. A. Temirkulov[1]
Assistant Professor, International and Comparative
Politics Department, American University of Central Asia

Formalization of Traditional and State Institution-Building in Transitional Countries. The Example of "Aksakals" in the Kyrgyz Republic.

Introduction

"Today, generally accepted wisdom says that institutions are
determining variables of development process." (2, c. 46)
Francis Fukuyama

The problem of state-building in developing countries concerns many different scholars, and practitioners. The traditional approach tends to export western modern state-building models to the countries of the South. The logic of course is understandable: these institutions and procedures have proven their robustness during centuries of troubled history. However, the experience shows that the soil of many developing countries is not favorable for such experiments: specifically with local societies – traditional social structures, practices, and institutions cannot simply be replaced by an imported western-style state model. Thus, in some cases one can observe competition or even conflict between traditional, usually informal, institutions and formal imported Weberian institutions.

In this paper, the concept of 'institution' is used according to the definition of Douglas North, where institutions are defined as "rules of the game," or "humanly-devised constraints that shape human interaction". For North, institutions "consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)" (9, c. 25).

Over the last two decades, institutional analysis has become a central focus in comparative politics. Fueled by a wave of institutional change in the developing and post-communist worlds, scholars from diverse research traditions have studied how constitutional design, electoral systems, and other formal institutional arrangements affect political and economic outcomes. These studies have produced important theoretical advances. Nevertheless, a growing body of research on Latin America, post-communist Eurasia, Africa, and Asia suggests that many 'rules of the game' that structure political life are *informal*–created, communicated, and enforced outside of officially sanctioned channels. (3, c. 725)

The collapse of the Soviet Union posed a formidable challenge for its successor states. The centrally administered Soviet structure fragmented into several societies. After the fall of the empire, these societies had to establish new institutional arrangements for self-regulation in order to ensure security, economic development, and intergroup stability. They also had to adopt their informal traditional institutions to a new state structure. The process of adaptation, integration, or cooptation of informal institutions into the official state structure is referred to in this article as "formalization".

In 1991, the parliament of the Kyrgyz republic enacted the Law on Local Self-Government (13), which created institutions of local government. These institutions have functions previously carried out by state and collective farms. This law has been supplemented by several clauses, which have formalized some informal traditional institutions of Kyrgyz society.

These traditional institutions are mainly *aksakals* and *kurultai*. After formalization, they took form of Court of *Aksakals*,[1] Council of *Aksakals*,[2] and *Kurultai*[3]. Within 10 years, these institutions were strongly adopted by local communities, and received wide application in all regions of Kyrgyzstan.

The basic focus of this research is formalization of the traditional *aksakal* institution, and its role in a state-building process at the local level. The study of this institution should be undertaken by means of a typology developed by Hans-Joachim Lauth, Gretchen Helmke, and Steven Levitsky. In the article "Informal institutions and democracy"(6), Hans-Joachim Lauth classified informal institutions into three types: complementary, substitutive and conflicting (or competing). Gretchen Helmke and Steven Levitsky in their work "Informal institutions and comparative politics: a research agenda"(3), added accommodating as a fourth type of classification.

Accommodating and complementary types are informal institutions that cooperate with strong and effective formal institutions. Considering a transition period and the current process of the state structure in the Kyrgyz Republic, and being based on the practical experience of field-work, I ascertained the absence of strong and effective formal institutions at a local level. By that, I ascertained the absence of informal institutions that would have accommodating or complementary types of relations with the formal state institutions.

Competing and substitutive types are informal institutions that coexist with weak and inefficient formal institutions. "In such cases, formal rules and procedures are not systematically enforced, which enables actors to ignore or violate them" (3, c. 729). The second dimension for competing informal institutions is "divergent outcomes", meaning that results of the informal procedures will be divergent from the results of formal procedures. "These informal institutions structure incentives in ways that are incompatible with the formal rules: to follow one rule, actors must violate another" (3, c. 730). Substitutive informal institutions "are employed by actors who seek outcomes compatible with formal rules and

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[1] Court of aksakals are created on the basis of Article 12 of the Law of KR "About local self-government and local state-administration" (Annex 1).

[2] Council of aksakals is not representative body of local self-government. There is no direct mention about this institution neither in Constitution nor in the Law of the KR "About local self-government and local state-administration". However, the Article 5 of the Law of the KR "About local self-government and local state-administration" provides creation of bodies of local government at the discretion of the community.

[3] Kurultai is traditional assembly practiced by Kyrgyz (Turk in general) tribes. The decree of the President of the Kyrgyz Republic "About measures on increasing of the role of peoples *kurultais* of representatives of local communities of the Kyrgyz Republic in management of local affaires", 2 May 2001, УП № 152.

procedures" (3, c. 729). They "achieve what formal institutions were designed, but failed, to achieve" (3, c. 729).

By means of these classifications, I shall try to show that the institution of substitutive *aksakals* promotes regulation of local conflicts by replacing statehood at a local level where its gap is present. I shall also demonstrate that in some situations the *aksakal* institution may have competing characteristics. Further, I intend to prove a hypothesis that formalization of the *aksakal* institution strengthens substitutive character on the one hand, and promotes the neutralization of competing character on the other hand; thus, rendering a positive influence upon development of effective statehood at a local level.

Research based on fieldwork that was led from August 2003 until November 2004. More than 130 semi-structured interviews, four focus groups, and participant observations were carried out during the fieldwork. In order to prove my hypothesis, I use comparative analysis of case studies comparing situations in different local communities.

The first chapter, "The 'aksakal' institution: traditional instruments and mechanisms" is a general overview of the institution. It examines mechanisms and tools that the *aksakal* institution uses for the sanction of disputed situations inside of communities and between them. The basic questions studied were, how the *aksakal* institution of was formed, what functions it has, and what methods and tools the *aksakal* institution uses to supervise conflicts. In the second chapter, "Typology of the 'aksakal' institution", I will explore the *aksakal* institution through the typology of Helmke and Levitsky. Substitutive and competing characters of the *aksakal* institution will be analyzed here. In the third chapter "Formalization of the 'aksakal' institution and its impact on state-building", research is concentrated on the problem of state structure at a local level, and on interactions between the formalized *aksakal* institution and official institutions of local government: the influence formalization of the *aksakal* institution has had on state-building. In this chapter, I prove my hypothesis – formalization of the *aksakal* institution strengthens substitutive character on the one hand, and promotes neutralization of competing character on the other hand, thereby providing a positive influence on development of effective statehood at a local level.

The problem of formalization of "traditional" institutions can be studied not only within the limits of research of Central Asian countries, but also it has a more scalable prospect in the context of the global study of developing countries. For example, the phenomenon of formalization of "traditional" institutions is also observed in the developing countries of South America, Africa, and Asia.[1]

1. The "aksakal" institution: traditional instruments and mechanisms

An *aksakal* has authority based on the traditional norm of respect for elders. Age has a great value in relations between members of the Kyrgyz communities. The age factor is a basis for construction of mutual relations. It is especially brightly expressed in provinces of Kyrgyzstan. Kyrgyz address each other indicating age subordination. For example, *baike*, *ake*, *ava* (the senior brother) when addressing an elder man, and *eje* (the senior sister) when addressing an elder woman. The reference to an old man is *aksakal*.

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[1] See for example: Barton, Brent, *Informal Legal Systems in Latin America,* Paper Presented at the Institute of Latin American Studies Student Association Conference, University of Texas, February 12-14, 2004. Sally Engle Merry, "Popular Justice and the Ideology of Social Transformation." *Social and Legal Studies* 1, 1992.

In local communities, a group of men, approximately of one age, having common past experience (usually going back to their youth), on a boundary of a certain age become *aksakals* and represent an informal *aksakal* institution of the given community. Usually this happens when the majority of members of a group of *aksakals* of the previous generation have already passed. This group has leaders, whose authority is based not only on traditional norms, but also on personal charisma. Thus, a subordination of members of the community to these *aksakal* leaders is magified by their charisma. These leaders are the kernel of an informal *aksakal* institution.

Members of community do not elect these leaders, and they do not become leaders in one day. Leaders of a group of the given generation became one in their youth, and in old age already have charisma, which is more or less bright and recognized by the community. These people by virtue of their character take on the functions of an *aksakal* institution, with social control in their hands. *Aksakals* usually do not integrate other members of the community such as youth or women into their 'closed circle'. However, they can integrate a "big man"[1], an influential informal leader of the community.

The Russian traveler Zagrajskyi wrote in 1874: "In each village, there is an *aksakal*, elder of householders. He decides on the place and time of migration. He is a head of the village and often a judge" (16, c. 174). Of course, seventy years of Soviet social modeling has changed the characteristics of the *aksakal* institution. However, it has kept some of its efficiency, or has been revived as operative institution as a reaction to easing of the post-Soviet state, at least in three of the four studied communities[2]. The traditional function of the *aksakal* institution is management of mechanisms of social control, with the purpose of maintenance of existence of a community by means of preservation of traditional values, norms, and customs. For realization of this function, *aksakals* use informal tools, such as *uiat* and *bata*.

Uiat can be translated from Kyrgyz as "shame". It is a tool of punishment and is usually used to condemn unworthy behavior. It is an act that entails public criticism and censure. The initiator of this tool can be one or a group of *aksakals*. Condemnation can occur publicly at a meeting, and it can also be spread out in the form of hearings. As a result, the community, and more often its part, can isolate the person. People cease to communicate, greet, or help the person. Theoretically, the most extreme degree of punishment can be exile from the community, but such a thing has never happened in the practice of the researched communities. People of various ages, social statuses, and both sexes can be exposed to the punishment of *uiat*.

Aksakals of the Alga local community actively use the *uiat* tool. So for example, *aksakals* have told schoolteachers that they will shame them if they permit girls to wear skirts at school. According to the respondent, this phrase was literally stated as "we shall make *uiat* to you". Such threat had the intended effect, and girls were forbidden to wear skirts at school.[3]

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[1] The concept "big man" was elaborated by Sahlins, Marshall (1963). "Poor Man, Rich Man, Big Man, Chief: Political Types in Melanesia and Polynesia", In *Comparative Studies in Society and History*, 5/285-303.

[2] The exception is the Aksay local community, where because of high conflict potential between neighboring communities of Kyrgyzstan and Tajikistan, soviet authorities took exceptional efforts to create a spirit of communist internationalism and improvement of social life. They created joint Kyrgyz-Tajik *sovkhoz*, joint cultural events, and banned traditional practices like – *ashar, kurultai,* etc. This politic destroyed traditional social practices and decreased the role of traditional institutions in the local community.

[3] From the interview with Konurbaeva, the inhabitant of Alga local community, Kadamjai rayon, Batken oblast, 10 September 2003.

The sanction of an *aksakal's uiat* has not always had such an effect. In the Alga local community, a deputy of the local council threatened *aksakals* with court "if they will continue to interfere into affairs entering in the competence of local council"[1]. A group of *aksakals* tried isolate this deputy. They used the *uiat* tool, publicly shamed him and declared that nobody from community could support him in any of his undertakings. However, the population continued to support the deputy, and considered him a leader. In general, my impression was that men are less inclined to concede to pressure made by the *uiat* tool than women. Among young men, it is even prestigious to disobey *aksakals*, and to be unafraid of general condemnation.[2]

The *aksakal* institution also has an incentive tool – *bata*. It is a traditional ceremony where elders publicly bless those members of community who wish to begin a business. It is considered that during this moment *aksakals* 'open gates to success" in a new business. After that ceremony, the business is considered begun. *Ashar*[3] begins with this ceremony. For many local residents it is important to receive such blessing during the moment of undertaking of a new deal.[4]

For example, in the Alga local community *aksakals* used this tool for nomination of head of the Adyr village. He was not chosen by the local council, but was proclaimed by *aksakals* during the general meeting of inhabitants of the local community. *Aksakals* made *bata*, a majority of the inhabitants of the local community did not object, and this person became the head of the village in violation official election procedures. Thus, the tool of *bata* plays the role of a kind of "seal" in the hands of the *aksakal* institution.

In addition to these tools of influence, *aksakals* use networks that can extend to nearby communities. Networks of *aksakals* are usually based on old acquaintances and friendship. According to respondents, during the Soviet time, *aksakal* institution functions were limited to regulation of family quarrels, conflicts connected with customs (repayment for a bride, etc.), and interpersonal disputes. However, with the breakup of the Soviet Union, and with the decrease in efficiency of formal institutions to resolve of local conflicts, the *aksakal* institution began to expand the field of its activity. By the end of 1990's, *aksakals* were definitely "locked in" as a stable social practice at moments of escalation of local conflicts. Thus, formation of the *aksakal* institution as an active informal body in resolution of local conflicts, and expansion of sphere of its actions, is a reaction to easing of official local institutions resulting from political and economic reforms.

The fieldwork has shown that the *aksakal* institution is, as a practical matter, the most effective institution regulating conflicts on water at a local level. Formalization of this institution has strengthened its role in communities, provided it with a legal basis, and supplied it with legal authorizing mechanisms. In 2003, the Kyrgyz parliament made changes

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[1] This case will be further studied in the case-studies part.

[2] From group observations of youth in the Alga local community, Kadamjai rayon, Batken oblast, September 2003.

[3] *Ashar* is a collective self-help institution.

[4] The process appears as follows: at general meeting, *aksakals* stand or sit in a place of honor. People receiving blessings stand at the center. *Aksakals* lift hands to the face, others do same thing after them. Then the leader of *aksakals* asks god and ancestors to help these people in their deal, and says words wishing for success. He is echoed by the other *aksakals*, and after having placed their hands on their face, they say, "*Omin*". Others do the same thing after the *aksakals*. The ceremony is then considered complete.

to the existing law "About *Aksakals* Courts". One of amendments gave the *Aksakals* Court authority to resolve disputes on irrigation between water consumers of a community.[1]

Except for the resolution of conflicts within communities, the *aksakal* institution tries to regulate conflicts between communities, even though it lacks effective tools to do so. In conflicts within communities, the *aksakal* institution uses formal tools and mechanisms (penalties, etc.) and informal "traditional" methods of influence (*uiat* and *bata*). In conflicts between communities, *aksakals* only use informal methods: negotiations with other *aksakals* and leaders of the opponent community through *aksakal* networks.[2]

The *aksakal* institution also plays the role of mediator during the moments of escalation of conflict between inhabitants of villages of the neighboring republics. An example is the Aksay local community, where *aksakals* of Kyrgyz and Tadjik communities have close friendly contacts. These networks are used for carrying out negotiations between communities. *Aksakals* of both communities come to the place of incident, call for calmness, and investigate with the purpose of punishing the guilty. During such moments, the *aksakal* institution is key to carrying on negotiations, because of a mutual rule of respect for them. As incidents happen, often on boundary posts, *aksakals* negotiate with official bodies of the neighboring state as well. For example, during a frontier post incident between the villages of Chunkur-kyshtak (Kyrgyzstan) and Vuadil (Uzbekistan), *aksakals* of both sides condemned the behavior of frontier guards, and the staff of this frontier post was completely replaced (10).

Water conflicts are more successfully resolved inside of communities and especially inside of one village (for example, the Ton local community and the Kumbel local community), than between different villages or especially adjoining communities (for example, Alga local community and Aksay local community). This shows that the function of social control by the *aksakals* institution (and probably other "traditional" institutions) is more effective in smaller demographic and geographical scales. Field research has shown that for *aksakals,* and for other leaders, it is easier to supervise small communities than large ones. Moreover, the influence of *aksakals* in the neighboring village is not necessarily as high as in their native village, because of the absence of formal and informal tools, except for networks of *aksakals*.

2. Typology of the aksakal institution

Gretchen Helmke and Steven Levitsky in their work "Informal institutions and comparative politics: a research agenda" (3) elaborated four types of informal institutions based on the character of their interactions with formal state institutions. These types are complementary, accommodating, substitutive and competing.

Accommodating and complementary are types of informal institutions that cooperate with strong and effective formal institutions. Francis Fukuyama defines strong and effective institutions as having the:

> ...capability to formulate and realize political courses and create laws; to administrate effectively and with minimum procrastination; to control fraud, corruption and bribing; to promote high level of transparency and responsibility of governmental institutions; and the most important to realize laws. (2, c. 26)

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[1] The Law of the Kyrgyz Republic "About Courts of *aksakals*", Article 15, point (d).
[2] For example, during construction of the illegal channel in village Pulgondu, the Alga local community supplied *aksakals* with special bus transportation to carry out negotiations with *aksakals* of Pulgondu villages.

According to the World Bank's Governance Index, the Kyrgyz Republic ranked between 25th and 40th in their Government Effectiveness indicator (15). Thus, considering a transition period, and the current state of the state-building process in the Kyrgyz Republic, I found the absence of strong and effective formal institutions at a local level. By that, I found the absence of informal institutions that would have accommodating or complementary types of relations with formal state institutions.

Competing and substitutive types of situations occur where informal institutions coexist with weak and inefficient formal institutions. "In such cases, formal rules and procedures are not systematically enforced, which enables actors to ignore or violate them" (3, c. 729).

The substitutive feature of the aksakal institution

Substitutive informal institutions "are employed by actors who seek outcomes compatible with formal rules and procedures" (3, c. 729). Substitutive informal institutions "achieve what formal institutions were designed, but failed, to achieve" (3, c. 729).

Prior to formalization of the *aksakal* institution in 2002, the substitutive type of interaction between the *aksakal* institution and local government could be found in the important sphere of resolution of local conflicts. According to respondents, during Soviet time the *aksakal* institution played a role in conflicts regarding water between inhabitants of *kolkhozes* and *sovkhozes*. However, after the collapse of the USSR this role became even more important.

Field work has shown that in all regions of Kyrgyzstan one of the acute problems of local communities is conflicts over water. These conflicts happen between members of communities (private farms, cooperative societies, individual peasants), and between neighboring communities. This problem concerns all areas of research, even where water is apparently in excess supply.[1]

Problems of water sharing arise during the irrigation period: in spring and end of summer when the amount of the future crop depends on irrigation. At this moment, water becomes a factor in determining the economic condition of a peasant for entire next year. During this period, struggle for this vital resource risks open violent conflict due to the absence of effective statehood.

During the irrigation period, private persons and cooperatives practice autocratic water drainage. As a result, the water intended for a certain cooperative or peasant is illegally used by other cooperatives or private persons. Scandalous situations arise, which practically paralyze all irrigation processes, because of infringement upon water-sharing schedules.

Intervention by the head of local self-government is not always fruitful. In this situation, local communities must find ways of solving water allocation problems, both inside of communities and between communities. Due to the absence of ad hoc institutions, the *aksakal* institution enters the scene and tries to resolve conflicts using informal methods and tools. Local residents allocate the central role in resolution of such conflicts to this institution. It is necessary to note, that very few people argue the decision of *aksakals*. Many inhabitants of the community believe that *aksakals* are impartial, and try to be fair while solving such problems.

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[1] Experts note that the basic problem is not the amount of water resources, but absence of efficient control on water supply, both at a local level, and at levels above.

In case of water conflicts, the relationship of the *aksakal* institution with formal institutions of local government has a substitutive character. The *aksakal* institution filled the gap that was left by formal institutions, and took on the functions of conflict resolution. *Aksakals* run educational and explanatory works, applied traditional punishments (*uiat*), and today impose formal penalties to infringers of the water-distribution regime.

There are also examples of intercommunal conflicts in which *aksakals* play an important role. Field research revealed cases of activity of the *aksakal* institution in transboundary conflicts. This is a special case where a basic problem facing local communities is the absence of legal transboundary mechanisms of conflict prevention and resolution. Shortage of land, disputable areas, unfinished border delimitation, and absence of formal water-sharing norms are principal causes of the conflict between communities of neighboring states.

Communities are forced to cope with daily conflict situations by themselves. They try to reduce conflict potential by involving not only state resources, but also NGOs, foreign donor organizations, and informal institutions and leaders. *Aksakals* of boundary communities often visit the same mosques and tea-houses (*chaikhona*), where they have an opportunity to communicate, discuss their common problems and build trust. Most of them know each other from a young age, and some of them have family ties. At the moment of escalation, they use these contacts to stop violence and resolve conflicts. *Aksakals* participate in management of the conflict, and negotiation with *aksakals* of the opposing community. They constrain youth from violence, but sometimes to the contrary, provoke them to violence. Moreover, in this case, *aksakals* are active and successful not only in conflict resolution at the moment of escalation, but also take part in peace building and conflict prevention activities.

Very often, this happens within the framework of NGO projects. Many different NGOs and donor organizations work in this area. They form initiative groups, train them for conflict prevention, organize negotiations, and initiate joint development projects. Many *aksakals* are involved in initiative groups and participate in negotiations, and by that try to hold the conflict within established institutional frameworks. Here, they combine the use of their informal instruments and formal mechanisms created by NGOs and the donor community.

Existing traditional institutions have filled the vacuum created by absence of effective ad hoc formal institutions. In spite of the fact that *aksakals* are not always successful, this institution plays a most active role during the moment of escalation of local conflicts. Prior to formalization, the *aksakal* institution replaced formal institutions. Thus, in these situations, the character of mutual relations between formal and traditional institutions is substitutive.

Competitive feature of the aksakal institution

Competing informal institutions produce results different from the results of formal procedures. "These informal institutions structure incentives in ways that are incompatible with the formal rules: to follow one rule, actors must violate another" (3, c. 730).

As fieldwork demonstrates, relations between official institutions and the *aksakal* institution are not limited to substitutive character. They also can have competing character. Moreover, there are communities where *aksakal* institutions have features of substitutive and competing types, depending on a situation. That shows that the *aksakal* institution can have different types of relations with different formal institutions. For example, the same *aksakal* institution can have substitutive type relations with formal institutions of water

management and other institutions responsible for regulation of conflicts (both internal and external). At the same time, it can have competing type relations with bodies of local authorities, in particular with local councils and other bodies of local administration. This was observed in those communities where the *aksakal* institution is sufficiently strong and active.

Competing character is generally shown in decision-making functions that are within the competence of official bodies of local authorities. In such cases, the *aksakal* institution tries to dominate the internal political life of the community by means of informal control of institutions of local government. According to my observations, the basic purpose of aspiration to such control is a guarantee of preservation of "traditional" norms and rules in the daily life of community. However, alongside with this, there can also be latent personal mercantile interests of some *aksakals*.

The character of rivalry, in relations between the *aksakal* institution and formal institutions of local authorities, promotes development of a functional imbalance in the work of institutions of local government. It has a negative impact on the state structure at a local level.

Factors that generate and develop a competing character in relations between the *aksakal* institution and institutions of local government include a strong *aksakal* institution[1], the absence of precisely defined authority of the *aksakal* institution, and the absence of official norms to regulate *aksakal* institution relations with formal institutions of local self-government. The consequence of these factors can be attempts by *aksakals* to intervene into any question of local government authority, provoking a situation where inhabitants have an alternative procedure and outcome. Such situation can create competition between official local state institutions and informal *aksakal* institutions.

Thus, two types of relations exist between official local state institutions and informal *aksakal* institutions in Kyrgyzstan. The substitutive type is favorable for a local community's stability and development, because an informal *aksakal* institution "assists" official local government institutions, and thereby fills the gap in statehood. However, the competing type of relations between official local state institutions and informal *aksakal* institutions is not favorable for state-building. It creates situations of competition between official state institutions and informal *aksakal* institutions, which has a negative impact on stability and development of local communities.

Formalization of the *aksakal* institution involves co-optation of this institution into the official local state structure. This gives its substitutive character an official status, and eliminates the competing character in its relations with local government institutions. This will increase the positive effects and decrease the negative effects of this institution.

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[1]   One of the factors that can have an impact on the force of the *aksakal* institution is the geographical location of community villages. If villages are located close to each other, then there is more interaction between their inhabitants, more cohesion within community. As a result, there is a powerful *aksakal* institution. For example in the Aksay local community, villages are very much separated from each other. *Aksakals* of different villages of the community very rarely meet each other to discuss common problems. As the result, the *aksakal* institution is active only at the village level, and is rather weak and not active at the entire community level. On the other hand, in the Alga community where villages closely adjoin each other, *aksakals* very often have an opportunity to meet and discuss problems, and are able to develop a common policy. The Alga community *aksakal* institution is very active, and even competes with bodies of local authorities.

3. Formalization of the aksakal institution and its impact on state-building

The Constitution of the Kyrgyz Republic (Article 92 §2) and the Law "About local self-management and local state administration" (Article 12) strengthens the *aksakal* institution, and gives an opportunity for local communities to add to the authority of this institution on a legitimate basis. The law provides a right of local communities to "people law-making initiative". It explicitly declares an opportunity of creation of a Court of *Aksakals* under the decision of representative bodies of local self-government or meeting, *kurultai,* or any other assembly of members of local community.

The order implementing the specified right of people law-making initiative is set forth in the law of the Kyrgyz Republic "About Courts of *Aksakals*" (July 5,, 2002, № 113). Clause 9 of this law provides that any member of a community that has reached the age of majority, and enjoys authority in the community, may be elected as a member of a Court of *Aksakals*. Clause 2 of the law, "About Courts of *Aksakals*" states that in carrying out its mission, Courts of *Aksakals* are guided not only by laws, but also "...by conscience, personal belief, norms of morals and ethics, historically developed by customs and traditions of people of Kyrgyzstan, not contradicting the legislation of the Kyrgyz Republic". An example of a local self-government structure with a Court of *Aksakals* is presented in Attachment 1.

Formalization supplied the *aksakal* institution with formal tools. These tools are educational and explanatory discussions, counseling, advice, negotiations with the opposite community, and punishment in the form of restoration of the damage caused and penalties. For example, according to Charter of the Alga local community the Court of *Aksakals* can impose penal sanctions not exceeding 500 som[1]. Affairs are examined after submission of the statement to local administration, where it is fixed and then it is transferred to the judge.

Each village of the local community may have its own Court of *Aksakals* if the inhabitants desire, but the law limits the authority of this to the local community. In practice, cases exist where Courts of *Aksakals* received and examined statements against inhabitants of neighboring Uzbekistan. In 2002, the Court of *Aksakals* received a statement from *mirabs* (distributors of water) of the Alga local community, against water-users of the neighboring villages of Uzbekistan, because of illegal water drainage. Despite lacking official power, the judge accepted the statement, and resolved this conflict.[2]

At the end of 2004 in the southern region of the Kyrgyz Republic, the Association of Courts of *Aksakals* was created. Within the limits of this association, members of courts receive judicial courses that promote their legal activity. This fact increases the official capacity and functionality of this institution, and develops the consciousness of court members as the recognized official social institution.

Moreover, the law "About local self-management and local state administration" gives local communities the right to organize bodies and institutions of local significance at their own discretion. This must be done according to the law, and with approval of the Ministry of Justice. Based on this right, many communities created Councils of *Aksakals,* and included them in the structure of local government.

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[1] Equivalent of $12 USD.

[2] From an interview with Gapar-ake, secretary of Court of *Aksakals*, in Alga village, Alga local community, Kadamjai rayon, Batken oblast, 12 September 2004.

The result of formalization of the *aksakal* institution is the establishment of its official competence, and the definition of a normative framework of its relations with other formal institutions of local self-government. These factors permit elimination of the competing character, and strengthen the substitutive character in relations of the *aksakal* institution with bodies of local authorities. I will try to prove this hypothesis using a comparative analysis of two communities: one with a partially formalized *aksakal* institution, and the other with a fully formalized *aksakal* institution. By "partially formalized *aksakal* institution", I mean the cases where the Court of *Aksakals* have been created, however a Council of *Aksakals* (probably the most important official *aksakals* institution) is absent. "Fully formalized *aksakals* institution" are cases where both official institutions have been created, and no informal *aksakal* functions remain.

Case-study with a fully formalized aksakal institution: Kumbel local community, and Ton local community.

After formalization of a "traditional" *aksakal* institution in Ton and Kumbel local communities,[1] two official bodies were created: a Court of *Aksakals* and a Council of *Aksakals*. Local self-administration workers in both communities believe that formalization benefited their work, because of norms that defined official competences of the *aksakal* institution, and established formal mechanisms of interaction between the *aksakal* institution and official institutions of local government.

The Kumbel local community created both a Court of *Aksakals* and a Council of *Aksakals* in 1999. A majority of the community members choose the *aksakal* judge at a general meeting. He is the sole member of the Court of *Aksakals*; however, in complex questions he has the right to request advice from other *aksakals*. In the local state-government building there is a special room allocated for the Court of *Aksakals*, which accepts visitors on the certain days. The judge receives a stable monthly salary from the budget of local state-government. Most often, cases examined by Court of *Aksakals* are water disputes between members of the community during the irrigation period.

The Council of *Aksakals* consists of ten of the most senior and respected members of the community. The Council members choose their chairman. The Council of *Aksakals* is located in the same room as Court of *Aksakals,* and has a certain time for reception of visitors. According to the Charter of the Kumbel local community, the Council of *Aksakals* is competent in questions involving the protection of interests of the senior generation of the community. Offers received by the Council of *Aksakals* from inhabitants of the community are transferred and discussed in Local Council, where the Council and Court of *Aksakals* play an important official role.

The assistant to the head of Kumbel local community has explained the results of formalization in a following manner:

> Before formalization, bodies of local self-governance and *aksakals* existed separately from each other. The decisions of institutions of local government were unilateral because *aksakals* did not participate in decision-making process. Therefore, they often were not agree with such decisions. There were conflicts between *aksakals* and institutions of local government. In order

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[1]   Issyk-kul oblast, Kyrgyz Republic.

to achieve their goals and solve their problems, *aksakals* made a pressure on employees of local self-government through informal means, such as *uiat*. After formalization and integration of institution of *aksakals* into local government structure, *aksakals* began to take active part in decision-making process, at the same level with other interested groups, such as the Council of women, the Council of youth. It allows produce decision, that would be comprehensible and acceptable to all social groups of community, that in turn allows avoid the contradiction and conflicts after decision-making. Moreover, *aksakals* now have an opportunity to develop more precise position within the limits of Council of *Aksakals*, and also have formal opportunities to influence bodies of local government.[1]

In the Ton local community, as well as in Kumbel local community, two bodies were created: a Court of *Aksakals* and a Council of *Aksakals*. In the Ton local community, the Court of *Aksakals* consists of nine members, with three from each village. *Aksakals* can resolve disputes between inhabitants of the villages without the presence of other members of Court, and regulation of disputes regarding water remains in a very narrow geographical and demographic scale that promotes efficiency. This body is located in the building of local self-government, in the same room as the local police. The judge receives a monthly salary from the local budget.[2]

The Council of *Aksakals* consists of nine members, and members elect their chairman. This body is competent on issues concerning the senior generation. As in the Kumbel local community, offers of the Council of *Aksakals* come to the Local Council where representatives of all social groups of the community discuss them.

An employee of Ton local self-government stated, that before formalization of the institution they were personally exposed to pressure from *aksakals*. After formalization, attempts of pressure upon employees of local authorities from *aksakals* became less frequent. One of the employees explained it as follows:

> Before creation of Courts and Councils of *Aksakals*, *aksakals* came in local self-administration bodies, and also at home to employees, and could state their problems or their opinion during hours. If you have not listened, or having listened have not made what they wanted, *aksakals* could take offence, but it is not acceptable. We did not know what to do with this. We were forced simply to avoid and be hidden from *aksakals*. But after creation of Court and Council of *Aksakals*, we have the right methods, we say:
>
> "*Aksakal*, you have a Council of *Aksakals*, go there, discuss your question with others, write the statement, and we at assembly shall necessarily examine your question. But without the statement from Council of *Aksakals* I cannot promise anything to you, because it will turn out that I ignore this body. I cannot permit myself to do that."[3]

Further, this respondent stated:

> In the beginning, it was necessary to tell this to *aksakals* every time. And now they have got used. Sometimes you meet *aksakal*, he asks you a question, and answers it himself:

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[1] From the interview with Muhabbat-eje, deputy-head of local administration of Ton local community, Issyk-kul oblast, august 2004.

[2] From the interview with Tilek-ava, chairman of the Court of *Aksakals* of Ton local community, Issyk-kul oblast, august 2004.

[3] From the interview with Gulnara, employee of Kumbel local administration, Issyk-kul oblast, august 2004.

'I know, I know, you will tell me, go to Council of *Aksakals*, write a statement'.[1]

The employee of this local self-government said that statements are examined at the assembly of the local Council. Decisions are made collectively, in view of the interests of all stakeholders, and the answer to the statement is given in written form. *Aksakals* understand that decisions are adopted collectively based upon the interests of all stakeholders, rather than of one person. Therefore, they do not place personal pressure on any one individual.

These examples illustrate that, as a result of formalization of the *aksakal* institution, interpersonal relations on which traditional mechanisms of influence are based were reduced. In addition, a bureaucracy was developed, which allows workers of local self-government bodies to avoid personal pressure from *aksakals*.

Aksakals consider that formalization has not brought any cardinal changes to the life of their community, but mark the positive moment that *aksakals* are officially involved during decision-making as a separate body. It serves as a guarantee that local authorities will consider their opinion as a separate social group. They consider that formalization of a Court of *Aksakals* increases the value and role of *aksakals* in the community. One *aksakal* commented on this phenomenon: "Before formalization, we felt as a group holding a meeting in front of the governmental building, but now we have not only a tribune, but also a place in presidium".

Case-study with a partially formalized aksakal institution
Alga local community

In the Alga local community, Batken oblast, the *aksakal* institution has been partially formalized, having formed only the Court of *Aksakals*: they did not create a Council of *Aksakals*. The Court of *Aksakals* in the Alga local community consists of only *aksakal*, whose autharity is defined by the local Charter. Thus, the institution of *aksakals* was left out of the official structure of local self-management. However, an informal institution consisting of approximately 10-15 *aksakals* from the villages of Chunkur-Kyshtak, Alga, and Adyr has wide influence in the community.

The informal "office" of *aksakals* is the mosque in village of Chunkur-Kyshtak. Here, *aksakals* gather, discuss problems of their community, and even make decisions in the form of informal instructions, which they believe must be adopted by the official local authority. Thus, they penetrate into the competence of bodies of local self-government. Moreover, these *aksakals* have a powerful influence not only on simple inhabitants of the community, but also on official local authorities.

In 2002, during election of the head of the local community, *aksakals* supported and promoted a candidate who would consider their opinion, and easily yield to their decisions.[2] *Aksakals* have a strong personal influence on the head of local self-administration. However, many inhabitants are not happy with him "for lack of independence, absence of firm character, and corruption". The interest of *aksakals* in control over local authorities consists not only in performance of their requirements concerning morals and traditional norms[3], but

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[1] From the interview with Gulnara, employee of Kumbel local administration, Issyk-kul oblast, august 2004.
[2] From the interview with member of local council Erkin-ake, in Chunkur-Kyshtak village of Alga local community, Kadamjai rayon, Batken oblast, 12 September 2003.
[3] Example: interdiction for girls to wear skirts at school.

also in well-hidden personal material benefits. The sons of two of the most active *aksakals* are businessmen, and often require support from local authorities.

In the Alga local community, a union was formed of employees of local self-government bodies and the institution of *aksakals* (which informally controls this official body), which tries to control the entire community. For example, at assembly, during the election of the head of Adyr village, *aksakals* put forward their own candidate, and without waiting for the vote made a *bata,* contrary to legal election procedures. They thereby appointed their candidate to the post of the head of the village. The *bata* tool has appeared as a kind of informal "seal" in the hands of *aksakals*. No members of the community objected, except for some deputies of the local Council. According to one of local Council deputies, the person that was nominated as head of the village is "soft and obedient and is under *aksakals* influence". This deputy considers that *aksakals* thereby wish to strengthen their influence upon institutions of local government.[1]

The control of the *aksakal* institution over employees of institutions of local government, and on members of the community as a whole, is carried out not only by means of *bata*, but also by means of *uiat*. For example, in the attempt to gain control over the most independent deputies of local Council, *aksakals* used the *uiat* method: publicly having accused them of non-respect for traditions, absence of morals, and corruption. One of the deputies reacted by threatening to bring an action against the *aksakals* for blackmail and attempted pressure upon the deputy of a local Council.[2]

According to my observations in Alga local community, *aksakals* successfully took control over an executive-administrative body of local self-government, and tried to take control over the local Council. During the field research, there was a state of animosity between the institution of *aksakals* and the executive body of local self-government on the one hand, and the local Council on the other hand. Conflicts, provoked by rival attitudes, break effective interaction between institutions, and lead to a functional imbalance in the work local self-government bodies. The competing character of relations negatively influences the process of formation and development of institutions of local self-government, and the state structure as a whole. Such situation is a result of the absence of official competence of the *aksakal* institution, and formal norms regulating relations between bodies of local authorities and the *aksakal* institution.

These two examples show that formalization has affected the work of bodies of local authorities, and the process of state-building as a whole. In the first example, where the institution of *aksakals* was completely formalized, and two official bodies (a Court of *Aksakals* and Council of *Aksakals*) were created, interactions of these bodies with other bodies of local authorities are regulated and have more or less harmonious features. In the second example, where the institution of *aksakals* is partially formalized (a Court of *Aksakals* was created, but a Council of *Aksakals* was not), the state has left a free space of activity for the *aksakal* institution. This has enabled the *aksakal* institution to strengthen its position, due to informal influence over an executive-administrative, and has enabled it to compete with representative bodies of local self-government. This is the result of the absence of regulation

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[1] From the interview with member of local council Erkin-ake, in Chunkur-Kyshtak village of Alga local community, Kadamjai rayon, Batken oblast, 12 September 2003.

[2] From the interview with member of local council Erkin-ake, in Chunkur-Kyshtak village of Alga local community, Kadamjai rayon, Batken oblast, 12 September 2003.

over the activities of the *aksakals* institution, and its relations with official bodies of local authorities. In such a situation, the relation between them can be both the substitutive type and the competing type. A summary of these results are contained in Table 1.

	Institution	Mechanisms	Relations with official institutions of local government
Prior to formalization	*Aksakals*	Informal	Substitutive Competing
Case with partial formalization	Court of *Aksakals*	Formal	Formal
	Aksakals	Informal	Competing
Case with full formalization	Court of *Aksakals*	Formal	Formal
	Council of *Aksakals*	Formal	Formal

Formalization can be favorable in the determination of the competence of the *aksakal* institution, and regularization its relations with institutions of local self-government; thus making local self-government more effective and stable. It can promote substitutive features of the *aksakal* institution on the one hand; and on the other hand, it can contribute to reducing competing features in relations with institutions of local self-government. As previously stated, the law leaves the option of formalization of traditional institutions in the competence of communities. Thus, many communities have formalized the *aksakal* institution, and eliminated the rivalry character in relations of this institution with bodies of local authorities. Other communities have partially formalized it, and in these communities, the competition between the institution of *aksakals* and formal institutions of local government can still be observed.

Conclusion

The institution of *aksakals* survived seventy years of Soviet social modeling, and became stronger after the collapse of the USSR. This institution, which is based upon the principle of respect for elders, uses mechanisms of social control for maintaining the existence of a community through preservation of traditional values, norms, and customs. To realize this function, *aksakals* use informal tools, such as *uiat* and *bata*.

The institution of *aksakals* may have two different types of relations with official local government authorities. One is substitutive; where informal the *aksakal* institution replaces weak official local government institutions (especially in the sphere of water conflict resolution) and thus assists them to keep stability in the local community. Another type is competing, where an informal *aksakal* institution competes with the official local authorities for control over local community affairs, and thus creates a situation of rivalry.

Field research has shown that formalization has a positive impact on the functioning of local self-government. Formalization (co-optation of the traditional *aksakal* institution into the official local state structure) may promote and increase its substitutive features,

which become formal official functions, and eliminate or decrease competing features. Thus, formalization of traditional the *aksakal* institution promotes a state-building process.

However, one should not disregard the possible negative impact on state-building process. For example, an *aksakal* institution, which becomes part of the local government structure with the increased power of official status, can be used and manipulated for the purpose of creating public opinion, and decreasing public indignation in the personal interests of employees of institutions of local government. There were also some indications that authorities manipulated this institution for social mobilization during elections, referendum and other purposes.

Jack Knight, in his book *Institutions and Social Conflict,* studied the process of change of institutions, and confirmed that in this process "state actors, either administrative officials or political representatives, have their own interests" (5, c. 190). Further, he concluded that:

> "the state might also enhance the social efficiency of many social institutions. First, it may prefer it if state actors are directly affected by the consequences of the rule and if they will benefit materially from a more socially efficient rule. Second, the state may prefer a more socially efficient institution if state actors are indirectly affected by the rule through its effect on their ability to stay in power and they will benefit politically from a more socially beneficial rule. (5, c. 191)"

This issue needs further research and analysis.

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