

# Kazakhstan: *Adat* – the Traditional Conflict Management Mechanism in Central Asia

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**Abstract:** The following article is based on the three principles of the anthropology of law and portrays the experiences of the Chechens and the meaning of their cultural norms, especially in case of conflicts and conflict management, back home and inside a foreign country – Kazakhstan – and sometimes in a clash with the Sharia law and the federal/republican one. More specifically, this article will focus on *Adat* – norms of local customary law – in the traditional Chechen society. This study was developed in Karaganda (Kazakhstan) with the help of the data and information provided by the Chechen Veteran’s Council in Kazakhstan and the vice-dean of the Law Faculty in Karaganda and it found out that conflicts can be addressed through the extension of existing alternative dispute resolution mechanisms.

**Keywords:** Adat, mediation, teip, tukkhum, Kazakhstan, customary law, legal anthropology

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People have always looked for the most effective methods of resolving conflicts, in any context or at any level they may have happened. This constant search went through several stages and generated many methods and techniques of conflict management, but also acts defined as deviant in relation to the systems of values and norms in various places and times. Obviously, in our society today, formal justice comes first, followed

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by negotiation, arbitration and mediation techniques, which today have also been institutionalized. However, the complexity of conflicts in the modern and contemporary period has made them so that they are no longer enough and mankind has sought other ways to manage these situations, among them are more hybrid practices, such as private trial, the ombudsman, the med-arb procedure or the simulated court. Throughout this period of evolution, however, we have forgotten something, namely the traditional methods of conflict resolution, or the techniques used for hundreds or thousands of years by different communities around the world, which have passed the test of time and even efficiency in managing documents considered deviant by them.

Traditional practices and institutions have been revived across the globe. The successes of the particularized mechanisms of peace have developed a trend in which tradition and indigenous practices and institutions have been enthusiastically embraced and prescribed as a mechanism for preserving the peace and order of the community.

Contemporary Kazakhstan is a multiethnic and multireligious republic. Due to the massive deportation in the 40s and the two Chechen Wars in the 90s and early 2000, Kazakhstan is the home of a large Chechen population. Chechens are a unique cultural group. They share some common norms with other cultures, yet their historical narrative is locally rooted and bound in the Caucasus region (mostly to the remote areas in the mountains).

The following article is based on the three principles of the anthropology of law and portrays the experiences of the Chechens and the meaning of their cultural norms, especially in case of conflicts and conflict management, back home and inside a foreign country – Kazakhstan – and sometimes in a clash with the Sharia law and the federal/republican one. More specifically, this article will focus on *Adat* – norms of local customary law – in the traditional Chechen society. This study was developed in Karaganda (Kazakhstan) with the help of the data and information provided by the Chechen Veteran’s Council in Kazakhstan and the vice-dean of the Law Faculty in Karaganda and it found out that conflicts can be addressed through the extension of existing alternative dispute resolution mechanisms.

Clan disputes and conflicts are interdependent of other violent conflicts so this form of traditional conflict resolution can be extended towards other types of conflict. The reason behind this statement is one of the many proverbs the members of the Chechen Veteran’s Council gladly shared with us: knowing *Adat* and Sharia means to know about the consequences of your actions because you constantly know the punishment. In the following pages we will see how powerful this old saying is and how useful it is for proper and efficient conflict resolution.

The approach adopted in our article is that of legal anthropology. Therefore, we were guided by the specific objectives of this branch of anthropology: identifying normative

control systems, identifying how society and its members use the concept of justice to resolve conflicts and their interaction with other social control systems (Donovan, 2008). Legal anthropology looks at the law from a comparative intercultural perspective, the purpose being to identify the general principles of normative regulation of society. Specifically, this field of anthropology focuses on those social forces that create and maintain cohesive bonds in society (Donovan, 2008). In this context, legal studies have a special place due to the unique role that law plays in shaping society and culture.

Legal anthropology emerged as a distinct specialty in the 1920s, with the study of Bronislaw Malinowski, *Crime and Custom in the Savage Society* (1926). Although similar studies have been conducted before this time, Malinowski's study was a turning point for anthropology in general, given that his study was long-lasting, in the community studied and in its mother language. Malinowski's work was continued by Schapera and his study of the laws and customs of present-day Botswana. Within legal anthropology, Schapera's study is important because it describes both the customs/customs of the tribes and the modern legislation of the English settlers and how they work together (Donovan, 2008; Moore, 2005). Both of these studies were taken into consideration for our study.

Before continuing with the description of *Adat* and the Chechen traditional way of conflict resolution, we need to agree on a way to define four concepts without whom the rest of the article cannot be understood with ease.

The first one is *custom (customary law)*. Although it is generally accepted that customs have been the basis or source of formal law, no matter how much we study the subject, we fail to find a universally accepted definition of custom or customary law. The legal dictionary published by Henry Campbell Black in 1891 defines custom as a set of habits accepted as legal requirements or mandatory rules of behavior, practices, and beliefs that are so vital and intrinsic as part of a social and economic system, and which are treated as if they were laws. Tobin and Taylor (2009) add to this definition that it (custom) is dynamic and constantly evolving and often incorporates concepts and legal measures developed in other legal systems. Swiderska *et al.* (2009) provide a broader definition of custom, stating that it encompasses common visions, principles or values, rules, codes of conduct, and established practices. According to them, all these are applied by the community institutions and may have sanctions attached. Customs are especially common in small communities and are considered essential to their very identity. Defining the rights, obligations and responsibilities of members related to important aspects of life, they are accepted as mandatory rules of conduct by their members. By its very nature, custom gains its legitimacy by being accepted by individuals who submit to it. Therefore, in situations of conflict between custom and law, the former may have greater legitimacy and be respected to the detriment of the formal one, as we will see later in the article.

The second concept we need to look at is law. Traditionally, values are a solid basis for the social order, through their ability to ensure social solidarity. This concept assumes that within society there is a general understanding of accepted norms and behaviors or not (Parsons, 1968; Durkheim, 1984). This position requires from the outset a clarification of what is supposed to be the norm or the law, in order to understand why the members of a community choose to respect them, violate them or adapt them to their specificity. The Oxford Dictionary (cited by Donovan, 2008) defines law in two ways, (1) a rule of conduct imposed by the authority and (2) the body of rules, whether deriving from formal adoption or from customs, which a particular state or community recognizes as binding on its members or subjects.

Although they are in fact two approaches, one substantial (first) or functional (second) and regardless of how we position ourselves towards them (the two approaches are positioned differently from each other, the first takes into account the external criterion and the second is focusing on the effects of the law for the individual), we expect the law to regulate interactions between group members. In this sense, the law has two approaches. The first approach is one that promotes learning appropriate behavior (the aspirational dimension), showing the individual how to behave. The second approach, the prescriptive one, does the same thing, however, by punishing those who deviate too far from the established standards (Donovan, 2008).

The third concept we need to define before continuing with the applied part of our article is the *norm*. In this case, we will accept the definition given by Jack Gibbs (1963). According to him, the norm involves a collective assessment of desirable behavior, a collective expectation of the behavior of individuals; and/ or particular reactions to a particular type of behavior, including the sanction of a particular behavior.

The last concept we need to clarify is *deviance*. As we saw above, over time, society has created norms and values that indicate to their members the dichotomy of good-bad, moral-immoral or right-wrong, thus drawing some boundaries within which the behavior of members is considered appropriate. Thus, depending on the behavior in society, an individual can become compliant with the rules and values imposed by society or, conversely, nonconformist or deviant, manifesting a behavior of opposition or denial of norms or values dominant. Given that these boundaries are flexible and Durkheim's (1984) statement that deviance is normal in any society because no authority can impose full compliance of its members, we observe that an individual can conform to the values imposed by society or it can oppose them, thus being transformed into a deviant. In turn, deviance (understood as any violation of rules, either written / official or unwritten / informal) takes two forms: in the case of unwritten or informal rules, the phenomenon of social deviance occurs, understood as any deviation from the moral code and cultural behavior of the group (eg. indecent behavior), but which is not sanctioned by formal law. On the other hand, any violation of formal laws or any

action that endangers the safety of individuals turns deviance into delinquency or crime (eg. theft or murder). Deviant behavior thus becomes, according to Agabrian (2003), “an atypical behavior that violates recognized social norms and violates institutional expectations, conflicting with accepted standards within a group or social system, both socially and culturally” (p. 183).

### **Chechnya’s specific clan organization**

Chechnya is a clan society. Chechens identify themselves as belonging to one of roughly 150 *teips* (large clans), sometimes referred to as tribes. *Teips* are subdivided into several branches (*gars*), split into patronymic families (*nekyes*). *Nekyes*, in turn, are subdivided into groups of related families spanning up to seven generations (*shchin-nakhs*), which are further subdivided into nuclear families (*dözals*) (Souleimanov & Aliyev, 2015). For the Chechens it’s very important from which *teip* they belong. Every member of the *teip* feels responsible for the behavior of another member and the *teip* (as a whole) is responsible for the actions of its members. If one of the members of a community did something wrong to another one from a different *teip*, the members must go to that *teip* and apologies and ask forgiveness. If a solution is not possible (even in the case of a punishment from the government), the members should discuss/decide the problem with the *teip* (both of them).

The clan, or *teip*, has always played an important role in Chechen society. Its importance predates the arrival of Islam (Hille, 2010). Members of the same *teip* claim descent from a common ancestor and are considered blood relatives and *uzdens* (communal peasants) of equal rank. Each clan had a distinct name derived from its founder, occupied a definite territory, but not necessarily in a single area, and possessed an eponymous mountain. A *teip* consisted of one or more villages, and as such clan loyalties could cut across geographical divides. Each *teip* had its own elected council of elders, the court of justice and its own version of customs and traditions (Jaimoukha, 2005).

The *teip* are run by a clan elder who is chosen by the clan. The clan elder acquires his position based on his achievements in life - bravery in conflict, a strong economical position or a strong sense of justice. In the 19<sup>th</sup> century, there used to be a civilian clan elder and a military one. A clan elder can be old, but also middle and young age (Hille, 2010). Within the clan, the clan elder is responsible for the resolution of conflicts and blood-feuds between members. Part of the clan culture is hospitality which is given even to enemies when they ask for help. There is however also blood vengeance which will never interfere with hospitality. When an enemy leaves the house, he is given a specific amount of time after which his host can run after him and perform that act which evens the blood vengeance. The clan can be safety characterized as a closed society due to the fact that clan members are accountable to their clan and have to protect their fellow clan members (Hille, 2010).

Another important system of social organization in traditional Chechen society is the *tukkhum*. There are nine such *tukkhums* in Chechnya right now. A *tukkhum* is a grand alliance of familial clans or *teips*. The *tukkhum* brings together clans which are unrelated by blood but united in a higher association for the joint solution of common problems - the protection from enemy attack and economic exchange. *Tukkhums* occupied a specific territory, which consisted of them actually populated areas, as well as the surrounding area, where the *teips*, which were part of *tukkhums*, engaged in hunting, farming and cattle breeding. Each *tukkhum* spoke their own dialect of the Vainakh language. *Tukkhums* could vary in size from a few *taips* to several dozen. In Chechen society, size mattered, since influence and power were generally commensurate with how big the family, clan and tribe were, and this partly explains the Chechen obsession with procreation and the enthusiastic welcome of 'asylum seekers' (Jaimoukha, 2005).

*Tukkhums*, in contrast to the *teips*, had no official head or commander. Thus *tukkhums* was not so much a control body but a social organization. Everyday issues were deliberated by the Council of Elders composed of equal representatives of all *taips*. Members of a *taip* were generally not allowed to marry within the clan, but were obliged to seek marriage partners from without the *taip*, but within the *tukhum*. This system ensured that despite strife within them, *tukhums*, among themselves, were on the best of terms. The wisdom of this arrangement manifested itself several times in Chechen history with the entire nation standing as one in the face of many an external foe. The Council of Elders would convene to address inter-*teip* disputes and differences, to protect the interests of the individual *teips*, and *tukhums* in general. The Council of Elders had the right to declare war, conclude peace, to negotiate with the help of their own and others' ambassadors, make alliances and break them. *Tukhums* were leaderless in normal conditions, but in case of external danger, leaders would be quickly chosen and empowered to deal with it. Finally, the tribal union of all the *tukkhums* forms the Kham or the whole Chechen nation.

### ***Adat* and *Nokhchallah* - the foundation of the Chechen society**

The Chechen collective culture retains early beliefs, values and behaviors that are rooted in a specific code of socio-cultural norms – *Adat* – and the spirit of being a Chechen – *Nokhchallah*. Even if the customary laws can be traced back to the pre-literate era, the preservation of Chechen norms is ensured through generations because the Chechens teach their children *Adat* from youth through verbal means. Chechens learn, memorize and teach tales throughout their lives. As mentioned above, tales are an important element of Chechen communication, used to convey meanings, transmit lessons and explain events and situations. Chechens express norms and behaviors through simple anecdotes. Chechen norms are strict, allowing for little variation or deviancy and the collective nature of Chechens ensures that every individual and family is held account-

able to these norms. Basically, *Adat* is a set of ideals – indisputable, propagated and internalized (Layton, 2014).

The Chechens lived in their strong and clearly defined community, with its complex social layering and clan mentality and bound together by a common interest, tied together by a code of conduct named *Nokhchalla*. The word *Nokhchallah* can't be translated per se. But it can be explained. *Nokhcho* stands for the *perfect* Chechen. Therefore, *Nokhchallah* brings together all the specific (perfect) properties of the Chechen character. It implies a large spectrum of moral and ethical norms. *Adat*, the Chechen customary law, is part of *Nokhchallah*. If *Adat* represents the institutional norms, whether codified or not, *Nokhchallah* is what those norms create in a Chechen's person. Chivalry, gentility, diplomatic skills, generosity and reliability are the qualities which a child must know from his youth. Most importantly, *Nokhchallah* made them, according to themselves and many observers, hospitable, tolerant and non-aggressive to (non-aggressive) outsiders (Gammer 2006: 3-4).

Now, after the interviews with the members of the Chechen Veterans Council in Karaganda and the available literature, we can trace the sources of *Nokhchallah* to the rough life conditions that the Caucasus offers to its inhabitants. For example, in the severe conditions of the Caucasus, the refusal to open the door to a stranger could lead to lethal outcomes. He could die due to fatigue or famine, fall prey to a wild beast or robbers. The Chechen tradition, which has been held sacred, demands that a stranger be welcomed in, seated by the fire, offered food and shelter for the night. Hospitality is, thus, *Nokhchallah*. Politeness and willingness to compromise are *Nokhchallah*.

*Nokhchallah* demands that Chechens respect all other men, regardless of their social origins, family background and religious beliefs. The bigger the difference between a Chechen and someone else, the more respect the Chechen must show to the later. The reason for this is the Chechen believe in the afterlife: a Chechen have a chance to be forgiven for hurting a Muslim's feelings because, people say, he can meet the person on Judgement Day. But all is lost if a Chechen have hurt the feelings of a person of a different creed because there is no chance of ever meeting him. The sin will stay with him forever.

*Nokhchallah*, nor *Adat*, is not a book of what you can do or not. It is their own free will that the Chechens obey its rules. *Adat*, this code of conduct finding similar strains among all Caucasian societies (but also Central Asia and SE Asia), has regulated Chechen behavior for centuries. As previously shown, respect for elders and veneration of ancestors were of utmost importance, as well as the strict rules of hospitality. Courtesy in public and private behavior, relations among families and clans and moral ethics were all ruled by *Nokhchalla*, and all Chechens obeyed these rules out of communal necessity.

In the same time, the Chechens are also Muslims. The rules and norms which developed under the leadership of Muhammad evolved into the *Sharia*, which dictates how the

pious Muslim must live his life. Religious leaders (ulama) had to guide the community to ways of external conformity, as required by *Sharia*. *Adat* has to be differentiated from the *Sharia* law which finds its basis in religion and was introduced in Chechnya only for a very short time after the first Russia-Chechnya war by the president Maskhadov (1998). Even though from 1920 soviet law and latter Russian law were imposed, the traditional *Adat* remained important within families and society.

### ***Adat* in Chechnya**

*Adat* is the generic term derived from the Arabic language for describing a variety of local customary practices and tradition in North Caucasus, Central Asia and Southeast Asia (Hauser-Schäublin, 2013). Within these regions, the term refers, in a broader sense, to the customary norms, rules, interdictions, and injunctions that guide individual's conduct as a member of the community and the sanctions and forms of address by which these norms and rules are upheld. *Adat* also includes the set of local and traditional laws and dispute resolution systems by which society was regulated (Ooi, 2004). The term of *Adat* can refer to one of the following: "law, rule, precept, morality, usage, custom, agreement, conventions, principles, the act of conforming to the usage of society, decent behavior, ceremonial, the practice of magic, sorcery, rituals". Therefore, he contends that the precise meaning of *Adat* depends upon a particular context.

Following the dissolution of the Soviet Union, *Adat* practices in Central Asia began to resurrect among the communities in rural areas. This was largely due to (1) the lack of legal and law enforcement institutions in many parts of the region and (2) the lack of trust of the community in these law enforcement institutions. The federal constitution also contributed to this process, since it empowered some traditional institutions, such as councils of elders (*aqsqaqs* – white-bearded), with some administrative authorities (Abazov, 2005). In North Caucasus, traditional clan-based systems of self-government, which had been functioning underground since the 1950s, began to reappear in response to the federal government's neglect. Because of the loss of Islamic scholars and literature during the Stalinist years, the *Adat* that emerged contained almost no elements of Islamic law. However, more and more Muslim scholars participate in *Adat* proceedings.

Before the arrival of Islam, the peoples of the North Caucasus had long-established codes of legal and civil law, which in the Islamic period came to be known by the Arabic term *Adat* (customs). While in Chechnya and Dagestan some uniformity in *Adat* customs existed, in the Northwest Caucasus and particularly among the mountain peoples, various forms of *Adat* functioned, based primarily along clan lines. In matters involving criminal offenses, the foundation of the *Adat* is the principle of reconciliation and the re-establishment of equilibrium in the community (Comins-Richmond, 2004). While *Sharia* punishments are not unknown among the Caucasian peoples, in the Northwest, they are quite uncommon; on the other hand, the western method of imprisonment is

completely alien. Rather, the focus of *Adat* is on the material loss sustained by the crime victim; the criminal act itself is not particularly relevant. According to the members of the Chechen Veterans Council in Karaganda (Kazakhstan), Chechens know the consequences of their actions. For example, in case of a murder the “blood” is being “paid”. The relatives have the right kill the one who killed before. Another example is the one of a taxi driver who is responsible for the death of a passenger in a car accident who can pay for his life (money or nature). The role of the mediators is to determine the compensation the injured party is willing to accept in order to obtain reconciliation (Comins-Richmond, 2004). When the criminal offense causes no actual material loss – as in the case of physical assault, for example – the *Adat* process establishes a value to the offence suffered by the victim in a manner similar to the ‘pain and suffering’ judgments in western civil courts (an exception is sexual assault, which is usually addressed by compelling the offender to marry the victim).

Furthermore, compensation is not considered a right of the victim, but rather an obligation: injured parties who refuse mediation are subject to ostracism and even hostility by the community at large. With the exception of specific serious crimes, the republican judicial system is used primarily as a threat to a criminal who is hesitant to agree to the terms of mediation. If the authorities become involved in a matter, the injured party will most often refuse to cooperate in a prosecution. On other occasions, the mediators will intervene in the republican court in an effort to reduce the guilty party’s sentence. The most notable exception is premeditated murder, in which case the family of the victim usually insists the matter be taken up by the republican court and calls for the most severe penalty, apparently seeing capital punishment as a corollary to the tradition of vengeance, a long-standing exception to the *Adat* system. In addition, there is an element of familial responsibility in a criminal case. The family of the offender must take specific steps, through the aid of the mediators, to reach a solution, and thus reconciliation, with the family of the injured party. Even when cases dealt by the republican court, as in premeditated murder, the mediators still play this role, as they did throughout the Soviet period. Occasionally, village residents unrelated to the case at hand will become involved, particularly if the case is sent to the republican court (Comins-Richmond, 2004).

*Adat* also regulates issues of inheritance, settling disputes between rival claimants, family and personal relations. Thus in the vast majority of cases, *Adat* is a flexible system, the ultimate goal of which is the maintenance of stability in the community and which functions quite well, even when the parties involved are of different ethnic backgrounds. Even Russians living in North Caucasus villages will often (but not always) refer certain cases to mediators (Comins-Richmond, 2004).

The *Sharia*, by contrast, represents a series of religious precepts and guidelines developed over the first few centuries of Islamic history and regulates all aspects of a

Muslim's life, both public and private. Before the introduction of a centralized government into the Caucasus, the tribal society in which Chechens lived was characterized by communal responsibility. Islam introduced different concepts, legal procedures and the means of carrying out justice (Zelkina, 2000). The idea of personal responsibility for crimes was a new idea to the Chechens and *Sharia* stressed this point. One dimension of *Sharia* deals with criminal matters, and it is from these principles that Islamic scholars render legal judgments. Mastery of *Sharia* requires many years of study, and so unlike *Adat*, where the parties to an action are involved in the resolution, a *Sharia* judgment can be issued only by a trained imam whose opinion cannot be challenged except by another qualified scholar (Swirszcz, 2009). While there is some flexibility in sentencing, corporal punishment is prescribed for nearly all criminal offenses, although material compensation is also possible in many cases. Regarding the issues of inheritance, *Sharia* has no flexibility whatsoever, as shares for immediate relatives are specifically stated in the Quran, which cannot be superseded by any other text, scholar or law. A third dimension of *Sharia*, the *Fiqh As-Sunnah*, governs aspects of a Muslim's life that are not considered within the realm of legal or civil jurisprudence in either *Adat* or Western systems: dress, food and drink, public behavior, bathing and so on. While *Sharia* and *Adat* can theoretically coexist, the complexity and pervasiveness of the first would in practice relegate the later to a minor role.

In the North Caucasus, the integration of the two systems followed an opposite pattern: only those *Sharia* laws that did not contradict *Adat* practices were successfully adopted. Chechens readily accepted Sufism as it was more akin to their introverted character and fitted well with their social system. According to Vakhit Akaev, Director of the Humanities Research Institute of the Chechen Republic: "Sufi ideology easily lends itself to adapting to popular beliefs, customs and traditions. This peculiarity, enabling the incorporation into Islam of elements of popular culture related to the cult of ancestors, elders, native land and etiquette, led to its massive dissemination among the Nakh and Daghestanis" (cited in Jaimoukha, 2005, p. 123). This is what attracted the Chechens to Sufi orders, allowing them to accept Islam on a personal, mystical level. This also explains the constant clash between Chechen's "folk" Islam and the *Sharia*-minded fundamentalists, because the majority of Chechens have consistently resisted a rigid interpretation of Islam (also brought by foreign influence). In the Northwest Caucasus, where Islam never became fully integrated into society, *Sharia* always played a negligible role (Swirszcz, 2009). In 1997, Muslim leaders put pressure on Maskhadov to institute *shariat* as the law of the land. After some hesitation, the president acquiesced to this demand, with a provision for introducing a secular criminal code for non-Muslims. Most Chechens were not very impressed with these developments. When an order was issued requiring Chechen women to abide by the Islamic dress code, it was largely ignored. Many Chechens discovered that punishments meted out the Muslim way were degrading and at odds with their customs and traditions. Over time, any distinction between the two systems was lost and

the resultant fusion was perceived by its practitioners as an Islamic legal system, even though the majority of the practices were derived from pre-Islamic traditions, including rituals that involved alcohol consumption, ancestor worship, sympathetic magic and other forbidden kinds of behavior (Comins-Richmond, 2004).

### **The Chechen way of conflict resolution**

Conflicts differ from one and another and the Elderly Council must understand the situation. According to the members of the Chechen Veterans Council in Karaganda, sometimes Sharia contradicts *Adat*. For example, in case of separation (divorce), *Adat* say that the child must remain with the father and to continue living in the same taip. On the other hand, *Sharia* says that a child must stay with the mother, and move to her taip. In these types of conflicts, the Elderly Council can decide differently. Sometimes, if the mother has a second husband, the child can go back to his father and it's the responsibility of the tapes for any future accidents or conflicts.

*Adat* courts consist from five to ten judges selected from the elders and with knowledge of the *Adat* norms. The mediators decide on a compensation in money or in nature for each crime. If the injured person recovers, the guilty person and its family organize a reconciliation dinner for the victim and his relatives where they try to reach an agreement on compensation. If the victim dies, the family of the killer gives money, cattle, participates in the organization of the funeral and helps the orphans. If reconciliation fails, the injuring family leaves its settlement either on its own or after a decision of the rural gathering (ostracisation). This can be for a while or permanently (Hille, 2010).

Other customs and procedures of *Adat* were presented by the members of the Chechen Veterans Council in Karaganda. Extramarital relations were punished severely by the community. If a man had an unlawful relation with a married woman, he had to pay ten cows before being banished for good from the community. A similar offence with an unmarried woman or a widow was penalized by the payment of seven cows. If a man took his wife's life, he had to pay 85 cows to her family if the marriage was childless and only 12 otherwise.

If a person committed an offense unworthy of his name, the elderly council decided to rename it and give a disrespectful nickname. As in the case of many traditional communities, we can see here that shame is also used by the Chechen as a form of punishment: "Ban on the name of a person who has committed an unworthy act".

Another form of punishment in the Chechen clan-structured society is the ostracism – the rejection of a relationship with a member of the group who had unworthy misconduct. Also the relatives publicly renounced at the relationship with that person. He (the offender) has lost the patronage and protection of the family and became an outcast. Relatives do not bear in this case responsibility for his actions (in our previous pages

we talked about the fact that the members of a *taip* are responsible for the actions of the other members). Expulsion from a related group led to the fact that an individual has lost the social and physical protection. If a person committed socially reprehensible action, he was condemned in a public place. If a member of society committed more serious misconduct, he is cursed by the community in a public place and, most often, he leaves the village.

According to the members of the Chechen Veterans Council, the punishment for a serious antisocial offense (murder, treason, adultery, serious offence towards a widow or an orphan) was the burial of the offender in a round hole – “the pit of sin”. The offender’s body is placed in the fetus position with both hands closed over the face “like a sinner”, representing the shame for their actions before God and men. Then, each member of the community is cursing him and throwing stones at him.

The most severe forms of social stigma in Chechnya is the expulsion from the village beyond the fatherland. This measure will apply to persons who have committed a particularly shameful crime – cowardice in battle, betrayal of the motherland, incest, non-compliance with the custom of hospitality, blasphemy and other violations of the *Adat*. The Chechens expulsion was accompanied by the imposition of the criminal curse, in which every single villager should participate. On the day when the decision of the curse is given, no one could stay at work or be absent. If someone tried to skip the participation in the ceremony, his behavior was seen also as a crime. The ceremony of the curse was accompanied by a roar: all the inhabitants, simultaneously, are standing at the threshold of their homes, actively pounding in pots or other loud ringing dishes or fired guns into the air. After that, the offender was forced to immediately leave his native village. The outlaw became really the “former”, because he is deprived also of the right to wear the family name.

Take another example. A man steals a horse only to fall off the stolen animal and break his neck. Pagan law holds the owner of the stolen horse responsible for the thief’s death. *Adat* holds no one but the dead thief to blame for what has happened: he stole another man’s horse and his kinsmen ought to apologize for this. They have to give a gift to the owner of the stolen horse and, naturally, return the animal.

Another example is that *Adat* demands that a man keep order where he lives. A Chechen has two homes, a private (his regular home) and a public one (the village square.) Imagine, for example, that fighting breaks out on the village square. The farther from the square the fighters live, the more they will have to pay in reimbursement for the damages (Jaimoukha, 2005). *Adat* envisages different payments for wounds inflicted on the left and right-hand halves of the human body.

As a more recent procedure, the members of the Chechen Veteran’s Council gave us an example regarding a nephew that died in a car accident. Old relatives and old people

gathered and began investigating the accident (who's to blame). After all aspects are discussed, the old people decide the solution. The decision and the procedure are very objective. Parties can say that they don't like any elders to be involved. In this case, the procedure continues until this situation is resolved (saying NO for an elderly to be a member in the Council means replacement).

When we asked them about the possibility of not reaching a solution inside this Council, the members of the Chechen Veteran's Council responded that the main aim of this Council and the parties involved is to eradicate the conflict. The most important argument is that the conflict will influence future generations if not resolved, so it's very important to resolve it now. If the decision is not respected by one/all parties, this means less respect for them (from the other members of the community), meaning they became outsiders. For the Chechens, it's very important to be part of the society (community) so a very harsh punishment is isolation.

The procedure is close to arbitration but, if one disagree with the decision, the procedure continues until a new one. Sometimes they have a mediator. This is the oldest person and he must be untouchable (independent) and respected by both parties. His job is to translate and transmit information and emotions between the parties.

### **Blood feuds**

*Adat* also include the set of local and traditional laws and dispute resolution systems by which society was regulated. One of the most important one regards the blood feuds as a form of dispute resolution.

The words "revenge", "feud", "vengeance", "retribution", and "retaliation" have many meanings. In contrast, the term "blood revenge" typically refers to a more specific, context-bound form of revenge – that is, the desire to kill an offender or his (usually patrilineally delineated) male relatives in retaliation for a grave offense committed against oneself or one's relatives. As a rule, women and children are not targets of blood-revenge (Souleimanov & Aliyev, 2015).

The custom of blood-revenge has some common characteristics across societies that practice it. First, it is closely tied to the notion of honor. Described in anthropological studies as an inseparable attribute of honor in honorific cultures, blood revenge is, above all, expected to defend or restore one's honor (Nisbett & Cohen, 1996; Shackelford, 2005; Sommers, 2009). As Jon Elster (1990) observed, honor is central in all feuding societies. Part of the clan culture of honor is hospitality which is given even to enemies when they ask for help. There is however also blood vengeance which will never interfere with hospitality (When an enemy leaves the house, he is given a specific amount of time after which his host can run after him and perform that act which evens the blood vengeance.

The practice of blood feud has largely disappeared in societies that have undergone industrial development, a centralized government, a strong state authority or the decomposition of tribal-based or clan-based social structures. Nevertheless, it continues to survive and thrive in some parts of the world. Despite the ongoing processes of modernization and urbanization in Chechnya, traditional socio-cultural values and archaic patterns of the social organization remain largely intact among the Chechen people. These patterns are evident in the persistence of three key phenomena: clan identity, the concept of honor and the custom of blood-revenge (basically *Adat*).

Severe offenses historically include extreme verbal humiliation, physical injury resulting in incapacity or death and especially manslaughter or rape. Such blood insults can lead to the declaration of a blood feud (*ch'ir*) by the individual directly offended or by one or more of his or her male relatives. The restoration of an offended individual's honor (or that of his or her clan), requires the offense be "washed off" with the blood of the perpetrator, his brothers, or his cousins. Thus, in some cases the initial act of retaliation transforms the offender into the offended, creating a vicious cycle of reciprocal violence that can last for generations, because blood feuds have no expiration date (Jaimoukha, 2005).

As a procedure, blood revenge and blood price were meticulously regulated in the *Adat* code. It even have a very strong reason to be used: had it not been for the deterrent punishments laid out against murder and mutilation, chaos would have ruled the land and human life would not have been respected. Before the promulgation of a vendetta (*dov*), rigorous attempts would have been made by third parties to effect a reconciliation, or at least to limit the scope of punishment to the guilty party and spare other members of his family and clan. There were three ancient means for a murderer to escape immediate retribution and defer his case to a tribal council. He could take refuge in the house of the murdered man and suckle, willing or not, at the breast of his mother (later, mere touching of the breast was enough), thus retroactively becoming his milk-brother. The second method was to touch the hearth-chain in the dead man's house, signaling his joining the victim's household. The third was to let one's hair and beard grow and then go without weapons to the grave of the deceased in dilapidated attire and contrite state and let the kin of the deceased know that he was earnestly asking the gods for forgiveness (Jaimoukha, 2005). The charade was put on for the benefit of the village elders who would presumably take pity on the sorry figure and intercede on his behalf. A special *taip* council had the responsibility of deliberating and pronouncing judgment on blood-revenge suits and of determining compensation (*tam*). Upon the death of a member of the community, it would convene to decide on the means to avenge the deceased. Generally, only members of the family and close relatives of the dead had the right to take part in the vendetta (collectively called '*ch'irkhoi*'= 'avengers'), whereas the role of the other members of the *taip* was to ostracize the murderer.

### 3<sup>rd</sup> party

Chechen chiefs, elders and tribal councils upheld *Adat*, maintained order, (re)distributed lands and protected their communities from external threats. The elders were primarily chosen for their legal knowledge and chiefs for their military skills (ten Dam, 2011). Assembly-councils and elder-councils (mehq-quel, akhsaks) could decide over life and death, even in matters not concerning crimes and violations. Yet, these councils did not decide on all matters. Disputants could select non-elders as judges and provided (male) relatives to take an oath in court; the graver the alleged crime, the greater the number of (con)jurors. Judges punished “ordinary” crimes, like theft, by fine or banishment, not by beatings, mutilation or death, as possible under Islamic law, though the latter sanctions were possible for intra-community crimes. Women could not be witnesses or (con)jurors, or two of them counted for one male (Luzbetak, 1951).

Clans are run by a clan elder who is chosen by the clan. The clan elder acquires his position based on his achievements in life which can be bravery in conflict, a strong economical position or a strong sense of justice. In the 19<sup>th</sup> century, there used to be a civilian clan elder and a military one. A clan elder can be old, but also middle and young age. Within the clan, the clan elder is responsible for the resolution of conflicts and blood-feuds between members.

The clan elder plays a central role in the process of dispute resolution as the justice of the peace. He acts as the mediator in resolving any kind of disputes between inhabitants of the same village, including disputes over land. He is seen as the pillar who upholds *Adat* law and thus he becomes the primary actor in the society for settling problems. Since there are no strict rules for resolving conflicts, the clan elder decides which approach and *Adat* rule to apply in each case. The primary means of dispute resolution is mediation in which the clan elder will seek reconciliation to achieve the best interests of the disputing parties. This process is crucial in maintaining peacefulness and establishing order within this society.

However, if the *Adat* mechanism fails to end the conflict, the clan elder facilitates further negotiation between both parties until they reach an agreement or find another way to settle their dispute. Not infrequently, the clan elder can suggest that the disputing parties appeal to higher administrative officials or experts (mostly in commercial matters). They may also bring the case before the state court, as a last resort. The *Adat* council head and *Adat* elders who sit in the council are chosen based on their knowledge of *Adat* norms, their authority and position and reputation. In some communities, the role of the *Adat* council is recognized only in the area of conflict resolution and in solving problems related to the breach of *Adat* rules. No salary or any other benefit was given to the *aksakal* judges for their work. The fact that the local population recognized them as “wise elders” was thought sufficient to both qualify and reward them for the new job.

## Concluding remarks

Our article presents the traditional conflict resolution mechanisms used by the people from Central Asia, considering the Chechens in Kazakhstan as a case-study to show how the moral code of this population shaped its own justice system. During the research phase, we found out that there are specific factors which need to be taken into consideration when addressing alternative dispute resolution practices in the North Caucasus because both the formal and informal ways of conflict resolution conduct the actions of the Chechens. Currently, the two systems are often in conflict, as they do not always share the same view on a matter. State justice protects and prosecutes the individual. Informal justice mechanisms, as used by the clans, are primarily concerned with achieving justice for the group, sometimes at the expense of the individual's personal rights and freedoms.

Many of the clan-based indigenous peoples of the North Caucasus have a rich history of informal conflict resolution. Incorporating clan-based conflict resolution mechanisms into informal justice mechanisms, such as the use of alternative dispute resolution under the supervision of the state can lead to two very important things: (1) it will reduce the incidents of clan-based violence as parties to a dispute have greater access to justice mechanisms and (2) it will improve local management of disputes and their successful, peaceful resolution, as the method used for reconciliation respects the local traditions and practices. Incorporating clan-based conflict resolution mechanisms into state practices provides several types of justice (formal and informal) to the population, while maintaining sensitivity for cultural preferences (individual rights versus restoring social relations). It also recognizes the importance that clans have as part of the society of the North Caucasus and can play a vital role in stabilizing the region.

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