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## **Developmental Trajectory of *Mahalla* Laws in Uzbekistan: From Soft Law to Statutory Law**

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### **Table Contents**

#### **Introduction**

- I. The Structure of Uzbek Law: The Co-existence of Statutory Law and Soft Law
- II. Overview of Existing Laws Regulating Mahalla Activities
  - 2.1 The Mahalla Law (1993, 1999, 2018)
  - 2.2 The 2018 Law on Elections of Chairpersons (Aksakal) of the Citizens' Assembly
  - 2.3 The 2013 Regulation on Providing Social Welfare to Low-income Families
  - 2.4 The 2018 Regulation on Neighborhood Watch (Mahalla Posboni)
- III. Direction of Legal Development
- IV. Certain Legal Contradictions with Regard to the Nature of Mahalla
  - 4.1 Public Non-intervention into the Fair Elections of the Mahalla Chairperson
  - 4.2 The Legal-Terminological Dilemma in Article 16.
  - 4.3 Positioning the Mahalla Chairperson and Other Staff Within the Category of a State-salaried Employee
  - 4.4 Unclear Legal Authority
  - 4.5 The Coordination Council

#### **Conclusion**

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## Introduction

In the wake of the post-*perestroika* period, the national political elite groups in Uzbekistan viewed the *mahalla*<sup>1</sup> as a unique self-governing platform with a promising capacity for democratic involvement. In the context of the public administration reforms in Uzbekistan in the post-Soviet period, the policymakers made a similar assertion that *mahalla* manifested a significant potential to successfully perform the role of a democratic institution, albeit with peculiar national characteristics. Subsequently, systematic reforms in the form of legal intervention character resulted further in a republic-wide *mahallisation* process and transformation of *mahalla* into a complex system with both public and non-public administrative functions.

The purpose of this research paper is to examine the laws on *mahalla* from a dynamic perspective and demonstrate the legal evolution of this neighborhood association in the wider context of the sophisticated structure of Uzbek law. The dual nature of the research objective necessitates splitting this paper into several parts. The initial section focuses on the structure of contemporary Uzbek law and its distinctive characteristics. The following section provides an overview of basic laws guiding contemporary *mahalla*. This order will enable an unfamiliar reader to understand the specifics of local legal structure and their influence on the activities of *mahalla*. The next section aims to analyze the milestone developments in *mahalla* laws in the period between 1992 and the present, and clarify this institution's legal evolution. In the context of legal analysis, this research paper argues that certain statutory provisions undermine the theoretical grounds of the self-governance concept, and eventually result in legal contradictions. In 2016, Uzbekistan experienced a transition of presidential power. Within the last two years, the new president has initiated wide-scale reforms, including in the area of public administration. Hence, a legal analysis of primary laws guiding *mahalla*, most of which were amended in 2017 and 2018, may help researchers and practitioners to conceptualize the character of past, present and future of *mahalla* and its functions.

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<sup>1</sup> Present paper uses the term *mahalla* in both its singular and plural forms.

## **I. The Structure of Uzbek law: The Co-existence of Statutory Law and Soft Law.**

A brief look into the general history of Uzbek law demonstrates that within the last century it evolved in a very unstable manner. Before the Russian tsarist invasion, the legal system in the territory of present-day Uzbekistan was based explicitly on Islamic (Sharia) law. Subsequently, in the next half a century of Russian tsarist administration, this territory was referred to as Turkestan, and experienced a transformation towards establishing a non-religious legal system based on civil law tradition. This period is also known for the co-existence in certain territories of Turkestan of civil law tradition with Islamic law. From 1920 to 1990, the Uzbek Soviet Socialist Republic composed one of the 15 union republics of the Soviet Union that had a legal system modeled on socialism. Notably, it was only under the Soviet socialist system that higher educational institutions started producing legal professionals *en masse*.<sup>2</sup> Hence, as a result of sophisticated historical circumstances, Uzbekistan's statutory law, the judicial system used to manage this law, and its legal professional consciousness are heavily influenced by Soviet law and the legal systems of other post-Soviet republics (for example, Russian law).<sup>3</sup>

On the other hand, associating Uzbek law as a typical creature of the Soviet legal system does not adequately reveal its true nature. While the 70-year period of Soviet rule formally dismantled Islamic (Sharia) law, it did not completely erase it. Whereas massive pre-Soviet and Soviet changes abolished the formal existence and application of Islamic laws (such as *Shariat, fikh*) and dispute-resolution instruments (such as *kazi*, a judge in an Islamic court), the deep-rooted Islamic practices transformed into the indigenous informal legal system in the form of *urf, adat* - (custom, or social norm) and

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<sup>2</sup> A. Agzamhodjaev and B. Blinder, *Yuridicheskoe Obrazovanie v Uzbekistane* (Tashkent: O'zbekistaon, 1990);

A. Agzamhodjaev and B. Blinder, *Tashkentskiy Gosudarstvenniy Universitet Imeni V.I. Lenina. Yuridicheskij Fakul'tet* (Tashkent: O'qituvchi, 1980).

<sup>3</sup> William Butler, *Uzbekistan Legal Texts: The Foundations of Civic Accord and a Market Economy* (Kluwer Law International B.V., 1999), xii.

continued to exist in Uzbekistan even in the Soviet and post-Soviet periods.<sup>4</sup> This indigenous informal legal system was created within domestic settings and is based on social norms. Derived from social relationships, this soft law is different from statutory law because it is not created and enforced by a central authority, and thus has no adequate means for legal enforceability. While it is a commonly accepted fact that the central authority creates, interprets, and enforces statutory law by means of its specific institutions, there are no similar elements in soft law. What makes soft law so striking is that even though there is no central institution(s) to create, interpret, and enforce it, soft law still occupies a significant role in peoples' social behavior and relations.<sup>5</sup>

While various theories dominate the discourse on soft law's existence in different societies, the one which seems applicable in case of Uzbekistan is the so-called internalization theory. This theory is based on the argument that soft law has strong roots within societies whose members historically practice regular mutual support and impartial contributions to own society. In other words, people comply with soft law and internalize it within their communities because it eventually benefits the society as a whole.<sup>6</sup> Hence, soft law appears to be a set of rules from an obscure and decentralized origin, based mainly on traditions and customs. Furthermore, there is no court or any other authoritative public institution to force people to comply with soft law or provide detailed interpretation. Various societies however, utilize certain traditional forms of enforcement, such as retaliation, which may include criticism or ostracism for not following commonly adopted social norms. Therefore, scholars sometimes use retaliation as a concept which explains soft law's existence within societies. It is

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<sup>4</sup> One bright example is marriage and family law. Refer further to, Marfua Tokhtakhodzaeva, *The Re-Islamization of Society and the Position of Women in Post-Soviet Uzbekistan* (Global Oriental, 2008), 9–10.

<sup>5</sup> Refer for detail to, Irmgard Marboe, *Soft Law in Outer Space: The Function of Non-Binding Norms in International Space Law* (Böhlau, 2012).

<sup>6</sup> Refer for details to; E. W. Sievers, "Uzbekistan's Mahalla: From Soviet to Absolutist Residential Community Associations," *Chicago-Kent / Journal of International and Comparative Law* 2 (2002); E. W. Sievers, *The Post-Soviet Decline of Central Asia: Sustainable Development and Comprehensive Capital* (Routledge, 2013). D. M. Abramson, *From Soviet to Mahalla: Community and Transition in Post-Soviet Uzbekistan* (Indiana University, 1998);

commonly accepted that people residing in a particular society often obey its informal rules out of anxiety that non-compliance may result in retaliation against them by other members of the same society.

The soft law is often a very pragmatic system of rules which in its developmental trajectory demonstrates viability in the context of various political and legal realities. As an example, research on the historical evolution of residential units in Uzbekistan demonstrates how pre-Soviet *mahalla*, a neighborhood community that was centered around the mosque and was eligible to administer local legal disputes, did not vanish in the Soviet era, but instead demonstrated its firmness and ability to adapt to various political and legal settings.<sup>7</sup> Although the Soviet government initiated several failed attempts to eradicate *mahalla* by abolishing its original structure based on formal Islamic legal relations, it decided to use these communities for its own interest. Hence, under the socialist system which oppressed any form of religious-dogmatic units, the *mahalla* lost its formal Islamic component, but did not alienate its traditional, customary elements - *urf*, *adat*.<sup>8</sup> In other words, under Soviet rule formal Islamic (Sharia) law underwent a process of secularization and eventually transformed into an informal system based on non-statutory, traditional, and socially binding norms and customs - *adat*. In such conditions, this informal system could adapt to co-exist with a formal Soviet and post-Soviet legal systems parallelly.

As secular Socialist law replaced Sharia, certain religious institutions lost their legal authority but could still retain or transferred specific functions to other institutions. For instance, traditionally mosques were centers of the local community and managed a number of local issues. In the Soviet period, these mosques gradually transferred some functions to be performed informally to the so-called *Krasnaya chaykhana* - tea drinking

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<sup>7</sup> Aziz Ismatov and Sardor Alimdjanov, "Historical Discourse of Mahalla Functions in Uzbekistan.," *Jahrbuch Für Ostrecht [Yearbook of East-European Law]* 59(1) (2018): 79–80.

<sup>8</sup> Z. Kh Arifkhanova, "Rol' Mahalli v Vozrojdennii Natsional'nykh Traditsiy Uzbekskogo Naroda," *Obshchestvennie Nauki v Uzbekistane* 7 (1998): 25.

clubs. This is one bright example how the soft law which experienced fundamental challenges in the transition period could survive and exist on an informal basis.<sup>9</sup>

In the initial years of Uzbek independence, specific actors within the *mahalla*, such as the citizens' general assembly - *shod grazhdan*, the chairman - *aksakal*, and the local committee - *kengash*, maintained their specific competencies to influence or decide numerous types of legal, social and administrative affairs occurring in their respective neighborhood territories. The scope of their intervention still covered various aspects ranging from social control over implementation of governmental tasks to dispute resolution in civil and family matters (Refer to Appendix 1). The most peculiar point in the managerial framework of the *mahalla* was its decision-making framework, which had not always been reflected in written statutory law whether codes or statutes, but relied on *adat* - a soft law element.<sup>10</sup> As long as *adat* implements only informal methods (for example, guiding parties to a compromise via traditional mediation in various disputes), its outcomes do not have any legally binding force. Hence, anyone non-sympathetic with such traditional mediation or unwilling to accept the regulation according to the soft law is always free to seek justice or regulation according to statutory law and state courts. The experience in Uzbekistan is that the number of people seeking a formal legal way to resolve local and specific civil and family disputes through black letter law is markedly lower compared to those who refer to informal soft law provided by *mahalla*.

Thus, the structure of law in Uzbekistan is not an exact copy of Russian law, or that of any other former Soviet state. The present dualist nature of Uzbek law includes the formal structure of statutory law originating from the Soviet legal system and still pertaining many socialist traces, and unwritten soft law based on traditions and customs

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<sup>9</sup> Paul Georg Geiss, *Rechtscultur und Politische Reform in Centralasien*, in B. Christian, *Recht in Der Transformation. Rechts- Und Verfassungswandel in Mittel- Und Osteuropa* (Berlin: Berliner Debatte Wissenschaftsverlag, 2002), 153.

<sup>10</sup> S. Dzhabbarov, *Shariat, Semeynoe i Obychnoe Pravo v Uzbekistane: Istoriya i Sovremennost'*. (Tashkents: Fan, 1996), 49–65.

inherited from the non-radical, secular Islamic culture.<sup>11</sup> Notably, both systems, formal and informal, demonstrate particular positive signs of adaptability to each other and to co-existence. In fact, after the collapse of the Soviet Union and the ensuing cultural boom, normative-legal tendency even demonstrated clear signs of the stable transformation of soft law into statutory law.<sup>12</sup> Policymakers asserted that this legal structure allowed the maintenance of a secular state and social stability in one of the more religious Muslim regions of the former Soviet Union. On the other hand, the evolution of laws in the post-independence period, specifically those guiding *mahalla*, demonstrates the gradually changing dynamics of interactions between the state and *mahalla*.

## II. Overview of Existing Laws Regulating *Mahalla* Activities

### 2.1 The *Mahalla* Law

Since 1992, the government was closely involved with *mahalla* reforms. The government underwent numerous challenges through legislative codifications which enabled *mahalla* to enforce both the statutory and soft law norms. Until the government of Uzbekistan launched *mahalla* law reforms in 1993, the customs and social norms (*urf, adat*), or in other words, the indigenous informal legal system were the dominant source of promoting *mahalla* with informal authority in various local matters. *The 1993 Law on Local Self-Governing Institutions*<sup>13</sup> and its subsequent revisions in 1999<sup>14</sup> and in 2013 (hereinafter, the *mahalla* law) became the first legislative codification which clarified the definition and the status of *mahalla*, as well as influenced its functions explicitly.<sup>15</sup> Notably, up until the adoption of this law, the *mahalla's* status and the nature of its

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<sup>11</sup> P.G. Geiss, "Legal Culture and Political Reforms in Central Asia," *Central Asia and Caucasus* 6, no. 12 (2001): 114–125.

<sup>12</sup> Sievers, "Uzbekistan's Mahalla," 103.

<sup>13</sup> *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*, 1993. (Outdated)

<sup>14</sup> *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*, 1999. (Outdated)

<sup>15</sup> *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*, 2013. (With 2018 amendments)

activities remained undefined and highly obscure. The *mahalla* law stipulates very clearly that:

The mahalla is an independent activity of citizens, guaranteed by the Constitution and the Laws of the Republic of Uzbekistan, for the purpose of resolving issues of local importance according to their own interests and historical peculiarities, as well as to national traditions, spiritual values, and local customs.<sup>16</sup>

Article 105 of the Constitution of Uzbekistan in its new 2018 version briefly states that “the citizens’ assembly [hereinafter, assembly] is the *mahalla*’s supreme organ in charge of self-governance.”<sup>17</sup> Further interpretation of this provision is reflected in the *mahalla* law, which specifies the assembly’s composition structure and visibly broad authority as of 2018. (Please refer to Appendix I which provides an enumeration of the multiple functions of *mahalla* compiled by the authors.)

The same law positions the assembly at the top of the *mahalla* framework. The publicly salaried chairperson (*aksakal*), and his advisors, consultant, and secretaries lead the *mahalla* through the assembly and perform their roles in the council - *kengash* which is an executive organ functioning in the period between the assembly’s meetings. The *kengash* coordinates the work of the *mahalla* commissions and ensures the interaction between the assembly and local state authorities in the implementation of the *mahalla*’s activities.<sup>18</sup> The assembly also includes the audit commission, which verifies financial and economic activities of the *mahalla*.<sup>19</sup> (Refer to the figure 1.1)

The law enables residents over the age of 18 to participate in the activities of the assembly and thus, exercise their right for self-governance.<sup>20</sup> In practice, only a selected number of respected residents factually participate in the assembly’s activities and

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<sup>16</sup> Art 3 *ibid.*

<sup>17</sup> Art 105, *The 1992 Constitution of the Republic of Uzbekistan* (Sobranie Zakonodatel’sstva Respubliki Uzbekistan). (With 2018 amendments)

<sup>18</sup> Art 13, *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens.*

<sup>19</sup> Art 18 *ibid.*

<sup>20</sup> *Ibid.*, Art 9; 11.

perform their duties. This provision confers upon the *mahalla* an official mandate to represent their residents' interests and in some cases, make legally binding decisions.

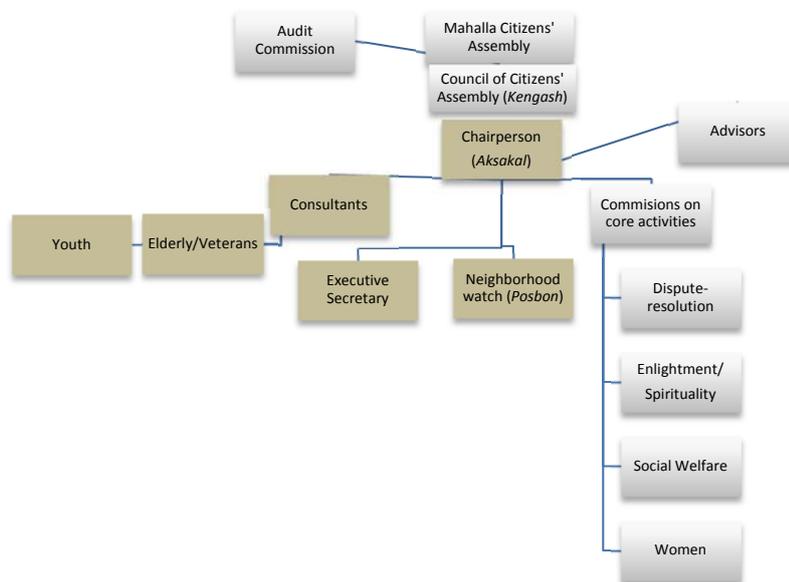


Figure 1.1: A typical structure of a self-governing (Mahalla) system in Uzbekistan. (Items in light brown show state-salaried mahalla staff). Source: The Law of the Republic of Uzbekistan on Self-Government Institutions of Citizens (The Mahalla Law). (with 2018 amendments)

## 2.2 The 2018 Law on Elections of Chairpersons (*Aksakal*) of the Citizens' Assembly

Before its amendment in October 2018, Article 105 of the Constitution stipulated a term of two and a half years for the elected chairperson of a *mahalla*. When the 2018 Law on Elections of Chairpersons (*aksakal*) of the Citizens Assembly (hereinafter, the *Mahalla* Elections law) was adopted, the term was extended to three years. The same law stipulates that it is the assembly which elects (votes for) the chairperson.<sup>21</sup> This new law regulates in detail the framework of elections including the creation of specific assisting commissions, critical deadlines, requirements for candidates, and also highlights a supportive role of the public institutions in organizational matters.<sup>22</sup>

<sup>21</sup> Art 3, *Zakon Respubliki Uzbekistan O Vyborah Predsedatelya (Aksakala) Skhoda Grrazhdan*, 2018. [*The 2018 Law on Elections of Chairperson (Aksakal) of Citizens' Assembly*]

<sup>22</sup> *Ibid.*, Art 9.

Simultaneously, the law prohibits any direct or indirect interference into the process of elections.

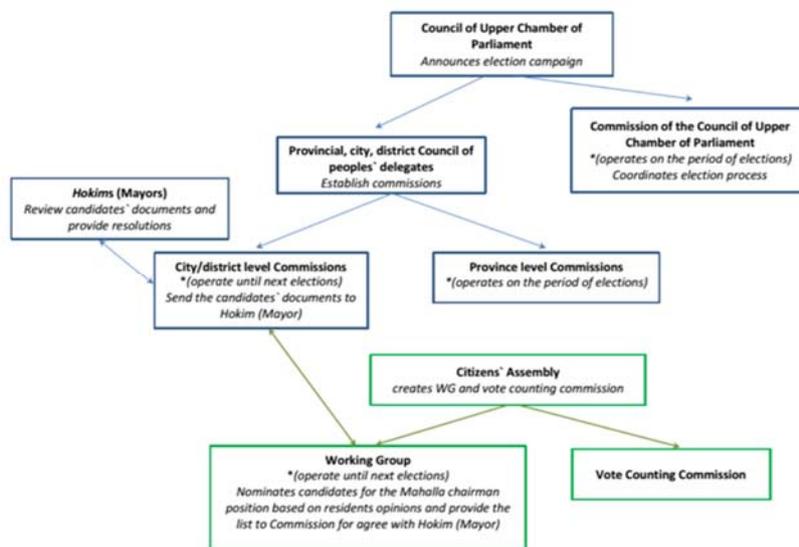


Figure 1.2: The stages of electing the mahalla chairperson. Source: The 2018 Law on Elections of Chairperson (Aksakal) of Citizens' Assembly. The blue boxes include preparatory process on the republican level, whereas green on the local level

### 2.3 The 2013 Regulation on Providing the Social Welfare to the Low-Income Families

The *mahalla* law, starting from its initial 1993 version, transformed *mahalla* into a focal point to disseminate social welfare for low-income and vulnerable local residents, a function which in the pre-independence period fell exclusively within the scope of public institutions.<sup>23</sup> While the *mahalla* law confers upon this institution a legal mandate to operate on behalf of the state in the distribution of social welfare, the mechanism of such a mandate is legally enforced in the *2013 Regulation on Providing Social Welfare and to the Families with Low Income*.<sup>24</sup>

<sup>23</sup> Art 6 *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*; (Outdated) “The presidential decree N 983 (Outdated),” 1993.

<sup>24</sup> “O Poryadke Naznacheniya i Vyplaty Sotsial’nykh Posobiy i Materinskoy Pomoshy Maloobespechennym Sem’yam,” 2013.

The present 2013 regulation provides a categorization of eligibility for obtaining social welfare, procedural matters regarding the social welfare application, and the dominant role of *mahalla*. In particular, *mahalla* incorporates a special commission - local-level provider of social aid mandated to examine social welfare applications. A closer look at this regulation reveals that a special commission is authorized to nominate eligible individuals for social benefits according to an investigation of the applicants' living standards.<sup>25</sup> According to statutory regulation, such investigations target the personal situation and financial condition of each applicant's family, and their available property. According to the available research, the practical examination may go far beyond these criteria. Eventually, under the provision of the regulation, the assembly or its separate commission has the decision-making power in granting social benefits to a particular applicant. Notably, this norm raises concerns regarding the limits of the authority because it does not clarify further in written statutory form about the procedural side of evaluation circumstances and decision-making prerogatives. In other words, this regulation does not stipulate any concrete and substantial grounds which would legally guide the *mahalla* to unconditionally award available social welfare to people in need. Perhaps this situation is an example where the *mahalla* fills in the statutory gap by relying on informal, traditional settings, or soft law, based on collective decisions rather than written statutory guidelines. The final decision of the *mahalla* regarding the granting of social benefits is discretionary, and there is no adequate appeal mechanism available.<sup>26</sup>

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<sup>25</sup> VI, 27-29, Addendum 5 *ibid*.

<sup>26</sup> Refer further to, John Micklewright and Sheila Marnie, "Targeting Social Assistance in a Transition Economy: The Mahallas in Uzbekistan," *Social Policy & Administration* 39, no. 4 (August 1, 2005): 431-447.

## **2.4 The 2018 Regulation on Neighborhood Watch (*Mahalla Posboni*)**

The *mahalla posbon* - a neighborhood watch, guards, or local patrol, as introduced in the most recent *2018 Regulation on Neighborhood Watch* is a social formation within the *mahalla* structure endowed with the mandate to assist the *mahalla* and the Internal Affairs Organs (police) in ensuring public order, safety and prevention of crime within the territory of the *mahalla*.<sup>27</sup> This regulation lists the eligibility requirements for *posbon* and assigns them to comprehensively collaborate with local internal affairs units, which are usually based in the same building with the respective *mahalla*. Furthermore, this social formation is expected not only to maintain public order as prescribed by the administrative and criminal justice systems, but also to protect society's morals and spirituality. As long as the terms moral and spirituality are very general and vague concepts which, additionally, has no adequate statutory interpretation in the present-day Uzbekistan, it apparently presupposes the general values represented in *urf/adat*. *Posbon* is a public budget salaried staff of *mahalla* recommended by the citizen's assembly. Their number in each *mahalla* depends on the number of residents and the size of the *mahalla*.

### **III. Direction of legal development**

The statistical data demonstrates that in the period between 1993 to the present time, the parliament, the cabinet, and the president of Uzbekistan adopted more than 200 statutory regulations, each to a certain extent assigning new functions to the *mahalla* or making reference to them. Compared to the Soviet era administrative-legal reforms on *mahalla*, the post-independence public administration reforms are more concrete in terms of the contextual legal definition of *mahalla*, its status, and its functions. Notably, the architects of the *mahalla* reforms address such a wide-scale attempt to legitimize this

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<sup>27</sup> "Fuqarolar Yigining 'Mahalla Posboni' Jamoatchilik Tuzilmasi Faoliyatini Tubdan Takomillashtirish Haqida," 2018.

institution as a legal intervention in order to promote social order and provide public goods under the discourse of democracy and decentralization.<sup>28</sup>

Since adoption of the initial *1993 Mahalla law* which defined this institution as a self-governing body and legitimized its managing structure, it paved the way for far more ambitious laws and regulations. Subsequently, as they delegated various rights and responsibilities to *mahalla*, the evolution of laws and regulations in this area followed in somewhat predictable way of transforming *mahalla* from social into the administrative formation.<sup>29</sup> In the past, the original managerial structure of the *mahalla* centered around the informal leader (*aksakal*) and a number of similar informal advisors who were local residents that could assist the *mahalla aksakal* in terms of their wisdom or specific knowledge. In the post-independence period, the laws and statutory regulations guiding the *mahalla* have gradually transformed such informal leadership towards a more formalized structure. Present *mahalla* leadership consists of a chairperson who leads and relies on support of formal advisors, secretaries, and consultants. The law concretely stipulates the number of *mahalla* staff, their specific pillars of activities, and related responsibilities within those pillars. Simultaneously, *the Mahalla law* positions a chairperson and his advisors under the category of state-salaried employees and stipulates their fixed terms in office. The legal reforms have also drastically increased the authority and mandates of the *mahalla* leadership by placing a provision that ignoring the decisions of the *mahalla* might be punished by law. This

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<sup>28</sup> Rustamjon Urinboyev, “Law, Social Norms and Welfare as Means of Public Administration: Case Study of Mahalla Institutions in Uzbekistan,” *NISPAcee Journal of Public Administration and Policy* 4, no. 1 (July 1, 2011): 38–42.

<sup>29</sup> See, Sievers, *The Post-Soviet Decline of Central Asia*; David M. Abramson, *From Soviet to Mahalla: Community and Transition in Post-Soviet Uzbekistan* (Indiana University, 1998); Timur Dadabaev, 記憶の中のソ連: 中央アジアの人々の生きた社会主義時代 [Kioku no Naka no Soren, Chuuouajia no Hitobito no Ikikata Shakaishugi Jidai](つくば; 東京: 筑波大学出版会; 丸善 (発売), 2010); Urinboyev, “Law, Social Norms and Welfare as Means of Public Administration”; Tom Everett-Heath, *Central Asia: Aspects of Transition* (Psychology Press, 2003).

provision is in principle an apparent component of the public power. According to law, only the *mahalla* itself or a court can annul the decisions of *mahalla*.<sup>30</sup>

The *mahalla* reforms have also formalized the elections of the chairperson. In particular, the law on chairman's elections enumerates detailed requirements and a sophisticated process of elections. The law also stipulates the responsibility of public agencies to assist in organizational matters related to such elections. A closer look into this law also reveals the a contradictory provision regarding the elections of a chairperson, particularly the local government's control over the whole process of such elections.<sup>31</sup>

A comparatively recent novelty in terms of the managerial structure of *mahalla* is an introduction in 1999 and an amendment in 2018 of a regulation introducing the position of *posbon*, a formal neighborhood watch composed of one or several residents of a *mahalla*, depending on the size and number of residents. This *mahalla* staff is paid from the public budget and expected to cooperate with the internal affairs organs. While the law states that *posbon* is comprised of staff recommended by the citizen's assembly, it confers upon *posbon* the authority to make arrests, which is another clear example of public authority component within the *mahalla*. The reason for promoting this statutory regulation apparently includes a willingness of the state to address local security concerns, such as early prevention of crime, and controlling certain unreliable residents, for example those who are allegedly might be involved into illegal conduct, such as prostitution or terrorism.<sup>32</sup>

In the Soviet period, basic schooling, adequate medical service, good social welfare, issues related to territorial construction, water, and crime prevention fell exclusively within the scope of the state and its relevant agencies. A more detailed look into most of the post-independence *mahalla* reforms reveals that many of these issues fell entirely or partly within the scope of *mahalla* functions. Primarily, the *Mahalla* law has legally enabled this institution to implement social-welfare functions to the local residents.

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<sup>30</sup> Art 24; 25 *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*, 2013.

<sup>31</sup> Refer to a more detailed discussion in the next sections.

<sup>32</sup> Human Rights Watch, *From House to House: Abuses by Mahalla Committees*, Vol 15 (New York, 2003).

Furthermore, the presidential decree on increasing the role of local self-governance regarding the targeted social-welfare support of the population adopted in 1999, and the 2002 cabinet regulation on targeted social-welfare support for the 2002 and 2003 fiscal years have reconfirmed the *mahalla's* solid mandate to manage state-sponsored social assistance. Hence, this traditionally state-dominated function was transferred to the local level in the independence period, however, with an obvious component which is based on a soft law. As a result of such legal reform, the *mahalla* obtained a typical public function and gravitated towards being a focal point to make decisions on disseminating the social-welfare.<sup>33</sup>

Through a set of subsequent regulations adopted between 1993 and 2017, the *mahalla* has also been formally tasked with assisting governmental agencies in collecting taxes, supervising local commerce, initiating construction, as well as notarization functions. Simultaneously, a compulsory registration in the *mahalla* by virtue of legal residence became a precondition to obtain the *mahalla's* formal consent on various matters, starting from applying for public certificates (passports, marriage, birth or death certificates) up to initiating a local business plan.<sup>34</sup> In addition, *mahalla* presently has an authority to control the family life, youth politics, the elderly, employment, religion, crime prevention, environment, weddings, disciplinary disputes in local schools and even the local sale of alcohol. In the years following independence, the government, by means of its statutory regulations, formally allocated within *mahalla* the committees for women and girls, veterans, weddings and celebrations, justice, and road maintenance, amongst a host of others.<sup>35</sup>

The general direction of *mahalla* laws, starting from 1993 and continuing up to the present time, clearly demonstrates a drastic increase of this institution's formal functions and responsibilities which go far beyond the social, economic, and security aspects of

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<sup>33</sup> Sievers, "Uzbekistan's Mahalla," 119; Human Rights Watch, *From House to House: Abuses by Mahalla Committees*, 7; Urinboyev, "Law, Social Norms and Welfare as Means of Public Administration," 43.

<sup>34</sup> Every person who resides in *mahalla* automatically joins its membership.

<sup>35</sup> Elise Massicard, Tomasso Trevisani, "The Uzbek Mahalla" in Tom Everett-Heath, *Central Asia: Aspects of Transition* (Psychology Press, 2003), 207.

residential life. By passing and amending the *mahalla* law, the government claimed the legitimacy of this institution and considerably increased its authority in multiple matters. In the context of the legal evolution of *mahalla* laws, one interesting aspect for legal scholarship is a clear tendency of formalizing the legality of the *mahalla*'s many previously informal functions based on *adat*. Thus, in the period between 1993 and up to now, *mahalla* has demonstrated the new phenomenon of increasingly formalizing the *adat*'s parallel co-existence with the statutory, typically public functions. In fact, the development trajectory of *mahalla* laws gradually led to the situation when classifying or separating its fundamental social norms from statutory responsibilities became increasingly difficult. In such circumstance traditional functions of *mahalla* gradually eroded or transformed into the category of statutory functions. In other words, a traditional, social *mahalla* gained more clear signs of administrative *mahalla*. Such gravitation towards administrative institution also demonstrates a gradual transformation of *mahalla* into a controversial body lacking transparency when it comes to interactions with public institutions and agencies.

#### **IV. Certain Legal Contradictions with Regard to the Nature of *Mahalla***

The development nature of laws has created several questions regarding contradictions in the existing legal framework which affect the theoretical grounds and traditional nature of the *mahalla*, its features of self-autonomy, and its independent decision-making power. For example, the contradictions are more apparent when looking at the language in Article 16 of the *Mahalla Elections Law* where the law's wording results in two questions worth analyzing. The first question centers on the role of the mayor in the election process of the chairperson, whereas a legal-terminological axiom in the second question results in a vague interpretation of the provision.

#### 4.1 Public non-intervention into the fair elections of the chairperson

Some English language-based literature asserts that the *mahalla* chairperson is a state-appointed public official.<sup>36</sup> As their main argument, most of these studies point to the exceptional role of the mayor (*khokim*) in facilitating an orchestrated election process in which the future chairperson's candidacy is agreed upon by the government far before the actual elections results. On the other hand, policymakers assert that they choose a chairperson based on the principles of fair elections and non-intervention from public authorities. What is missing in these declarations is a substantial examination of the legal provisions dealing directly with chairpersons' elections.

Article 16 of the *Mahalla* Elections law states:

Nominating candidates for the position of chairperson (*Aksakal*) of the Citizens Assembly is conducted by the working group by considering the opinion of citizens permanently residing in relevant territory.

The working group prepares the documents of candidates for the position of chairperson (*Aksakal*) of the Citizens Assembly and submits it to the relevant commission for **agreement with** the mayor of the district or city (*Khokim*) not later than ten days before the elections. Written consent from the candidates for the position of chairman on nominating own candidacies are attached to the documents.

The *Khokim* (mayor) of the city or district examines the documents of proposed candidates for the position of chairman (*Aksakal*) of the Citizens' Assembly and forwards it to the appropriate commissions. *Khokim* also must attach own reasonable conclusions on these candidates and forward further to working groups.

After obtaining the conclusions of the *Khokims* of the district or city not later than five days before the elections, the working groups post information on the **agreed** candidates for the position of chairman

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<sup>36</sup> Sievers, *The Post-Soviet Decline of Central Asia*; Abramson, *From Soviet to Mahalla*; Everett-Heath, *Central Asia*, 2003.

(*Aksakal*) of the Citizens Assembly on the building of the citizens assembly and *Guzar* [central neighborhood area].<sup>37</sup> (usually there is a note “emphasis added by authors” here)

A working group, a non-permanent organ to facilitate the elections process, is usually composed of locally based residents and not-for-profit representatives. The law enumerates some technical functions of this body but does not grant it any concrete decision-making power. A working group, by relying on the opinions of local residents, nominates the potential candidates for the position of *mahalla* chairperson, and upon obtaining these candidates’ written consent, prepares and forwards the respective applications and documents to the specially composed local government commission which includes both private and public parties. Similarly to the working group, this commission does not enjoy any degree of decision-making power, but performs technical coordination between the numerous election working groups existing in the city or district, and the mayor. Subsequently, upon obtaining relevant applications and documents from the working groups, the commission forwards all of it to a mayor who bears an exceptional authority in **agreeing** or **disagreeing** on the candidates’ final nomination for their participation in elections. Hence, one may quickly notice that within the three multi-type bodies involved into the elections process, namely, a working group which is a private body, a local government level commission which is a mixture of private-public formation, and a mayor, who is the representative of public power, only the mayor possesses extraordinary decision-making authority.

Such a framework subsequently raises justified legal contradictions regarding a mayor’s intervention into the process of elections of a self-governing body’s (*mahalla*) chairperson which, according to law, is supposed to be openly chosen by the eligible residents.<sup>38</sup> In particular, it is unclear how to conceptualize such an electoral framework in which the government enjoys the discretion to intervene in the local self-governing body’s activities, for example, *mahalla* elections, in light of the fact that another fundamental law on Citizens Self-Governing Institutions’ (the *Mahalla* law) asserts that

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<sup>37</sup> Art 16 *Zakon Respubliki Uzbekistan O Vyborah Predsedatelya (Aksakala) Skhoda Grrazhdan*.

<sup>38</sup> Art 3 *ibid*.

“intervention of the state (public) organs and their officials into the citizens self-governing organs’ activities is not allowed.”<sup>39</sup> Furthermore, another contradiction appears with regard to the principle of fair elections of the chairman, which stresses that “any direct or indirect limitations on the rights of citizens to participate in *mahalla* chairman and his advisors’ elections process are prohibited.”<sup>40</sup>

#### **4.2 The Legal-Terminological Dilemma in the Article 16 (wording)**

The real problem within the article has to do with legal language.<sup>41</sup> The article uses both the Uzbek and Russian languages and there is some confusion when it comes to the term agreement, which is *kelishish* in Uzbek and *soglasovat* in Russian. In both languages, depending on the context, these words can suggest either agreement or negotiation. Therefore, one’s interpretation could change the actual meaning of Article 16. A careful look into the provision on the mayor’s authority regarding decision-making power in the elections process demonstrates a clear example of legal-terminological ambiguity and paves the way for debates on a possible interpretative dichotomy. As an official translation in English does not exist. The Uzbek and Russian versions, while translated into English, may simultaneously reflect the meanings to agree, in this case an unconditional top-down decision by the mayor, or to negotiate, which presupposes a certain level of mutual conditionality between the parties.<sup>42</sup> The reason why the present section uses the word agree but not negotiate, is because in the process of election, a mayor does not interact with any interest group(s) and, thus, is not involved into the process of reaching a common agreement on a perspective candidacy. The mayor takes rather an independent, top-down decision to agree or disagree on a specific candidate. While this hypothetically grounded interpretation may be challenged by an alternative one(s), the official interpretation from the Constitutional Court of Uzbekistan on Article

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<sup>39</sup> Art 4 *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*.

<sup>40</sup> Art 3 *Zakon Respubliki Uzbekistan O Vyborah Predsedatelya (Aksakala) Shkoda Grrazhdan*.

<sup>41</sup> Art 16 *ibid*.

<sup>42</sup> Bryan A. Garner, *Black’s Law Dictionary, 10th Edition*, 10th edition. (St. Paul, Minn: Thomson West, 2014) 1199-1200.

16 of the *Mahalla* Elections law would contribute meaningfully to the further clarification of this seemingly controversial terminological dilemma.

#### **4.3 Positioning the *Mahalla* Chairperson and other Staff within the Category of a State-salaried Employee**

Financial relations between the government and *mahalla*, particularly regarding the delegation of full control over the social allowances for vulnerable people is another dilemma that raises particular concerns among scholars and practitioners. As mentioned above, some scholars fairly address the *mahalla* chairperson as a state-salaried employee given the fact that a chairperson and other staff receive their remuneration from the local public budget.<sup>43</sup> The present research attempts to address this aspect from the viewpoint of law, by focusing specifically on the provisional collisions between the statutory regulations which result in the controversial positioning of *mahalla* staff within a grey zone between public and private sectors.

Article 8 of the *Mahalla* law states that self-governing bodies (*mahalla*) do not form a part of the state (public) organs.<sup>44</sup> Ideally, such a relationship presupposes equal and independent status for both parties. A closer look at the statutory regulations which guide financial matters, especially the public budget-based remuneration of the core *mahalla* staff usually, around four-six people, including a chairperson, secretary, advisors, *posbon*, raises concerns regarding the financial independence of the *mahalla* from the government and its separation from the state organs. While the law defines *mahalla* as a non-state institution, its staff ideally should not be regarded as public officials. However, such theoretical settings are challenged by the specific statutory regulations which formally place the core *mahalla* staff within the scope of civil servants. Notably, the decree ‘On Stimulating the Employment of Civil Servants adopted by the Cabinet of Ministers of the Republic of Uzbekistan in 1997 (with 2018 amendments) while dealing with the remunerations issues, *de jure* positions *mahalla* staff (chairman,

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<sup>43</sup> Urinboyev, “Law, Social Norms and Welfare as Means of Public Administration,” 41; Abramson, *From Soviet to Mahalla*, 189.

<sup>44</sup> Art 8 *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*.

his secretary, and *posbon*) within the category of public servants.<sup>45</sup> Such a framework theoretically, although with a certain level of vagueness, places the *mahalla* staff on the same line with public officials who obtain their remuneration from the same public budget. Notably, while the *mahalla* law separates *mahalla* from the public sector, and simultaneously, existing statutory regulations categorize its staff as civil servants, absence of relevant labor agreements prevents examining further about the character of such employment. This legal anomaly raises justified contradictions regarding the ambiguity of the simultaneous public and private nature of the *mahalla*.

#### 4.4 Unclear Legal Authority

The *Mahalla* law unequivocally states that the *mahalla* is a self-governing body, and the intervention of public organs and agencies into its activities is not allowed. In common legal interpretations, the law entrusts the *mahalla* to address numerous local issues as reflected in its functions. Article 19 of the *Mahalla* law states that “...decisions of self-governing bodies (*mahalla*) and their respective officials, taken within the scope of their competency, are obligatory for execution by local residents, legal entities based locally and their officials.” Simply speaking, everybody within neighborhood has to follow what the *mahalla* decides. The same article asserts that non-compliance with (*mahalla*) decisions entails a responsibility in accordance with law.<sup>46</sup> In other words, decisions of the *mahalla* can be regarded as binding when it comes to its primary statutory functions.

The first issue which raises a justified concern regarding legal incompatibility is the mere fact that the enforceability of decisions is typical of public organizations, and its formal allocation within *mahalla*, a non-public self-governing institution, without any relevant background context is unclear. The second issue touches upon the actual competence and statutory limits of *mahalla*. The direction of the legal development of *mahalla* laws demonstrates that this institution has a multi-functional dimension. However, the statutory entrusting of various functions is not always followed by

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<sup>45</sup> “Postanovlenie Kabineta Ministrov Respubliki Uzbekistan N 339,” 1997.

<sup>46</sup> Art 19 *Law of the Republic of Uzbekistan about Self-Government Institutions of Citizens*.

stipulating explicitly the mandate or the decision-making competency of *mahalla*. Hence, while the law gives many statutory functions to the *mahalla* and confers upon it the authority to take legally-binding actions, it does not address clearly what the authority actually is.

Whereas the scope and the form of *mahalla* decisions *de jure* fall into a somewhat grey zone and remain highly ambiguous, the factual situation demonstrates that its binding decisions can only be obtained upon receiving agreement from state (public) organs. Hence, in light of the gradual increase in *mahalla*'s non-peculiar functions which simultaneously fall under the decision-making scope of state (public) bodies, one may wonder whether it is reasonable to grant *mahalla* the authority to enforce their own decisions. Therefore, given the multiple functions of *mahalla* as provided in law and its ability to address local issues from a community-mobilization perspective, one may reasonably question its *de jure* and *de facto* authority in taking binding decisions locally.

#### **4.5 The Coordination Council**

In 2013, the government came up with a legal initiative focused around composing a bridge between *mahalla* and local governments which eventually resulted in the establishment of the Coordination Council. According to *the Mahalla law* the functions on coordinating activities of the *mahalla* are assigned to the Republican Coordinating Council (hereinafter, the Council), as well as the coordination councils in regions, districts, and cities.<sup>47</sup> Relevant regulations from the Cabinet and the President define the Council as an association of self-governing bodies (*mahalla*) which is not a part of the public authority. Simultaneously, according to these regulations, the Council's organizational structure represents somewhat a traditional hierarchy involving many elements from the public sector and thus, posing specific concerns regarding its being factually non-public.<sup>48</sup>

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<sup>47</sup> Art 20 *ibid*.

<sup>48</sup> "Postanovlenie Kabineta Ministrov Respubliki Uzbekistan N 329," 2017; "Postanovlenie Prezidenta N 4944," 2017.

Namely, the Prime Minister of the Republic of Uzbekistan is placed at the very top of the Council's structure on the republican level, whereas the heads of local administrations (*khokims*) in regions, districts, and cities are respectively responsible for the chairmanship of the Council on provincial levels. The next category includes many public officials from local executive and legislative branches. A separate regulation on salaries stipulates that employees of the executive organs of the republican and territorial councils are salaried as public servants.<sup>49</sup> In addition, the first deputy chairman of the Council is regarded as minister, while the deputy chairman as deputy-minister. According to the regulation, the members of each territorial coordination council are comprised from the heads of governmental organizations (20-30 organizations), representatives of the non-governmental sector (5-10 organizations) and self-governing bodies (chairmen of three *mahallas*).<sup>50</sup> In contrast to the total share of public officials, the Council includes only about ten percent of local *mahalla* representatives (chairpersons) and a certain number of representatives from the NGO sector. Although the regulation addresses the top as voluntary-based structure, nevertheless, the managerial structure raises many concerns with regard to the possible conflict between public and private interests. Furthermore, the 'top-down' principle set in the contents of the legal text points to the obvious normative contradictions.<sup>51</sup>

According to the regulation, the primary objective of the Council towards *mahalla* is to coordinate the direction of *mahalla* management, assist in implementing legal authorities, and ensure interaction and partnership relations between *mahalla*, public authorities, and non-profits. The provisions of the same regulation also state that official decisions of the Council are obligatory for all government and non-government organizations, as well as *mahallas*. Thus, it appears that the Council is densely packed by the public officials who, simultaneously maintain exceptional authority in decision-making. From the other hand, there is only a tiny number of *mahalla* representatives with a very unclear status. Such a framework eventually raises well-grounded concerns

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<sup>49</sup> "Presidential Degree N 1778," 1997.

<sup>50</sup> "Postanovlenie Kabineta Ministrov Respubliki Uzbekistan N 329."

<sup>51</sup> N6, 69, pp2 "Postanovlenie Prezidenta N 4944."

regarding the non-public character of the Council and its discretionary authority which theoretically may intervene into the self-governing sector.

### **Conclusion**

From 1992 until 2016, the *mahalla* laws demonstrated a tendency of expanding the *mahalla*'s administrative scope by transferring numerous non-peculiar functions that had been performed by the state to the *mahalla*. In the context of democratic post-independence reforms, the government asserted that legal changes would support traditional *mahalla* and strengthen it as a unique Uzbek self-governing institution. The development of laws, indeed demonstrates that *mahalla* became an institution concentrating both on a large number of obligatory public tasks and non-public (traditional, customary) functions. On the other hand, the law did not offer an adequate funding framework for the growing number of functions that was falling on the *mahalla*'s shoulders.

The phenomenon of *mahalla* is that most of its typical functions originating from soft law and which played a vital role in preserving its traditions have been gradually obtaining a formal character (statutory law) and becoming legally-binding for residents and enterprises. Such transformation of soft law-based functions into statutory law has significantly transformed *mahalla* into an institution closely integrated into the system of public administration. This observation is one of the primary aspects demonstrating how traditional *mahalla* are gradually transforming into administrative *mahalla*.

Since the transition of presidential power in 2016, the government has adopted several critical legal initiatives in the public administration area that additionally influenced the *mahalla*. Recently, specific changes in *Mahalla* law, for example, withdrawing some public functions, signals of the government's emerging understanding that *mahalla* should not maintain financially burdensome tasks. Instead *mahalla* should concentrate on the matters which do not require large funding, for example, social control - a function that *mahalla* can easily perform based on its capacity. Even such a step can be considered as a minor positive signal regarding withdrawal of public functions from *mahalla* and transforming it back to the institute to perform its

actual features and purposes. Furthermore, public control over public bodies can contribute to the government's efforts towards democratization of society as a whole. However, the renewed statutory regulations, including the initiative to introduce the government-backed Council, demonstrate that the new government's tendency indeed continues administering *mahalla* into the public sector. The findings of this research paper indicate that *mahalla* laws currently contain legal contradictions which make it nearly impossible to define this institution as a self-governing body. Controversial aspects of law address the *mahalla* as a quasi-governmental unit aimed to perform numerous tasks including social control, social-welfare distribution, local dispute resolution, and many other responsibilities. This tendency will inevitably keep on increasing the gap between the traditional and the administrative *mahalla*.

## Appendix 1

Formal (statutory) functions [including those which were formalised from <i>Adat</i> ]		Traditional (non-statutory) functions
<i>Typical governmental (public) functions</i>	<i>Functions related to interaction with governmental and non-state organizations</i>	
Social welfare distribution;	Assisting law enforcement agencies in preventing crime;	Assisting residents in holding ceremonies (weddings, funerals etc);
Assistance in the implementation of governmental policy on the patronage of vulnerable residents (For example, the elderly);	Assisting in the suppression of the activities of unregistered religious organizations, ensuring respect for the right of citizens to freedom of religion;	Protecting the interests of family and women in society;
Registration and keeping records of residents, issuing certificates of property and family status of residents;	Involvement of the population in civil protection activities and the prevention of natural disasters;	Conciliation activities in family and other disputes;
Notary and certification;	Involve the population into civil protection, assisting in organizing notifications and mobilizing military reservists and conscripts to the territorial defense departments, and also conducting primary accounting;	Formation of a positive spiritual and moral atmosphere in families, educating of the young generation;
Informing residents about governmental notices and ensuring compliance of laws and governmental decisions by local residents;	Assisting public agencies in conducting political, spiritual, educational and other local events	Conducting traditional and cultural events
Public order and control;	Nominating candidates to be elected to the city/district councils;	<i>Hashar</i> (community cleaning projects);
Regulation of local construction;	Assisting in the logistics of elected city/district council members in organizing meetings with voters;	Collecting voluntary contributions from residents and philanthropy;
Environmental control (water, cleaning, garbage, etc);	Representing the interests of local residents to state authorities;	
Requesting various reports from locally based enterprises;	Mobilization of residents' resources for the implementation of local improvement works and rehabilitation of the social infrastructure in the community;	
	Assisting tax authorities in the timely collection of taxes from the population;	
	Assisting in public utilities fees collection (water, gas, electricity supply);	
	Implementation of social control over the implementation of laws and governmental regulations by respective organizations at the community level;	

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