FOREIGN POLICY & SECURITY PROGRAMME

Police Reform in Georgia[1]

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Contents:

1. Introduction

After the Rose Revolution of 2003, the new government of young reformers headed by Mikheil Saakashvili launched all-encompassing reform of the public sector. The police reform was one of the key pillars of this transition and was regarded as the most successful. Public confidence in more efficient police has increased and crime rates have gone down. On the other hand, various observers and international organizations have been criticising the authorities for using extrajudicial and extralegal tactics in anti-crime campaigns and concerns over human rights abuses have been rising.

The issue of police reform and policing is important for the general security environment. The studies in the field often focus on national security although the everyday security of the people is closely tied to criminality that threatens the physical integrity and welfare of the citizenry. Also, police themselves can be a threat to individual security.

Georgia has been portrayed as the 'safest place in Europe' with low victimization and low crime rates. However, there is little discussion of the possibility that the 'zero tolerance policy' and anti-crime measures may have displaced the crime problem into the future.[2] Despite a more professional and well-equipped police that effectively fights crime, problems remain. In the prisons inmates are still socialised into a deviant, criminalistic sub-culture and there is little evidence that long-term change in social norms is underway.

In this paper I do not intend to make the argument that police serve the interests of the 'privileged class.' Nor do I aim to downplay the achievements in reforming a notoriously corrupt police force. Rather I demonstrate that an important angle of police reform, making it accountable, transparent and de-politicised, remains unachieved and should not be ignored in academic writings[3] and in the reports of international organisations such as the World Bank.[4] The lack of critical attention to the shortcomings of police reform fits the trend of overlooking significant shortcomings in Georgian democracy and human rights by some international organisations and foreign states. This trend is damaging to the legitimacy of these same institutions/countries.

This paper analyses the trajectory of post-revolutionary transition in the criminal justice system and the way in which the rule of law has been undermined for the sake of building a strong state. I discuss the achievements and shortcomings of Georgian police reform and argue that the reforms have mainly targeted 'low policing' in order to meet the key concerns of the citizenry while 'high policing' remained above the law and a crucial safeguard for the ruling regime. Importantly there are many questions whether the larger goals of policing understood broadly such as normative compliance, cultural change and citizen acceptance of police authority are accomplished and whether the policies in place are appropriate for the achievement of these goals.

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[2] Slade Gavin, 'Georgia's war on crime: creating security in a post- revolutionary context', European Security, vol. 21, no. 1, 2012, p. 50

[3] Researchers working on policing issues are sometimes reluctant to criticise with the fear of losing access to data and respondents

[4] See World Bank, Fighting corruption in public services. Chronicling Georgia's reforms, (Washington DC: World Bank, 2012), pp. 13-23

The next section focuses on the achievements, controversies and drawbacks of police reform. It discusses the structural constraints and incentives for choosing particular anti-crime policies and launches the discussion about the side effects of these policies. The third section analyses various polls measuring police effectiveness and argues that the survey results are sometimes wrongly interpreted as an indicator of public trust. It then disaggregates the public perception of police efficiency to explain why society thinks 'favourably' of police work and focuses on three key variables: low level of victimisation and fear of crime in society, liberalisation and reform of police-public interaction, professionalization and modernisation of police and policing. The fourth section makes a distinction between 'high' and 'low' policing and provides empirical evidence to argue that the reform mainly targeted low policing and high policing was kept as a safeguard of ruling regime. The fifth section asks the question whether larger goals of policing has been achieved and argues that over the longer term the anti-crime policies may have been failing. It follows up on the side effects first discussed in the second section and shows how the zero-tolerance policy and prison experience of delinquents could have contributed in the displacement of the crime problem to the future. The sixth section addresses the issue of transferability of Georgian reforms to other countries and points to the potential difficulties and to the importance of the underlying context under which the reform was possible. The last section sums up the discussion and draws the conclusions.

2. Reforming Georgian police

Before discussing public perceptions of police work this section first focuses on the particularities of police reform. It examines the grounds for choosing particular anti-crime and reform policies and elaborates on the remaining problems.

Before the Rose Revolution, Georgia was a 'failed state' with rampant corruption, collusion between criminals and politicians, and ineffective state institutions. Bringing order to such a society, together with maintaining a degree of legitimacy, was a difficult task. In this respect Saakashvili inherited Georgia in a same shape as Russia was in the aftermath of chaotic years of Yeltsin rule. Building a strong state was a key task of Mikheil Saakashvili, like Vladimer Putin. In his essay "War Making and State Making as Organized Crime," Charles Tilly predicts that the relative predominance of state-making results in a repressive state with a highly policed society. This explains the similarities between Saakashvili's Georgia and Putin's Russia in terms of government handling of independent media sources and political opposition groups and the boosting of police powers. This is not because the two leaders thinking similarly, or one copies the other,[5] but because both leaders prioritised the building of a strong state and similar situations on the ground pushed them to act in similar ways. This is not to say that the path of police reform was similar in the two countries. In Russia it did not go beyond the mere change of technical cosmetics and never affected police tactics and behaviour. However, in Putin's Russia and Saakashvili's Georgia the stronger state has exercised power primarily

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[5] Kupchan Charles, 'Sukhumi Dispatch: Wilted Rose', The New Republic, 6 February, 2006; De Waal Thomas, 'Putin's copycats', New Statesman, 29 November, 2007

through coercion, producing a repressive state[6] and making the police a key institution in the state-building process.

The concept of building a new and strong state rested on several pillars, fighting corruption and organized crime being the most important. This legitimated more powers to the police and the prosecutor's office, some tolerance for police misconduct, an increase in the prison population, regular breach of human rights including mistreatment of detainees, and the use of excessive force.[7] Anti-crime policies were frequently based on quasi-legal practices with little respect for the rule of law. Many allegations of criminal procedural violations were made, such as arrests without warrants.[8] In response, the Tbilisi procurator once told reporters that because suspects would often attempt to flee or feign illness to avoid arrest, law enforcement was sometimes forced to detain them in such a manner.[9] Disregarding the rule of law led to serious criticism from human rights watchdogs and other NGOs, who have reported that the police are involved in extrajudicial killings,[10] torture, and other violations of the law.

The balance between maintaining civil liberties and ensuring state security has been a perennial question in democratic societies. The 'tough on crime' approach builds on the assumption that over-sensitivity to civil liberties undermines police effectiveness by restraining the use of coercive and vigorous tactics.[11] The rationale behind the line of thinking of the authorities was that it would not have been possible to implement reform with full observance of human rights and full accountability.[12] However there is no evidence that disrespecting human rights produces more effective policing. The leading policing expert David Bayley demonstrates that police effectiveness actually depends on their accountability in the sense of behaving at a high standard and conforming to international standards of human rights.[13] In fact, respect for human dignity is a key aspect of democratic policing. Policing through human rights has become an increasingly popular concept.[14]

Another important distinction to be made is between coerced compliance focused on repressive social control and normative compliance based on the perceived legitimacy of law and police. Strategies of coerced compliance rest on the assumption that rationally minded offenders are deterred by the potential punishment. Such strategies ignore the importance of boosting the legitimacy of the

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[6] Holmes Leslie, 'Russian corruption and state weakness in comparative post-communist perspective', in Pravda Alex (ed.) Leading Russia: Putin in Perspective, (Oxford: Oxford Scholarship Online, 2005), p.95

[7] See, for instance, US Department of State, 'Country reports on human rights practices Georgia', (Washington DC: Department of State, 2006); and Amnesty International, 'Georgia profile', (Amnesty Internaitonal, 2007).

[8] Georgian Young Lawyers Association (GYLA), 'Legal analysis of cases of criminal and administrative offenses with alleged political motive', 2011, pp.8-9; RFE/RL (Radio Free Europe Radio Liberty), 'Government trumpets victory over budget revenues amid legal concerns', Georgia Desk, 11 August, 2004

[9] Messenger (newspaper), February 5, 2004.

[10] The climax of alleged official disregard of law was the assassination of Sandro Girgvliani, a banker kidnapped and assassinated, allegedly by high-ranking police officials, in 2006. The case led to a major uproar in Georgian society and greatly damaged the public standing of the police.

[11] Hitchens Peter, A brief history of crime, (London: Atlantic Books, 2003).

[12] See for instance David Darchiashvili, 'The future of Russia-Georgia and the variations on internal politics - the devil is in details', [in Georgian] 13 January 2012, available at http://azrebi.ge/index.php?pid=1343

[13] Bayley David, 'Police Reform as Foreign Policy', Australian & New Zealand Journal of Criminology, vol. 38, 2005; Marx Gary, 'Police and Democracy' in Menachem Amir and Stanley Einstein eds., Policing, Security and Democracy: Theory and Practice, (Huntsville: Office of International Criminal Justice, 2001).

[14] Greene Jack R., 'Policing Through Human Rights', Police Foundation vol. 13, 2010

law and criminal justice system. Procedural justice theorists[15] argue that compliance built on the people's recognition of the police as representing legitimate authority, and motivating willing consent and voluntary cooperation, is more effective. The centrepiece of the idea of 'police' was 'policing by consent of the governed.'[16]

The authorities in Georgia have opted for the instrumental methods of zero tolerance policy and rational deterrence. It is not entirely clear whether foreign experience was inadvertently emulated or whether the policy was a rational choice based on clear strategy. Arguably little thought has been given to the long-term consequences of disproportionate punishment (disproportionally lengthy sentences) and using incarceration universally as the solution to public ills.[17] Since 2003 the authorities have used threat and punishment to shape behaviour. The formal rhetoric suggested that all criminals would go to the prison. The media campaign has extensively covered police action demonstrating their toughness and efficiency. The emphasis was put on boosting the legitimacy of police action through demonstrating that there were no 'untouchables'. This should have contributed to a general sense that the police abide by the same rules that they impose on others.

The choice of the particular policy was delineated by structural constraints to some extent. The widespread legal nihilism in society and little respect for the law made it difficult to deal with the crime problem without tough measures. Even up to now the legality and social acceptability of behaviour often diverge and a number of illicit actions are socially encouraged, for instance rule-breaking is frequently encouraged as a display of 'courage' or 'manhood.' In this context police authority may have been accepted by intimidation rather than respect. In a society that emerged out of the Soviet authoritarian past and had no culture of abiding by legal rules, the people would not to follow the rules because they believed they ought to, but rather out of fear of punishment. Further, high crime levels often led to the public calls for decisive measures,[18] making the 'tough on crime' approach politically expedient and attracting public support more easily. 'Fighting crime mercilessly' and 'putting all criminals behind the bars' were among the key post-revolutionary self-legitimising strategies of ruling regime.

The 'zero tolerance policy,' the frequent release of wiretaps of political opponents, criminals and corrupt officials, and the excessive use of police force in breaking up the demonstrations in 2007 and 2011[19] led to the perceived omnipresence and omnipotence of the police in post-revolutionary Georgian society. Even though this can be an exaggerated perception, the populations' fear of the state

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[15] Tyler Tom R., 'Enhancing Police Legitimacy', The Annals of the American Academy of Political and Social Science 593, no 1, 2004; Tyler Tom R., 'Trust and legitimacy: policing in the US and Europe', European Journal of Criminology vol. 8, no. 4, 2011.

[16] Sheptycki James, 'Police,' entry for the Encyclopaedia of Law and Society, (Thousand Oaks, CA: Sage Reference), 2007.

[17] OECD, 'Anti-corruption network for Eastern Europe and Central Asia, Istanbul anti-corruption action plan, second round of monitoring for Georgia' [online]. 29-31 March 2010, p.4 Available from:http://www.oecd.org/corruption/acn/istanbulactionplan/anti-corruptionnetworkforeasterneuropeandcentralasia-meetingsheldon29-31march2010.htm; Hammarberg Thomas, Commissioner for Human Rights of the Council of Europe, Report, April 2011, p.5; Georgian Young Lawyers Association (GYLA), 'LegaL analysis of cases of criminal and administrative offenses with alleged political motive', 2011, pp.20-22;

[18] Marks Monique and Goldsmith Andrew, 'The State, the People and Democratic Policing: the case of South Africa' in Jennifer Wood and Benoît Dupont eds., Democracy, Society and the Governance of Security (Cambridge: Cambridge University Press, 2006), p. 143.

[19] Human Rights Watch, 'World Report 2012: Georgia', available at http://www.hrw.org/world-report-2012/world-report-2012-georgia; U.S. Department of State '2011 Human Rights Report', released 24 May 2012, p. 27.

police apparatus has been manipulated for political ends. It also may play a role in public responses in various polls and surveys.[20]

This is not to say that the reform had no positive consequences. Probably the most comprehensive reform in the public sector was carried out in the police. In the immediate aftermath of Rose Revolution, the Ministry of Interior and Ministry of State Security were merged into one structure integrating all police functions including counter-intelligence. The structure also incorporated the Emergency Situations Department, the Pipeline Protection Department and the Border Guards. Along with undermining the independent functioning of the court system,[21] the police have acquired unlimited power. The personnel were cut by almost half and totalled 27 thousand policemen[22] thus approximating pre-independence, Soviet police personnel numbers.

There was impressive progress made towards the professionalisation of the police force. Patrol police cars have been equipped with modern technology, including digitalised databases containing all information about motorists and vehicles.[23] The police academy started to provide professional training services for new and acting policemen.

Steps have been made toward re-orienting the Ministry of Interior towards the citizen-focused services. The Service Agency encompassed the 'one window principle,' uniting all necessary procedures in one building, such as police, customs and notary services. Nowadays a driving licence can be obtained in 2 hours and the vehicle can be registered within 7 minutes. More recently, a 911-type hotline service was established, uniting previously partitioned services of Fire and Rescue, Emergency, Water and Gas Service, and Police.[24] Most importantly, the unpopular and demoralised traffic police were disbanded and new 'patrol police'[25] were established with new personnel having higher salaries and a full social package, and recruited through a competitive process managed by the police academy. Bribery, that is money, goods or services given quid pro quo for an illicit advantage, almost disappeared. According to 2010 Global Corruption Barometer, the Georgian police are perceived to be one of the least corrupt in the world together with the Swiss, Norwegian and Danish police.[26]

However, key problems remain. The Ministry of Interior remains a powerful, centralized and hierarchical state organ. This kind of centralisation can be found in both democratic and non-democratic countries[27] hence cannot be regarded as a fundamental problem. However the unwillingness to decentralise may reflect the potential for undermining central government control

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[20] Confidential interviews with survey respondents, 2011-2012, Georgia.

[21] Reports by international organisations speak about undue influence of prosecutor's office on criminal cases in the courts and high conviction rates (98%). See Freedom House, Nations in Transit report 2012, available at http://www.freedomhouse.org/report/nations-transit/2012/georgia. European Commission, High Representative of the EU for Foreign Affairs and Security Policy, Report on the Implementation of the European Neighbourhood Policy in Georgia Progress in 2011 and recommendations for action, (Brussels: European Commission, 2012), p.5

[22] Ministry of Interior, Analytical Department data (unpublished), October 2011.

[23] In September 2011, carrying driving license was no longer obligatory.

[24] Ministry of Interior, Analytical Department data (unpublished), October 2011.

[25] The patrol police are an autonomous unit inside the MIA and beyond the control of local police departments, uniting various police structures such as subway patrol, on-foot patrol, mounted patrol, border police. The Patrol Police consist of approximately 3320 policemen, 13% of which are females.

[26] The Survey asks 'to what extent do you perceive the following institutions in the country affected by corruption?' See Transparency International, Global Corruption Barometer, 2010, available at http://gcb.transparency.org/gcb201011/

[27] Kratcoski Peter C., 'Policing in Democratic Societies: an historical overview', in Dilip Das and Otwin Marenin eds., Challenges of Policing Democracies: A World Perspective, (Reading, UK: Gordon and Breach Publishers, 2000), p. 27

locally that would be the end result of the process. Inherently this limits the extent to which local needs can be addressed and prioritises centrally determined targets.[28] Further it hinders the development of a capacity for judgement and discretion among individual police officers.[29]

The Ministry of Interior lacks transparency, accountability and external oversight. According to the official narrative, the police glass buildings are the symbol of transparency and safety.[30] However it is not clear whether this transparency equally applies to spending of public funds on construction of these very buildings.[31] Several NGOs including Transparency International had problems of obtaining public information from the Ministry of Interior.[32] Apart from the 'symbols,' there are few if any accountability mechanisms for the public.

3. Trust in police or perception of police effectiveness?

The predictable outcome of the reform was the increase of police effectiveness to fight crime and deliver services to the public. This section explains why the public regards police work as 'favorable' but it first demonstrates that public perception of police effectiveness should not be equated with the public trust in police as is frequently done by the authorities.

According to a 2011 IRI survey of Georgian public opinion, 87 per cent of the population consider the work of the police 'favourable'. The actual question asked in the framework of survey sounded as 'how do you feel about the work of the following institutions?'. The Police came third in a list that is led by the Church and the Army. Authorities frequently quote this study as an indicator of public trust of the police.[33] But that is an inaccurate interpretation.

The results of the IRI survey may be used to evaluate public satisfaction with police work or perceptions of police effectiveness (the extent to which respondents are satisfied with the work of the police), rather than public trust in police. Trust denotes a more complex set of expectations and predictions that are rooted in a kind of relationship between individuals and institutions.[34] Police effectiveness is just one dimension of public trust and these two terms cannot be used interchangeably. Two other pillars are important: fairness of treating citizens and value alignment.[35] In terms of fairness, it is important to evaluate to what extent police decisions are influenced by pressure from political parties and politicians and whether the police treat everyone fairly regardless of who they are and what kind of views they have. In terms of value alignment, we need to look at the extent to which the police

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[28] Beck Adrian and Annette Robertson, 'The challenges to developing democratic policing in post-Soviet societies: the Russian experience', in Police Practice and Research, vol. 10, no. 4, 2009, p. 288

[29] Caparini Marina and Marenin Otwin, 'Crime, insecurity and police reform in post-socialist CEE', The journal of power institutions in post-Soviet societies [online]., vol.? no.? 2005, p.4

[30] Personal communication with high ranking official of Analytical Department of Ministry of Internal Affairs, April 2012

[31] EurasiaNet, 22 May 2012, available at http://www.eurasianet.org/node/65442

[32] Transparency International statement 9 March 2011, available at http://www.transparency.ge/blog/psadjaro-inpormatsia-shinagan-sakmeta-saministro-upasukhod-tovebs-kitkhvebs-politsiis-reklamast

[33] Mikheil Saakshvili, statement on 14 January 2011, available at http://www.epn.ge/?p=42083, Zguladze Eka, Statement on 29 March 2012, available at http://www.ghn.ge/news-63354.html

[34] European Social Survey, Round 5 Module on Trust in the Police and courts - Final Question Design Template. (London: Center for Comparative Social Surveys: City University of London, 2011), p. 34

[35] Value alignment is the extent to which the police are seen to understand, defend and represent group values and community standards.

understand the needs of community and whether they actively seek to deal with the issues that matter.[36] There has been no survey in Georgia that asked citizens whether they trust that the police operate in the best interest of the public. In fact, trust in police fairness may have a stronger effect on perceived legitimacy than trust in police effectiveness.[37] A CRRC survey of 2009 that asked respondents to evaluate their trust towards institutions on a 5 point scale showed that only 21.2 per cent 'fully trust'[38] and 12.4 per cent 'fully distrust' the police.[39] Earlier, one researcher found that the satisfaction rate among the citizens having been in contact with police was much lower compared to those who had not.[40] The crime surveys of 2010 and 2011 confirm that the proportion of crime-reporting people that express satisfaction with their treatment by the police is much lower than in the USA or most Western European countries.[41]

However, it is important to recognise that public perceptions of police work as 'favourable' is high compared to many other countries. Disaggregating satisfaction with police work, we may speak of several variables accounting for it. The dramatic cut in crime rates, the resulting low victimisation, and the reform and modernization of the police-public interaction explain why so many people think that police work is favourable.

First, most people think that the reason behind decreasing crime level is proper performance of law enforcement bodies.[42] The level of victimisation,[43] which is an effective tool to measure the extent of fear of crime in society, decreased from 29.7% in 2006 to 16.8% in 2011. Some crimes like car theft almost disappeared over past few years and others have decreased dramatically. This makes Georgia one of the safest countries in Europe according to the survey.[44] Reynolds et al. found that fear of crime negatively correlates with satisfaction with police work. The less people are afraid of being a victim of crime, the more they think favourably of the police.[45]

Second, greater emphasis on building transparent police offices, cutting everyday corruption, and boosting the delivery of services, have transformed the dynamics of the police-public encounter and shifted it away from previous enmity and hostility. Police training has focused on making uniformed police more polite, friendly and helpful to the citizens and has contributed to a much better image of the average policeman in the public eye. However, arguably the behavioural change is not the result of the reorientation of beliefs and values but rather the outcome of new policy and operational guidelines. Importantly, the transformation of the police-public interaction is effectively used for

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[36] See Hough Mike and Mai Sato, 'Trust in justice: why it is important for criminal policy, and how it can be measured', Euro-Justis project, (London: Institute for Criminal Policy Research Birkbeck, University of London), 2011

[37] European Social Survey 2011

[38] The IRI survey of the same period evaluates public satisfaction with police at 68 percent.

[39] 33.7 percent somehwat trust, 12.9 percent somehwat distrust and 19.7 percent is neutral

[40] Bonvin Blaise, 'Public security in Georgia and the region bordering Abkhazia: revisiting some received ideas' [online], 2006, Available at: http://www.traccc.cdn.ge/resources/articles/Blaise_Bonvin/Public_Security_in_Georgia.pdf

[41] Van Dijk J. and Tea Chanturia, 'Georgian Crime Trends in an International Perspective; a secondary analysis of the 2010/2011' Crime and Security Surveys in Georgia, (Hulla and CO Human Dynamics KG and European Union, 2011), p. 17

[42] Ministry of Justice, Crime and Security Survey, 2011

[43] Percentages of the public victimised by crime

[44] Van Dijk and Chanturia 2011

[45] Reynolds Michael K., Semukhina Olga B. and Demidov Nicolai N.,' A Longitudinal Analysis of Public Satisfaction with the Police in the Volgograd Region of Russia 1998-2005' International Criminal Justice Review vol. 18, 2008.

boosting legitimacy while maintaining the coercive function. To use Loader and Walker's expression, this is 'the velvet glove covering and cushioning the iron fist.'[46]

Third, the general efforts to professionalise and modernise the police raise its public image and respect in society. New uniforms, new arms and cars together with more sophisticated technology of police Ipads, car board computers with access to the database of driving licenses and drivers' traffic offenses, more than 2000 CCTV cameras in Georgian cities are good examples. Overall, the policy of meeting general public needs worked well enough that is also reflected in satisfaction rates with police work.

4. High vs. Low policing

The previous section shows that the area where police interact with the citizenry ('low policing') has been transformed. However the police still provide protection for the ruling regime; the function of 'high policing' changed little. This section further elaborates on the distinction between 'high' and 'low' policing and provides empirical evidence for 'politicisation' of the Georgian police.

Democratic police are politically neutral police,[47] but the full independence of the police from politics is difficult to achieve even in developed democratic states and police independence is not recognized as key pillar of democratic governance, unlike judicial independence, which is an important element of of the checks-and-balances concept. Understandably, there is much temptation among the rulers to keep police control as a valuable tool for maintaining influence.

Generally, contemporary police research pays little attention to the question 'who are the beneficiaries of the good of policing?' This is important because much policing that claims 'public interest' may actually serve private interests.[48] In this sense the policing driven by private or regime interest can qualify as another form of corruption if one defines it broadly as using formal office for private ends thus damaging public interest.

There is room for police discretion remains in all settings. But usually it does not go beyond random involvement in particular cases of criminal investigation or nepotistic appointments.[49] In democratic settings, politicians do not interfere regularly in the work of law enforcement in a way that distorts the impartial application of law. By the same token, calling up the police force to violently suppress public movements and uphold the status quo in the middle of a political or social crisis is a feature of both authoritarian and democratic governments[50] although minimising the use of force is one of the basic principles of democratic policing.[51]

Further, since the police are a coercive institution, there are obvious limits to its legitimation in any society and it never commands universal love. However this does not mean that police should be

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[46] Loader Ian and Neil Walker, 'Necessary virtues: the legitimate place of the state in the production of security' in Wood Jennifer, and Dupont Benoit eds., 'Democracy, Society and the Governance of Security', (Cambridge: Cambridge University Press), 2006, p. 174

[47] Marx 2001

[48] Crawford Adam, 'Policing and Security as 'club goods': the new enclosures', in Wood Jennifer and Dupont Benoit eds., Democracy, Society and the Governance of Security,)Cambridge: Cambridge University Press, 2006), p. 117

[49] Das Dilip, Challenges of policing democracies: a world perspective, in Das Dilip and Otwin Marenin eds., Challenges of Policing Democracies: A World Perspectivective, (Reading, UK: Gordon and Breach Publishers, 2000), p. 11

[50] Loader and Walker 2006, p. 173

[51] Bayley 2005, p. 207

'politicized' i.e. the subject of overt political controversy over its manner, tactics or mode of operation and organization.[52]

      In the literature on policing, the concepts of serving the large public and defending political regime are often seen as contradictory.[53] This is a false dichotomy. The leading Canadian criminologist and policing expert Jean-Paul Brodeur makes a distinction between two different policing practices: high policing that aims at protecting state political institutions and the constitutional framework in a democratic setting and protecting the political regime in nondemocratic setting, sometimes with the help of extralegal means; and low policing that aims at protecting society. These two types of policing are not anthitetical.[54] Empirically, in Georgia the new authorities were successful in transforming the public face of the police and fundamentally reforming those branches of the police apparatus that directly interact with the citizenry (patrol police, border police and criminal police). At the same time, the branches of the 'secret police' (Special Operations Department, Constitutional Security Department, and Counterintelligence) remained largely unreformed with continuing lack of transparency, abuse of human rights and bullying of the political opposition.[55]

      This resonates well with the distinction between the general and specific order that police exist to maintain. Marenin refers to a 'specific order' to describe the use of the police for maintaining specific patterns of inequality and dominance. This is distinguished from 'general order' that is shaped by public rather than sectional interests.[56] The patterns of domination organized on political lines are reproduced by using the police as the regime tool.

      There is ample evidence to support this claim when it comes to Georgia. The police became increasingly political, especially after Saakashvili's power was challenged in November 2007, and the main function of the police was reported to be undermining the political opposition. The trends of politicisation became even more pronounced after Bidzina Ivanishvili entered politics. Empirical evidence suggests that political use of police can be grouped in several categories:

a) bullying and intimidating political opposition activists

In the wake of the public protests of 2007-8 the reports have been continuously emerging about police mistreatment and blackmail of the activists of political parties that were well documented by several NGOs.[57] After the protests, the authorities extensively used administrative punishment to fine or lock up political activists and protestors that were detained at or following the political opposition protests. This was done with numerous violations of the legal process.[58] This was followed by the scandal in 2010 in a mountainous region, where the

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[52] Reiner Robert, The politics of the police, 4th edition (Oxford: Oxford University Press, 2010), p. 33-34

[53] Caparini and Marenin 2005, p.2; Beck and Robertson 2009, p. 291.

[54] Brodeur Jean-Paul, 'The Policing Web', (Oxford: Oxford University Press, 2011), pp. 223-226

[55] Kupatadze Alexander, 'Organized crime, political transitions and state formation', (Basingstoke and New York: Palgrave Macmillan, 2012), p. 45

[56] Marenin Otwin, 'Parking Tickets and Class Repression: The Concept of Policing in Critical Theories of Criminal Justice,' Contemporary Crises vol 6, no 3, 1982

[57] See Humanrights.ge, 19 May 2008, available at http://www.humanrights.ge/index.php?a=main&pid=11930&lang=geo; Amnesty International, public statement on 23 June 2009, available at http://www.amnesty.org/en/library/asset/EUR56/001/2009/en/2d4db874-5e22-4fc0-99a5-54f2015fa1bc/eur560012009en.html; International Federation for Human Rights (FIDH), 'After the rose, the thorns: political prisoners in post-revolutionary Georgia', September 2009.

[58] Human Rights Watch, 'Administrative error. Georgia's flawed system for administrative detention', January 2012

regional police, together with representatives of local government, detained opposition candidates overnight and forced them to withdraw from the election race to be held a month later. The incident was caught on camera.[59]

In 2011 European Commissioner for Human Rights Thomas Hammarberg warned against the 'serious deficiencies marring the criminal investigation and judicial processes in a number of criminal cases against opposition activists, which cast doubts on the charges and the final convictions of individuals concerned.'[60] However this did not prevent further occurrence of similar cases.

In March 2012 Amnesty International reported on illicit practices during the questioning of more than 100 opposition activists throughout Georgia that had been summoned by the Georgian Chamber of Control, the state auditing agency in charge of monitoring the funding of political parties. The report says that 'Amnesty International received several reports that these examinations often are carried out in an aggressive manner, under heavy police presence, with people subjected to invasive searches and questioned about their personal political beliefs and activities, often while being denied their right to legal representation.'[61]

b) bullying and intimidating the general population to prevent them from supporting opposition political parties

There are numerous reports of political pressure by the police in various regions in 2012. Ordinary citizens are intimidated and blackmailed to withdraw their support from political opposition groups, to remove the TV channels covering the activities of political opposition, etc.[62] In July 2012, the Coalition for Freedom of Choice, a movement comprising several nongovernmental organisations, reported the discovery of a memory chip belonging to a policeman in Guria that contained various data on the local population including their employment, political beliefs and ownership of satellite dishes.[63] This would amount to illicit surveillance of the local population without the appropriate court approval.

c) manipulating the criminal justice policies to recruit activists for the ruling UNM party

Another illicit practice is the manipulation of conditional sentences for political purposes. By July 2011 there were 36 700 probationers in Georgia.[64] The police allegedly sometimes approach probationers, promising to cancel their conditional sentences in exchange for political loyalty and support in the October 2012 elections.[65]

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[59] France 24, 24 May 2010, available at http://observers.france24.com/content/20100524-local-authorities-filmed-forcing-opposition-out-election-race-georgia-saakashvili
[60] Hammarberg Thomas, Commissioner for Human Rights of the Council of Europe, Report, April 2011, p.3
[61] Amnesty International, press release, 'Georgian Chamber of Control must respect human rights in the ongoing probe on political financing', 16 March 2012.
[62] See Information Center of Kakheti, 6 April 2012, available at http://ick.ge/ka/articles/10462--ickge-.html; TS Press 17 January 2012, available at http://tspress.ge/ka/site/articles/10837/; Mtskheta-Mtianeti Information Center, 13 July 2012, available at http://beyondtbilisi.ge/en/content/khevsureti-residents-police-forbid-watching-maestro-and-channel-9; TS Press 25 April 2012, available at http://tspress.ge/ka/site/articles/11650/;
[63] InterpressNews, 30 July 2012, available at http://www.interpressnews.ge/ge/sazogadoeba/208965-qarchevnis-thavisuflebisthvisq-mier-mopovebul-policielis-mekhsierebis-barathshi-mosakhleobis-shesakheb-informaciaa-chatserili.html
[64] GEOSTAT, Report on Criminal Justice Statistics, July 2011, available at http://www.geostat.ge/index.php?action=page&p_id=622&lang=geo
[65] Personal communication with the residents in Tbilisi and Rustavi, June-July 2012.

d) manipulating criminal justice policies to raise funds for the ruling UNM party

Interestingly, some of the individuals arrested by the police over past years for corruption, illegal entrepreneurship, membership of an organized criminal group and fraud have appeared on the list of funders for National Movement Party.[66] Even if the contributed funds are formal fines, it is not clear why this money goes to the party coffers instead of state budget. This may suggest the manipulation of criminal justice policies for extorting money in favour of the ruling party.

Considering the strict hierarchical structure of the Ministry of Interior it is less likely that individual police officers or various sub-units of the Ministry act on local initiative. Rather it is highly probable that the police pressure is part of the overall policy to suppress dissent.

5. Failure of accomplishing larger goals of policing

Considering all the aforementioned, there is reason for concern that that the general reform and anti-crime policies may be failing to achieve the key policing goal of maintaining public order over the long term. This section demonstrates that the normative change in society still needs to come and 'policing through consent' remains unachieved in a foreseeable future with the current policies in place.

The zero tolerance policy and rational deterrence model has led to dramatic decrease in crime rates. However, citizens comply out of intimidation not out of the consent. There is little evidence that long-term changes in social norms toward voluntary rule-abiding and greater self-discipline are underway. The 'change of mentality' rhetoric remains wishful thinking and has little to do with reality. Surveys show that Georgians are still suspicious of institutionalized cooperation and the general trust in society is remarkably low. Blood kinship based links still prevail over formalized relationships.[67] Georgians are still reluctant to report crime to the police. An overwhelming majority of 95 per cent of surveyed citizens in 2010 did not call the police over past five years.[68] This can be partially explained by the little confidence in police services based on the historical experience of interaction with police.[69] However, satisfaction from contemporary experiences is also low.[70] Among the reasons of not reporting burglary to the police Georgian respondents most often mention 'not worth reporting, not serious enough' (34%) and 'police could not have done anything' (21%). The next two most popular answers attract attention because the number of respondents citing the reason is substantially higher than the EU average. 20 per cent of Georgian respondents think that 'police would not have been interested' compared to 5.6 per cent of the EU average and 18 per cent of Georgians 'dealt with the

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[66] See Netgazeti 21 June 2011, available at http://netgazeti.ge/GE/105/News/10380/; for the police statements on arrests see the web links of Constitutional Security Department at http://kud.security.gov.ge/index.php?task=news&id=35&lang=geo and http://kud.security.gov.ge/index.php?task=news&id=16&lang=geo

[67] CRRC (Caucasus Research Resource Centers), 'Social Capital in Georgia: Final Report and Recommendations', (Tbilisi: CRRC, 2011)

[68] GORBI (Georgian Opinion Research Business International), Crime survey of Georgia. (Tbilisi: Ministry of Justice, 2010), p.9

[69] Van Dijk and Chanturia, 2011, p. 16

[70] Bovenin 2006, Van Dijk and Chanturia 2011

matter by himself' compared to 5.9 percent of EU average.[71] This indicates low trust to police and higher self-sufficiency of the citizens.

The zero tolerance policy and the use of near-universal incarceration have led to a dramatic increase of the prison population. This is dangerous because prisons lack re-socialization programs and the facts of unfair and often illicit handling of inmates is a common occurrence.[72] This means displacement of the crime problem into the future rather than 'correctional' treatment of delinquents. The prison population increased four-fold, from 6119 in 2003 to 24114 in 2011.[73] That makes Georgia a country with one of the highest incarceration rates in the world (547 prisoners per every 100,000 people) only superseded by United States, Rwanda and Russia.[74] Even though several new prisons have been constructed and some older ones have undergone renovation works, the number of inmates still exceeds the possible limits (by the end of 2011 there were 24 244 inmates instead of the allowed 23 630). According to the Ombudsman's reports in some prisons the inmates do not have at least 2-3 square meters of their own space. A number of prisons (Tbilisi prison N1, Batumi prison N3, Zugdidi prison N4) lack basic standards of light, ventilation, and heating. Arguably containing a person in these conditions amounts to inhuman and humilating treatment .[75]

Even though the prison infrastructure and the living conditions have improved,[76] beating, and verbal and physical abuse of inmates are regular.[77] There are very few complaints by the inmates largely because those who appeal are not moved to a different detention facility. Hence others are afraid to report because those who dared are continuously abused by prison staff.[78]

The Ombudsman's reports contain numerous accounts of lack of willingness of the police and penitentiary system to investigate, and the failure of prosecutor's office to be proactive in, cases of prisoner abuse. Given the background of increased efficiency and professionalism of the investigative structure, it is more likely that unwillingness to investigate the incidence of prisoner abuse in the penitentiary system is part of general policy rather than an outcome of institutional deficiency. This also contributes to the sense of impunity among, and even encouragement of abuse by, prison staff.[79] The prison administration usually imposes overly strict rules (talking loudly to other inmates in neighbouring cell, turning up radio) and disproportionally strict punishment for the violation of these rules. The punishment is often unofficial, and even if formally registered, the records lack information on why the particular methods of punishment were chosen. This led some experts to conclude that disciplinary punishment is often applied arbitrarily.[80] In some prisons, inmates are punished collectively: if one inmate breaks the rule, all other inmates in the same cell are punished. This is not

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[71] GORBI (Georgian Opinion Research Business International), Crime survey of Georgia. (Tbilisi: Ministry of Justice, 2010), p.11

[72] Ombudsman 2011, Ombudsman 2010

[73] Geostat 2011

[74] International Centre for Prison Studies, data on World Prison Population, 2011.

[75] Ombudsman, 'About the state of human rights and liberties in Georgia' (Tbilisi: Ombudsman office, 2011), p.300

[76] Ministry of corrections and legal assistance, annual report 2011.

[77] U.S. Department of State '2011 Human Rights Report', released 24 May 2012, pp. 4-5 available at http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186353#wrapper; See also Human Rights Watch, 'Prisoners' Rights in Georgia', vol. 18, no. 8, September 2006.

[78] Ombudsman, 'Special Report on the result of monitoring of penitentiary system', (Tbilisi: Ombudsman office, 2011)

[79] Ombudsman 2011, pp. 2-8; Ombudsman, 'Special Report on the result of monitoring of penitentiary system', (Tbilisi: Ombudsman office, 2010), pp. 13-17.

[80] PRI (Penal Reform International) 'Assessment of penal legislation in Georgia', (Tbilisi: PRI, 2009), pp. 22-23.

commensurate with international standards and the law. Forty three per cent of the respondents with recent detention experience surveyed by Penal Reform International think that inmates are treated 'brutally' and only ten per cent consider the treatment 'correct.'[81] The prison system and the courts are the least trusted institutions in Georgian society.[82]

The practice of arbitrary punishment, insulting and humiliating inmates undermines their trust in the criminal justice system and exacerbates their criminality.[83] The prisons remain a criminogenic environment. In-prison experience of strains, stigmatising labels, and physical intimidation reinforce the criminal propensity of inmates and pushes them to more antisocial behaviour in post-prison life.[84] The focus on punishment, coupled with the lack of re-socialization and re-habilitation programs, increases the risk of re-offending. Criminologists have recently advocated a view of the prison's role in recidivism that differs from the rational choice argument that the prospect of harsh punishment makes re-offending very costly. The advocates of restorative justice[85] have convincingly argued that punishment alone is not effective in changing behaviour and actually may cause more harm through disrupting communities and families.

Hence there are many question marks about whether the state is achieving the key goal of policing, that is, securing public order over the long-term. In fact there is no long-term solution to the crime problem in place and there are few signs of the transformation of norms in society. Anti-crime policies built on penal excess and suppression of independent criminal justice bodies, such as courts may not be sustainable over time and may not survive a change in power.[86] Lower victimisation does not mean that society is better. The normative change is usually slow and does not occur overnight. The argument made by liberal criminologists against increasing police power is that, after all, policing plays only marginal role in maintaining social order, which is rooted in larger processes in political economy and culture.[87]

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[81] PRI and Estonian Institute for Open Society Research, 'Attitudes of Georgia's population towards crime and penal policy', November 2009, p.27.
[82] ibid, pp. 44-47
[83] Nagin, Cullen and Johnson, 2009, p. 122. According to the 'schools of crime' viewpoint, the brutal, inhumane, and psychologically destructive nature of social experience of imprisonment makes offenders more likely to encourage recidivism.. For a review see Gendreau Paul, Goggin Claire and Cullen Francis T., 'The effects of prison sentences on recidivism', A report to the Corrections Research and Development and Aboriginal Policy Branch, Solicitor General of Canada, (Ottawa, Ontario: Public Works & Government Services Canada, 1999).
[84] Nagin Daniel S., Francis T. Cullen, and Cheryl L. Jonson. 'Imprisonment and Reoffending', in Tonry Michael, ed., Crime and Justice: A Review of Research, vol. 38. (Chicago: University of Chicago Press, 2009), pp. 125-129; Francis T. Cullen, Cheryl L. Jonson and Daniel S. Nagin, 'Prisons Do Not Reduce Recidivism : The High Cost of Ignoring Science', The Prison Journal vol. 91, no. 48, 2011.
[85] Wright Martin, Justice for Victims and Offenders (Bristol, PA: Open University Press, 1991); Mackey Virginia, Restorative Justice: Toward Nonviolence (Louisville, Ky: Presbyterian Justice Program, 1990); Van Ness Dan and Strong Karen Heetderks, Restoring Justice (Cincinnati: Anderson Publishing Co., 1997); Latimer Jeff, 'The Effectiveness of Restorative Justice Practices: A Meta-Analysis', The Prison Journal, vol. 85, no. 2, 2005; Tyler Tom R., 'Restorative Justice and Procedural Justice: Dealing with Rule Breaking', Journal of Social Issues, vol 62, no 2, 2006.
[86] Slade 2012, p.52
[87] Reiner 2010, p. 22

6. Transferability of the reforms

The media often discuss the elevated interest of foreign states in Georgian reforms and there are reports about sharing policing experience with Kyrgyzstan,[88] Moldova,[89] Guatemala[90] and other states. However it seems that technical details are less important than the underlying context in which the reform was possible. The combination of factors in Georgia (a small group of leaders having a monopoly of political power, a window of opportunity provided by the Rose Revolution, etc) is not likely to be replicated elsewhere.[91]

This kind of reform is difficult [if not impossible] in countries like Kyrgyzstan and, more generally, in corrupt environments where regionally based political clans are competing for power. In that kind of setting, rival groups are competing over illicit rents, hence radical reform would undermine a system in which various political-financial 'clans' divide the licit and illicit resources between themselves. In Kyrgyzstan, the willingness and capacity to change the system is undermined by the perceived power of potential losers from radical reform. In other words there is a vested interest in keeping the status-quo. This can change if a window of opportunity opens that brings a major reshuffle of the ruling elite and the emergence of one principal center of power. Although it is not the only pre-condition, quick and radical change is highly unlikely without a monopoly of power that eliminates contestation, resistance and differing views on reform. In other words, reform like the Georgian one is highly unlikely to be carried out in a pluralistic setting.

In addition, policing reform needs to be comprehensive, with a number of different branches of the public sector being transformed. On the national level, police reform would not work without the reform of tax enforcement and customs because financial resources are crucial for sustaining the reform effort. On the institutional level, increasing salaries for police officers will not be effective without cleaning up the police ranks and establishing an effective system of punishment for corrupt police officials. Reforming traffic police may not succeed without the reform of police education. In the Latin American context, it is necessary to consider how the role of military in public governance and the militarisation of policing changes the equation or shapes the policy context.

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[88] EurasiaNet, 28 October 2011, available at http://www.eurasianet.org/node/64401
[89] Moldova News, 25 January 2012, available at http://www.allmoldova.com/en/moldova-news/1249053604.html
[90] Netherlands Institute for Multipary Democracy, public statement, available at http://nimd.ge/index.php?option=com_content&view=article&id=79%3A-sharing-georgias-police-reform-in-guatemala&catid=1%3Alatest-news&Itemid=76&lang=en
[91] Slade 2012

7. Conclusion

The new authorities that came to power in November 2003 have reformed and modernized the sectors of policing that are in direct touch with the citizenry. Making police stations visually transparent, equipping police with modern technology, improving the police handling of citizens are part of transforming the public image of the police. They are also part of the effort to liberalise the space where police interacts with the population. Having said that, we need to keep in mind numerous reports on the bullying of the political opposition and the violation of human rights by the police. The police still function as crucial safeguard of the ruling regime, although now better camouflaged under 'citizen-oriented reform'.

If the legal system makes unfair and politically-motivated decisions and acts accordingly, this leads to the erosion of legitimacy, damaging the normative motivation to comply with the law and cooperate with this legal system, and the undermining of the moral justifiability of the power of institutions that are meant to deliver justice as a public good. If the authorities are committed to democratic reform, the police must become less oriented to regime protection and more committed to the delivery of equitable services and community needs.[92] Security must extend to all members of society despite their political agenda or influence..

Georgia still has a long way to go toward democratic policing. The list of achievements in police reform is impressive. However it is watered down by an overwhelmingly coercive approach to the crime problem, an emphasis on incarceration and a failure to adopt policies aimed at normative compliance. Even if Georgian police are more professional and more effective nowadays, the broader criminal justice system suffers from a lack of court independence and the overstretched powers of the prosecutor's office. Policy must focus on making citizens law-abiding through the emphasis on education rather than through coercion.

About the Author

Alexander Kupatadze is a scholar with numerous years of experience in studying organized crime and corruption issues in post-Soviet Eurasia. He obtained his PhD in International Relations from the University of St Andrews, UK and has held teaching and research positions at the Transnational Crime and Corruption Center (TraCCC), Georgian Institute of Public Affairs in Tbilisi, Georgia, OSCE academy of Central Asia in Bishkek, Kyrgyzstan, and Elliott School of International Affairs of George Washington University, USA. He is currently Oxford-Princeton postdoctoral fellow in global governance.

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[92] Marks and Goldsmith 2006, p. 161