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# **Informality as Illegality in Georgia's Anti-Mafia Campaign**

## Abstract

The paper examines the anti-mafia laws in Georgia and links the decline of informality under Saakashvili with the use of punitive measures in a concerted effort to establish legal centrism over and above other extra-legal normative orders. The paper discusses the specific informal practice of the *obshchak*, or mutual aid fund, and how this evolved to become linked to organized crime, making it an object of criminalization. Finally, the paper argues that punitiveness, framed in terms of fighting the mafia, was a key element in tackling informality. However, far from banishing informality, pressure in the criminal justice system led to systemic punitive informal practices within the state.

Anti-mafia; organized crime; Georgia; law; punishment; informality

## **Introduction**

What role does criminalization and punishment play in state projects to fight informality? Many informal practices are perfectly legal, and many are not. As Polese et al. (forthcoming), usefully define it ‘informality consists of a myriad of (economic, social and cultural) practices spread on a spectrum between the legal, the extra-legal and illegal.’ In contrast to informality, illegality is decided through acts of categorization by state institutions. Yet, the legal/illegal categorization can also go unapplied or be contested. As Polese (2013: 86) writes, ‘a law is a law, but the value and applicability of that law is ultimately decided by the people in social practice.’ That decision must take into account the nature of the particular law, and in the case of criminal law, the attendant punishments and credibility of their enforcement. This paper will show how criminalization, heightened punitiveness and credible enforcement were used in the case of Georgia to re-categorize many informal practices as illegal and credibly signal their unacceptability to society. In this paper, I focus on one particular aspect of this: the struggle with organized crime and in particular that subset of organized crime that provides protection, the mafia. This is known in Georgia as the *k'anonieri kurdebi*, often rendered in English as ‘thieves-in-law’, where ‘law’ here means a code of honour. For the Georgian state, following the Rose Revolution of 2003, this network of made men represented an alternative normative order and ‘juris-generator’ in competition with the state (Slade 2007, 2013). The thieves’ world (*kurduli samq'aro*) consisted of a set of informal institutions and practices that became widespread within Georgian society.

The paper's main contribution is to use the example of the anti-mafia campaign to address the specific role that punitiveness – the use of severe and predictable punishment involving the deprivation of liberty - has played in Georgia in fighting against informality. The paper makes two key arguments: firstly, that criminalization was a cornerstone of the United National Movement's (UNM) reform programme and that 'organized crime' became convenient shorthand for a slew of informal practices. Secondly, that, somewhat incongruously at the same time, informality was used in order to produce credibility in the enforcement of new and existing laws. The paper places greater emphasis on the second aspect highlighting informal practices of punishment which took hold in criminal justice institutions in order to make the fight against organized crime and corruption more effective. Informality became embedded in the punitive mechanisms employed by the state and was manifested in the collection of compromising material, the forcing of confessions and the employment of excessive violence by criminal justice actors.

The paper draws on previous research (Slade 2012, 2013) into organized crime and the anti-mafia campaign in Georgia. This research involved on and off the record interviews with former convicts, criminal justice agents, NGOs and experts in two main sites: Tbilisi and Kutaisi between 2008 and 2011. I also collected police files, court cases and archival data. On top of this, the paper utilizes data from research conducted with the Open Society Georgia Foundation (Slade et al. 2014) on human rights abuse in Georgian prisons involving interview and survey data of prisoners and ex-prisoners. Finally, the paper also draws on data from an ongoing interview project of prisoners and ex-prisoners conducted by the author in a number of former Soviet countries, the results of which are only partially published (Piacentini and Slade 2015, Slade 2015).

Before turning directly to the issue of informal practices of punishment, the paper will first give a discussion of the fight against the mafia as a project of legal centrism – permitting only one juris-generator, the state. The paper then discusses one particular informal practice – the *obshchak* or mutual fund – and its manifestations to understand how this informal practice came to be framed as organized crime and the state's elision of the informal and the illegal. Finally, the paper examines punitiveness and the ways in which informal practices of punishment by the state have contributed to the attack on informality as organized crime.

### **Creating Legal Centrism by Fighting Organized Crime**

There is now a burgeoning literature on the anti-corruption and institution building measures under the UNM government and Mikheil Saakashvili following the Rose Revolution of 2003

(World Bank 2012, Kupatadze 2012, Light 2014, Di Pippo 2010; Aliyev 2014, 2015). Reforms aimed at producing greater oversight in regulatory bodies, reducing the complexity of citizen-state interactions, and ensuring effective enforcement of the law and prosecution of corrupt activity. World Bank (2012) indicators show that institutional performance improved in many areas under Saakashvili. In line with much of the literature on informality, efficient and streamlined institutions and procedures reduced reliance on informal practices and networks. However, Aliyev (2014, 2015) notes that due to a lack of progress on improving employment prospects, providing social security or poverty reduction, informal networks continue to be prominent as a form of non-state social support in Georgia. Change has occurred, as witnessed by survey data that shows a decline in those reporting utilizing informal connections to achieve formal positions. Aliyev (2014, 30) sums up: “institution-building processes in Saakashvili’s Georgia achieved a notable success in weakening such deeply-rooted informal practices as gift-giving and reciprocal favours offered in return for preferential treatment in formal institutions.” What is missing from this conclusion is the reliance on criminalization, prosecutorial action and punitiveness in co-producing this notable success.

Recent works, based on grounded empirical research, describe how strategies of repression were utilized in Georgia. Rekhviashvili (2015) and Polese et al. (forthcoming) show how street vendors were targets of a state crackdown that pushed them out of public spaces in Tbilisi. Curro (2015) discusses the ways in which the informal institution of the *birzha*, a collective form of socializing in public, was similarly problematized. Dunn and Frederiksen (2015) ask what forms of sociality, ‘objects and habits’ have been lost – what ‘absences’ have been created - in the lightning quick flash of westernizing reforms. These works tend towards viewing political economic decision-making as the underlying cause of this process of making absent. Neo-liberalism, the domination of social relations by market logic, secured the fate of the *birzha* or low-level street vendor, even as societal actors fought back and resisted.

Moreover, these authors show that such moves were framed by a discourse that highlighted the need to uproot backward tradition and practices in the name of modernization. Curro (2015) in particular focuses on the role of criminalization and punitiveness towards informal practices. This paper also looks at the role of punitive approaches to informality in Georgia. However, the paper aims to place the role of criminal sanctions more centrally in showing how punitiveness – predictable and severe punishment - was a vital mechanism standing behind state actions, whether purging corruption within the state or unofficial vendors from the street. Moreover, this paper aims to show that, while the UNM did indeed frame much of this fight with informality as a struggle with backwardness, criminal justice itself became suffused with informal punitive practices.

The UNM produced a discourse that emphasized the modernization of Georgia through re-establishment of state control over territory, administration and resources after over a decade of state decline. The rule of law was one perceived goal of this modernization. To this end, a particular view of the law, and particularly criminal law, took hold. Law after the Rose Revolution was a social instrument for changing behavior and attitudes. States around the world utilize law in this manner, yet law must also operate with some notion of embeddedness with prevailing social norms and rules (Galligan and Kurkchiyan 2003). The peculiar problem for reformers across the post-Soviet region was that the prevailing social norms in these countries appeared to be anti-law. That is to say, there existed a “negative myth of law” (Kurkchiyan 2003), ‘legal alienation’ and ‘legal nihilism’ (Hendley 1999, 2000, 2012; Gibson 2003). Law could therefore hardly dovetail with collective consciousness. The issue, as Galligan (2003, 15) puts it, is that the supremacy of law over informal norms requires “that those whose social norms have to be changed are open to change through law; that in turn depends on a threshold acceptance of law as...a proper and legitimate way of ordering society.”

A lack of this threshold acceptance was thought to be most acute in the South Caucasus republics during Soviet times (Law 1974). Various measures of the scale of second economic activity, law-breaking and the use of nepotism suggest that this was particularly true of Georgia (Feldbrugge 1989, Grossman 1998, Alexeev and Pyle 2003). Moreover, reliance on informal networks and social norms only intensified during the virtual collapse of the state in the 1990s (Zurcher 2005, Kupatadze 2012). Thus, by 2003 in Georgia, legal nihilism and alienated statehood were seen as major obstacles to modernization and development (Kukhianidze 2003, Nordin and Glonti 2006). As discussed below, the UNM, with an impressive popular mandate after the Rose Revolution, openly attempted to utilize the law as an instrument to overcome the embeddedness of informal norms and practices. However, law-making was a largely executive and elite driven process (Berglund 2013, Tangiashvili and Slade 2014). Galligan’s (2003, 11) characterization of the law as a social instrument serves as a good description of its use by the Georgian state after the Rose Revolution: “the image here is not of law as an expression of social norms and in turn shared values...but rather of law as detached from them; it is an image of a relatively separate and autonomous system of authority.” In Georgia, the overarching goal was legal centrism – for the state to become the one autonomous system of authority and source of law in the country.

This goal, at the heart of the UNM reform agenda, faced big obstacles. In Georgia, as in other post-communist countries, in conditions of alienated statehood informal norms and practices can take on highly complex organizational forms (Tilly 2006, Morris and Polese 2014). They can become entrenched, often codified and institutionalized informally among various

social groupings, and supported by a logic of appropriateness as much as instrumentality (March and Olsen 2008). When this occurs and such groupings become criminalized they can come to be called mafias or criminal organizations. These overlap with the state and may compete with it. Charles Tilly (1985) classically argued that states historically begin as force-wielding organizations imposing protection rackets over a given territory. In this sense, only a degree of legitimacy distinguishes states from mafia groups as well as acceptance, often bestowed over time by virtue of the protection rents that accrue to those that are taxed. Symbols, imagery, and historical narratives further burnish legitimacy. In areas of limited statehood today, organized criminal groups can produce protection rents and develop forms of external and internal legitimacy within communities, taking on some of the trappings of a state (see Fiorentini 1995, Shortland and Varese 2012, Slade 2013). Thus, organized criminality can become highly developed, utilizing ritualized codes of honour and sets of informal institutions to produce monitoring and sanctioning, regulate relationships and coordinate interaction. In such circumstances organized criminal groups can operate as an alternative juris-generator to the state.

Georgia had just such a problem – a plurality of social actors claiming to uphold and promote a set of informal rules that were congruent with Georgian values. Particularly prominent in this were the thieves-in-law. The thieves-in-law are made men emerging from prisoner hierarchies. They wear protected insignia (specific tattoos) and adjudicate on disputes, collecting tribute from those under their protection. They also represent a wider normative world, a subculture, in which a set of particular informal social norms, language and practices hold sway (Gurov 1995, Dolgova 2003, Slade 2013). The Georgian government from the end of 2005 chose a strategy of direct criminalization of these actors to fight them. However, in utilizing an anti-organized crime strategy the government engaged in net-widening; cracking down on much broader forms of informality such as the *birzha* (Curro 2015) and the use of public space for vending (Rekhviashvili 2015) discussed in other works.

One way this occurred was through anti-mafia laws. Such laws, such as the US' Racketeer Influenced and Corrupt Organizations act (RICO) of the 1970s or the anti-mafia commissions of the 1980s and 1990s in Italy, aim at providing legal powers to disrupt and prosecute networks of organized criminals including those actors who give orders. Further than this though, such laws also criminalize association with and facilitation of mafia groups and their activities. In the Soviet Union, it was not until the 1980s when the existence of organized criminality finally became recognized. Legislation from that time can still be found in the criminal codes of many post-Soviet countries. Soviet legislation made a curious distinction between criminal groups (*gruppировки*) and criminal communities (*soobshchestva*) with the latter term applying to larger, more serious and long-standing groups (Dolgova 2003). The use of this

distinction suggests an acknowledgement by law-makers of serious organized crime and mafias in the Soviet Union; criminal corporate entities that existed over and above the individuals that made them up. The thieves-in-law network was perhaps the most obvious example of such entities.

The Georgian Law on Organized Crime introduced in late December 2005 built on the existing Soviet legislation and went beyond it. Firstly, it introduced the crime of mafia association. Secondly, it criminalized certain informal statuses, most specifically that of “thief-in-law”, introducing prison slang into the criminal code. Article 223 of the criminal code states: “1. membership of the thieves’ world [*kurduli samq’aro*] is punishable by deprivation of liberty for a term of 5 to 8 years...2. Being a thief-in-law [*k’anonieri kurdi*] is punishable by deprivation of liberty for a term of 7 to 10 years.” Legally, the thieves’ world is defined as a group of people who act on special orders recognized by them. The aim of these orders is to gain profit through intimidation, threats, force, or criminal dispute resolution [*garcheva*]. These activities seek the involvement of juveniles and encourage criminal acts by others. A member of this world is someone who recognises the criminal authorities and seeks to achieve the goals of the thieves’ world. ‘Criminal dispute resolution’ is the settlement of a difference between two or more parties by a member of the thieves’ world that can employ threats, force or intimidation. A ‘thief-in-law’ is a member of the thieves’ world who organises activities in accordance with the rules recognised by the members (Prosecution Service 2006, 12). Furthermore, Article 37 of the Code of Criminal Procedure provides the prosecutor the right to request the confiscation of property if there are grounds to believe that the property was acquired from racketeering or through membership of the thieves’ world (Prosecution Service 2006, 13).

This legislation was unique and highly specific. It carried a number of problems concerning the burden of proof, admissibility of certain forms of evidence, and a potential threat to the right to free association from over-zealous police, investigators and prosecutors. Proving that someone possessed a criminal status or membership of a criminal community was not easy in Georgia as no feasible witness protection programme had been instituted. Thus, proving that someone was a thief-in-law or a member of the thieves’ world often relied upon legally dubious self-incrimination, police testimony and wire-tapping that may not always have had judicial authorization. Supporters of the new laws argue that the legislation is only used against individuals who engage in provable criminal acts within the terms of the thieves’ world (Lomsadze 2014). Hence proving that a defendant recognized the authority of the thieves-in-law often involved producing evidence of engaging in informal practices associated with the thieves’ subculture as well as evidence of criminal status and utilizing the jargon terms of the criminal world.

Thus, when the professional footballer Giorgi Demetradze was found guilty along with two others of extorting winnings from football gamblers in 2010, he found himself charged under Article 223/1, membership of the thieves' world. Thousands of dollars' worth of assets were confiscated from Demetradze and others. The use of the anti-mafia legislation in this case was based on evidence that the extorted money was parceled out to the so-called *obshchak*, a mutual aid fund originally collected in prison, and also a criminal term for the pooling of dirty money. Demetradze set out to appeal to the European Court of Human Rights (ECtHR). Izet Ashlarba had got there before him. In 2007, Ashlarba had similarly been convicted as a member of the thieves' world on three grounds: his involvement in 'criminal dispute resolution' over a disagreement concerning an apartment, his use of coercion to ensure a taxi driver was paid a debt owed to him, and a discussion concerning the use of an *obshchak* with a prisoner. Ashlarba challenged his seven-year sentence at the ECtHR asserting that the concepts within the new laws were not understandable and too generally defined for him to have foreseen that he was violating the law in his actions. The ECtHR rejected his application, arguing that the concepts, and their related practices, contained within the laws were 'common, public knowledge' (ECtHR 2015).

The court was no doubt correct; these were indeed common, publically understood practices. They were widespread and practiced by Georgians who had spent decades going about their lives within informal frameworks to do such things as Ashlarba had: resolve disputes, ensure payments or redistribute resources. Now to reassert the state, informal ways of doing such things had to withdraw and formal frameworks had to prevail. Disputes over apartment ownership should be resolved through the courts or properly instituted and internationally promoted Alternative Dispute Resolution mechanisms. Ripped off taxi drivers should turn to the police. Hard up prisoners should be provided for through the state or by credit from relatives accessible on bank cards provisioned by recognized banks.

To achieve this change in behaviour, the government had chosen criminalization as its preferred strategy. Many forms of informality were framed as organized crime and became illegal (Curro 2015, Rekhviashvili 2015). The policy choice to criminalize certain practices within the framework of anti-organized crime demonstrated the concern that certain forms of informality had evolved into complex practices that facilitated the activities of serious criminals. These forms of informality could compete with the state in producing rules as well as provide the mechanisms for enforcing those rules. However, as Ashlarba's and others' legal appeals suggested, it was difficult to distinguish between what was simply informal and what was criminal. Moreover, some of the now criminal informal practices had degrees of popular legitimacy; some Georgians were just not open to having their social norms and practices shifted by law in this way. Sozar Subari, the Ombudsman at the time of the anti-mafia legislation,



suggested just this: that to begin with, some people had simply not supported nor understood the new laws and the seriousness and credibility of their enforcement (Interview with author, June 2008). The *obshchak*, introduced above, demonstrated this blurring between informality and organized criminality. The paper now discusses this practice and its manifestations in order to better understand the logic of the state's attack on them.

### **The Obshchak: Double Taxation and the Moral Economy of the Criminal**

Practices of resource pooling, sharing and redistribution outside of state frameworks are common to all forms of society (Mauss 1954, Scott 1976). Outside of straightforward kin networks, the sequestering of resources by wider networks that manage those resources through complex codes of trust and informal rule enforcement can exist in the form of religious sects, utopian communities, smuggling networks, migrant communities, or street and prison gangs, to give just a few examples (Kanter 1972, Tilly 2006). As some of these examples show, such resource pooling can cross the boundaries of legality. In the Soviet context, the *obshchak* or prisoner mutual fund, was a form of resource pooling and redistribution that, by 2006 in Georgia, had become in the eyes of the state synonymous with organized crime.

The *obshchak* is a Russian term that emerged in the early Soviet penal system (Gurov 1995, Varese 2001, Dolgova 2003). It derives from the Russian adjective for shared, common or communal (*obshchii*). It refers to a collective fund, used primarily for the purposes of mutual aid among like-minded convicts. In its original incarnation it might be understood as a form of moral economy, ensuring that everyone in the penal labour camps had enough to survive, ensuring the 'right to subsistence' regardless of the deprivations wrought by the state (Scott 1976, Thompson 1966). It is still collected throughout post-Soviet prisons. In many cases, such as in Lithuania, the term is used for such mundane activities as the pooling of cigarettes and tea. Social norms dictated that in the communal context of the prison dormitory, a prisoner that one week received a package of tea or food should give some of its contents over for communal use. This would be both an investment in the prisoner's social standing, a signal of value-orientation, and provide a basis for reciprocal generosity if the next month the prisoner received no packages. Thus, the level to which voluntarism existed regarding the *obshchak* is very difficult to judge, however many prisoners suggest giving was incentivized through informal norms and reciprocity rather than coercion (Author interviews with Lithuanian prisoners, January 2015, and Georgian ex-prisoners, June 2013).

This pooling of resources by convicts and ex-convicts began to take on a moral quality and produced forms of solidarity in the Soviet Union, a country where millions had passed through the prison camp system. The *obshchak* became sacralised as surrender of the individual to the collective. In post-Soviet Georgia, criminal materials confiscated by police included a document with rules concerning the use of the *obshchak* (Glonti and Lobjanidze 2004, 118-119). This document states that: ‘the *obshchak* is a sacred place. It may only be governed by saintly people...these people must be absolutely honest to the thieves’ idea, dedicated in their heart and soul...Every keeper [of the *obshchak*] must have from five to fifteen people in his care.’ Misuse of the *obshchak* and abuse by the keepers was framed in terms of a sin. This sacralisation of the community that the *obshchak* represents is by no means unique. Communal work and investments that cause feelings of a higher calling to a collectivity are common in groups such as religious sects and utopian communities (Kanter 1972; Tilly 2005).

As a mode of pooling resources, the *obshchak* became an informal taxation system that involved redistribution, in principle based on the maxim to each according to their need. McDonnell (2013) argues that the practice provided security and was consumption based, rather than predatory and based on selling protection. In any case, there appears to have been a move in Georgia from specific to generalized reciprocity. In other words, investment in the *obshchak* for many prisoners gave no immediate returns. Resources were managed by those at the top of the prisoner hierarchy who could abuse their position, embezzle and cheat. Some investments, particularly direct and large financial ones, were surely involuntary. However, investors also then had an interest in remaining within the criminal community to reap the long-term returns as they moved up the prison hierarchy. Thus, at least in Georgia the *obshchak* became a form of generalised reciprocity that locks those who practice it into future consistent lines of action. The *obshchak* at once produced normative commitment and solidarity primarily among a substantial outcast population as well as rational incentives to maintain ties within that population (Slade 2013).

The *obshchak* then was analytically distinct from organized crime. However, in terms of the latter, the *obshchak* became more and more useful as a practice of sequestering resources in a predatory manner. The *obshchak* originally aided cooperation for the population of the Soviet gulag and its norms and practices lent themselves to coordination in criminal markets beyond the state as well as for the purposes of extortion outside prison. The moral framework of giving for mutual aid framed much racketeering. For example, in the village of Taglioni in the demilitarized zone between Abkhazia and Georgia a thief-in-law called Merab Okujava

‘regularly collected tribute from the residents of his region in the form of a regular sum of money’ (Prime Crime 2007). In an argument over collecting for the *obshchak* in March 2007, Okujava shot one of his potential contributors in the leg. In 2006, 19 people were arrested in Tbilisi and an *obshchak*, containing 100,000 lari (\$50,000 USD) was seized. Along with the money, an encoded list was recovered with names, dates and amounts given. According to the Georgian police, ‘the money was collected by criminal authorities or contributed by people who voluntarily donated money to support the criminal world and transferred funds to this criminal account’ (Prime Crime 2006). Examples of the *obshchak* containing huge amounts of money and funnelling up to thieves-in-law have been discovered by police forces investigating post-Soviet organized crime far beyond Georgia, in Austria, Greece and Sweden.

However, the term *obshchak* covers a wide array of meanings. Public or common understanding of this phenomenon ranges from packs of tea in a communal box in a prison dormitory up to large-scale money laundering by Georgian migrants through the construction industry on the Costa del Sol in Spain. For prisoners, the *obshchak* represented prisoner solidarity and a practice that could ease the pains of imprisonment. For some prisoners it could of course easily exacerbate these pains too. However, the riots and disturbances in prisons across Georgia at the start of the anti-mafia campaign in 2006 were to some degree a sign of resistance to disruption of an embedded moral economy of the criminal. Thus, the *obshchak* represents the difficulties in untangling dangerous criminality from broader informal practices of self-help and mutual aid that may constitute such a moral economy in areas of limited statehood, whether indigent rural villages or decrepit prison cells. In Georgia, the niceties of such distinctions would no longer be considered once the anti-mafia campaign began. Collecting the *obshchak* or even referring to it in prison became punishable as a form of insubordination, while as we have seen discussions about and collection of the *obshchak* outside prison was prosecutable evidence of membership of the thieves’ world.

What does the example of the *obshchak* demonstrate regarding how and why criminalization is pursued as a state strategy against informality? The *obshchak* shows a particular form of informality that directly subtracted resources from those that would be otherwise requisitioned by the state. When the state is weak, state actors may calculate that criminalizing such practices is not worth the risk of possible societal resistance. Moreover, state actors might be co-opted by mafia groups through corruption, lowering the chances that the state will choose to fight organized criminality. Instead, weak states may reduce the burdens of legal forms of taxation and resource acquisition to maintain social stability, tacitly accepting the

presence of other sources of taxation. However, when double taxation by legal and extra-legal actors becomes too onerous on citizens it may create social instability (Celentani et al. 1995). Thus, at such times, if the state has the means it can be incentivized to at least try to eliminate the competition in the form of legal crackdowns or anti-mafia campaigns.

In Georgia, one of the main mandates of the Saakashvili government was to build institutions, collect resources and use those resources for the public good. Criminalizing the *obshchak* in the framework of anti-mafia laws that enabled asset seizure was a method of achieving this. The *obshchak* was only one example of a significant process of turning the informal into the illegal. However, criminalization was only one aspect of this. New laws have to be credible and their enforcement credibly signalled. In Georgia, this occurred through extremely punitive measures. The paper now seeks to better establish the role of punitiveness in the attack on informality and the ways in which that punitiveness often rested itself on informal practices.

### **Punishing Informality**

The anti-corruption campaign and reforms to government bureaucracy and law enforcement under the UNM are generally perceived positively, producing an overall reduction in the reliance on bribery, gift-giving and informal networking to get things done (Aliyev 2014). What has been less emphasized is the ways in which the practice of punishment also impacted on informality. Criminalization of particular practices does not necessarily imply punitiveness – criminal sanctions can still display leniency, allow for discretion or go unenforced. This was not the case under Saakashvili. Punitiveness is a complex concept, encompassing variation in the severity and predictability in punishment and degrees of deprivation suffered. However, in the present day the deprivation of liberty is a cornerstone of the concept as the use of prison has increased across parts of Western Europe and North America (see Frost 2006, Campbell 2015). Thus, incarceration rates are a convenient and comparable proxy measure for punitiveness.

On this measure, the Georgian state under Saakashvili was extremely punitive. The prison population increased 300% between 2003 and 2010, from 6,000 to 24,000 people. Georgia, by the time Saakashvili left office in 2013, was in the top ten incarcerators in the world per capita of the population. Under a zero tolerance approach adopted in early 2006, even petty crime was punishable by mandatory custodial sentences. Average sentence lengths increased from one to five years between 2004 and 2008 (Slade et al. 2014). Thus, Georgians were massively disincentivized from those forms of informality that had become criminalized due to the harshness and predictability of the sanctions that the law provisioned. This was demonstrated

above by the harsh sanctions that were produced against those found to be members of the thieves' world. Indeed, it may be that the use of an anti-mafia discourse enabled the legitimization of such harshness for even petty crime. Thus, criminalization and punitiveness were key parts of the story in explaining the Georgian struggle with informality.

Moreover, as the state fought informality the pressures of that fight pushed criminal justice practitioners to use practices that deviated from formal legal frameworks. As the caseloads in the courts increased by tens of thousands within the space of a few years, pressures on prosecutors and judges increased. The main solution to this was the practice of plea-bargaining (Transparency International 2010). This had been introduced into the system in 2004 almost as soon as the UNM had come to power. Guilty pleas before trial reduced prison sentences for the defendant and sped up the process for the courts. By 2011, 87% of cases ended with a plea (Supreme Court of Georgia 2011). More problematic were the methods by which such pleas were obtained. Directly after the Rose Revolution, and before the zero tolerance era in 2006, long waiting times in pre-trial detention incentivized defendants to simply make a plea, pay a fine and be released from pre-trial facilities (Areshidze 2007). The World Bank (2012) refers to this as 'unconventional solutions,' a euphemism for the successful avoidance of due process in tackling corruption and sequestering resources for the state. In the same World Bank report, Saakashvili admitted that deliberate and extra-judicial pressure was used to re-coup resources believed to be owed to the state from businesses and individuals. Due to this, the state budget came to be referred to by some as its own form of *obshchak*. While undoubtedly this was a somewhat unfair comparison, the informal methods by which the state used criminal justice to begin institution-building undermined its legitimacy.

Once the zero tolerance policy was implemented in 2006, there is evidence that other forms of informal pressures were applied to pre-trial detainees and prisoners. The use of torture in the Georgian prison system was exposed in 2012 when video footage was released on YouTube of the beating and sexual abuse of prisoners. A survey of 1,199 prisoners and ex-prisoners by Open Society Georgia Foundation (Slade et al 2014) found that almost half of respondents knew 'many' (defined as six or more) prisoners who as a result of torture or inhumane treatment had agreed to a plea bargain; 35% of respondents knew of 'many' prisoners who had given up assets to the state as a result of improper physical and psychological pressure; 15% of all respondents claimed that they had given a plea bargain under duress (Slade et al 2014, 48-49). The scale of the torture and inhumane treatment is difficult to assess; however, thousands of videos are purported to exist and the existence of many of these have been confirmed by NGOs and human rights defenders. Moreover, 75% of respondents in the survey claimed to have been victims of physical beating and 8% said their abuse had been filmed. There is some

evidence from testimony by torture survivors as well as the survey data that torture and physical abuse was directed against those who were perceived as supporting the thieves' world. One interview respondent who had thievish tattoos on his knees had his leg broken by prison guards. One ex prisoner testifies that during beatings prisoners were forced to insult the thieves in law. Any attempt to collect an *obshchak* or even speak in criminal jargon could be brutally punished.

In framing the fight against informality as one of anti-organized crime, the state itself used both formal and informal forms of punishment. The use of extra-legal methods and *kompromat* or compromising material in the form of abusive videos showed the state's reliance on informal practices for the functioning of the criminal justice system. Collecting information, maintaining prison order, forcing confessions, incentivizing cooperation and plea bargains were achieved in many cases by the use of widespread yet hidden informal coercive state practices. The irony is that the state's goal of modernizing through destroying backwards and anti-modern forms of social organization in the end was pursued using the harshest of informal methods itself, torture and extra-legal violence. The use of anti-organized crime rhetoric perhaps served to justify this approach as a means to an end. Far from banishing informality, the Georgian state actually depended on it in pursuing its professed goal of the rule of law.

## **Conclusion**

This paper was concerned with a specific aspect of the fight against informality in Georgia as part of a modernizing and westernizing agenda under the UNM. The paper has argued that punitiveness – severe and predictable punishment – was a central aspect of fighting informality in Georgia. Criminalization was not enough; law enforcement had to be credibly signaled. The paper considered Georgia's anti-mafia campaign as a lens to examine this punitiveness. The paper has argued that the anti-mafia campaign enabled the UNM to penalize a wide range of informal practices by framing these as organized crime. In so doing, certain forms of informality were securitized and presented as a threat to Georgia's modernization. This legitimated a particularly punitive approach which itself utilized informal practices of punishment to function. This in turn blurred the boundaries between the formal and the informal once more, making the state budget, for some in Georgian society, no different from the criminal mutual fund, or *obshchak*.

The *obshchak*, as double taxation, demonstrated how certain forms of informality produced direct competition with the state for resources. Moreover, the informal institutions and array of practices that supported the *obshchak* also point to a competing extra-legal, socially embedded, normative order. For all these reasons, there were plenty of incentives to frame such

informality in terms of organized crime in Georgia and pursue this with punitive zeal. Organized crime became a useful shorthand for backwards, anti-modern and traditional mentalities and their attendant informal practices. It also legitimated harsh sanctions and zero tolerance towards informality now re-conceptualized as crime. Yet, in utilizing criminalization and extreme punitiveness to fight informality, the state itself turned ironically towards informal practices to manage the criminal justice system.

Thus, the mutualism of the formal and the informal was not destroyed in Georgia; it became embedded in the management of investigations, court cases and prisons. The strengthened and streamlined formal institutions and frameworks credited with reducing informality in Georgia were often in practice effective only through a reliance on practices that were both informal and illegal. The Georgian case study of fighting the informal then is instructive in the ways in which state strategies of anti-organized crime campaigns and punitiveness can be used to modernize society and uproot the informal, at the same time as creating new and pernicious forms of it.

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