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A Closer Look at the Progress of Reform in Georgia

Ana Dolidze

In the years following the 2003 Rose Revolution, Georgia has experienced significant economic and political reform. Considering the time span, many of its achievements are impressive. Among them is a significant reduction of petty corruption. Through a ten-fold increase in wages for the public sector, the Government has successfully reduced civil servants' temptation to solicit bribes and has made public service an attractive career for enthusiastic and talented young people. Civil society has been given considerable freedom over the last several years, and there have been no attempts by the Government to curb NGO activities as has happened in other countries.

Yet, many reforms have been achieved in the environment of weak rule of law. For example, Georgia's courts are not yet fully independent and remain under the influence of the Executive Branch. A weak judiciary and an ineffective civil service often result in poor enforcement of legislation and do not protect citizens from violations of their property rights. Still, despite the evident deficiencies in the reform processes, Georgia's continued efforts to adopt a democratic, market-oriented system must be encouraged both within the country and by the international community.

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ph: (202) 721-9200 • web: www.cipe.org • e-mail: cipe@cipe.org

Introduction

Rampant corruption in the 1990s ensured that most interactions between entrepreneurs and Georgian officials involved a combination of bribery, coercion, and shady dealings. When providing services mandated by law, public officials would frequently use their positions to extract additional income from ordinary citizens. But the blame should not be placed solely on the shoulders of public officials – exploiting institutional failures, citizens would also offer bribes to get preferential treatment or to speed up the process.

The corrupt nature of many transactions in the 1990s and early 2000s has prompted many in the Georgian Government today – including leaders of the parliamentary majority and the mayor of Tbilisi – to boldly bring to light the corrupt deals of the Shevardnadze era. While these initiatives warrant respect, their implementation raises serious questions. For example, in many cases, the anti-corruption campaign in the area of privatization has turned into massive coercion, forcing businesspeople, small entrepreneurs, and land owners to hand over their shares, real estate, and enterprises to the state or a handful of quasi-official structures.

“What should be ruined, will be ruined!” declared Tbilisi Mayor Gigi Ugulava in reaction to the recent protests of property owners in Saburtalo, one of Tbilisi’s busiest neighborhoods. Their property, mostly grocery stores, had been demolished overnight by order of city authorities. Local government defended these actions by saying that the buildings were illegal and obstructing the city’s picturesque view. Yet the demolitions were conducted in the absence of a court order declaring the structures illegal; it was instead a unilateral decision by the mayor’s Office of Supervision. The office had not even *applied* for a court order, choosing to verbally communicate a warning to property owners about the possible destruction of their buildings. Some entrepreneurs were offered alternative space elsewhere in the city, but no one received compensation for lost property or relocation expenses. Those who protested were left only with rubble.

It should be emphasized that as in many other cases across the city, all proprietors possessed certificates

from the State Registry of Immovable Property (part of the Ministry of Justice). Under Georgian law, this document certifies ownership of immovable estate.

This large-scale destruction of private property and subsequent appeals by the property owners have been made public by the media, but there has been no reaction from local authorities thus far. There has not been any legal action taken or even public rebuke of the perpetrators. Established legal procedures that could prove that the structures were illegal would legitimate their destruction and absolve municipal authorities of the ultimate responsibility for these widely unpopular actions.

There are a number of precedents in which the Ministry of Economy filed suit against property owners on the basis that their property was illegitimately privatized. In these instances, it was only after winning a case that the government offices took control of the property. However, the use of the legal system is becoming increasingly rare and there has been persistent criticism of the unlawful actions and blatant abuse of authority.

Rule of Law – Process Matters

The example above demonstrates that a fundamental tenet of democracy – rule of law – is rather weak in Georgia today. While elections are important in bringing about change and holding government officials accountable, they alone do not guarantee a democracy. In fact, the concept of democracy implies that citizens’ rights are protected by a set of legally binding documents, and these rights are inviolable under any circumstances.

The concept of rule of law thus means that legitimate, democratic governance can occur only when the government itself is restrained by procedural rules and an independent judiciary, and is held accountable for its actions. In other words, the ends should not and cannot be more important than the means. Violations of a good governance process, even if excused by legitimate goals, are not acceptable in a democratic society. As in the property rights example above, the legitimacy of the state is undermined

when a government acts outside the law and abuses citizens' rights, responding to an illegal act in an illegal manner. Due process must accompany expropriations of property, just as it must accompany any other government action.

Yet, the eagerness to expropriate private property must be understood in the context of the current cycle of re-privatization conducted by authorities. Income from the privatization of public property makes up an alarmingly high percentage of the national budget – and the Government is certainly proud of this accomplishment. All types of real estate are subject to swift privatization, from energy and gas companies to public buildings. Property that is appropriated by the state, even a small building in the center of Tbilisi, is subject to re-privatization and quickly sold to a new owner, often a construction company.

One such case involved a casino in a sleek glass building in one of the most prestigious boroughs of Tbilisi. The building was brought down overnight the day after the chief of that borough at the time of the casino building's privatization was arrested on charges of abuse of authority. Without attempting to determine the legality of the building's construction in court, the mayor's office brought the building down, violating a court injunction that had been filed by the owner. Soon afterwards, the cleared space and adjacent land were sold to a construction company.

This is just one example of how the Georgian Government has resolved the "efficiency vs. legitimacy" dilemma by committing to swift action at the expense of citizens' right to private property – a right guaranteed in any democratic society. In addition, re-privatization under such dubious circumstances provides more fodder to the argument that the privatization process is corrupt – creating an endless cycle of legal questions, seizure, re-privatization, and new ownership.

This example goes to show that reforms implemented by the new Government are often not what they seem. During Shevardnadze's time in office, many privatization transactions were conducted in a questionable manner. Severe corruption and nepotism permeated Georgian society at the time, and before the country could move forward, that corruption

had to be exposed and properly addressed. Although Shevardnadze's regime ended nearly four years ago, authorities are still confiscating and destroying private property without proper legal authorization. These actions are directly in violation of the principles and values of democracy and a free-market economy – values that Georgia is seeking to build on.

The Missing Reform Strategy

In years following the 2003 Rose Revolution, Georgia has experienced significant economic and political reform. Considering the time span, many of its achievements are impressive. Among them is a significant reduction of petty corruption. Citizens and businesses no longer have to pay bribes to receive basic public services. Previously the most corrupt of the country's public agencies, the traffic police have been drastically reformed. Through a ten-fold increase in wages for the public sector, the Government has successfully reduced civil servants' temptation to solicit bribes and has made public service an attractive career for enthusiastic and talented young people. Civil society has been given considerable freedom over the last several years, and there have been no attempts by the Government to curb NGO activities as has happened in other countries.

However, amid these and other important achievements in implementing reforms stands a serious problem: an overarching reform strategy has not been developed. The missing element of many reform efforts is an accompanying written document to delineate objectives and describe a plan for action. Additionally, reform agendas are rarely discussed with relevant experts and stakeholders in advance of actual design and implementation. For example, the Government's concept paper on reforming the police force, a one-page document, did not address the major issues that became evident during the implementation stage, including massive reductions in personnel, structural changes, and the need for professional development and training programs.

This lack of vision and the absence of an ongoing communications strategy have led to a number of problems that could have been avoided

were proper governance mechanisms put in place. Public participation in the reform process is key to adopting successful and lasting reforms that take into account the needs of all stakeholders. These problems significantly hampered the Government's ability to implement effective reforms. In instances where the reform agenda – and concrete action plans – for future activities are not communicated in advance, relevant staff and public officials are likely to exert considerable resistance to change.

The absence of a publicized reform strategy and vision is closely related to the trend of unilateral decision-making. Reform initiatives, even national-level reform that will affect the entire country, are often discussed among a very small group of decision-makers. Following initial discussion within this circle, ideas are often subject to immediate implementation. While public debate and recommendation helps improve the quality of public policy, it has been left of many reform initiatives.

One effect of such a decision-making process is that the expert community is fractured and must choose between remaining in the good graces of the Government and withholding criticism or offering recommendations and risking being alienated. Generally, while civil society groups are allowed to operate freely in Georgia, their feedback is poorly received by Government. Those professionals who have even once voiced a critical opinion of a proposed or implemented initiative are often excluded from future participation. This applies to Georgian and foreign experts alike.

Centralization has also created a set of problems in designing and implementing effective reforms: senior leaders at the state level make decisions on matters that could be handled effectively by local authorities. Often, the head of an agency is the primary decision-maker on such insignificant issues as granting permission for vacation to a particular employee, planning business trip itineraries, or deciding when and where public events should be held. This centralized decision-making negatively affects the efficiency of public institutions and undermines the professional growth of less senior public servants, who have few responsibilities.

The Need for Civil Service Reform

Civil service reform, in the broad sense of the term, has not been implemented. While redundant staff were let go from various government institutions and salaries were raised significantly, substantial and sustainable change has not yet taken place. The overall system of recruitment and the criteria for appointment, promotion, and dismissal have not changed. These questions are still left to the discretion of the leadership of each government office. Moreover, civil servants are pulled into partisan politics, as they see their professional advancement intricately tied to good relations with the current regime. This in itself hinders the establishment of an experienced, independent civil service whose value is not tied to the political climate.

Similar problems are evident in the judiciary. There have been positive changes, including increases in judges' salaries and the removal of the President's power to influence the High Council of Justice. Even so, no significant steps have been taken to improve the procedural mechanisms that guarantee judges' independence – such as procedures for judges' selection, appointment, and dismissal, or legislation on disciplinary sanctioning. Georgia's courts are not yet fully independent and remain under the influence of the Executive Branch, namely the Office of the Prosecutor. The Georgian judiciary is not yet an independent and effective protector of freedoms and rights, and does not yet balance the Executive and Legislative Branches of Government.

A weak judiciary and an ineffective civil service results in the poor enforcement of legislation and does not protect citizens from violations of their property rights, thereby impeding Georgia's overall development as a democratic and economically prosperous country. It is almost impossible to win a case against a public agency because judges perceive that it is in their own best interest to uphold the State's interest – in spite of the law. One owner of a razed building in Tbilisi is currently filing a suit against the Government requesting compensation for damages, but it is unlikely that the person will win.

Moving Forward

Assessments of the country's progress in implementing reforms must measure the current situation against the expectations raised by the "Rose Revolution" in 2003. While Georgian authorities deserve credit for the accomplishments of the past several years, criticism for problems that remain is still warranted. However, the Government has avoided necessary criticism for the simple reason that the country went through a significant non-violent change. Such reasoning is inherently wrong and has an adverse impact on the ground. One-sided praise without adequate and constructive criticism does not encourage learning and growth and allows for the repetition of mistakes. On the other hand, despite the evident deficiencies in the reform processes, Georgia's efforts to adopt a democratic, market-oriented system should continue to be encouraged both within the country and by the international community.

Additionally, the achievements of the Georgian people and their Government should be assessed independently from political circumstances in other countries. Certain failures or lack of progress in other countries in the region are often used as a justification to inflate Georgia's success. This skewed perspective is causing the Government to lose sight of how much more must be done.

Regarding the state of Georgian civil society, rumors that civil society is dead are quite exaggerated. Although several influential figures have moved from the non-profit sector into politics, Georgian civil society still retains independent, competent, and honest personalities. Their job is equally if not more important than that of public officials. It is especially important to support their activities when so few work to protect the rights of citizens, monitor the activities of Government, and, at the risk of ridicule and harassment, bring abuses of government power to public attention.

Some might argue that because the Georgian leadership is overly sensitive to criticism, international public reprimand, and support of critical civil society groups, might cause its alienation. Perhaps due to the

particularly young age of certain influential decision-makers in the country (e.g., the 26-year-old Chief of the Penitentiary Department) or other circumstances, Georgian leadership in general seems to be highly sensitive to criticism and often distances itself from its critics. This should not place it above reproach. The international community is endowed with numerous feedback mechanisms, so it must take the initiative to find a subtle yet effective avenue for constructive feedback without alienating the Georgian leadership. With support from abroad, and a willingness on the part of Georgian leadership to continue down the path of reforms, Georgia can one day become the full-fledged democracy that its citizens have long sought.

Ana Dolidze is a Visiting Scholar at Columbia University and Lecturer in Human Rights and International Law at both the Caucasus School of Business and Georgian American University. She served from 2004-2006 as president of the Georgian Young Lawyers' Association (GYLA), an organization promoting higher standards for the legal profession and supporting the professional development of law students and young lawyers in Georgia. Dolidze also works with the Georgian Media Council, the Stakeholders Committee of the Millennium Challenge Georgia Fund, and the Human Rights Monitoring Council of the Penitentiary and Detention Places. A graduate of Tbilisi State University, Dolidze earned her LL.M (Master of Laws) degree in Public International Law from Leiden University in the Netherlands.

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