

HUMAN RIGHTS CENTER



# Repressive Democracy?!

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Chronicles of State Sponsored Violence in Georgia during the spring 2009

Tbilisi

June, 2009

The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country.

HRIDC implements projects to ensure compliance with human rights laws and standards. We cooperate with international organizations and local organizations which also share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

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*“The Georgian state and all the relevant structures are ready to take the most decisive steps to eradicate any attempt at undermining the constitutional order, our democracy and freedom. . . I request our citizens to keep calm and accept with understanding the action, which the Georgian state and any ruler in our history would have undertaken in a situation of this type.”*

Mikeil Saakashvili, President of Georgia  
Address to the Nation, May 5, 2009

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## *Executive Summary*

On April 9, 2009 several-thousands strong demonstrations started in Tbilisi. Demonstrators accused President Saakashvili of authoritarian rule and of dragging Georgia in war with Russia last year which ended with drastic results for the country. Demonstrations are ongoing as to the date of writing this report; yet, unlike November 2007, when the authorities violently dispersed peaceful demonstrations in Tbilisi, this time the Government appears to be more lenient towards the public protests against it.

However, this report demonstrates that the change in the government's behaviour has happened at the level of form rather than of substance and in reality the government is using undemocratic and even illegal means to quash the dissent and maintain the power.

The primary focus of the report is about what the government has labelled as 'mutiny' of May 5, 2009 at Mukrovani Military Base. With this incident in the centre of its focus, the report unpacks the chronicles of politically hot spring in Georgia which has been accompanied by numerous incidents of violence orchestrated and/or condoned by the state.

The report consists of two parts; first one refers to harassments and repressions against the demonstrators and identifies several important features of state action in the context of ongoing demonstrations:

- State omission to investigate harassments against the demonstrators committed by 'unidentified people'
- Use of legal mechanism to repress demonstrators rather than to uphold justice: until this very date only those offences have been investigated and prosecuted which were committed *by* the demonstrators and not those which have been committed *against* the demonstrators.
- Detention of political party members on ill-grounded accusations and with the procedures which do not seem to be in line with the requirements of law.
- Use of disproportionate force and means prohibited by law to dismantle isolated groups of demonstrators for *restoring the public order*.

*In this respect the report deliberately abstains from evaluating the methods used by Georgian political opposition in their political struggle. While we condemn any form of violence, we deem the actions of the political opposition irrelevant when the legality of state action is at question: disobedience to law or ethical rules by a political opponent in no way dissolves the government from its obligation to abide by law in all circumstances whatsoever.*

The first part of the report also contains a section about the police special operative activities as they are carried out in Georgia. Such an operative activity was carried out to apprehend the suspects of the ‘mutiny’ and ended with death of one suspect and serious injuries to the other two. The section demonstrates that in Georgia special operative activity in general is one of those contexts where human rights are put at a highest risk by authorities. A well-documented failure of the national justice system to adequately address the issue of excessive use of force in this context and to redress the victims further exacerbates the situation.

In short, the first part of the report reveals that the Georgian government is intolerant towards the dissent and by action as well as omission undermines the very foundations of political pluralism in the country. But the section concerning the issue of special operative activities further demonstrates that the state violence in Georgia is not only directed towards the political dissent but, more disturbingly, towards the politically neutral citizens as well.

The second part of the report deals in detail with the Mukrovani ‘mutiny’ (referring to the story and consequent developments as Mukrovani incident.) The Mukrovani incident is one of those cases when it is the context not the details so much which matters. Therefore the first part of the report is provided as a context against which it should be judged. Context-conscious look at the Mukrovani incident demonstrates that it was not an isolated incident but a next step in the government’s quest for power and control. It also demonstrates that this quest heavily relies on violence and misrepresentation of truth.

The second part looks beyond the official story line put forward by the government about the Mukrovani incident and voices two widespread perceptions in the public of what the Mukrovani story is all about. The first opinion suggests that Government staged the ‘mutiny’ in order to avoid loss of control over the military while facing serious internal difficulties inside the country and inside the military - especially after the lost war in August. Second opinion suggests that what happened at the Military Base was not a *mutiny* but *disobedience* towards the government order to dismantle the demonstrations.

While it is not easy to assert which version is closer to the truth, it is clear that the story put forward by the government is less credible also because it failed to substantiate its allegations and instead has used the “mutiny” as a ‘legitimizing’ factor to resort to repressions against the former and current military.

A short summary of repressions carried out by the government under the pretext of Mukrovani ‘mutiny’ is as follows:

- One of the suspects of the ‘mutiny’ – Gia Krialashvili was killed in highly questionable circumstances in the context of a police special operative activity, two others – Otanadze and Amiridze were badly injured and remain in the hospital as to the date of writing this report;

- According to unofficial estimates, around 40 people are detained in connection with the ‘mutiny’ charges. The only basis for their detention is the secretly recorded video footage which raises many question marks as to its authenticity.

- There are credible allegations that at least some of the detainees were subjected to physical pressure by the authorities and were forced to testify against certain individuals who are charged in connection with the ‘mutiny.’”

- In order to exert pressure on Otanadze who was declared as wanted before his detention on May 20, authorities illegally detained his family and relatives, including an eight months old child. Moreover, a child of Otanadze’s was also expelled from school when Otanadze was declared as wanted.

The second section zooms on specific human rights endangered by the actions of the government carried out while ‘dealing’ with the “mutiny.” In particular it documents incompatibilities of state action with its positive and negative obligations under the right to life and the right to a fair trial, more precisely the presumption of innocence and access to a lawyer.

The section concludes that:

- The special operative activity carried out to apprehend the suspects of the ‘mutiny’ does not seem to be compatible with the legal and human rights framework regulating the use of force by authorities.

- Contrary can be proved only if the state will demonstrate that the use of force

during the special operation was proportionate and absolutely necessary and if such a conclusion is reached by thorough and impartial investigation and trial. For meeting this test the investigation and trial must answer the concrete set of questions which are set out in this report.

- Authorities have without any justification denied a victim's status to the next-of-kin of the suspect who was killed during the special operation. Without the formal status the factual victim is unable to voice its concerns as to how the investigation is going. Unless such status is granted to the next-of-kin of the deceased suspect the ongoing investigation is neither impartial nor thorough.

- State officials violated the suspects' presumption of innocence when they referred to the suspects as "criminals" in their public statements before that was established by the court.

- Authorities violated a suspect Otanadze's right to a lawyer: 1) when they kept denying his lawyer access to Otanadze who was hospitalized during the first days; 2) when officials from Special Operative Department were present during their first meeting. Moreover, as a result of the violation of the right to a lawyer, Otanadze was effectively denied the possibility to appeal the court decision on his pre-trial detention.

- The government misused the legal system to exert pressure on suspect Otanadze through ill-grounded detention of his the family and relatives. One of his brothers still remains in prison at the moment. Such method goes beyond the basic principle of criminal justice system – no common guilt – and undermines Georgia's rule of law credentials.

The investigations of the 'mutiny' and case files of those people who have been detained in connection with it have been classified as a state secret. However, the lawyers involved in the case as defenders of the detainees declare - there is nothing in the case file to qualify as state secret and therefore such a decision has only one possible goal: to immunize the case from public scrutiny.

Exactly in order to avoid such developments in respect of the 'mutiny' story, Human Rights Center has prepared this report. Human Rights Center will continue watching closely Mukrovani incident as well as the ongoing demonstrations and will deliver a follow up report on these events in the near future.

### *Official Story Line of 'Mukrovani 'Mutiny''*

This section provides a summary of the story put forward by the Government about what it calls the Mukrovani 'mutiny', in particular the reasons behind the 'mutiny' and the links of the organizers with Russia, as asserted by the government. It also contains quotes from the address of the President, Commander-in-Chief of Georgian Army, to the nation and the army. This section also contains the text of the secretly taped video footage which became the basis for the detention of tens of people and declaration of others as wanted in connection with the 'mutiny' as alleged by the government. So far this footage remains the only evidence of the planned 'mutiny' available to lawyers involved in the case and the general public.

#### **The Government Version of Reasons behind the 'Mutiny'**

On May 5 information surfaced in Georgia about a 'mutiny' in Mukrovani Military Base. This happened against the backdrop of the war with Russia in August 2008 and the then month-long demonstrations in Tbilisi demanding the resignation of President Saakashvili.

The Minister of Defence made an official statement at press conference saying that a tank battalion had "declared disobedience and 'mutiny'." The Minister also reported that a number of civilians, with no relationship to the Base and a number of Commanders of some other battalions were at the Mukrovani Base and had "declared disobedience and 'mutiny'."

Ministry of Foreign Affairs of Georgia further clarified that it was a "group of former defense and security officials who were dismissed shortly after the Rose Revolution. . . [who] attempted to organize a 'mutiny' in one of the units of the Georgian armed forces with their stated goal of thwarting NATO-led exercises, planned to take place on the territory of Georgia."<sup>1</sup>

The President of Georgia pointed out in an address to the nation that "disorders" at the military unit coincided with upcoming NATO military exercises in Georgia, scheduled to start on May 6 and Georgia's joining with EU's Eastern Partnership of EU Eastern Partnership initiative."

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<sup>1</sup> Statement of the Ministry of Internal Affairs of Georgia dated by May 5, 2009

Officials further clarified that the ‘mutiny’ “at a minimum aimed at thwarting NATO military exercises and at a maximum - organizing full-scale military ‘mutiny’ in the country.”<sup>2</sup> Allegations of Russian involvement in the ‘mutiny’ were also voiced. In his televised speech on May 5, the President of Georgia said that the “organizers of disorders” had links with Russia: “A group of former national guard officers and former military officers about whose links with one country’s special services we were aware of for already a long time, tried to stage disorders in the Mukhrovani base,” Saakashvili said. He also said that Russia had been increasing its military presence in breakaway Abkhazia and South Ossetia and suggested that Russia wanted to capitalize on internal political development in Georgia hoping it would have grown into disorders. “But the authorities have been demonstrating extreme restraint,” he said and also thanked “all the responsible political force.”

The Ministry of Foreign Affairs in its official statement declared: “The hysterical reaction of the authors of the aforesaid statement is a sign of unquiet conscience they might have, as well as the whole Russian side per se.”<sup>3</sup>

A similar position was expressed by the Minister of Internal Affairs. On a televised dialogue with the President he said: “According to the information available for us, which we have already made public, they had far-reaching goals like inviting Russians,” Merabishvili told the President. “We will further make other evidence public. . . . We are arresting several people having links with Russians.”<sup>4</sup>

Russia denied Georgian allegations. Russia's envoy to NATO, Dmitry Rogozin, said the allegation about Russian involvement was ridiculous and unfounded, and that Moscow has become accustomed to such mad accusations from Georgia.<sup>5</sup>

### **Secret video footage about the ‘mutiny’**

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<sup>2</sup> Statement of the Defence Minister, Davit Sikharulidze dated by May 5, 2009; Statement by the Head of the Information and Analysis Department of MIA Shota Utiashvili, dated by May 5, 2009

<sup>3</sup> Statement of the Ministry of Foreign Affairs of Georgia, May 5, 2009

<sup>4</sup> As of June 17 no other evidence has been made public by the authorities. Under Georgian Criminal Code there exists no a provision criminalizing “having links with Russians.”

<sup>5</sup> Russia ridicules Georgia's coup claims, ABC News, by Moscow correspondent Scott Bevan, May 5, 2009 at <http://www.abc.net.au/news/stories/2009/05/05/2561817.htm?section=justin>

On the previous day, May 4, the Ministry of Internal Affairs [hereinafter MIA] announced about the arrest of Gia Gvaladze, a former commander of the Defence Ministry's special task force in 1990ies. MIA further clarified that Gvalade was arrested "in connection with plotting a 'mutiny'."

The MIA released a video footage, recorded apparently with a body-worn covert camera showing a man, purportedly Gia Gvaladze, talking to several persons – one whose face was blurred in order not to identify him and another one who wore the camera. In the video footage Gvaladze names several former senior military and security officials and politicians from the previous government and says that these people will be supporting the 'mutiny' and will return back to power in Georgia after the current government is changed.

Gvalade further gives some further details of the 'mutiny' plan in the video footage: To blow up the buildings of Rustavi<sup>2</sup> and premises of Special Operative Department [hereinafter SOD], to blow up train station, block the airport and central highways. He also says in the video footage that after the change of the current government, Georgia will officially reject NATO membership and re-enter the Commonwealth of Independent States.

### **President's address to the nation and the army**

At noon on May 5 the President of Georgia addressed the nation. The President said:

*"The Georgian state and all the relevant structures are ready to take the most decisive steps to eradicate any attempt at undermining the constitution order, our democracy and freedom. . . I request our citizens to keep calm and accept with understanding the action, which the Georgian state and any ruler in our history would have undertaken in a situation of this type," he said. "We and personally me, as the President, will act responsibly before the country's history, before the security of each citizen and before the democratic system."*

The President said that he had ordered the law enforcement agencies "to act appropriately."

A Couple of hours later the President who according to the Constitution of Georgia is the Commander-in-Chief of Georgian Army, accompanied by Minister of Internal Affairs and the Minister of Justice, visited the Mukrovani Military Base.

The Commander-in-Chief questioned soldiers lined-up in front of him: "were the tanks turned on? what were Otanadze and Tskrialashvili doing at the base?", etc. The Commander did not get answers to his questions from the soldiers. After this he addressed the soldiers saying "it is pity you are carrying the title of Georgian Armed Forces."

*"Maybe you have been fooled –said Saakashvili – but an adult has a head on his shoulders in order to act according to his own mind in similar situations. I personally and the*

*state have done so much for you. What was Otanadze doing at the base? What was Tskrialashvili and other criminals and bandits doing at the base? [they] have done nothing in their life but made money, stole and betrayed Georgia. You allowed those people at the base but denied access to my representatives?!”*

While at the base, the President made a statement that it was all surrounded by special forces and that he was ready to open fire in case of need. He also told to the Minister of Internal Affairs to “take Otanadze and Tskrialashvili out of the ground and jail them.”

### **A Wave of Detentions**

According to unofficial estimates, around 40 people have been detained in connection with the ‘mutiny’ charges, official number of detainees is however not known as of June 17.

Shota Utiashvili, head of the information and analysis department of the MIA stated that the number of detainees will become known only after their questioning is completed: “On May 5 we detained 60 civilians who were not working on the base but where there [at the time of the incident], apart from that there are 400 people on that base, before we question them all and reveal their guilt, we cannot say the exact number. We can detain a person one day, question him and then release the other day, therefore before this questioning process is completed we cannot say the exact number.”<sup>6</sup>

### **Statements by detainees**

**On May 6**, the MIA released extracts from video footage showing statements of eight officers from the Mukhrovani-based military unit. Each statements says that saying that Mamuka Gorgiashvili, Collonel at the Mukrovani Base, told the servicemen in the morning of May 5 that he was “declaring disobedience to the authorities.” It was not clear from the footage whether the battalion commander told the servicemen reasons behind “declaring disobedience.”

In the statements of other military officers in the same video footage they say that on the site of the military unit they saw several armed “unknown persons” who were not servicemen of the battalion. One officer says that he had seen five or six unknown persons on the territory of the unit.

In the footage one officer, Major Mardoni Chikhvanaia said that several weeks ago Major Levan Amiridze, commander of rangers’ battalion told him that “some people in the

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<sup>6</sup> Newspaper *Newspaper Rezonansi*, May 12, 2009

opposition” asked him to join the protest rally in Tbilisi with dozens of his soldiers. “This morning, at about 5am Levan Amiridze called me and told me to position the battalion for defensive action and not to allow anyone on the military unit’s territory.”

Otanadze, Amiridze and Krialashvili were declared to be wanted by the government on May 5. A reward of about 200 thousand lari reward (120 thousand dollars) was declared for the information on Koba Otanadze's location suspected of organizing the ‘mutiny’ in Mukhrovani tank battalion and a lesser award was offered for other two persons.

### **Special Operation to apprehend the ‘mutiny’ suspects**

On May 20 the MIA stated that “based on operative information received by the employees of Special Operative Department and Counter Intelligence of the Ministry of Internal Affairs the Ministry of Internal Affairs has held a special operative activity aimed to detain the wanted persons due to which suspects have put up armed resistance to the police forces. During the exchange fire Gia Krialashvili has died at the location of the incident, while Koba Otanadze and Levan Amiridze were wounded.”

As to the date of writing this report (June 2009) the two - Koba Otanadze and Levan Amiridze have been sentenced to pre-trial detention in the prison hospital in Tbilisi.

### *Beyond the Official Story Line*

This section looks beyond the official story line put forward by the Government about the Mukrovani incident. It is based on several interviews which reflect well the two perceptions widespread in the public of what the Mukrovani Story is all about. The first one suggests that Government staged the ‘mutiny’ in order to avoid loss of control over the military while facing serious internal difficulties inside the country and inside the military - especially after the war lost in August. A second opinion suggests that what happened at the Military Base was not a ‘mutiny’ but *disobedience* solely of the government order to dismantle the demonstrations.<sup>7</sup>

### **Military Expert Giorgi Melitaruti<sup>8</sup>**

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<sup>7</sup> According to national law it is the obligation of the military not to obey unconstitutional orders, otherwise they may face criminal responsibility.

<sup>8</sup> Journal Gza, *Special Operation of Getting Rid of Political Opponents*, 28.05-03.06, 2009

**Question:** why should the society believe that there was no ‘mutiny’?

**Answer:** because, there was no ‘mutiny’ there. There was a minor incident.

Because of the recent developments, soldiers often were expressing their discontent about the government. These guys could hardly get over the defeat in a one day war and over the actions of their frightened commander-in-chief, that high ranking figures started accusing them of being fugitives in order to conceal their own wrongdoings. On top of that, they were ordered to dissolve the demonstrations lead by political opposition. It is true that the army expressed their discontent because of this fact, but the idea of a ‘mutiny’ did not even occur to them, they have not left the territory of the base, have not mobilized tanks, have not taken hostages; therefore the statement of the President that he was intending to open fire against soldiers was shocking for me and any normal person.<sup>9</sup>

**Question:** Do you have a proof that there was an order to the army to dissolve the demonstrations?

**Answer:** This order was not given in a written form, therefore I cannot prove its existence. I know for a fact however, that in the evening before the ‘‘mutiny’’ representatives of the MIA visited the Mukrovani base. After they left, the vice-colonel Mamuka Gorgiashvili spread a statement via internet in which he called upon the government and the opposition to have engage into a dialogue and said that he would not allow bloodshed in Georgia. After making this statement, Gorgiashvili also was detained. Does not that seem strange to you?’’<sup>10</sup>

**Question: Why do you think these people were linked up with Mukrovani Incident?**

**Answer:** The Otanadze and Krialashvili were connected to the Mukrovani Incident of 2001; Therefore the Government thought it would be easier to make people believe that they were ‘bad guys.’ But the Government miscalculated – the incident in 2001 was inspired by social motives and people remember that. Another reason for linking up their names with the ‘mutiny’ this time is that these people were critical of the government.

**Giorgi Tavdgiridze, Military Expert, Former Head of the Military Academy**

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<sup>9</sup> Journal Gza, *Special Operation of Getting Rid of Political Opponents*, 28.05-03.06, 2009

<sup>10</sup> Journal Gza, *Special Operation of Getting Rid of Political Opponents*, 28.05-03.06, 2009

He thinks that the video released by the MIA “lack logic” and that a good detective can easily investigate that. Judging from the Gvaladze’s background Tavdgiridze doubts that Gvaladze has sufficient contacts and capacity to organize a ‘mutiny’.

**Irakli Aladashvili, Military Expert, Editor of the Military, Editor of the Military Magazine “Arsenal”<sup>11</sup>**

“I cannot prove that there was a link between this ‘mutiny’ and Russia, however in case a disorder were to start in Georgia, I am sure Russia would take advantage of it. There was a real danger of that.”

Aladashvili says the version that the military of the Mukrovani Base did not obey the order to dismantle demonstrations “is not serious.” “In such a case similar orders would have had to be given to other parts of the army, though there is no sign of that” – Aladashvili says and continues: “The use of tanks to dismantle the demonstration seems not to be serious. In addition, a day before the Chief of the United Georgian Headquarters Devi Chankvetandze flew to Brussels. I do not think if there were such an order, he would leave the country.”

Aladashvili does not suggest any version of why the incident happened; He says there is very few information from both sides. However he says that he does not take seriously the testimony given by Gvaladze. “Some of the people he names to be involved in the ‘mutiny’ do not know each other: some are not in quite friendly relations with each other and yet others are not in Georgia at all.”

**Online News Agency *presa.ge***

“Society has met with scepticism the incident labelled as ‘mutiny’ on the Mukrovani Base” – reports the agency and says that according to their source of information, the night before the public learned about the incident, the Constitutional Security Department and Special Operative Department officials visited the military base and demanded the military to take part in dismantling the planned picket.

There were only officers there, they protested against the unconstitutional order and informed the leadership of the military unit.

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<sup>11</sup> Interview with Human Rights Center, recorded in June, 2009

### **Kaxa Gogolashvili, Expert, Head of the European Research Center**

Gogolashvili considers the Mukrovani incident to be a continuation of the August War and thinks that “Russia is by different means still trying to forcefully change the government in Georgia.” He excludes the possibility that the ‘mutiny’ was staged by Georgian government. “That would have been a risky method as such methods cannot stay secret and will be revealed.”

### **Paata Zakareishvili, Political Scientist**

“A first impression is that this was a performance staged by the government aiming at discrediting Russia in the eyes of the world.” He does not exclude however that the government was planning to connect the ‘mutiny’ with the political opposition.

### **Tamar Shanidze, widow of Gia Krialashvili**

On May 5 Gia was playing cards with his sister till early morning. Then he got a phone call that he was one of those accused in Mukrovani Incident. He left the house and never came back. You remember that in his speech in Mukrovani the President ordered the Minister of Internal Affairs to “take Krialashvili out of the ground” then he paused for a while and I thought he would say: liquidate him, but he did not say that word. Apparently he implied that and Mrabishvili understood him. I also understood that they would not let Gia stay alive.”<sup>12</sup>

In 2004 he was fired from the military, he went to Kiev and started a small-size business there. He came back during the August war, he could not help not to do so. . . He was fighting in Tskinali, saved wounded guys, how do you think why he came back from Kiev, in order to betray his motherland and his children?”<sup>13</sup>

### **Irakli Sesiashvili, expert of security issues**

“It is not excluded that the government will sack or detain other military people, as the government is afraid of solidarity which is a distinct characteristic of army<sup>14</sup>. . .the government is

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<sup>12</sup> Journal Gza, *Special Operation of Getting Rid of Political Opponents*, 28.05-03.06, 2009

<sup>13</sup> Journal Gza, *Special Operation of Getting Rid of Political Opponents*, 28.05-03.06, 2009

<sup>14</sup> Number of military experts suggested that a new wave of arrests of military or former-military may start, as many people do not believe the Mukhrovani story and the government needs to reassert the idea that there was a ‘mutiny’ there. (Newspaper *Newspaper Rezonansi*, May 28, 2009 )

afraid of former military people can exercise certain influence on the inside situation in the army and their mood.”<sup>15</sup>

According to Sesiashvili, “the president is afraid of the army: if before the August 2008 he was doing everything for the army, after the loss in the war the situation in the army has become difficult and its logical that the military servicemen are dissatisfied with the actions of its commander-in-chief. Therefore the government is doing its best to fill up the holes which the society and army may have in common.”

### **Testimony by a detainee Temur Meliqidze<sup>16</sup>**

*I was in my village in Akhaltsikhe region, in the house when the special forces, around 10-15 men early in the morning at around 5:30 broke into the house and handcuffed me in the underwear.*

*On the question, why was he detained the Special Forces started beating him and abusing Meliqidze verbally. At 9-10 in the morning he was transferred to Tbilisi and was detained in the premises of the Special Operative Department till May 7. During this time he was physically abused several times and was not allowed to have access to lawyer. Authorities threatened him that they would plant drugs on his children if he would not testify that he was going to take part in the ‘mutiny’ together with a number of people named by the police. “I testified under pressure, do not know what exactly is written in there. They also demanded me to testify against Otanadze and say we were going to organize ‘mutiny’.*

### *Political Context*

This section provides a brief overview of the tense political situation in Georgia amid which the Murkvani Incident emerged. Those who wish to find an answer to the question - who is right and who is wrong in this political situation will not find answer here. The section instead focuses on certain aspects of the political struggle and the attitude of the government towards the political dissent, which in general reflects very well the overall rule of law and human rights climate in the country. Knowing this climate should be helpful to put Mukrovani Incident in a broader context.<sup>17</sup>

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<sup>15</sup> Newspaper *Newspaper Rezonansi*, May 28, 2009

<sup>16</sup> Testimony given to the Public Defenders on May 5, 2009

<sup>17</sup> This section does not evaluate the methods used by the Georgian opposition in their political struggle. We deem this issue to be irrelevant when the legality of state action is assessed:

The story of a ‘mutiny’ at Mukrovani Military Base surfaced in Georgia against the backdrop of a month-long demonstration in Tbilisi with the demand of resignation of President Saakashvili. These demonstrations, lead by major opposition political parties,<sup>18</sup> started in Tbilisi on April 9. Demonstrators voice two main accusations against the President: the August War with Russia and authoritarian governance.<sup>19</sup>

In the middle of the demonstrations, the government invited the opposition for a political dialogue. Initially, opposition as well as their supporters and number of civil society groups criticized the proposition of the government. Human Rights Center was among the few who from the very beginning welcomed the government proposition and called upon the political parties involved in the process to engage into a dialogue. We further stressed that the dialogue should not become an end in itself but the means for achieving a real change in the country and clarified that the dialogue between the opposing parties will have a very little chance to succeed if it fails to adequately address the crucial issues - restoring the constitutional balance of powers, freeing the Georgian media from governmental control and creating the environment conducive of political dissent.<sup>20</sup>

On May 11, 2009 opposition leaders met the President for a dialogue.<sup>21</sup>

After the meeting the President made a public speech in which he talked about a number of proposals he offered to the opposition, including occupying high offices in the government. The opposition stated that president was inadequate to the grave situation created in the country which needs fundamental changes.<sup>22</sup> At the moment talks about the resumption of the dialogue continue.<sup>23</sup>

It is worth also to mention that there was an attempt from both sides – government and the political opposition to involve non-political institutions in the situation, e.g. Orthodox

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disobedience to law or ethical rules by a political opponent in no way dissolves the government from its obligation to follow the law and rule of law commitments.

<sup>18</sup> With some exceptions, e.g., the Labour Party is not participating in the demonstrations, they have however publicly declared, they support the cause; Interestingly enough, among the opposition leaders are the former head of the Parliament and the former Prime Minister of Georgia during Saakashvili regime.

<sup>19</sup> Some of the benchmarks of this authoritarian way of running the country are documented in the HRIDC online campaign Unsubscribe

<sup>20</sup> Full text of the Statement can be seen at

<http://www.humanrights.ge/index.php?a=news&id=6190&lang=en>

<sup>21</sup> The meeting took place in Tbilisi, in the premises of the Ministry of Internal Affairs

<sup>22</sup> Despite the seriousness of the situation, the President and the ruling elite is denying existence of a political crisis in Georgia and prefers to call it ‘disconnect by certain groups’

<sup>23</sup> Some opposition leaders do not agree with that.

Church and the Head of the Church himself. At times the latter did that voluntarily.<sup>24</sup> Yet in other cases opposition and part of the society accused the government of attempted direct pressure on the Church to deter it from voicing its position about the ongoing political situation.<sup>25</sup> On the other hand, there were allegations that opposition also made mistake trying to obtain Patriarch's blessing of their goals openly.

Amidst the generally peaceful demonstrations, a number of violent clashes still took place between the police and demonstrators e.g., on May 6 in front of a Police Building in Tbilisi, just recently police violently dispersed The MIA has recently acknowledged that on that night they used plastic bullets to disperse the demonstrators. Plastic bullets may lead to death and their usage is prohibited by Georgian legislation.<sup>26</sup> As a result of their usage considerable number of people, including journalists sustained serious injuries.<sup>27</sup> In a number of other occasions also police used disproportionate force to disperse demonstrations, e.g., on June 15 when policemen dispersed the young people gathered in front of the Main Tbilisi Police Department. Tens of young activists of the youth movement were wounded; many more demonstrators were severely beaten; and media representatives also were injured.<sup>28</sup>

From the very first days demonstrations were accompanied by street violence, i.e. physical and verbal abuse against the demonstrators and sometimes even temporary abductions of demonstrators by unidentified people. Human Rights Center has documented the cases of police inaction to intervene in such situations, subsequent omission by investigative authorities to identify and bring the perpetrators of violence to justice and in some cases at least the evidence of direct state involvement in these harassments.<sup>29</sup> Such attitude of the government raises doubts that the violence is directly orchestrated by the latter.

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<sup>24</sup> e.g., during the escalation of the political situation in connection with three young people detained by the government for physical violence against a journalist: the opposition vowed that if the government would not free these guys, the opposition would do that' Patriarchy addressed the government publicly, asking them to 'reach a political decision' and release the guys to calm the situation. The government took this request into consideration.

<sup>25</sup> e.g., on May 26 around 80 000 demonstrators gathered in the yard of Sameba Church to get recommendations from the Patriarch, the Minister of Internal Affairs and the Tbilisi Mayor showed up to attend the speech of the Patriarch, as alleged later. However, people at the church and the opposition assessed that the officials came to make the Patriarch watch his words.

<sup>26</sup> Bullets Used by Riot Police on May 6 Could Kill a Person, 3 June, 2009 at <http://www.humanrights.ge/index.php?a=article&id=3810&lang=en>

<sup>27</sup> Bullets Used by Riot Police on May 6 Could Kill a Person, 3 June, 2009 at <http://www.humanrights.ge/index.php?a=article&id=3810&lang=en>

<sup>28</sup> For more information see <http://www.humanrights.ge/index.php?a=article&id=3835&lang=en>

<sup>29</sup> e.g. there are documented fact that some of the abusers appeared in the cars with the state numbers, (meaning the cars which are state officials while they are in office)

The version attributing street violence to the government is further supported by selective application of law in respect of such cases: few cases in which demonstrators were involved as offenders were promptly addressed by law enforcement authorities, demonstrators were detained and at least in one case subjected to inhuman and degrading treatment. While as to the knowledge of the Human Rights Center, Public Defender and NGO sector in Georgia, public knowledge, investigations have not been initiated. In any of the cases of harassments against the demonstrators, while in their nature and scale have been far more serious violations of laws of Georgia and right to physical security, freedom of assembly and expression.

To sum up, Human Rights Center has identified two important features of state action in the context of ongoing demonstrations:

- State omission to investigate harassments against the demonstrators committed by ‘unidentified people’
- Selective application of justice towards violence taking place in the context of demonstrations the aim of which is to repress demonstrators rather than uphold the rule of law

Against this background, very recently, an emergence of two disturbing tendency has been observed: 1) detention of political party members which do not seem to be well-grounded and in line with the requirements of the law. 2) Use of disproportionate force to dismantle groups of demonstrators for “restoring order.”<sup>30</sup>

It is noteworthy to mention here that after the first meeting with the opposition the President of Georgia offered to the opposition to declare a moratorium on all cases of violence which were committed in the context of demonstrations. The offer was not accepted by the opposition, civil society groups also raised their voices that there cannot be a trade off on justice.

To sum up, the current political situation in Georgia suggests that there has been a shift in the government’s approach towards the political dissent from November 2007 when they responded to the demonstrations by massive crackdown and closure of critical opposition TV station *Imedi*. Looking closer to the events however tell that the shift has happened more at the level of form rather than the substance. In reality, people in the government have stayed as intolerant to the dissent as they were before and are as ready to use undemocratic and even illegal means in the political struggle with the opposition as they were before.

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<sup>30</sup> See e.g. the story about the Incident Near the Main Tbilisi Police Department, 15 June, 2009 at <http://www.humanrights.ge/index.php?a=article&id=3835&lang=en>

As of the writing of this report the demonstrations and harassment of its participants are ongoing.

### *Rule of Law and Human Rights Context*

This section provides an introduction to the phenomenon of a special operative activity as it is carried out in Georgia. It is included in the report because the special operation carried out to apprehend the suspects of the ‘mutiny’ ended with the death of one of the suspects as a result of a special operative activity.

Drawing conclusion that this special operation in question will necessarily follow the existing pattern described below of ineffective investigations and denial of the fair trial to victims would be premature at this stage - as the investigation is ongoing. What this section aims to do is however to make a note that special operative activity is one of those contexts in Georgia in which human rights are put at highest risk by authorities.

Georgia’s human rights record since the current political power came into power in 2003 has been mixed. Significant progress has been achieved in many directions of the country’s life, e.g. economic growth. On the other hand however in respect of certain rights and freedoms the situation has significantly deteriorated: right to life, fair trial, and freedom of expression and media, right to property belong to this category.<sup>31</sup> Moreover, Government has often been criticized for upholding rule of power rather than rule of law.<sup>32</sup>

On this background, a so called “police special operative activity”<sup>33</sup> emerges as one of the most troubling contexts in which human rights of Georgian citizens are at highest risk.

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<sup>31</sup> More information on these issues can be seen through the online campaign of Human Rights Center *‘unsubscribe’*

<sup>32</sup> PD.

<sup>33</sup> the word refers to police activity to apprehend a suspect which is very often accompanied by use of force

## **Documented pattern of police excessive use of force**

*“The existence of criminality does not explain or excuse killings by Government forces. All Governments have to deal with criminals, and it is one of the central duties of a Government to protect its citizens from such persons. But a democratic Government operating under the rule of law does not respond to terror with more terror.*

*Surely we have moved beyond the point where it needs to be stated that the proper response to criminality is not to shoot a suspect in the back of the head and dump the body in a forest, but to investigate, arrest, and try the suspect in accordance with law.”<sup>34</sup>*

Philiph Alston, UN Special Rapporteur on extrajudicial, arbitrary or summary executions, 2009

Georgian Constitution and laws guarantee right to life and provide for remedy in civil as well as criminal courts when the right to life is violated. Right to a fair trial is also enshrined under the national legal system. Nevertheless, Georgia has years long record of excessive use of force by law enforcement authorities and of a state failure to effectively redress these violations: Notorious cases of Robakidze (2004), Tsalani (2005) Afrasides(2005), Girgvliani(2006), Vazagashvili (2006), Gamtsemlidze(2008), Shavadze (2008) are but a few examples of that.

In general, almost no state is safe from excessive use of force by police. What distinguishes some from others however is administration of justice in respect of such cases.

Human Rights Center is currently working on a comprehensive study of the situation in respect of police excessive use of force in more than 30 cases which ended with loss of a suspect's or civilian's life. Preliminary findings of this work are as follows:

### **Context of the use of force**

- Almost in none of these cases the person killed as a result of excessive use of force had been charged or even recognized as a suspect by the time of using force, most of them did not even have a previous criminal record.
- In most of the cases the police spread the information via the media that the police had operative information that the killed were going to commit a crime
- Naturally, government had difficulties to substantiate their allegations. This situation further encouraged them to commit additional crime - falsification of evidence, planting of weapons, etc.
- Police often invoked resistance from the other side, to justify use of force; However results of alternative expertise carried out later often rebutted this version

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<sup>34</sup> Philiph Alston, UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions, 2009

- As a rule police failed to take necessary measures to avoid accidental loss of life or damage to civilians. Some cases ended with a death of a passer-by or family member of the targeted person. No redress was provided to them.

### **Practices at the Stage of Investigations**

- As Human Rights Center identified, effective investigations in police excessive use of force leading to death are rare.
- In some cases investigation was not initiated at all, contrary to expressly stated legal obligation on the part of the state to do so.
- In other cases victim's status was not granted to the next-of-kin, as required by law, or was delayed without any justification.<sup>35</sup> That seriously effected protection of victim's rights and interests in the case.
- In other instances case file was closed at the stage of investigation without proper explanation for such a decision; Closure was preceded by taking away the status of a victim from the next – of –kin of the deceased, so that they could not even appeal the decision.
- In most cases investigation failed to question police officers involved in the case of use of force, obtain important evidence, etc. to ensure impartial and thorough investigation as required by Georgian law. The court further failed to do that.
- In most cases allegations police version that it belonged to suspect was rebutted by expertise investigation as well as the trial failed to answer the question of who fabricated the evidence or planed weapons after the.

### **Practices at the Stage of Trials**

- At least in one case, the government changed the law in order to shield the high ranking officials from criminal responsibility.<sup>36</sup>

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<sup>35</sup> Without the formal status, de facto victim is not a party to the legal proceedings neither at the level of investigations nor at the trial.

<sup>36</sup> Since 2004 the ruling party in Georgia headed by the President enjoys absolute majority in the Parliament. Consequently, the Parliament is able to rewrite overnight not only a law but the constitution itself.

- In most of the cases the court could not secure presence of police officials participating in the special operative activity in question before the court
- In none of the cases compensation was provided to the victims or their families
- In none of these cases the family (or next-of-kin) considers that justice was served.

Numerous irregularities have been documented at the stage of investigation and trial, in those cases when it reached the trial stage. Those irregularities made it impossible to conduct objective thorough and impartial investigation and guarantee to the victims (next of kin of the liquidated person) fair trial as mandated by national law and international human rights standards. But what had even worse and far reaching effect is that the miscarriage of justice in these cases undermined public confidence in the national justice system.

#### *Policy of Impunity for Excessive Use of Force*

It is important to note here that after coming into power that President Mikhail Saakashvili announced at several occasions that he would adopt a zero tolerance policy against crime. In January 2004, just days after his election he made a public statement and called upon the justice minister to *"open fire and eliminate on the spot all criminals who would make any attempt at stirring up the situation."*

Later on, addressing Georgian lawmakers, Interior Minister Vano Merabishvili said: *"While I am on the air, I am ordering the Georgian police, members of the special police forces, and anyone whose duty is to protect society: do not let your hand shake if you notice the slightest threat to the life or health of a citizen, especially if this citizen is a police officer."* The Minister brushed aside allegations of police abuses, saying the government was "at war" with organized crime.

On November 23, 2005, the Minister made a similar statement on the channel Rustavi2 TV: *"I apply to all Georgian policemen not to hesitate to use arms when a person's or policemen's life is endangered."*

On February 23, 2006, during a meeting in Tbilisi with newly appointed judges<sup>37</sup>, President M. Saakashvili publicly announced; *"...Policemen have instructions to open fire directly because*

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<sup>37</sup> By that time judges were appointed and dismissed by the High Council of Justice, a body headed by President Saakashvili. Criteria for appointing and dismissing judges, as well as provisions concerning the composition of the Council were not clearly set out in the law. This

*the life of one policeman is more valuable than the lives of entire world of criminals and their accomplices. Therefore, we made precedents to use arms and we intend to continue this way, same as practiced in USA, Europe, Israel and all other developed countries.”*

Considering the lack of judicial independence and degree of executive control over judges in Georgia<sup>38</sup>, these statements practically legitimized shoot to kill policy, gave a license and secured it from judicial scrutiny. The fact that this is so has been demonstrated by the uninterrupted chain of the violations of the right to life under the pretext of combating crime which followed soon to these statements.

This chain of violations was accompanied by additional measures to quash public scrutiny on these cases: State representatives harassed human rights activists who tried to rise public awareness on these cases in Georgia,<sup>39</sup> including detaining them for *petty hooliganism* and *disrespect to the court* when e.g. they wrote on the streets: *Respect the Life*; they also exerted direct pressure on the media, especially TV, to influence the way it was covering similar cases, etc.<sup>40</sup>

**Putting all these different parts of state action together draws a bigger picture of the situation and leads to three disturbing conclusions:**

- 1. In Georgia impunity for excessive use of force is rarely investigated effectively, in a few cases which were heard by the court on the merits it is hardly possible to say that the victims enjoyed their right to a fair trial.**
- 2. Failure of the state to carry out its positive obligations in relation to the right to life is not due to incapacity of the national justice system to bring perpetrators to justice but due to deliberate unwillingness of the state to do so.**

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arbitrary decision-making process introduced by Constitutional amendments heightened the sense of executive prerogative.

<sup>38</sup> “In Georgia there is no independent judiciary and the judiciary is completely subjected to the office of the prosecutor and state administration. Courts practically serve as rubber stamps for decisions taken in advance in other offices. The courts fail to carry out the crucial task of protecting and upholding human rights” (extract from *Anatomy of Human Rights Violations in Georgia*, Speech of the Public Defender of Georgia dated by 2008

<sup>39</sup> e.g. representatives of NGO Egalitarian Institute were imprisoned in a number of times during those actions. Irakli Kakabadze, was accused of petty hooliganism for writing “protect life “

<sup>40</sup> Eka Khoperia, an anchor of a popular political talk show on the Rustavi-2 television channel, announced during a live program on July 6 concerning the Girgvliani murder that she was resigning to protest government authorities’ requests to alter that program’s format. 2006

**3. Unwillingness is not because of state indifference towards the issue or mere solidarity of colleagues with each other, but because of an official (?) state position which legitimized shoot to kill policy.**

#### *Special Operative Activity of May 20: Law*

This section provides a legal framework regulating use of force by law enforcement authorities in the light of human rights standards enshrined in ECHR and relevant UN documents. In the light of those standards it assesses special operation of May 20 carried out to apprehend the three ‘mutineers’ and identifies those issues which must be investigated thoroughly and impartially by relevant authorities in order the investigation to be in line with Georgia’s international human rights obligations.

This section in particular covers the following rights:

- Right to life, as negative obligation of the state is concerned
- Right to life, as positive obligation of the state is concerned

The special operation was further followed by other violations, in particular that of:

- Presumption of Innocence
- Right to free access to lawyer

#### **Right to life: legal framework**

Prohibition of excessive use of force lies in universal recognition of the right to life. Right to life is the most basic human rights of all: if one could be arbitrarily deprived of one’s right to life, all other rights and freedoms would become illusory. Therefore, although use of force is not completely outlawed in international human rights law, it is subjected to the most vigorous constraints.

The right to life places upon the state two categories of obligations which cannot be derogated from even in “time of war or other public emergency threatening the life of the nation.”<sup>41</sup> These obligations are: 1) to refrain from the deprivation of one’s life save in strictly defined exceptional circumstances, e.g. use of force which is no more than absolutely necessary in order to effect a lawful arrest (negative obligation of the state) and 2) to launch prompt, effective, impartial and transparent investigation in cases of death, especially when the death happens at the hands of the authorities (positive obligation of the state).

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<sup>41</sup> Article 15 of the European Convention of Human Rights and Freedoms

The right to life is protected under the Constitution and Laws of Georgia. The law on Police states that use of firearms is permitted “as a measure of last resort.” Intensive case law developed by the European Court of Human Rights, which is directly applicable to Georgia, further provides important guidance to identify state obligations to secure right to life under its jurisdiction and legal constraints on use of force. Two other UN instruments are also important to bear in mind: Code of Conduct for Law Enforcement Officials [*hereinafter* the Code of Conduct]<sup>42</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [*hereinafter* Basic Principles]<sup>43</sup>

This report will evaluate government’s actions in the light of these international standards - set out by the European Court of Human Rights and the two UN documents.

### **Negative Obligation upon the State to Refrain from Deprivation of Life: Restraints on Use of Force**

Article 2 of the European Convention on Human Rights states:

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a in defense of any person from unlawful violence;

b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c in action lawfully taken for the purpose of quelling a riot or insurrection.

“Article 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life.”<sup>44</sup> The term “absolutely necessary” means that “no other action – short of using such force – can achieve the same lawful purpose.”<sup>45</sup>

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<sup>42</sup> General Assembly resolution 34/169 of 17 December 1979

<sup>43</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990

<sup>44</sup> *Egri v. Turkey*, ECHR (1998)

<sup>45</sup> *McCann and Others v UK*, ECHR (1995 )

However, even when the use of force is absolutely necessary, it will still be deemed illegal if the force used was not “strictly proportionate” to the legitimate aim pursued.

The issue of proportionality is further clarified in the Code of Conduct. It states that even when a suspect offers armed resistance or otherwise jeopardizes the lives of the police, use of force is only justified if less extreme measures are not sufficient to restrain or apprehend the suspected offender. The nature of the resistance put up by the suspect is instrumental in order to determine the issue of sufficiency. Police is obliged to display caution in assessing the resistance from the suspect. In order to avoid prejudging the level of resistance and to distinguish dangerous criminals, who can be stopped only with deadly force, from both the deferrable and the innocent ones, the Code establishes two safeguards: 1. the obligation of the police to give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, and 2) to gradually escalate the force. The police has to observe these safeguards “unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.” In the end, any use of firearms should be such as to “[m]inimize damage and injury.”<sup>46</sup>

In determining whether the force used was compatible with Article 2 what should be carefully scrutinized is not only whether the force used was “strictly proportionate to the legitimate aim pursued” but also whether the action under examination ‘was planned organised and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force’<sup>47</sup> and whether the information and instructions given . . . took adequately into consideration the right to life of the suspects.<sup>48</sup> The principle of necessity will, thus, never justify the use of disproportionate force. If all proportionate measures have proved insufficient to apprehend a suspect, he or she must be permitted to escape.

**Thus, Representatives of the state are obliged to plan and implement control over special operation in such a manner that they minimize chances of use of lethal force.<sup>49</sup> And if they still have to recourse to such force, it must be strictly proportionate to a legitimate aim pursued, as defined in the Convention.**

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<sup>46</sup> Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>47</sup> *McCann and Others v UK, ECHR (1995)*

<sup>48</sup> *McCann and Others v UK, ECHR (1995)*

<sup>49</sup> *Guli v. Turkey, ECHR (2000)*

### **Obligation to avoid incidental loss of civilian life**

Responsibility of the State is not confined to circumstances where there is significant evidence that misdirected fire from agents of the State has killed a civilian. It may also be engaged where state fails to take all feasible precautions in the choice of means and methods of an operation with a view to avoiding and, in any event, to minimizing, incidental loss of civilian life.<sup>50</sup>

**Thus, police has an obligation to plan and conduct the operation in such a way as to avoid or minimize, to the greatest extent possible, any risk to the lives of the passerby's and innocent civilians, including from the fire-power of the suspects.<sup>51</sup>**

#### *Special Operative Activity of May 20: Facts*

According to the Official Statements of the MIA released on May 21:

*“The participants of Mukhrovani ‘mutiny’, namely: Koba Otanadze, Levan Amiridze and Gia Krialashvili, after the attempted military ‘mutiny’, were avoiding legal responsibility and were hiding in different locations of Tbilisi. The wanted persons were careful in their manner of behaviour and rarely contacted their relatives or other people. For the last few days the given persons were hiding in one of the summer-cottages situated in the vicinities of Tskvaritchamia village.*

*On the basis of operative information received by the employees of Special Operative Department and Counter Intelligence of the Ministry of Internal Affairs, it was established that the group of wanted persons was planning to leave Tbilisi on a mini-bus and was heading towards territories currently under Russian occupation and military control. Law enforcers, have also managed to ascertain the details of the above mentioned scheme. When suspects attempted to leave the surroundings of Tbilisi the Ministry of Internal Affairs has held a special operative activity aimed to detain the wanted persons due to which suspects have put up armed resistance to the police forces. As a result, during the exchange fire Gia Krialashvili has died at*

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<sup>50</sup> *Egri v. Turkey, ECHR (1998)*

<sup>51</sup> *Egri v Turkey, ECHR (1998)*

*the place of incident, while Koba Otanadze and Levan Amiridze were wounded. . . Among other evidences firearms . . . were seized from the detainees by the police.*”<sup>52</sup>

Any additional official information in relation to the special operation has not been released.

Facts stated in this Statement raise a number of questions and concerns as regards to law and human rights:

- According to the Statement, authorities had the suspects under their control and knew the details of the suspect’s scheme to leave Tbilisi. Accordingly, they were in a position to plan, organise and control the special operation so as to minimise, to the greatest extent possible, recourse to lethal force,<sup>53</sup> and take adequately into consideration the right to life of the three suspects.<sup>54</sup> At least from the information made public, there exists no reason to assert contrary.

In fact however, the special operation was carried out in a compact residential district, while a number of civilians were in the streets and according to witnesses, their lives were also endangered. In addition, supposedly the fire was opened when both cars were moving, which naturally increased chances for the loss of life.

Another important consideration is the fact that while the special operation was planned in advance, no one took measures to ensure that a medical unit be on alert to promptly reach the place in case of need to save life. In fact, as newspapers reported – the medical unit came only after the Minister of Internal Affairs paid a visit to the scene.

- The Statement does not clarify what action from the side of the police preceded to the putting up of armed resistance from the suspects.

The area where the special operation in question was carried out is surrounded by street surveillance cameras, a measure introduced by the MIA in the Capital to better control the crime some 3 years ago. As to the date of writing this report the MIA has not released the full video footage of the special operation, neither to the public nor to the family of the killed suspect.<sup>55</sup> Speaking strictly legally, MIA does not have obligation

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<sup>53</sup> *McCann and Others v UK, ECHR (1995)*

<sup>54</sup> *McCann and Others v UK, ECHR (1995)*

<sup>55</sup> However the MIA, which did not hesitate to release the video footages of Gvaladze speech which incriminates a handful of people, till this very date has not released the footage of the special operation.

to do so (at least till the victim's status is officially granted to the family). However, what should be born in mind is that because there is considerable public interest in the issue and burning questions around the special operation have emerged in the society, and considering that as a rule MIA does not hesitate to release video footages to convince the public in the correctness of its position, denial to release the footage stirs up suspicions among the public about the special operation.

- *What action from the side of the police preceded to putting up of armed resistance from the suspects* is not the only question investigation should answer. It should also find out *if there was an armed resistance from the suspects*. Ministry of Internal Affairs is a party to the case here and main 'suspect' in possible excessive use of force which led to the loss of life. Therefore, investigation must not take MIA statement for granted and has to conduct "thorough, impartial, objective investigation and establish facts which incriminate as well as prove the person's innocence."<sup>56</sup>

Furthermore, according to eyewitnesses interviewed by Human Rights Center, there was no exchange of fire at all and that there was no blood on the crime scene. The defence lawyer also confirms, based on the information availed from his client, that there was no exchange of fire between the police and the suspects. According to one version spread in the public, suspects were detained before the special operation, they were travelling in the car together with the MIA representatives who shoot them inside the car and then staged the special operation.

Obtaining further confirmation of this version is difficult, because Otanadze and Amiridze are in hospital and not available for comments. Otanadze is availing its right to silence.

Of further importance is the fact that in several hours after the special operation road reconstruction activities were carried out on that particular place. Thus the possible crime scene no longer exists. Consequently, there no longer exists a possibility to carry out examination of the place where the special operation took place. Otanadze's defence lawyer said that the investigators are telling him that they have carried out examination and taken samples from the place as required by law. But because the defence lawyer cannot get access to these materials it is impossible to say whether the investigation has carried out the procedures required by law appropriately. Speaking strictly legally, while national law provides for the obligation to ensure protection of the crime scene, it does

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<sup>56</sup> as required by article 18 of Criminal Procedural Code of Georgia

not however specify for how long that obligation exists. However, if the defence lawyer at some point will need to carry out certain procedures on the scene, he will not have the possibility to do so. This is why expediency in road reconstruction activities carried out after the special operation, gave rise to concerns and suspicions.

**Based on the facts available as of to date, the special operation carried out by the police on May 20 gives rise to many legitimate questions as to:**

- whether the special operation was planned and controlled in a way which would minimize recourse to lethal force
- whether feasible precautions were taken in the choice of means and methods of an operation with a view to avoiding incidental loss of civilian life
- whether there was an armed resistance from the side of the suspect
- whether there was no other action – short of using the force – which could achieve the same lawful purpose
- Whether the police gave a clear warning to the suspects and gave them time to surrender

To sum up, investigation should be effective in the sense that it should establish whether use of force was justified. This is obligation not towards the result, but the means.<sup>57</sup> Burden of proof on this matter lies exclusively on the MIA and the obligation to investigate the case on the office of the prosecutor.

### **Positive obligation to investigate the case**

**This section deals with the positive obligation of the state in terms of the right to life as defined by the ECHR and the case law. In particular the obligation to launch prompt, effective, impartial and transparent investigation in cases of death, especially when the death happens at the hands of the authorities. After summarizing the law the section draws attention to certain factual information from the case which raise concerns in terms of state compliance with**

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<sup>57</sup> *Shanaghan v. UK, ECHR,(2001)*

its obligation to effectively investigate the case. However, no final conclusions are made on this matter as the investigation is still ongoing.

### **Legal Framework**

**The obligation to carry out** effective official investigation on the lawfulness of the use of lethal force by State authorities is corollary to the state obligation not to deprive life illegally. Otherwise the legal prohibition of arbitrary killing by the agents of the State would be a dead letter.

Standards of effective investigation have been clarified by the ECtHR in its case law. It encompasses four main elements: *independence, effectiveness, promptness and transparency*.

#### **Independence**

Investigation will only be independent if ‘the persons responsible for and carrying out the investigation are independent from those implicated in the events’. The Court has stressed that ‘this means not only a lack of hierarchical or institutional connection but also a practical independence [...]’.

#### **Effectiveness**

Investigation will be effective if:

- it is ‘capable of leading to a determination of whether force used was or was not justified under the circumstances and to the identification and, if appropriate, the punishment of those concerned.’
- ‘all reasonable steps’ have been taken to secure evidence concerning the incident, including ‘eyewitness testimony, forensic evidence, and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death’. The Court has stated that the requirement that an investigation be effective ‘is not an obligation of result, but of means’. In other words, the Court’s emphasis is not upon whether (or not) an investigation has led to a finding of unlawful killing. Instead, it seeks to evaluate the content and quality of the investigation.

#### **Promptness**

In order to comply with Article 2 of the ECHR, an investigation must also be conducted in a prompt and reasonably expeditious manner. Speed is of the essence at the very beginning of an investigation into the use of lethal force, when immediate steps are required to seize any evidence which may support (or undermine) a complaint about unlawful killing (e.g. firearms which may have been discharged, clothing, etc.). The investigation as a whole should also be conducted in an expeditious manner. In other words, it must be carried out as quickly as is consistent with completing the work in a professional way.

### **Transparency**

An investigation will only comply with Article 2 of the ECHR if it can be shown to have been transparent. The European Court of Human Rights has explained that this means that there must be ‘a sufficient element of public scrutiny of the investigation or its results [...] to secure accountability in practice as well as in theory’. The Court has recognized that the degree of public scrutiny that is required may vary from case-to-case but, in every case, the next-of-kin of the deceased ‘must be involved to the extent necessary to safeguard their legitimate interests’.

### **Failure of the government to conduct effective investigation – paying due regard to all four elements of it - violates article 2 of the ECHR.<sup>58</sup>**

### **The Ongoing Investigation**

As already stated in this report, while the investigation is ongoing it will be premature to draw any conclusions as to its effectiveness. Couple of issues still deserves attention already at this stage however, most significantly:

- Investigation into the issue of special operation was launched under article 114 of the Georgian Criminal Code. The title of the article is “exceeding the force necessary to apprehend a criminal.” Without going into further details of what the substance of the provision entails, opening the case under this article violates presumption of innocence of those who were targeted at the special operation. By the time of the special operation, and as of today, those three targeted were not recognized as criminals by the court and

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<sup>58</sup> *Shanaghan v. UK, ECHR, (2001)*

consequently are were entitled to be presumed innocent before they are found guilty by the court.

On the other hand launching investigation under article 114 of the Georgian Criminal Code means that this investigation already assumes that the targeted three were criminals. This assumption comes into direct conflict with another ongoing investigation which has been initiated exactly in order to find out whether or not those people were criminals. Both these investigations are ongoing in the same office of the prosecutor.

- The special operative activity of May 20 ended with a death of one person and serious injurious to the health of the other two. All three people are identified and their loss is also evident. However the investigative authorities are denying them the status of a victim.

National law prescribes special procedure for granting the status of a victim to a person who sustained material, physical or other types of injuries. It also states that in case the person is dead the status is granted to the next of kin. Without such a status the person who sustained injuries or loss of life is not a party to the investigative process and is unable to present his/her interests and protect his/her rights in the ongoing investigation. Neither can s/he obtain information as to how the investigation is going on and what measures and activities have the investigators undertaken. Denial of the victim's when no proper legal justification exists for that, violated one of the most important requirements of an effective investigation as defined by the ECHR – transparency and decreases chances for thorough, objective and impartial investigation, as required by the national law.

### *Incompatibilities with the Right to a Fair Trial*

This section provides legal assessment of state actions in connection with the suspects of Mukrovani “mutiny” as their right to a fair under ECHR is concerned. In particular it concentrates on two aspects of the right to a fair trial: presumption of innocence and the right to a lawyer. The section concludes that public statements made high ranking officials in which they already referred to suspects as “criminals” violated the suspects’ rights to presumption of innocence. It also concludes that as Mr. Otanadze was denied access to his lawyer by representatives of the state his right to a lawyer was violated. Denial of this right is particularly

disturbing in the light of the fact that Mr. Otanadze was thus deprived the possibility to appeal the decision of the court sending him to two months pre-trial detention.

### **Presumption of Innocence: Legal Framework**

The term Presumption of Innocence refers to the legal doctrine which states that no one should be considered guilty before a court establishes so. Presumption of innocence is a fundamental principle protecting an accused against being treated by public officials as guilty of an offence before this has been established by a court. The presumption of the accused person's innocence is crucial for the evidence-taking process, in that it places the burden of proof on the prosecution and allows the accused the benefit of the doubt.

European Court of Human Rights<sup>59</sup> has established, that presumption of innocence must be observed in the treatment of pre-trial detainees, who cannot be treated as convicted individuals. One example of that is that no representative of the State may make statements before the final decision of the court which make the impression that the accused has already been found guilty.<sup>60</sup>

Presumption of innocence is enshrined in the Constitution and criminal law of Georgia as well as article 6 of the European Convention on Human Rights and number of other international human rights instruments.

### **Statements made by Georgian Officials violating the presumption of innocence**

President and the Minister of Interior in their public statements aired on TV referred to Otanadze, Krialashvili and Kobaladze(now under the pre-trial detention) as “criminals,” “people with criminal mentality. . . who have done nothing good for Georgia” and talked of them as if they were already proved to be guilty of the crime of ‘mutiny’.<sup>61</sup>

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<sup>59</sup> Georgia is a state party to the European Convention of Human Rights

<sup>60</sup> *Petra Krause v. Switzerland*, (1978), ECHR

<sup>61</sup> In a video footage, released by the MIA, Saakashvili is seen talking with soldiers from the military unit. “What did those *criminals* doing in your unit?” Saakashvili tells a group of soldiers lined up outside the military unit headquarters. “You let those people inside the unit and you were not allowing our representatives.” [“I know that probably you have been fooled,” Saakashvili continued after a short pause.]

A video footage aired by the television stations on May 5 showed Saakashvili, Merabishvili, as well as Justice Minister, Zurab Adeishvili, and other officials standing in a room having a conversation. Vano Merabishvili, the Georgian Interior Minister said: A commander of a

An official of the Military Police, Gaga Kirkitadze, violated presumption of innocence of Kakha Kobaidze and Davit Sul Khanishvili in his public statement.<sup>62</sup>

### **Infringement of the right to free communication with a defense lawyer**

Right for a detained person charged with a criminal offence to communicate with his/her lawyer out of hearing of other persons is inherent in Article 6 (3) (c) of the European Convention.<sup>63</sup> The case law of the Court states, that ‘presence of the police officer within hearing during the applicant’s first consultation with his lawyer infringes his right to an effective exercise of his defense rights, in violation of Article 6 (3)(c) read together with Article 6 (1).<sup>64</sup>

During the three days after Otanadze was hospitalized, his lawyer and relatives were not allowed to see him. The chief doctor of the Gudushauri Hospital was telling them such was an order of Vano Merabishvili, Minister of Internal Affairs. “I am asking for a meeting with my client every day, but Irakli Kodua, the head of SOD and Dimitri Shashkin, the head of the penitentiary do not allow me to meet him. Representatives of Special Operative Department hinted to me that I have to get the permit from Kodua and those from the department straightforwardly said: Shashkin has ordered not to allow a lawyer to meet Otanadze or Amiridze. Representatives of Special Operative Department and counterintelligence are sitting in the cabinets of the head of the hospital. The hospital has been converted into the Special Operative Department. According to the law Special Operative Department does not have a right to establish surveillance on a detainee. It is clear they are doing that illegally. Their aim is not to allow a lawyer, isolate the detainees and exert physiological pressure on them in order to extract wanted testimonies from them.”<sup>65</sup>

After those three days the lawyer managed to get access. “They allowed me to meet with Otanadze only for a couple of minutes with the presence of officials from the SOD, therefore, taking into consideration the interests of the party, I could not ask questions which are

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military unit, who *staged ‘mutiny’* on Tuesday morning, and his associates from the same unit have been arrested, while some remain at large. [ Are you agreeing that there was a ‘mutiny’?] Minister of Internal Affairs talked of Kobaladze in the context of people “having links with Russians.”

<sup>62</sup> “These persons were aware that the military ‘mutiny’ was organized; they also had information who were participating in it; however, they did not notify either their command, or the law enforcement agencies about it,” Gaga Kirkitadze an official from the Military Police, said on May 11.

<sup>63</sup> *Brennan v. United Kingdom. ECHR, (2001)*

<sup>64</sup> *Brennan v. United Kingdom. ECHR, (2001)*

<sup>65</sup> Interview with the Defense Lawyer, Special Operation of Getting Rid of Political Opponents, Journal Gza 28.05-03.06, 2009

important.”<sup>66</sup> At the moment Otanadze is in the prison hospital and according to his lawyer they have unhindered communication. However, the fact remains that as a result of the violation of the right to a lawyer during the first days of detention, Otanadze was effectively denied the possibility to appeal the court decision on his pre-trial detention.

### *Pressure on Otanadze's Family*

#### **Illegal detention of Otanadze's brother**

On May 12 a brother of Koba Otanadze, Nugzar Otanadze was detained. According to the lawyer of Otanadzes, special forces came to Nugzar Otanadze's place at night alleging that they had information that Koba Otanadze and the other two mutineers were hiding at his place. They did not find these people there, but arrested Nugzar Otanadze, and took him to the police station.

As the family members recall, the police officers were not hiding that Nugzar Otanadze was detained because he was the brother of Koba Otanadze.

According to the lawyer the power officials pressured Nugzar Otanadze to tell about his brother's location but he did not know that and could not say anything. Such action by the police, if so, is a clear violation of law which states that next-of-kin has the right to keep silence in similar situations.

According to the lawyer, Nugzar Otanadze was severely beaten by truncheons for approximately one hour. Otanadze lost conscious several times while being beaten, they pored water on him and beat him again when he regained his conscious and this happened several times. Among other injuries Otanadze had his arm broken. He claims he can recognize those who beat him.

Medical examination proves that Nugzar Otanadze was subjected to severe physical pressure while being in the premises of the police. Representative of the Public Defender of Georgia who visited Nugzar Otanadze confirms that Otanadze was subjected to physical pressure which was visible on him.

When the lawyer and the public defender spread information about detention and beating of Nugzar Otanadze, the MIA promptly sent out alternative story, saying that he sustained those injuries while resisting to the police. This was not, however, documented in the detention protocol filled out by the police.

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<sup>66</sup> Interview with the Defense Lawyer, Special Operation of Getting Rid of Political Opponents, Journal Gza 28.05-03.06, 2009

Moreover, detention protocol makes it clear that Otanade was not given the information on the grounds of his detention, neither about his rights at the time when he was detained. According to the existing legislation, if the detaining authority falls short of discharging this duty the detainee must be immediate release.

The next day charges were brought against Otanadze for “resistance to the police.” Under these charges Otanadze was jailed for two months. As of the writing this report, he remains under detention.

According to the Public Defender of Georgia, detention of Nugzar Otaandze took place without any evidence and the only reason is that he is the brother of Koba Otaandze.

### **Illegal detention of another brother of Otanadze and his family**

On May 20 public defender Sozar Subari, and defense lawyer, Onise Mebonia reported that the police detained brother of Koba Otanadze, Jimsher Otanadze, the latter’s wife Gulo Zaridze and their son Giorgi Otanadze at 3am on May 20. However, according to the PD and the lawyer the fact of detention had not been “formally registered.” “The Public Defender’s Office has contacted the Interior Ministry of Georgia. However, they did not give information about the whereabouts of the Otanadze family,” he said.

These people were released only after Otanadze himself was detained.

### **Detention of Otanadze’s 11 relatives, including a 8-months old baby**

On May 20 public defender Sozar Subari, and defense lawyer into the case, Onise Mebonia reported that the police detained 11 relatives of Koba Otanadze, including a 8-months old baby who was taken together with her parents.

During his interview on live Program Givi Targamadze Head of the Parliamentary Committee of National Defence and Security acknowledged the fact of their detention however said that they were detained for several hours not exceeding the limit established by law for questioning. However, what is strange is the fact that the protocols of questioning of these people do not exist contrary to the prescribed legal procedure.

These people were released only after Otanadze himself was detained. The defence lawyer has explained to Human Rights Center that these 11 relatives are not willing to bring charges or illegal detention as they work in public institutions are afraid that if they do so, they will loose their jobs.

According to the confirmed information by Otanadze's, their child was official expelled from school after his father was declared as wanted.

### *A Wave of Further Detentions*

A wave of detentions followed to the video footage of testimony by Mr. Gvaladze. Exact number of people detained in connection with the 'mutiny' is unknown. Shota Utiashvili, head of the information and analysis of the MIA, says, the number of detainees will become known "only after their questioning is completed. On May 5 we detained 60 civilians who were not working on the base but where there, apart from that there are 400 people on that base, before we question them all and reveal their guilt, before that we cannot say the exact number. We can detain a person one day, question him and then release the other day, therefore before this questioning process is completed we cannot say the exact number."<sup>67</sup>

According to lawyer Lali Aptsiauri, who is representing the interests of a number of detainees from rangers battalion says that 27 soldiers who were detained and were not allowed to get in touch with their families or get a lawyer at their choice, contrary to the law. "The prosecutor's office recruited state advocates from state advocate's regional offices, around 100 people to deal with their cases", says Aptsiauri. "It seems government cannot trust independent advocates and trusts only those who depend on them. I have not heard even a single one from those state advocates raising any objections about the case." Aptsiauri also says that her clients were severely beaten.

Public Defender accused the MIA of beating and torture of the detained people in connection with the Mukrovani Incident. According to the PD,<sup>68</sup> four people detained in relation to the Mukrovani Incident – Akaki Aptsiauri, Nikoloz Bibilashvili, Temur Meliqidze and Sandro Veshaguri – were tortured. These four have confirmed this fact and it was also visible on them when PD representative visited them. "But calling the names of these four does not mean that other detainees were not subjected to such treatment. It is alarming that the reports about torture and beatings have increased in the country recently."- says the Public Defender and demanded urgent medical examination of all the detainees.

**Irakli Sesiashvili, expert of security issues** says: it is not excluded that the government will sack or detain other military people, as the government is afraid of solidarity which is a distinct characteristic of army."<sup>69</sup>

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<sup>67</sup> Newspaper Rezonansi, May 12, 2009

<sup>68</sup> Newspaper Rezonansi, May 14, 2009,

<sup>69</sup> Newspaper Rezonansi, May 28, 2009

Number of experts suggested that a new wave of arrests of military or ex-military may start, the reason being that many do not believe in the story on Mukhrovani put forward by the government, therefore they need to reassert that there was a ‘mutiny’ there.<sup>70</sup>

It must be also mentioned here that the investigation of the ‘mutiny’ and case files of those people who have been detained in its respect have been classified as state secrets. Lawyers involved in the case as defenders of the detainees declare that there is nothing in the case file to qualify as such and such a decision therefore has only one possible goal: to immunize the case from the public scrutiny.<sup>71</sup>

### *Recommendations:*

#### **Human Rights Center urges Georgian authorities:**

##### **In relation to the ongoing demonstrations in Tbilisi to:**

- Promptly investigate and prosecute ALL the cases of violence committed in the context of demonstrations without any discrimination based on political belief or affiliation
- Refrain from abusing the legal system in order to repress political dissent and make sure that the government always abides by law, even in those cases when its political opposition fails to do so.

##### **In relation to the Mukrovani incident to:**

- Immediately release Nugzar Otanadze, the brother of Koba Otanadze who is detained

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<sup>70</sup> Newspaper Rezonansi, May 28, 2009 ( interviews with military expert Giorgi Tavgiridze, Giorgi Melitauri)

<sup>71</sup> In fact, Human Rights Center has encountered many obstacles while writing this report because of the mentioned restriction imposed upon the ‘mutiny’ related information.

only because he is the brother of the latter

- Exercise a careful scrutiny over the ongoing detentions of former and current military personnel under the pretext of having links with the Mukrovani ‘mutiny;’ Take steps to immediately release those who are detained illegally

- Grant the status of a victim to the family of Krialashvili, the suspect of the ‘mutiny’ who was killed at the hands of the authorities and ensure that they can effectively represent their interests and defend their rights in the ongoing investigation

- Take all reasonable measures to ensure effective investigation into the case of special operative activity of May 20 carried out to apprehend the ‘mutiny’ suspects.