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A Bullet for a Fig Leaf

– Verbal Bludgeoning to Subvert International Monitoring

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Summary

The Sri Lankan Government's choice to not halt violations by its security forces is a reflection of the direction in which this Government is taking Sri Lanka. By refusing to find a settlement to the country's long running ethnic problem through meaningful power devolution, the Government has set itself on a violent and destructive path through which it envisages reaching a sort of peace. As the people of Sri Lanka suffer the consequences of the Government's choices many of the President's party men, supporters and ministers are using sham and obfuscation in all corners of the world trying to buy time for this Government's misdeeds.

It is within this context that the controversy over one bullet in the ACF case has been seized upon by the Government as a fig leaf to cover a huge body of infamy. We have chosen to focus on the detail of the calibre of this one bullet not only because of its importance in identifying those responsible for the 17 killings but also as the developments around this one bullet serve to highlight the challenge of human rights in Sri Lanka, how the rule of law has been marred and justice denied.

The public verbal attacks on international NGOs and UN officials who take up this and other human rights issues, highlights the positioning of the Government *vis-a-vis* the international community. The President's party has continually tried to appease the smaller nationalist parties and their constituencies to such an extent that at times he has taken on an even more nationalist agenda than these parties themselves. Attacking foreign NGOs and UN officials ostensibly in defence of Sri Lanka's sovereignty should be assessed as part of this appeasement.

The controversy regarding the bullet in the ACF case began when the Australian forensic Pathologist Dr. Malcolm Dodd who observed on 24th and 25th October 2006 the second post mortem on the eleven exhumed corpses of the 17 ACF victims made an observation that startled especially the Government. Radiology, he said disclosed a 5.56 mm calibre projectile inside the cranium of ACF victim Miss. Romila Sivapragasam.

Finding a bullet of 5.56 calibre would be significant as there were rumours that the Naval Special Forces who were in Mutur were party to the killings and these forces as seen and testified by civilian sources had M-16 automatic rifles, which fire 5.56 calibre bullets, as distinct from the more common AK-47 and T-56 weapons that fired 7.62 mm projectiles.

Dodd's report which, conflicted with the government ballistic expert Mr. W.D.G.S. Goonetilleke's report dated 19th February 2007, was submitted to the Kantalai Magistrate's Court on 25th April 2007. Goonetilleke described the same item (Item (7) recovered from the 2nd post mortem) as *'by weight, size and shape corresponding to the mean standard model of the core of a 7.62 x 39 mm cartridge'*.

Two months of electric silence on the status of the bullet was broken on 25th June. The Addendum report of the observer appointed by the International Commission of Jurists to the case brought the discrepancy and potential interference with the ballistics evidence into the public domain. The ICJ had provided the Government with the report over two weeks in advance but the Government chose to not respond. Instead they responded publicly the day following the release of the report. Almost immediately afterwards, on 28th June, the Attorney General made a PowerPoint presentation during a public press conference convened by the Ministry of Foreign Affairs in Colombo based on a second report prepared by Mr. Goonetilleke in May. In the first week of August Dr. Dodd retracted his identification of Item (7) as a 5.56 mm bullet in a supplementary report, containing remarks apparently intended to shift the controversy from himself to the ICJ.

It is on these various reports of forensic and ballistics experts that this report focuses.

We find great cause for concern in the many questions that remain unanswered regarding the item in question, such as: Where is the jacket of the core now alleged to have been found in the victim's skull? Is it possible that Dr. Dodd and the other six experienced professionals in the post mortem room with him failed to look for lands and grooves on the item in question during what Dodd described as their "discussion" and "inspection"? How was the difference in appearance between a bullet and a core, having in addition distinct colours, not sufficiently obvious to Dr. Dodd?

Of equal concern are the statements and explanations put forward by the Government of Sri Lanka and Dr. Dodd such as: discrepancies between the report of Goonetilleke to the Court and the way in which it is quoted by the Attorney-General in his PowerPoint presentation; the

failure to identify the origins of the fragment found with the item in question in the victim's skull; the assertion that core and jacket separation is not abnormal; the discrepancies in the length and weight of the items, failure to account for divergences in appearance; and the complete reliance of Dr. Dodd on the report provided by the Government of Sri Lanka as the basis for his retraction. The further key question is the whereabouts of the original photos of the item taken during the second post mortem, which the AG said were being sent to Dodd, but were apparently not, going by Dodd's supplementary report.

The matter of the calibre of the item removed from Romila is far from our only concern. It is essential to remember that the Government has blocked potential for real progress on this case from the very beginning: the SLMM was prevented from visiting the scene of the crime; the Government brought in their own JMO to do the post mortems; shoddy and unconvincing collection of physical and oral evidence by the Police; the unethical transfer of the inquest from the Mutur Magistrate who had shown intention of doing a thorough investigation; the irregular transfer of the evidence from the JMO to the court by the police; the failure to ensure an independent ballistics expert at the ballistics examination as ordered by the Court; and the intimidation of the population of Mutur not even allowing them to talk freely with the Commission of Inquiry.

With inadequate responses to these multiple serious concerns we are left to draw our own conclusions regarding not only the calibre of the item in question but also the Government's commitment to identify those responsible and bring them to justice. Likewise we can only wonder at the reasoning for the Government's blatant attempts to subvert the investigation at every turn. Dodd's first report points to two other victims showing signs of bullet fragmentation, very untypical of 7.62 calibre AK-47 rounds. This report argues that with much of the evidence debased, wound ballistics may provide a way forward. A problem to which attention has so far not been drawn is the missing empty cartridge casings. These are primary indicators of the types of weapons used, but not one was given to the Court as evidence.

0. The Cul-de-Sac of a Unitary State and its Human Cost

The currently appalling state of human rights in Sri Lanka is underpinned by the Government's refusal to find a settlement to the country's long-running ethnic problem through meaningful power devolution. Despite pledges repeatedly given by the President to India and the international community, which helped him to buy time, he has now been forced to come out openly when the All Party Representative's Committee (APRC), which he had appointed, threatened to bring out proposals moving away from the unitary state. The unitary state has been the symbol of the subjugation of minorities to the whims of an extremist segment, which manipulated the majority.

The President in a recent interview with Inderjit Badhwar, virtually closed all doors to end the country's bloodletting and showed himself shamelessly a prisoner of a minority of extremists who hardly even represent the Sinhalese Buddhist electorate. He said:

"I cannot change history or my own political circumstances overnight... You must remember my political legacy and constraints. During my election I received few Tamil votes because of the LTTE-enforced boycott. I was elected primarily by a Sinhala constituency on an election manifesto which made it clear that an ultimate solution to the ethnic crisis could be evolved only on the basis of a unitary state."

It is a frank endorsement by the President of the legacy of the worst the minorities have endured over the past five decades. Today their right to their lives, their homes and the lands that provided their livelihood, they hold at the sufferance of the President's Sinhalese extremist cabal and likeminded officers of the security forces, with no real right of appeal. How the Supreme Court dealt with the people of Sampoor whose lands the State robbed is an open abrogation of their rights under international law.

As to the fate of the minorities we have always been frank about the unpardonable role of the LTTE. Many of the President's party men, supporters and ministers, once voiced enlightened positions that gave hope. Today they have become abject sycophants who behave as though their fate depended on the services they render in lying and dissimulation, trying to buy time for this Government's misdeeds. They once believed that the political defeat of the LTTE with minimum harm to the country and people of the North-East could only be achieved by a political settlement that addressed the long standing grievances of the minorities. Besides, the UNP dissidents, who argued that they were joining the government to help it resolve pressing national issues, have not played any positive role in promoting a reasonable political settlement.

This Government seems to rather relish strengthening the LTTE as a pretext for inflicting maximum harm on the people of the North-East, even if it means long term infamy and ruin for all the people of Sri Lanka.

This is the context in which the Government's long-standing pledge to check violations by the security forces under the direction of the Defence Secretary, the President's brother, have become a series of promises without substance. It is also the context in which the controversy over one bullet in the ACF case has been seized upon as a fig leaf to cover a huge body of infamy. Several features of the controversy serve to highlight the challenge of human rights in Sri Lanka and how the rule of law has been debased.

1. ACF Investigation: Plenty of Heat sans Light

The Government has for over a year dragged on its pledge to investigate and identify the culprits behind the massacre of 17 aid workers of *Action Contre la Faim* (ACF) on 4th August 2006. Meanwhile it has shed plenty of heat, beginning with its attack on the Nordic Sri Lanka Monitoring Mission (SLMM) a year ago, and denying, what for the very reason, seems increasingly obvious to most beholders. The latest victim of its verbal onslaught is the International Commission of Jurists (ICJ) along with Michael Birnbaum QC, its inquest observer for the ACF case. The Foreign Ministry said in a statement of 11th August 2007:

“Attempts by the International Commission of Jurists (ICJ) and sections of the NGO and media for several months to seek to implicate the security forces in this crime using arguments relating to ballistic evidence misusing a report by Australian Forensic expert Dr. Malcolm Dodd, has also fallen flat on its face last week, following the unqualified withdrawal of the original statement by Dr. Dodd, which gave rise to the original speculation.”

It began on 3rd August with a high powered press conference summoned by Human Rights Minister Mahinda Samarasinghe and included Foreign Secretary Dr. Palitha Kohona, with Deputy Solicitors General Shavindra Fernando and Yasantha Kodagoda, and Deputy Government Analyst W.D.G.S Goonetilleke. The Foreign Secretary alleged that the ICJ's

reporting has intentionally or unintentionally aided the LTTE's concerted campaign to tarnish Sri Lanka's image.

Minister Samarasinghe called upon the ICJ and other organisations who had used the Dodd Report subjectively to cast aspersions on the integrity on the Government of Sri Lanka and its investigative processes, to retract their statements and in future not to leap to undue hasty conclusions, when not in possession of the full facts. The Minister said on an almost comical note that a consensus position is now possible and the investigation can progress unimpeded. It were as though the ICJ report of 25th June 2007 had been the cause of zero progress in the investigation from 4th August 2006.

The issue becomes important for us ordinary citizens because the Government was using semantic arguments, along with the Dodd supplementary report, to discredit all international human rights concern over the appalling situation in this country. -

This strong public criticism of the ICJ further escalated with a renewed round of public statements in the first week of September by the Minister for Foreign Affairs, the Minister for Disaster Management and Human Rights and the Secretary General of the Peace Secretariat (SCOPP) in Geneva and Brussels just prior to the commencement of the sixth session of the Human Rights Council where the ICJ has been one of many national and international organisations calling for action on Sri Lanka by the Human Rights Council and the creation of a human rights field operation in the country.

Public attacks of international NGOs and representatives of the United Nations have become commonplace over the last year. These began following a statement by Allan Rock, the Special Advisor to the United Nations Special Representative for Children and Armed Conflict on Sri Lanka which stated that he had "*found strong and credible evidence that certain elements of the government security forces are supporting and sometimes participating in the abductions and forced recruitment of children by the Karuna faction*". More recently, some senior members in the Government have also jumped the bandwagon of abuse, including Cabinet Minister Jeyaraj Fernandopulle, who labelled Sir John Holmes, U.N. Under-Secretary-General for Humanitarian Affairs, a terrorist following his visit to Sri Lanka.

While domestic peace and human rights activists have long been accused of being traitors or terrorists by both sides to the conflict, the vehemence of the attacks on the international community is new. Their origins need to be seen in the local context. The SLFP, the President's party, has continually tried to appease the chauvanist/nationalist JHU and JVP and at times have chosen to take on an even more nationalist agenda than these smaller parties. Attacking foreign NGOs and dignitaries ostensibly in defence of Sri Lanka's sovereignty should be assessed as part of this appeasement. Also significant is the serious condemnation of their human rights that the Government of Sri Lanka (and the other armed actors in the conflict) are currently facing in various intergovernmental fora including, the Human Rights Council in Geneva, the Security Council in New York, the European Union's COHOM in Brussels and the US Senate. The attack on the ICJ is part of the Government's misplaced attempts to discredit the credible voice of international NGOs in these fora in an effort to protect the State from censure.

It is within the context of a Government in denial about its human rights record and the use of propaganda in an attempt to forestall public intergovernmental condemnation of Sri Lanka's human rights crisis, that we write this report focusing on one very specific issue – the calibre

of an item removed from the cranium of Miss. Romila Sivapragasam. The events around the calibre of this particular item tell the story of justice denied in Sri Lanka.

We are keenly aware of the additional difficulties reports such as this are bringing to the family of Romila. Their house has been visited and their sons questioned unnecessarily by the security forces. They are being intimidated and we regret adding to their visibility and subsequent targeting. We therefore seek to clarify that no information in this or any earlier report comes from the family of Romila in the hope that knowing they are not a source of information will result in the security forces leaving them be.

2. Documents discussed in this report

Throughout this report we will refer to various reports. Many of the documents are now available in the public domain as they have been submitted to the Kantalai Court. Despite this few people have had easy access to these important documents. For this reason we have made some of them available on the UTHR(J) website (marked with an asterix). These reports include:

- The original post mortem reports by Dr Waidyaratne.
- The detailed report of Dr. Dodd following his observation of the second post mortem including, radiological images and body diagrams. 71 pages *
- Dr. Waidaratne's original reports amended to include descriptions of what had been found during the second post mortem.
- The reports of Mr. W.D.G.S. Goonetilleke, the Government Analyst, dated 19th February 2007*
- The second report of Mr. W.D.G.S. Goonetilleke's dated 24 May. This is not directly in the public domain but parts of it appear to have been quoted in the Attorney General's PowerPoint presentation published on 28 June 2007*.
- Dr. Dodd's second report sent as a letter to the Government of Sri Lanka*

In what follows ICJ-B would denote Michael Birnbaum's first report of April 2007 (http://www.icj.org/IMG/ICJ_report-2.pdf) followed by relevant paragraph numbers.

3. A Brief Sketch of Developments

The controversy began when the Australian forensic pathologist Dr. Malcolm Dodd who observed on 24th and 25th October 2006 the second post mortem on the eleven exhumed corpses of the 17 ACF victims made an observation that startled especially the Government. Radiology, he said disclosed a 5.56 mm calibre projectile inside the cranium of ACF victim Romila. After the post mortem the following day 25th October he recorded the 5.56 mm calibre projectile as, "Item 7" and as part of retained evidence.

The evidence was sensitive because of rumours that the Naval Special Forces who were in Mutur were party to the killings and these forces as seen and testified by civilian sources had

M-16 automatic rifles as distinct from the more common AK-47 and T-56 weapons that fired 7.62 mm projectiles. Dodd's finding did not become public immediately.

The government ballistic expert Mr. W.D.G.S. Goonetilleke's report dated 19th February 2007 was submitted to the Kantalai Magistrate's Court on 7th March 2007. It described the same item (Item (7) recovered from the 2nd post mortem) as *'by weight, size and shape corresponding to the mean standard model of the core of a 7.62 x 39 mm cartridge'*.

Dr. Malcolm Dodd's report, which was signed off on 15th November 2006, was submitted to the same magistrate's court by the CID on 25th April 2007 by which it became a public document. There was a conflict. An object Dr. Dodd had identified as a 5.56 calibre projectile was according to the government ballistic expert consistent with the core of a 7.62 mm projectile. -

The Government had apparently asked the ballistic expert Mr. Goonetilleke to prepare a second report to prove Dr. Dodd's identification wrong. This report though dated 24 May 2007, was not used publicly until 28th June. Its scientific status as we shall see is questionable. Not having been requested by any court it cannot be regarded an official document, until it has been submitted.

The two months electric silence on the status of the bullet was broken on 25th June, when Birnbaum's Addendum to his first report in April as an ICJ inquest observer addressed the matter. The Addendum report had been sent to the Government for a response over two weeks earlier. The ICJ has stated publicly that it is disappointed that the Government chose not to provide any comments before the report was published. One could therefore surmise that the Government did not think it fit to respond or engage the ICJ by, say, giving them Mr. Goonetilleke's second report. That would have led to less public friction and would have reflected a genuine commitment to not only solving the case but also to maintain a meaningful dialogue with interested parties.

Birnbaum's Addendum addressed the irregularity in the transmission of the ballistics evidence from the JMO to the court by the CID and the failure to have an Australian ballistics expert present during the ballistics examination both bringing the integrity of the evidence into question and the significant discrepancy between the findings in the Government Analyst's and Dr. Dodd's reports in regard to Item (7). The Addendum, which was endorsed by the ICJ stated, *"The circumstances I have outlined also afford powerful grounds to suspect that someone removed from the exhibits a bullet that he thought might be incriminating and substituted another... There should be an urgent and thorough investigation into who had access to the exhibits and who tampered with them."*

The Addendum also suggested the means to resolving the conflict: *"I note that the exhibits appear to have been photographed. In my view it is vital that the photographs be obtained. They may shed a flood of light on the problem."* As we will later describe page nine of Dr Dodd's first report clearly states that photographs were taken. To this day the original photographs, which might have settled the matter, have not been produced.

Almost immediately afterwards, on 28th June, the Attorney General made a PowerPoint presentation during a public press conference convened by the Ministry of Foreign Affairs in Colombo, based on Mr. Goonetilleke's second report of May. The most remarkable development came just in time for the first anniversary of the ACF massacre, which fell on 4th

August 2007. Dr. Dodd's retraction of his identification of Item (7) as a 5.56 mm bullet in a supplementary report along with some remarks he made, apparently to shift the controversy from himself to the ICJ, provided the Government handy tools to belabour the ICJ with.

The weakness of the Government's position becomes apparent from the selectivity with which Dodd's supplementary report has been quoted. All principal quotations used by the Government appear in the statement on the government web site dated 6th August:

"In the supplementary report from Dr. Dodd communicated through the Australian High Commission in Colombo, and received by the Ministry of Foreign Affairs today, Dr. Dodd has stated that the presence of "a 5.56 calibre projectile can be confidently excluded". Dr. Dodd further states that he hopes "this supplementary report now settles convincingly the issue of calibre of projectile removed," and "that all projectiles retrieved from the bodies examined were of the same calibre (7.62)." Dr. Dodd has also refuted the Addendum to the ICJ report, saying "there is no suggestion in my mind of substitution of exhibits, and to this end I would categorically refute the suggestion in the Birnbaum Report".

A further crucial weakness in the Government's position concerns the missing photographs of the contested projectile taken at the time of recovery at the second post mortem. These were in Dodd's words, '*given individual accession numbers and seized as evidence*'. If such crucial evidence could go missing, one would be justified in the conclusion that the whole process of retention and transmission of evidence is open to abuse and has in fact been abused.

4. Salient Questions from the Dodd Report

4.1 Dr Dodd as a Ballistics Expert – Is he or isn't he capable of Distinguishing a Bullet from a Core?

The Government of Sri Lanka is now proclaiming Dodd's second report as the basis to demand an apology from the ICJ and to categorically rule out the claim that a 5.56 calibre bullet was removed from Romila's head. We must recall the earlier position of the Government of Sri Lanka regarding Dr Dodd's expertise: "*It should be noted that Dr Dodd is a forensic pathologist, and not a ballistics expert*" (SCOPP Secretary General, 27 June 2007) and the statement of the Minister for Human Rights and Disaster Management on 28th June that "*the Government has already made a request to the Australian Government to further assist the investigation by recommending a ballistics expert who could consult with Dr. Dodd and Sri Lankan officials*", clearly implying that Dodd is not a ballistics expert.

The Government cannot have it both ways – either Dr Dodd is or is not capable of distinguishing between a bullet and a core.

In his retraction, Dr. Dodd disclaims any credit for being a ballistic expert, but this is an understatement. About himself, he says on p.24-25 of his book '*Justice for the Dead*' (Lothian Books, Melbourne, 2006):

"I have also gained expertise in gunshot wounds, having always had an interest in handling rifles, shotguns and pistols...and now I shoot at a local pistol club. I coupled my personal

interest in shooting with my professional experience of gunshot wounds as a forensic pathologist and compiled a definitive textbook on the subject...As well as providing ballistic opinions on Victorian cases, I have also been asked for independent opinions on interstate cases.”

While in official documents it is correct to say that a forensic pathologist should not make identifications of calibres they often have some capability to understand what the items are that they remove from bodies. While he is not officially a ballistics expert, Dr Dodd’s experience in this area is clearly significant.

4.2 Dodd’s Account of the Original Identification as a 5.56 Projectile

Among the key omissions of government spokesmen quoting from Dr. Dodd’s supplementary report is the following. It makes a world of a difference to judging his reasons for retraction. Dr Dodd had identified in his first report a total of eight (8) projectiles. He had described seven (7) of them as being 7.62 calibre. In his second report he said of Item (7):

“The projectile removed from Romila’s body was immediately different from the others and a discussion ensued among the group present at the autopsy as to the calibre of this particular projectile. Beside myself and Dr. D Waidyaratna, there were six (6) additional personnel comprising of the mortuary technician, forensic technician, radiographer and three (3) members of the CID. It was on the advice of the members of the CID that this retrieved projectile in question was [identified as being] of 5.56 calibre.

“No ballistic experts were present at the time of the autopsy. The initial examination at the time of autopsy disclosed a projectile which on inspection appeared to have the characteristics of a 5.56 calibre projectile, however this has been proved to be incorrect.”

The key words are ‘immediately different’, ‘discussion’ and ‘inspection’.

We deal first with, ‘discussion’ and ‘inspection’: Dr. Waidyaratna, whom we understand worked at the military hospital in Anuradhapura, went far in registering his agreement by recording the Romila projectile in his amended report as a ‘relatively intact projectile’ – i.e. apparently a bullet rather than a core. The senior most CID officer present at the second post mortem is SI Sanjaya Perera, who was a leading member of the CID team under SP Mark tasked with the investigation, and had been involved with the ACF case from the start. It was he who presented productions recovered by the CID from the site to the Magistrate in Court. He may not be a ballistic expert, but we need not doubt his ability to distinguish between a bullet and a core, even if he was wrong about the calibre. -

Dr Dodd’s book makes it evident that he had little hesitation in making judgments about projectiles he recovered. He says of a post mortem in East Timor in February 2000: *“While I was examining the remains of internal organs, I felt something firm in between my fingers. I was delighted to extract an intact 7.62 calibre fully jacketed projectile from the pelvic tissues.”*

A number of instances in the book show that Dr. Dodd was keenly aware of the differences between and the significance of a bullet, the core of a bullet and the jacket of a bullet. He says in p.207 of a Solomon Islands case: *“As I felt my way through the degraded remains of the man’s upper right chest, my fingers hit something solid. I called John to look at the core of*

the bullet that I held in my hand... Several minutes later I found the fragments of the copper jacketing of the bullet in the same region... We were both over the moon that I had found hard ballistic evidence.”

Prior to the question whether the object is a 5.56 calibre bullet or the core of a bullet of 7.62 calibre, there is the very basic question of whether it is a bullet or a core. It is elementary and the question could hardly have escaped those present during their ‘discussion’ and ‘inspection’. The cartridge comprises the cartridge case and the projectile or bullet. The case holds the gunpowder, is sealed at the base and open at the top, into which the bullet is placed. When the powder is ignited by the firing mechanism, the bullet is discharged down the barrel and the case pops out of the gun. The bullet consists of the core, usually lead or steel, and the jacket. The jacket is made of copper or copper alloy and is meant to protect the barrel from damage by harder core materials.

An almost anecdotal story concerns the CID officer Sanjaya Perera, on whom Dodd ostensibly relied in identifying the Romila projectile as 5.56 calibre. He had been the CID officer in charge of the ACF investigation from the start. The items the CID found at the site and submitted to the court are quoted (ICJ-B 87) from a translated CID report of 4th October 2006 as ‘6 bronze bullet heads, 4 grey bullet heads and 2 empty cartridges’. The Government Analyst’s report identifies the 4 ‘grey bullet heads’ (items P38 – P41) as cores of 7.62 cartridges.

We have two clearly distinguished types of objects: A grey (blackish) core of a 7.62 calibre bullet and a copper (bronze) coloured 5.56-calibre bullet. Dodd has said in his supplementary report that at the second post mortem (25th October 2006), it was on the advice of Sanjaya Perera and his subordinates that he identified a supposedly grey core as a bronze 5.56 bullet. It creates an interesting problem. Sanjaya Perera and the CID had indicated to the ICJ that it was the LTTE that killed the ACF workers (ICJ-B 164). This sits strangely with Sanjaya giving the court, as evidence, four grey objects he thought were 5.56 calibre bullets. He would thus have been implicating the Special Forces, rather than the LTTE! No, Sanjaya knew what a real 5.56 bullet looked like.

4.3 The Question of Lands and Grooves

Every bullet discharged from a standard gun contains on the cylindrical length of its surface helical depressions forming lands and grooves. This results from rifling, where helical lands and grooves are formed into the barrel of a firearm to give the bullet a spin and therefore stability. One exception is when a bullet is discharged from a home made weapon made from say, a plain metal pipe. We have verified by observation that lands and grooves on a discharged bullet are clearly visible to the naked eye. Dodd shows a keen awareness of the forensic significance of rifling marks on a bullet, when he says on p.79 of his book, *“Examining the rifling marks of the projectile under a microscope could provide a connection between it and any gun implicated in the shooting.”* And he very definitely identified Item (7) as a 5.56 calibre bullet. Of course the core of a bullet would not bear lands and grooves as it had no contact with rifling.

The original ballistic report by Mr. Goonetilleke of February 2007 submitted to the Magistrate made no reference to an absence or presence of lands and grooves on Item (7). The AG’s PowerPoint presentation does not make clear whether Item (7) bears lands and grooves, although it is described as having a “generally smooth even surface”. But it is surely most

unlikely that Dodd and the CID officers could have concluded that it was a bullet unless they had seen lands and grooves on its surface. Ballistics experts and pathologists consulted about this case have expressed the view that it is quite easy for them to tell the difference between a core and a bullet, even by a visual inspection.

4.4 The Apparent Absence of Jacket Fragments in the Victim

Dr. Dodd's book deals with one case in East Timor and two cases in the Solomon Islands where core-jacket separation had taken place in the victim's body. In nearly all the cases he deals with in his book, he pays key importance to detecting jacket fragments as distinct from a core or a bullet (pp.79, 143, 207, 246, 258 and 263). He has this to say in case cited in East Timor (p.79) where he eventually found a full metal jacketed projectile:

“ Most bullets would surely have passed through the body, but fragments of bullet jacketing and possibly projectiles would still be present in some areas...As I worked I saw small fragments of bluish green crumbling material in several areas of soft tissues of the body. This was evidence of gunshot injury. The copper jacketing of bullets often separates on impact, and when combined with the acidity and water content of the body during decomposition, turns into readily recognisable blue-green.”

The last indicates that the importance of the jacketing arises from oxidised copper leaving tell-tale blue-green traces. Also when a bullet fragments, it is parts of the jacket that are most certain to remain in the body. Unlike the bodies referred to by Dodd in his book, which were sometimes a year old, the ACF bodies were just 82 days old. The importance of jacket fragments would not have been lost to him in this instance.

Dodd had no complaint about the equipment made available to him in Colombo. He records of the image intensifier that it “...[known locally as the C-arm] is an x-ray machine which allows examination of the image on a television monitor in real time and in addition, any areas of interest, particularly those containing projectiles or bullet fragments, can be immediately printed and retained as evidence.”

In his first report he wrote upon the examination of corpse TR-1, “*The metal fragments seen on x-ray were small and irregular, but could not be retrieved on internal examination due to their small size*”, and again of TR-15, “*No projectiles or metallic fragments were identified on full radiological examination of body.*”

In that report he wrote after the examination of TR-6 (Romila) where the projectile was identified as a 5.56 calibre bullet, “*Examination of the cranium disclosed three (3) discreet metal objects comprising a 7.62 calibre projectile, a 5.56 calibre projectile and an amorphous metallic fragment.*” No other fragments were identified.

A difficulty in the identification of what he called a ‘*relatively intact 5.56 calibre projectile*’ was that its pointed tip was missing. He reconciled this by marking the last two objects above on the x-ray photograph together as ‘*5.56 calibre projectile and tip*’. As part of retained evidence, he described them as ‘*Relatively intact 5.56 calibre projectile*’ and ‘*Metallic fragment probably representing tip of 5.56 projectile (cranium)*’

Knowing his previous work he must no doubt have been influenced in his judgment by the absence of fragments on the x-ray that could represent a jacket and also the ‘discussion’ over

and ‘examination’ of the projectile in question. From the discussion of 7.3 and 7.4 below, we could say with near certainty that if the object in Romila’s head were the core of a 7.62 projectile, jacket separation must have taken place inside her head and there should have been some jacket fragments nearby.

4.5 The Question of Appearance – Something too Obvious

We have kept this matter to the last since by now the reader would have some idea of Dr. Dodd’s work and experience. Appearance is another reason why the combination of Dodd and the CID officers could hardly have confused a core of a 7.62 calibre projectile for a 5.56 calibre projectile. In the few instances Dodd has given us in his book, he recovered a 7.62 calibre projectile with his hand and on another occasion, held the core of a projectile in his hand and then found the jacket. He is among the last persons to make the kind of error he now claims to have made.

Based on other projectiles he has analysed in this context, government analyst Goonetilleke has found it relevant to consider only FMJ (Full Metal Jacketed) projectiles of Norinco (North Industrial Corporation, China) make. This has a copper alloy jacket and a steel core. Goonetilleke describes the latter in his comparison table as having a generally smooth even surface and of the object in question, ‘fairly rusted in certain places, generally smooth’. Surely, there is immediately a marked difference in appearance between a copper alloy jacketed bullet, with lands and grooves, exposed to body fluids for 82 days, and a smooth steel core?

We find the Government’s insistence that only ballistic experts are fit to make judgments about bullets a red herring. It may be correct to say that it is beyond the remit of a forensic pathologist to pronounce on calibres for the official record. Yet they often have the capacity to know exactly what items they recover from bodies. We have consulted persons in Sri Lanka who have used and gained familiarity with weapons, but are not professional ballistic experts. They are clear that they could immediately tell the difference between a bullet and a core. In the case of the type of bullets under consideration, the jacket is made of reddish brown copper alloy. The cores have a blackish exterior, though their real colour is grey. The exterior may have acquired the blackish colour due to the bonding process for core and jacket. But the base would show the original grey for a core. For a jacketed bullet the base would have a circular eye with the original grey of the core. The CID officers with their weapons training and professional work would have well known the difference.

5. The Attorney General’s PowerPoint Presentation of Goonetilleke’s Second Report and Dodd’s Retraction

5.1 The metal fragment: Discrepancy between Dr Goonetilleke’s first report and its quotation by the AG

Goonetilleke’s first report dated 19th February 2007 and submitted to the Court was in Sinhalese which had to be read by those interested in translations of varying quality and confusion. His second and as yet unpublished report of 24th May 2007 quoted in English in the Attorney-General’s powerpoint and therefore presumably written in English appears to

have been written for the express purpose of proving that Item (7) is the core of a 7.62 calibre bullet and not 5.56. The AG's PowerPoint presentation made in Colombo on 28th June 2007 under results for Item (7) claims incorrectly that the following appeared in Goonetilleke's report of 19th February:

“The core of the bullet marked Item (7) is similar by weight, dimensions and shape to a core of a standard bullet of a cartridge of the calibre of 7.62 x 39 mm.”

“In view of the size, shape and nature of this object, it cannot be scientifically stated whether this fragment is part of a bullet of either a 7.62mm or 5.56mm calibre or a fragment of a bullet of some other calibre.”

By the second paragraph in quotes above, the Attorney General has claimed that there was in Goonetilleke's report of 19th February 2007 a reference to the possibility of a 5.56 fragment. This was certainly not there in the Sinhalese original given to the court. There are two possible explanations. Either Goonetilleke produced two different reports with the same date, which would bring his expertise into question. Or, the AG has made an unwarranted addition to Goonetilleke's first report, which ICJ-B 129 pointed out was lacking in detail and argument in support of the conclusions reached.

5.2 What is the fragment?-

Inside Miss Romila Sivapragasam's skull were Item (7) and a fragment. Dodd described the fragment in his first report as likely to be the tip of 5.56 calibre bullet. Suppose he was wrong and Item (7) is a core of a 7.62. The fragment must therefore be part of a 7.62 bullet – perhaps a part of the jacket which has become detached. But - if that is so - where is the rest of the jacket? Why was it not detected within the skull? Neither Dodd nor Goonatilleke has addressed this crucial issue.

The scientific analysis presented in the report of Dr Goonatilleke on 24th May should have included a scientific analysis of the fragment. If it is made of the same material as Item (7) then it is consistent with being the tip of the other item first thought by Dodd to be a 5.56, but if it is made of different material to Item(7) then it might be reasonable to conclude it is part of the copper jacket or the soft nose.

The possibility of the use of a 7.62 soft nose partially jacketed bullet is addressed and stated to be unlikely below in section 5.3.

5.3 Justifying core-jacket separation

An allied question comes from the conclusions of the AG's presentation trying to justify the separation of a core from the jacket as *‘not something abnormal’*. It goes on to say: *“This has been observed in a number of cases of shooting especially when the shots of the calibre of a 7.62 x 39 mm are fired through hard surfaces such as the body of a vehicle.”* Would one classify also a living human head as a hard surface? This suggests that the government ballistic expert has no previous experience of the jacket coming off when a Norinco FMJ 7.62 was fired into a human head. This is not surprising.

The nose of the soft nose partial metal jacket bullet is known to shatter on impact inside the body. Of the items found inside the bodies, Dodd listed all except three as “FMJ” (full metal

jacket) or “intact” projectiles (Waidyaratna did not in general assign any adjective to the projectiles retrieved, he exceptionally described the item removed from Romila’s head as an ‘intact projectile’). Of the three items listed by Dodd: one is the item found inside Romila (listed as a relatively intact 5.56mm projectile) and the other two are listed as deformed 7.62 calibre projectiles. The deformation does not refer to the removal of the jacket but from the x-rays can be inferred to mean the literal deformation of the item (see x-ray on page 11 of the Dodd report). Of the 7.62 mm bullets used in the ACF killings, it could therefore be assumed with some certainty that they were all 7.62x39 full metal jacket bullets and none of the soft nosed partially jacketed variety.

Researchers, including the leading US wound ballistics expert Col. Martin J. Fackler MD concluded that the Russo-Chinese 7.62 x 39 calibre FMJ bullet is strongly resistant to fragmentation in the human body. In his paper on the Stockton case referred to in 7.4 below, he said:

“The Russian/Chinese military full-metal-jacketed AK-47 bullets, with steel cores, do not deform on striking the body, unless they hit bone. These AK-47 bullets characteristically travel point-forward until they penetrate 25 cm of tissue. Only when this type bullet yaws, turning sideways during its tissue path, does it cause significantly increased disruption... The limited tissue disruption produced by this weapon in the Stockton schoolyard is consistent with well documented data from Vietnam [from 700 cases of AK-47 hits]...”

The document from *Bob Tuley.com* giving Fackler’s drawings observes along the same lines, “*While not as devastating as the 30 calibre [i.e. 0.30 x 2.00 in = 7.62 x 51 mm, US M-14] rounds, the [Russo-Chinese] 7.62 x 39 is still quite deadly having an unusual tendency to remain intact even after taking unusual deviations upon contact with bone.*”

The steel-cored Russo-Chinese 7.62 x 39 calibre bullet is thus as a rule one that bends or deforms, but does not break (as also seen from the 7.62 bullets extracted by Dodd). Core-jacket separation for these in the human body is very exceptional. This is in sharp contrast to the faster 5.56 x 45 mm bullet, which as represented in Fackler’s drawing in the document above ‘*enters the body, quickly turns sideways after passing through only 4 inches of flesh, then breaks in two major pieces, as well as many smaller fragments*’.

5.4 Creative scientific evidence length, weight and bullet appearance.

Some weaknesses in the Analyst’s second report and also the AG’s PowerPoint come from the comparisons made of putative Item (7), the core of a 7.62 calibre bullet and a 5.56 calibre bullet, both manufactured by Norinco. In order to emphasise their differences the weights of the three have been given as 3.59g, 3.6g and 3.5g respectively. But *Jane’s Book of Infantry Weapons* (26th edition, 2000 – 2001) gives the last as also 3.6g and not 3.5g. The length of putative Item (7) and the core of a 7.62 x 39 mm have both been given as exactly 20 mm, making them identical in length. But his ballistic report of February describes the second object as ‘distorted’, questioning the correctness of comparison. If Item (7) was indeed distorted then one would not expect its dimensions to be the same as an undistorted core or a bullet. If the other metallic fragment detected is from a core (rather than a jacket), length comparison becomes even trickier.

The Analyst's table of comparisons, which include weights and dimensions, has an important omission. Colour and smoothness are crucial properties in visual identification. As pointed out earlier the jacket of a bullet has a distinct copper colour while the core is blackish on the sides and grey at the base. The photographs the Analyst has supplied obscure these differences. As explained earlier, pictures of the base would be notably different for a core and a bullet.

5.5 Misleading statements about original photographs

Another serious issue arising out of the AG's PowerPoint presentation pertains to the original photographs. The last item in his presentation ran as follows:

“The GoSL has received a request from the Australian Government to make available certain imagery taken of the projectiles on the occasion of their recovery at the 2nd Post Mortems. The GoSL will make immediately available to the Australian Government the required material. Similarly the GoSL has requested the Australian Government to make available photographs taken by Dr. Dodd. It is believed that the comparison of these photographs would enable the two experts to reconcile their opinion regarding the disputed projectile.”

This was on 28th June. Dr. Dodd responded two months later. But he was not sent the original photographs taken at the post mortem on 25th October 2006. The Attorney General does not seem to have fully understood where matters stood. (See further discussion of this point section six.)

5.6 Dodd's retraction and his reliance on findings of the Government Analyst

We have already demonstrated above that Dodd's second report is based on reviewing photographs that appear to have been taken, not at the time of the second post mortem but on 22nd May 2007, three months after the removal of the items from their containers by the Government Analyst for analysis. The one photograph not dated is supposedly of Item (7), shown with a length scale, packaging and an open container with cover marked '7', indicating that it was not taken at the post mortem soon after retrieval.

The second basis for Dodd's retraction is scientific analysis provided by the Government Analyst. In this regard it is extremely important to note Dodd's findings in relation to the capabilities of the Sri Lankan Government Analyst's Department. On the final page of his 71-page report of November 2007 Dodd states that:

“A further report is required relating to the adequacy of the Government Analyst's Ballistics Section to cope with the exacting nature of comparison work of retrieved and question projectiles. It is my understanding that a report will be forwarded regarding this adequacy from an impartial external international expert. It is beyond my professional expertise to comment further on this matter.”

And at page 5 he states:

“Mr Eric Davies (Ballistics Analyst) did not accompany me on this occasion.

“It was decided that any ballistics evidence retrieved at the time of re-examination would be either submitted to the Government Analyst's Department or, pending instructions from the

Sri Lankan Government or indeed from the Government Analyst's Department, ballistics evidence may be examined externally, perhaps in Australia.

"This latter comment is entirely dependent on the capabilities of the Government Analyst's Department in pursuing meaningful comparison analysis from projectiles retrieved at autopsy to those from questioned and seized firearms."

While the second quote pertains largely to capabilities specifically in relation to the ability to compare bullets with the weapons that fired them, the first quote and the essence of the second quote reveal that Dodd was in doubt regarding the capabilities of the Government Analyst's Department. It is the findings of this Department that he has now based his retraction on.

6. The Whereabouts of the Original Photographs

On page nine of Dr Dodd's first report he states that *"As per international protocol the bodies were given individual accession numbers, all radiological images given individual accession numbers and seized as evidence, the body reexamined to confirm the point of bullet entry, exit and transit path, **all ballistic evidence retrieved from the body, photographed with accession number and seized** and individually labelled and sealed in containers for later analysis prior to the return of the bodies to the family"* (emphasis added). Based on this paragraph it is clear that photos were taken of the ballistic items removed from the bodies of the victims and marked as official evidence in the murder investigation.

Dodd says in the supplementary report, *"I have been forwarded colour photographs of the object in question (CF 541/2006 – (7))"*. The reference number pertains to the same photographs shown in the AG' PowerPoint presentation on 28th June. The date, which the camera displayed on the photographs shown with CF 541/2006-(7)), is 22nd May 2007, suggesting they were taken for Mr. Goonetilleke's second report. They are not the original photographs taken at the second post mortem. The only photograph shown in the PowerPoint that is not dated is the photo said to be of Item (7). It is however shown with the packaging marked clearly as the packaging of Item (7), implying that the item photographed has just been removed from the associated packaging. This would suggest it is not the original photograph taken during the post mortem, but is rather a photograph taken either in preparation of either the first or second reports of Mr. Goonetilleke in February or May respectively. It therefore would not be the original photograph and therefore Dr. Dodd has not seen the original photographs when making his second (supplementary) report.

The importance Dr. Dodd places on photographing the evidence could be seen on p.110 of his book *'Justice for the Dead'* which gives an account of his work as a forensic pathologist in situations of grave violations from February 2000 in East Timor, and later Kosovo and the Solomon Islands. Referring to his work in Pristina University, Kosovo, he says, *"Using x-rays I was able to remove all projectiles and fragments of shrapnel with great precision. They were later photographed and kept as evidence."*

His report on the ACF case indicates that the same method was followed. What Dodd says on p.9 of his first ACF report has been quoted above.

Dodd's supplementary report, written without recourse to the original photographs, indicates that the substance of his retraction is based entirely on Mr. Goonetilleke's second report. Even

if Goonetilleke's unpublished second report established that the item he saw and tested was a 7.62 core projectile, that would not disprove an earlier substitution.

Until he saw Goonetilleke's report, Dodd evidently believed his conclusion stated unambiguously at the end of his first report – *“The evidence shows that two distinct calibres have been used and therefore by inference two (2) distinct types of weapons.”* Given the knowledge and experience that comes across in his work, and the considerations outlined above, one would think that he in the first instance made a very rational decision about Item (7). His retraction without seeing the original photographs and consideration of jacket fragments that feature so importantly in his work, is hard to understand.

Dodd's report might be seen as attempting to deflect all the unpleasant attention on to Mr. Birnbaum and the ICJ by saying *“there is no suggestion in my mind of substitution of exhibits, and to this end I would categorically refute the suggestion in the Birnbaum Report”*. -

The key to understanding Dodd's supplementary report, may be to see it not as an endorsement of Goonetilleke's report, but rather as a repeated (at least twice) disclaimer that he is a ballistic expert. Most pathologists would not commit themselves to the calibre of a bullet, and Dodd may have found himself vulnerable to the Sri Lankan government's accusation that he is not a ballistic expert. He may not have wanted to prolong an argument about an object he did not have in his hand. Strangely, he again played the role of a ballistic expert in endorsing Goonetilleke's report with all its serious shortcomings. In this instance, we must be thankful that Dodd overstepped his limit as a pathologist and caused a stir which has helped to clarify issues.

In sum, the doubts about the item (7) have not been cleared, either by Dodd's latter assertion or by Mr. Goonetilleke. The first identification was made after discussion and inspection by persons not acting under pressure – persons who knew about lands, grooves and jacket fragments. By contrast the government ballistic expert's second report and Dr. Dodd's retraction are either poorly reasoned or not reasoned at all. Many discrepancies remain unanswered, such as the whereabouts of original photographs of Item (7) whose seriousness cannot be gainsaid, the missing jacket fragments, the origin of the amorphous metallic fragment thought by Dodd to be the tip of a 5,56 calibre projectile and the unanswered question of whether core-jacket separation for a Norinco FMJ 7.62 calibre projectile fired into a living human head is a common or a very exceptional event.

All troubling issues need to be resolved and Birnbaum's first report is the only place where one finds a comprehensive list of these. It marked a significant advance in the search for the truth. We will now take up some of them.

7. Some Outstanding Issues

7.1 Discrepancies in Evidence Sighted, Collected and Tested: The Missing Empty Cartridge Casings

In the first instance the crime scene was not secured from 5th August at least until the 7th when the bodies were collected entirely on the initiative of the colleagues of the victims. ICJ-B 86

says, “*The reports by the Muttur Police do not suggest they examined the crime scene; but later CID reports say that they did.*” The ICJ understood from CID reports and interviews with them that the items first collected by the Police were about 30 ‘empty cartridge cases’ or ‘empties’ and subsequently the CID collected about a dozen bullet heads. At the Magistrate’s Court on 4th October, all productions, supposedly collected by the Police and the CID were lumped together and marked P1 to P43. Yet the magistrate had described all 43 as ‘empty cartridge covers’.

The Commission of Inquiry was given a document in English by the Police in early 2007, which claimed **wrongly** that they found out after Prem at ACF Trinco was informed by an anonymous caller on 6th August 2006 about the death of their colleagues (in fact a known caller from Muttur informed ACF Trinco by 9.30 AM on the 5th) and it was then that SSP Kapila Jayasekera in Trincomalee was informed. It says that the SSP sent SI Gunasekera to investigate. In one place it appears that Gunasekera went on 6th August, viewed the scene and took photographs. At another place, it is indicated that the Police went there when the ACF team came to collect the bodies on the 7th. They had first gone to the Police Station to inform the Police, who then came to keep an eye on what the team was doing and took photographs.

The Police document given to the CoI attempts rather clumsily to cover up the Police’s failure to secure the area and move the bodies. ICJ-B 86 records the CID told them that the Police team (presumably sent by SSP Jayasekera) went to the premises to collect evidence only on 9th August – five days later – after it became an international issue and the Government had pledged to investigate. The area had been secure enough on the 5th for the Military to bring in a group of journalists.

The same document given to the CoI gives the evidence recovered by the Police investigation team as ‘30 empty cartridges and a bullet head’ and then ‘two (2) empty cartridges and nine (9) bullet heads’ (by the CID) on 17th January and later seven (7) bullets and three (3) pieces of metal at the second post mortem.

The Government Analyst’s report of 19th February 2007 of items collected by the CID and Police, lists items P1 to P37 and P42 to P43 as (spent/distorted) 7.62 calibre bullets (28 of which were found to have been fired from three different weapons) and P38 to P41 as cores of 7.62mm bullets. That appears to clear the confusion of what was given to the court as evidence, if we take the view that it arose in the first place because of misleading terminology. This leads to a serious question.

The Government Analyst dealt with 43 bullets discharged on the crime scene. Another eight (8) were collected during the second post mortem. This, if the collection of evidence on the scene could be relied upon, accounts for 51 bullets discharged at the scene of crime. How is it the CID that had earlier apparently been talking of tens of empty cartridge cases seemingly did not present even one to the Government Analyst? What became of the dozens of empty cartridge cases that would have been easier to collect had they not already been removed?

Empty cartridge casings form the most basic and easily identifiable check on the types of weapons used and the number of bullets discharged. A professional investigation into a massacre must collect such evidence. (See the reference to the Stockton case below, where the Stockton Criminalistics Laboratory determined that 104, 7.62 x 39mm, bullets were fired into the schoolyard by identification of the empty cartridge cases recovered from the crime scene.)

This failure to collect cartridge cases questions the credibility and seriousness of the ACF investigation.

The Consortium of Humanitarian Agencies, which visited the site on 6th August, found no trace of empty cartridge cases. They contrast the plenitude of cartridge casings along the Thoppur - Mutur Road, with their notable absence in the ACF compound despite looking for them specifically. They did not notice any bullets in the ACF compound and assumed these would be inside the victims. Another sighting on 7th August, the next day, related by a very trusted source speaks of ammunition remains (empty bullet casings or fired bullets) strewn all over the compound. What we could say with certainty is that from the 5th morning the premises were left unprotected allowing free tampering of the evidence for several days. And there were plenty of bullets and empty cartridge casings in the surrounding area for anyone to play about with the evidence. The Police and forensic investigation had grave flaws from the very start.

7.2 Were 5.56 calibre Guns also used in ACF Killings? – At least the Government appears to have thought so!

Circumstantial factors indicate the Military and the Government believed that the Special Forces were involved in the shooting. Seven, which come to mind, are:

1. Preventing the SLMM from visiting the scene. Most members of the SLMM have a military background and would quickly have spotted tell-tale signs from cartridge casings or signs of meddling with the evidence.
2. The unexplained imposition of JMO Anuradhapura to do the post mortems overriding the Trincomalee Magistrate's order to JMO Trincomalee. The fact that the former gave the bodies for interment without looking for forensic evidence that might identify the perpetrators defies international standards, which lay emphasis on the collection of evidence (see for example Dodd's book). Excuses made for Waidyaratna that because he was not properly briefed and was suddenly asked, by parties not so far named, to do some autopsies in Trincomalee, he had neglected to take his portable x – ray equipment, seem untenable. It would have been obvious to him that he was going to Trincomalee to do autopsies on persons killed during the fighting in Mutur – a professional JMO would have brought this portable equipment or if for some legitimate reason forgot to bring it, he would have not have given the bodies for interment until he had access to such equipment.
3. The shoddy and unconvincing collection of evidence by the Police and the disappearance of empty cartridge casings.
4. The unethical transfer of the case from the Mutur Magistrate, who had shown intention of doing a thorough investigation.
5. The failure to ensure the presence of an independent ballistics expert at the ballistics examination as was anticipated by the Australian Government and also by Dodd (see page 71 of his report). The continued refusal to allow an independent expert to examine the ballistics evidence raises further questions about transparency.
6. The security forces' intimidation of the population as a whole not even allowing them to talk freely to the Commission of Inquiry.
7. The transfer of the ballistics evidence from the JMO to the court by CID

Empty bullet casings are prominent objects, and would have told trained visitors like the SLMM the kinds of weapons used. Were the empty cartridge casings removed after the

massacre? We need to explain why the callers at the ACF premises on the 6th missed them despite looking for them. The missing empty cartridge casings, apparently not even noticed, are another pointer to the wholly unprofessional nature of the collection of evidence.

It is a matter of concern that the Police investigation for more than a year has not touched any of the substantive issues. Instead the Commission of Inquiry is being fed with laughable stories by the Attorney General's Department, as to why the killers must be the LTTE, that the Magistrate was moved from the case to protect him from the LTTE as he complained that they robbed his house, then they were enlightened by the Attorney General's PowerPoint Presentation and now it is going to be Dodd's Supplementary Report and an affidavit from poor SI Sanjaya Perera of the CID who apparently convinced Dodd that Item (7) was a bullet of 5.56 calibre. Does he have any choice?

7.3 Do Injuries Give a Clue to the Types of Weapons used?

One bullet entered **Miss. Romila Sivapragasam**'s head just above her left forehead and exited through the back of her neck. This rules out her having been on the ground face down. A second entered through the back of her right upper arm and exited through her forearm, which rules out her lying on her back on the ground. The two considerations tell us that she was in all likelihood kneeling on the ground and was shot with a gun held above her head pointing down. The entry wounds for the two injuries were 2 x 1 cm and 1.5 x 1 cm respectively, which suggests (see 7.4) that the bullets did not explode or fragment on entry. Two objects were found in her cranium.

Dodd's statement among the conclusions of his first report that "*The evidence shows that two distinct calibres have been used and therefore by inference two (2) distinct types of weapons,*" should lead us to ask whether there are other indications besides the projectile from Romila's cranium. We have good reason to believe that much of the evidence has been tampered with. Another course may be to classify the injuries on the victims according to size and nature. Injuries on two of the victims stand out. They were the only ones besides Romila on whom metal fragments other than bullets were found inside the body.

Yogarajah Ketheeswaran had three penetrating injuries on his head. These were, an injury to the mid forehead measuring according to Dodd's first report 15 x 1 cm (1.5 x 1?), between the eyebrows measuring 2 x 3 cm and a large injury to the middle third of the face measuring 8 x 6 cm. Dodd observed that there is a suggestion of at least three entry wounds to the mid-facial area with a common large irregular exit at the back of the head measuring 14 x 5 cm.

Another entry wound on the upper right anterior chest measuring 5 x 5 cm resulted in apparently two projectiles travelling through his torso and being extracted from his left knee, both described by Dodd as 7.62 calibre. The latter bullets may not have been immediately fatal. It might appear that someone shot him downwards from the back while he was kneeling and was also shot perhaps by another gunman separately on the face. Six small irregular metallic fragments were identified on the right side of the upper part of the victim's head.

Miss. Vairamuththu Kokilavarthani had an entry wound of 2 x 2 cm on the right side of her face and an exit measuring 15 x 8 cm through the middle third of her face. There was also rib disruption in the area of bullet fragmentation and a vertically oriented irregular laceration at the back of her right chest measuring 14 x 6 cm. Although the entry wound is not identified, Dodd suggests in a diagram that the bullet may have come from above her right shoulder

while she was kneeling, leading to fragmentation in her chest. The largest of these fragments measuring 5 x 4 cm was recovered as evidence. Though the Government Analyst has noted this fragment, he simply says in his report that it is a distorted piece of metal without saying where it came from (jacket, core?).

The fact that there were two victims who suffered bullet fragmentation among the ten others exhumed besides Romila, should alert us to fragmentation in this case being intrinsic to some of the weapons used rather than a statistical freak. The reader may find the next section useful as a guide to assessment.

7.4 Bullet Injuries, Core-Jacket Separation and Fragmentation: Relevant Basics

The area of bullet injuries is one that has wide disagreements among experts, but there is broad agreement on some rules of the thumb. One good article among several on the web is the paper by Eric Prokosch in the *International Review of the Red Cross* No.307 of 31st August 1995, 'Bringing the dumdum ban (1899) up to date' (<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JMMA>). We put down some basics:

1. Some key Factors in Injury

(i) Velocity and Mass: Velocity and mass determine the kinetic energy in a bullet. The seriousness of the injury upon a bullet striking a victim is significantly dependent on the rapidity of energy transfer.

(ii) Spin and Tumbling: Once the bullet penetrates the body it tends to tumble. Because the bullet's centre of gravity is towards the rear, it tends to rotate through 180 degrees until it moves with the rear end forward. This is called tumbling. Resistance to tumbling depends on the spin (gyroscopic stabilisation) given to the bullet by the rifling in the barrel during the discharge. Thus rifling with one turn in 7 inches would result in the bullet spinning faster and being more stable than another with one turn in 12 inches.

(iii) Fragmentation: Rapid transfer of energy results when the bullet fragments and transfers energy to the resulting particles, which offer a larger surface area having a greater wounding effect. Fragmentation results from stresses set up in the bullet when it tumbles, as in a log placed across fast flowing stream, or when its length strikes a bone. A bullet, which has not tumbled and is travelling with its nose forward encounters less resistance and is likely to be deflected on striking a bone or pass through the bone itself. An M-16 with rifling having one twist in 12 inches tumbles quickly on entering the body and fragments after travelling 4 inches. But the FN Minimi adopted by NATO to comply with humanitarian rules also fires 5.56 x 45 mm SS 109 Belgian rounds at about the same velocity, but these are more stable and resistant to early tumbling because the barrel gives a twist of one in 7 inches.

(iv) Relation of Fragmentation to Velocity: When a bullet tumbles the stress that causes it to fragment depends directly on the velocity. Thus when a bullet has travelled through a distance that has caused it to slow down sufficiently, it has less chance of fragmenting. Thus

the M-16, discharging with an initial velocity of 990 m/s, which causes serious injuries at 100m distance, is comparatively harmless at 200m.

(v) **Fragmentation and Strength of Jacket:** The US M-14 rifle uses 7.62 x 51mm (30 calibre or 0.3 x 2.00 in) bullets having a high velocity of 880 m/s which are resistant to fragmentation. But Danish and German 7.62 x 51mm bullets were notorious for fragmentation because of their weak steel jackets. (*Terminal Ballistics of 7.62 mm NATO bullets: Experiments in ordnance gelatin*, Peter J.T. Knudsen et al, *International Journal of Legal Medicine*, Vol.108, 1995).

2. Some characteristics of Norinco 7.62 x 39 mm bullets: We take it that the bullets recovered from the bodies are of Norinco make as implicitly suggested by the Government Analyst. *Jane's Infantry Weapons* (2000-2001) gives the velocity of a Norinco FMJ (Full Metal Jacketed) 5.56 calibre bullet as 991 metres/sec (3251 ft/sec) and for a Norinco FMJ 7.62 calibre bullet as 710 m/sec (2329 ft/sec). The Norinco (Russo-Chinese) 7.62 x 39 mm bullets fired by AK-47 and T-56 weapons are very stable and significantly slower than the 5.56 x 45 mm and 7.62 x 51 mm. They start to tumble (see Fackler's diagrams) 11 inches into the body as compared with 6 inches for the 7.62 x 51 mm and 4 inches for the 5.56 x 45 mm. The steel core of these bullets also gives them elasticity, enabling them to bounce, or deform when the stress exceeds the elastic limit, rather than break.

3. Romila's Injury: When a bullet strikes a body, the size of the wound is measured by tissue deficit. It depends on the energy lost to the body on impact. A high velocity bullet, which hits a bone shortly upon impact, passes through with very little loss of velocity and energy. A bullet directly hitting a bone at 800 m/s passes on with a velocity loss of only about 30 m/s. This is relevant to Romila's case. The injury from the bullet hitting her head was 2 x 1 cm, about the size of a normal entry wound. It suggests that the bullet did not fragment on striking her head, but passed on inside, began to tumble and fractured on hitting a bone. In such a situation the loss of energy from the bullet could create secondary projectiles of bone and parts of the bullet, which could explain the exit wound at the back of her neck while a major part of the bullet was detained in the head. The recoil of the gun when a bullet is discharged and the jerk of the body as soon as a projectile strikes, largely rule out the alternative possibility that two bullets entered through the same wound.

4. Lessons from the Stockton Case: We pointed out that what is relevant to this case are the Russo-Chinese type steel cored 7.62 x 39 cm FMJ rounds. Fortunately, we have a study, referred to earlier, done on bullets of this calibre, '*Stockton – the Facts*', by Martin L. Fackler, MD: http://www.cs.cmu.edu/afs/cs/usr/wbardwel/public/nfalist/fl_aw_report2.txt

In January 1989, the deranged man Patrick Purdy fired from a Chinese AK-47 rifle, 104 FMJ bullets, including Norinco 7.62 x 39 mm, into a school compound filled with children, injuring 35 persons. Five children died in the schoolyard, the remaining 30 were treated in hospitals and survived. The survival rate was markedly higher than for other comparable incidents with different weapons. We quoted earlier, "*The Russian/Chinese military full-metal-jacketed AK-47 bullets, with steel cores, do not deform on striking the body, unless they hit bone... Only when this type bullet yaws (tumbles), turning sideways during its tissue path, does it cause significantly increased disruption.*"

Of the Norinco FMJ 7.62 x 39 mm tested by firing into ordnance gelatin, Fackler said in particular, "*The Norinco full-metal-jacketed bullet did not deform at all, as expected, because*

its largely steel core is much more resistant to compression than lead.” The bullets with lead cores of another make deformed slightly. The autopsy report on the five dead children said, “*There was no damage to any organ not hit directly by a bullet.*” The latter would not be true for bullets that easily fragment.

5. 5.56 and 7.62, Contrasts: Fragmentation of bullets is characteristic of the significantly faster, but weakly stabilised, 5.56 calibre projectiles. “*5.56 FRAGMENTS heavily, and is known to create a far more destructive permanent wound cavity than the 7.62x39. The 7.62x39 does not fragment, it just tumbles through and tumbles out*”, is an assessment one commonly encounters in literature. (See Martin Fackler’s drawings on the article from <http://www.bobtuley.com/terminal.htm>)

Dr. Robert Kirschner of the Chicago Medical School wrote in a similar vein to the Palestinian Authority after studying the effects of Israeli sniper fire during the Palestinian Intifada, “*It was surprising to see that the most serious injuries were not caused by the sniper rifles, which fire 7.62-mm rounds. These bullets easily pass through the human body. The serious damage was caused by the 5.56-mm bullets ... the 5.56-mm rounds change direction in the body ... and the worst thing is that they break up inside the body. They leave along their path fragments of metal and a lead and copper 'dust' ... It is no wonder that with such damage, the Palestinians thought that they were being fired at with Dum-Dum bullets.*” (David Ratner, *Ha'aretz*, 17 Nov.2000)

6. Jacket Separation in 7.62: The above considerations suggest that for FMJ 7.62 calibre bullets core-jacket separation in the human body is exceptional and would be extremely rare for the Norinco type. The CID’s claim that four 7.62 cores were collected from the ACF premises, suggests, if true, that core-jacket separation could occur when the bullet strikes a hard surface such as of metal or concrete. Strangely however, no jacketing from the scene was given to the court as evidence.

The CID or Commission of Inquiry could seek further clarification on these points from the manufacturers of the bullets used by the Sri Lankan security forces or, more simply, ask local pathologists in hospitals in the North East if, in their experience, there has been core-jacket separation in any instance of a 7.62 calibre bullet being fired into the skull of a woman.

The rules above should be regarded as rules of the thumb that help us to make tentative judgments. In each case more specialised knowledge about circumstances and dynamics may be needed. But more especially, about other circumstances apart from guns and bullets, which would determine our final conclusion.

8. Switching Magistrates – Symptom of a Deeper Malaise in the Judiciary

Following the ICJ and some Sri Lankan activists, we too in Special Report No.25 addressed the unjustified removal of Magistrate Ganesharajah from the ACF case on 4th September 2006, the day before he was to deliver the inquest verdict. ICJ-B 130ff found no provision in Sri Lankan law that could justify the substitution of a magistrate already hearing the ACF case.

An earlier statement by Birnbaum on 10th March 2007 which also said that the way the Magistrate was removed '*might well undermine the confidence of the Tamil minority in the system of justice*', earned a strong repartee from the Chief Justice who was responsible for the transfer as Chairman of the JSC. As it turned out, a series of contradictory reasons emerged from the CJ, Secretary/Justice and members of the AG's Department briefing the Commission of Inquiry, all of them groundless and contrary to fact, justifying Birnbaum's contention. Among them are the Magistrate was '*not in a fit state to continue with his judicial work in that area*', he was accused of being inactive, having only recorded statements from those who had identified the bodies and not from anyone who could shed light on the circumstances of the deaths, the Ambassadors of Australia and France had expressed concern at the delay in recording the causes of death and concluding the inquest, he was un-contactable by the Police and much later that he was moved to protect him from the Tigers against whom he had complained to the Police.

Unfortunately, instead of calling it a day, officials of the state are still continuing this comedy. Yet another shift of old stories was given by the Foreign Secretary in his response to Birnbaum's Addendum on 29th June: "*The Magistrate in Muttur was changed because he himself was a victim and observed the movements of various groups in the area. Moreover, he had sought refuge in a police bunker and his belongings were taken away by the LTTE. He has been identified as a potential witness and had given evidence before the Commission of Inquiry today.*"

These reasons as seen above were not even thought of when the ACF case was removed from the Magistrate. It apparently took several months for someone in the Government to pick up this new pretext, and if the Magistrate had any evidence, hardly anything has been done with it after more than a year.

Here we have an example of how partial truths are twisted into canard to justify the unjustifiable. When the LTTE took Muttur on 2nd August 2006, as a senior judicial officer given police security, the Magistrate had no choice but to go to the Police Station. Everyone at the Police Station had to shelter in bunkers whenever the LTTE shelled the area as others in Muttur were seeking bunkers because of government shelling. According to sources in Trincomalee, High Court Judge Anton Balasingham and others tried to find ways to get him out, but gave it up when they realised that senior police officers in Trincomalee wanted the Tamil Magistrate to be kept at the Muttur Police Station as a human shield. Muttur was one of those stations where senior police officers stayed away in Trincomalee leaving an inspector in charge.

After the Army retook Muttur, Magistrate Ganesharajah was quickly back at work and issued orders showing his determination to punish the killers. An important sign of his determination was a letter he sent the Attorney General asking for help in the form of sending state counsel to question witnesses, as the AG had done in the case of the killing of five student in Trincomalee in January 2006. This meant that the Magistrate Ganesharajah intended summoning senior security officials to court and having them examined by the AG's officers.

We reliably understand from sources in his office that the AG practically threw the Magistrate's request into the waste paper basket. It is a sign that by this time, signals were coming down indicating that the Government wanted the ACF case suppressed.

The AG was due to apply for an extension of service from the President and he had once got into a bad spot when the previous government in 2005 wanted him to follow up an order given by Ganesharajah as Magistrate Trincomalee to remove all illegal religious structures including a contentious Buddha statue. An extremist Buddhist monk filed a scurrilous fundamental rights petition implicitly attacking the Attorney General as a Tamil Hindu. Instead of dismissing it outright, the Chief Justice toyed with it as a sword of Damocles over the former AG and arm-twisted him into ceasing all proceedings to remove illegal structures including the Buddha statue. We understand from a good source that the AG applied for an extension of term and was refused by the President who had a favourite in waiting, who took over in April 2007. The former AG since died.

It is notable that the new magistrate, Mr. Jinadasa, who substituted Ganesharajah, is yet, after more than a year, to question any senior officer of the security forces in court. It could be seen that all the reasons given for removing Ganesharajah are worse than lies. They are attempts to impugn and ridicule a man who acted creditably against odds. These amount to charges that he was in effect inactive, incompetent, unfit and was even hiding from the Police. These are afterthoughts long after the ACF incident to justify his removal. Months later someone even discovered that he was a potential witness!

Even more absurd is the story given by a subordinate of the AG to the Commission of Inquiry, that he was removed to protect him from the LTTE against whom he had lodged a complaint of robbery.

This is an earlier variation the subtle insinuations by the Foreign Secretary quoted above, which a person who does not know the background might read as the Magistrate, whose belongings the LTTE stole, was a witness to the LTTE's culpability in the ACF killings.

According to sources in Trincomalee, Ganesharajah gave two letters to the OIC Mutur Police after the LTTE left Mutur town. Neither was a complaint against anyone. The first was immediately after the LTTE had left. He asked the OIC to look for his purse and cell phone he had left behind in the bungalow. The second letter was given a month later. This letter contained a list of items stolen from the Court, which included productions, records, and items in the custody of the court, including recovered jewellery. The letter also included items lost from the judge's bungalow, mainly fans and some other items. No reference was made anywhere to the LTTE, since he simply did not know.

Different parties were in Mutur. The LTTE for one would not have been interested in court records. Notably, several persons who were under investigation for crimes or were in the Police lock up now roam free without impediment.

The fact that leading officials in the Government have to twist facts in this way, and corner a Tamil magistrate who was conscientious in his work, in order to detract from the State's culpability in the ACF case, is a sign of deep seated bankruptcy. When these same persons wax indignant against the ICJ using the fragile supplementary report of Dodd's and even demand an apology, no one need take them seriously.

What happened to Ganesharajah was not an isolated action of the Judicial Service Commission where the Chief Justice holds sway. On 20th August 2006, Fr. Jim Brown and a layman went through the navy check point to visit his church in Allaipiddy where two dozen people sheltering there were killed by government shelling during an abortive LTTE landing

(see Special Report No.25). There is no doubt that he was abducted by the Navy, which controlled the area.

Upon learning of Fr. Jim Brown's disappearance Acting Magistrate Kayts, Mrs. Srinithy Nandasekaran, went there on the 22nd August afternoon. She ordered the Police to take custody of the logbook maintained by the Navy guard at the entrance to Allaipiddy which had a record of movements in and out. The Navy refused to hand over the book. The same night the Chief Justice, in his capacity as Chairman JSC, removed Mrs. Nandasekaran as Acting Magistrate Kayts and appointed another judge. To this day the case remains stalled. Ganesharajah's removal from the ACF case came 13 days later.

Given this wider background we need not doubt that the JSC's substitution of magistrates in the ACF case was intended to block the investigation. Birnbaum's concerns in this regard were spot on. Without the ICJ's intervention, the web of deceit surrounding the exercise would largely have remained a closed book.

9. Impunity and Stunted Professionalism

Over the past twenty months a series of grave crimes have been attributed to the security forces, apart from the grievous institutionalised violations the LTTE is guilty of. We have in particular held top officials of the defence establishment answerable for a pattern including massacres, targeted killings, disappearances, shelling and bombing of civilians that would amount to crimes against humanity. Despite bending to international pressure to go through the motions of accountability and to appoint a commission of inquiry, effective investigation has been stymied, in particular by the blatant intimidation of witnesses.

We identified the Five Students' case and the ACF case as test cases that would indicate whether or not the Government is serious about identifying and punishing offenders. In the Five Students' case which was witnessed by hundreds of persons and the offenders were identified, the court proceedings have been stalled and the killers are at large continuing their havoc. The considerable international interest aroused by the ACF case led to the Government accepting forensic expertise from the Australian government. But there were already serious concerns of a cover up (see Special Report No.25).

The JMO Anuradhapura, Dr. Waidyaratna with an assistant, walked into Trincomalee Hospital early in the morning of 8th August 2006 and started on the ACF post mortems, despite the Magistrate having already, late the previous night, instructed JMO Trincomalee to do them.

The JMO Anuradhapura, Dr. Waidyaratna, did no more than to record the injuries and the cause of death, which is a scandal by international standards. Dodd's book shows that professional forensic pathologists dealing in murder are thoroughly dissatisfied unless they find the evidence that could implicate the culprits. An estimate of the time of death at the latest by early Friday 4th August morning given by Waidyaratna was pounced upon by the Government and its allies to abuse the SLMM for pointing a finger at the security forces and to blame instead the LTTE. But three estimates had been given at different times.

A 'Cause of Death' statement given to the families shortly after the post mortem gave the time of death as 3rd or 4th August, later the time in the post mortem report was given as *'most likely in the early morning of 04 August 2006'*. But Peter Apps told us, *"I was able to move*

around the hospital pretty freely. I see from the story I wrote at the time that the pathologist told me after the first couple of autopsies that the likely time of death was Friday afternoon, based on the decay and maggots in the body. I got the impression that was his honest opinion and it still seems to me the most likely scenario.”

The controversy concerning the pathologist was not an isolated one. The police officer under whom the investigations were conducted and the evidence collected was SSP Kapila Jayasekera, who was identified by many civilians, police officers and the Human Rights Commission’s Special Rapporteur as the key local agent in Trincomalee behind the executions of the five students seven months earlier. Further the Military had prevented the SLMM from visiting Mutur despite arranging a tour of journalists the very next day after the killings (a matter the journalists remained unaware of and did not ask about). The reasons given later for blocking the SLMM, which knew about the shelling of Mutur and the plight of the ACF staff, strike most people as ludicrous.

The importance of another factor in vitiating transparency should not be underestimated. The ACF case was originally to have been heard in Tamil. By moving it to Anuradhapura and Kantalai, the language of hearing and record was shifted to Sinhalese – a language the victims and witnesses are mostly unfamiliar with. Official documents pertaining to the case are almost exclusively in Sinhalese. This means that those most interested in the case, including the families of victims, need to go to much extra trouble to follow what is going on. The result is a critical diminishment of transparency. That the missing cartridge casings did not become an issue for so long is one instance of it. This is unacceptable.

Given this history, no fair minded person could be blamed for being wary of the possible lengths to which the Government would go to suppress the truth. The Commission of Inquiry (CoI) was itself under a cloud because the Chairman, a former Supreme Court Judge who as a member of the Judicial Service Commission was jointly responsible for the improper transfer of the Mutur Magistrate and 13 days earlier the Acting Magistrate Kayts who had taken the first bold steps to investigate the disappearance of Fr. Jim Brown. The Chairman is thus seriously compromised by conflicting interests in two cases before the CoI. The International Group of Eminent Persons observing the CoI had already expressed strong reservations about the Attorney General’s Department officials briefing and guiding its deliberations. Their performance as we have seen only fits them to be defence counsel for the state and the security forces, but thoroughly unfit to guide the CoI.

When observers see that most of the concerns repeatedly expressed are being ignored, it is bound to influence the tone of judgments they make. One cannot understand the recent exchanges between the International Commission of Jurists (ICJ) and the Government in isolation of the latter’s persistent insensitivity and disastrous diplomacy.

To many of us who see little hope in justice being delivered in the absence of concerted external pressure, the step taken by the ICJ in its decision to place eminent lawyers with international experience to observe, follow and report on some outstanding cases was one that was most welcome. It was in this context that it appointed Michael Birnbaum QC to observe the ACF case, something he, in our judgment, did with laudable commitment and competence and without his work we would not have noticed the importance many factors he drew our attention to in his two published reports.

We have persistently argued for active international participation to combat a culture of crippling impunity. Resisting this, the spokesmen of our country habitually keep saying that we have our Supreme Court, our police investigators, our Analysts, our JMOs and our Attorney General's Department, manned by persons with world class training and qualifications. We do not doubt that. But something else is needed that is not easily going to come back without an institutional commitment to justice and the rule of law.

In Bulletin No.25 we recorded the case of the Vesak Day massacre in Batticaloa in 2000, when some time after a bicycle bomb went off in front of the police station killing 3 civilians, the Special Forces massacred 17 persons, including 10 children, who had been brought to watch Vesak decorations. A priest who went to the mortuary was called by experienced labourers and told, "*Father, these died from bullet wounds, but the doctor is going to record that they died from the bomb blast*". A labourer lifted the skirt of the young maiden who had escorted the children and showed him the bullet wounds. The maiden was to be given in marriage two days from the fatal incident. A little later a labourer told the priest, "*Father, you had better go, the SI (sub-inspector of police) is watching!*" This doctor might today be a fully-fledged JMO with several distinctions at his exams. Yet what standards would one expect from him?

When there is a regime of impunity, all institutions become debased. Looking for evidence becomes a career or even life-threatening liability. The professional skills of judges, JMOs, policemen and the AGs Dept. all go to seed. We see this happening through the ACF case. It is in the interests of our professionals to work alongside a UN Human Rights Field Operation.

The Government continues to wax loud that the ICJ must apologise over the bullet issue. The underlying motive is to make out that all criticism of the Government's human rights record is malicious or ill-informed. At the same time it would like the ICJ to ditch able persons like Michael Birnbaum, drop cases and concentrate on soft issues as suggested by the Secretary General of the Government Peace Secretariat (SCOPP), to Justice Arthur Chalkson, President ICJ, after Birnbaum's second report. Prof Wijesinghe said, "*The ICJ is an important participant, since your continuing concern will help us to maintain the standards with regard to Human Rights and the Rule of Law which we should all aspire to.*"

We have given ample reason that the original identification of the bullet stands until convincing evidence and arguments are forthcoming and the serious lapses such as the missing photographs are explained.

Among those fervently demanding an apology from the ICJ is the Secretary General of the SCOPP. In reference to the Five Student's case he said in an article in the *Asian Tribune* on 8th December 2006, "*Certainly the fact that at least some of those killed had been carrying dangerous explosives at the time would have reduced the sense of outrage internationally.*" The families of the victims are surely owed an apology, not just for being denied justice but also for having to swallow falsehood and not talk back. Anyone who checks the facts would find that the STF's execution of the students was a planned outrage (our Special Report No.24) and the case remains stalled. SSP Kapila Jayasekere was locally responsible for the execution and Inspector Zawahir found a planted bomb near the bodies to support the story that the youths were carrying explosives. The official lie that the students died from a bomb they had laid to rest by the JMO who resisted the imposed intimidation and placed on record that the students were shot. It was Kapila Jayasekere and Zawahir who were in charge of collecting evidence for both the ACF and Five Students cases.

If the Peace Secretariat thinks it important to honour Ketheeswaran Loganathan who joined it out of a desire to work for peace and was cruelly killed, all indications pointing to the LTTE, it must move away from blind semantics defending the Government's positions. It has much work to do talking to victims in the North-East and making the Government sensitive to their plight.

The disease of impunity, lies and histories divorced from facts, when allowed unchecked, spread like a contagion paralysing the entire country. It is the Government that owes an apology to all the victims of its security forces, to whom it promised justice and then fooled around while intimidating them along with potential witnesses. In the rare instance when the Government is forced to go through the motions of an investigation, what transpires is duplicity and equivocation. Then follow episodes of foreign observers saying something hard, a fusillade of admonition from government spokesmen and tortuous briefings to the Commission of Inquiry by the AG's Department.

10. References

Links have been given to the documents below:

[1. Dr. Malcolm Dodd's First Report, November 2006](#)

[2. Dr. Malcolm Dodd's Supplementary Report, August 2007](#)

3. Michael Birnbaum QC's (ICJ) First Report, April 2007: http://www.icj.org/IMG/ICJ_report-2.pdf

4. Michael Birnbaum QC's Addendum Report:
http://www.icj.org/IMG/ACF_Add_report_final_no_pic.pdf

[5. Government Analyst's Ballistic Reports 1 & 2, 19 Feb.2007](#)

[6. The Attorney General's PowerPoint Presentation, 28 Jun.2007](#)

[7. Wound Ballistics, Drawings by Col. Fackler MD](#)

[8. Report on the Stockton case, Col. Fackler MD](#)