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FOR
HUMAN RIGHTS (JAFFNA)*
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Third Anniversary of the ACF Massacre

**A Travestied Investigation, Erosion of the Rule of Law and Indicators for the
Future of Minorities in Lanka**

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Summary

Three years ago, on the 4th of August 2006 at around 4.15pm, one Muslim and 16 Tamil ACF aid workers were forced to their knees, begging for their lives, and shot execution style at point blank range in their office compound in Mutur, Sri Lanka.

The victims of this crime were not caught in cross fire, killed accidentally or mistaken for combatants in the midst of an encounter. They were sought out and murdered. Available evidence points to the responsibility of police officers and Muslim home guard members who have acted in the presence of Sri Lankan Army commandos.

In this, or any premeditated crime of this nature, the State has a responsibility to independently determine the facts of the case and the identity of the perpetrators. The Government has not only failed to fulfil this duty, it has obstructed efforts to do so through the Presidential Commission of Inquiry (CoI).

Currently, turning the scales of justice completely upside-down, the Government is pointing the finger at the organisation for which the victims worked, the ACF, and accusing it of negligence. This can only be an effort to divert attention from its own responsibility, since the ACF's actions, although important for the organisation to look into, are utterly irrelevant to a determination of responsibility for the premeditated murder of the ACF employees.

In light of the Government's recent claim that the CoI has found the LTTE to be fully responsible for this crime and attempts by the CoI to debunk our findings, we present a thorough review of our earlier reports, with new evidence gathered and assessed. This effort has affirmed our earlier findings that the 17 aid workers were killed by at least one member of the Muslim home guard (Jehangir) and two police constables (Susantha and Nilantha) in the presence of military commandos

Even before the Commission of Inquiry was constituted, several arms of the state including the Judicial Service Commission undermined a proper inquiry, including by replacing the sitting Magistrate (a Tamil, who was replaced by a Sinhalese) just prior to his announcing the findings of his inquest. After the CoI was formed, the AG's office along with the defence lawyers continued to work as a team to discredit any information which might point towards the real culprit. The role of AG's office was questioned by the IIEGP (International Independent Group of Eminent Persons, mandated to observe the work of the CoI) but their concern was discarded.

The report stands by its earlier concerns regarding the cover up of bullet types used by the assailants and unprofessional nature of the Australian expert's decision to retract his earlier identification of a 5.56 mm bullet.

This report also critically examines the CoI proceedings and actions by the Government in the context of the CoI's efforts. In addition to favouring witness testimonies at the CoI that were sympathetic to the Government's position, the Government of Sri Lanka and its proxies have engaged in systematic intimidation and harassment of witnesses and families that have refused to support the Government's patently false position.

A representative list of these actions includes the following, carried out, prior to, during and after CoI proceedings:

- threats carried out by telephone and in person;
- public questioning and temporary restriction on movement by police;
- forced reporting to police stations and a TMVP office;
- abduction and assault;
- intimidation, bribery and threats by the CoI's police investigation unit;
- ongoing surveillance by police;

- illegal arrest and temporary detention by the security forces;
- house searches;
- threatening letters signed by TMVP;
- intimidation while giving testimony at the CoI and while in the witness protection room of the CoI; and denial of witness protection to those seeking it.

The government made sure there was no proper witness protection in place, and any support by a commissioner for a witness facing fear and isolation was used to discredit both. The police investigation unit of the CoI came to function as an intimidation unit towards the witnesses, making sure that the truth was suppressed. The presidential order to stop video conferencing of testimony by witnesses who had to flee the country was another blatant move to suppress the truth.

Family members of victims were harassed and threatened to such a level that their lives in Trincomalee became unbearable; some were forced to flee the country. Two family members have died: Kanapathy, the guardian of ACF driver Koneswaran, died consequent to being beaten by a naval officer in an unrelated incident and Niranjala, wife of ACF worker Muralitharan, from a brain haemorrhage resulting from high blood pressure a day after she received a letter summoning her to appear before the CoI, following months of official harassment. Several families and witnesses have been forced to leave Sri Lanka and others are forced to live underground to escape attempts by the Government and its proxies to silence those who may point the finger at the Government for the killings. Perhaps the best thing the witness protection unit of the CoI has done is to tell witnesses frankly the unit cannot provide any protection.

In an attempt to debunk evidence that consistently points to State responsibility for the ACF murders, the Government has carried out a series of actions through the CoI including:

- attempts to provide or assert alibis for certain persons we named as the killers in our report in April 2008;
- attempts to advance the time of the killings to make the LTTE's guilt more plausible;
- attempts to post date by two days the Police's knowledge of the killings;
- attempts to discredit the finding that commandos were involved by denying the commandos ever went out with the Muslim home guard.

The Government's control of the CoI through the role played by Deputy Solicitor General Kodagoda and the complicity of some of the Commissioners, has allowed the extraordinary attempts at cover up described above to take place as well as an obvious and deliberate failure to pursue questioning and investigation that could implicate the Government.

The conduct of the CoI further degenerated after Dr. Nesiiah, then a Commissioner, was forced out by the President supported by the Counsel for the Army Gomin Dayasiri for a perceived conflict of interests. No attention was given to the manifest conflict of interests of other Commissioners:

- Javid Yusuf with his long term association with the ruling SLFP;
- Mr. Douglas Premaratne, a former additional solicitor general having close associations with the extremist party, the JHU; or
- Chairman Udagama who as a member of the Judicial Services Commission had improperly removed the ACF inquest from the Tamil Mutur Magistrate.

The CoI ceased with a whimper in mid 2009. According to the Chairman, the culprits in the ACF case were not identified because he 'ran out of funds'. However this admission has not prevented the Government from coercing

the family members to sign documents stating that they “agree with the findings of the Commission that the deaths were caused by the LTTE”. Thus it would seem that someone in the Presidential Secretariat has been able to wind up the investigation and attribute responsibility on behalf of the CoI.

The course of the ACF inquiry traces growing state hostility to legal norms, arbitrariness in the use of police powers, and the politicisation of the Attorney General’s office to the point of complicity in crime. Extra judicial methods of dealing with inconvenient witnesses on occasion to the point of murder have become the norm as several witnesses in the ACF and Five Students cases came to know. These developments are not just about the fate of the 17 ACF victims, but about developing attitudes and practices that will determine the fate of the minorities and no doubt, sooner rather than later, that of the Sinhalese population as well. There is no excuse for leaders so obtuse and arrogant as to forget within a generation the bitter lessons of the 1980s.

The case reveals the mindset behind the repression. The State consequently makes itself far more venal than what its ideology attributes to the minorities, as evident during rounds of communal violence. If the trend continues, in the end there will be no standards or laws the citizen and communities could appeal to. Anarchy is complete where truth loses all meaning and the state itself incapable of rationality and foresight.

Rather than marking a return to normality, the end of war appears as just another milestone for those in power. For them, the war and its aftermath remain an opportunity for a return to an ideological agenda that sought the debilitation of minorities, treating them as permanent enemies, purposefully uprooted from lands that had been their home for centuries. Their existence may be tolerated only under the jackboot of the State. The human rights abuses so abundant during the decades of conflict will not simply be forgotten. While those in power continue to suppress the truth, the tragedy continues for those who have suffered these harms. Without public recognition of the truth, including the brutalities inflicted by the LTTE, it will never be possible to build a new course for the Island based on principles of equality, justice and peace. A proper inquiry, revealing the truth behind the ACF killings and the multitude of other human rights abuses is necessary to avoid the further entrenchment of ethnic politics. There is a need for an honest evaluation of the past that can provide a basis for a common future for all Lankans.

0. Introduction: ACF 2006 – 2009: Tracing the Precipitous Erosion of the Rule of Law

The ACF and a related case [1] mark an all important saga in the relentless growth of impunity in Sri Lanka. The gruesome execution-style murders of 17 aid workers with the French organisation Action Contre La Faim in 2006; a criminal investigation that went nowhere; a half-hearted inquiry by a Presidentially appointed commission of inquiry (which ceased with a whimper in mid- 2009); and the fear and intimidation faced by the families who sought justice, have dashed hopes of a return to peace and the rule of law. The end of war rather than marking a return to normality or better yet an opportunity to improve interethnic relations and justice in Sri Lanka appears to have been only another political milestone for chauvinist and authoritarian elements in power. They treated the war as an excuse to return to an ideological agenda that sought the debilitation of minorities; presenting them as permanent enemies, purposefully uprooting them from lands that had been their home for centuries and tolerating their existence only under the jackboot of the State.

UTHR (J) withstood terror and challenged Tamil nationalist politics, especially the strain spearheaded by the LTTE, which exemplified its latent ruthless totalitarian potential. Many Tamils knew well its dehumanising and destructive nature, even when many Tamil intellectuals tried to explain the LTTE’s actions as an unavoidable consequence of state terror and thus evaded taking responsibility of its actions. At the same time, UTHR (J) documented and challenged the state policies and actions which made minorities insecure and forced them to turn to armed struggle and later to support destructive forces like the LTTE.

The course of the ACF inquiry traces growing state hostility to legal norms, arbitrariness in the use of police powers, and the politicisation of the Attorney General’s office to the point of complicity in crime. Extra judicial methods of dealing with inconvenient witnesses often to the point of murder have become the norm as several witnesses learnt. These developments are not just about the fate of the 17 ACF victims, but about developing attitudes and practices governing the imminent fate of the minorities and no doubt, sooner rather than later, that of the Sinhalese

themselves. There is no excuse for leaders so obtuse and arrogant as to forget within a generation the bitter lessons of the 1980s and find in the fleeting pleasures of impunity a self-defeating notion of patriotism.

The ACF massacre is another instance of the inbuilt habit of using all arms of the state to cover up a crime by a section of the security forces. It advances the corrosion of the state and country in several ways. Members of minority communities in state institutions and especially in the security forces feel too powerless and insecure to act according to their conscience. Friends and families of the victims and the local community have a clear awareness of the perpetrators of the crime, but the elites in Colombo continue to believe it within their power to suppress the truth using the brute power of the state. Any civil society attempts at raising concern are targeted and attacked as supporters of terrorists.

The government has exhibited an irrational obsession with hiding the truth in every incident where harm was done to civilians from the minorities by the armed forces. In many cases, the blame was not simply on one side – the LTTE was responsible for a great deal of violence against civilians – and if these cases were faced honestly they could have led to corrective measures. There is presently no such interest. When the Government shelled Mutur in August 2006 killing 50 mainly Muslim civilians, parallel to the LTTE's killing of civilians perceived as enemies, the State spied upon and intimidated leaders of the local community who led demands for an inquiry into violations by both parties, to stall any accountability. **In the ACF case as will be seen below, systematic intimidation of victim families was resorted to in attempts to obtain signed statements from them blaming the LTTE.**

The Commission reports

On 14th July 2009, the BBC in a similar vein as other news media announced '*Sri Lanka's top human rights panel has cleared the army of killing 17 people working for a French charity in 2006*'. As the basis for the exoneration CoI Chairman Justice Udalgama reiterated to the BBC the position in the excerpts from the final report as given in the *Island*: "*The evidence that was laid before us is that not a single witness stated before us that they saw the army around the place at the relevant time...The entire town was taken over by the LTTE at the time. The LTTE said on their website (TamilNet) that they had taken over the town of Muttur.*"

Justice Udalgama added, "*There was other evidence like the presence of Muslim home guards. They had access to the weapons. And it could have been LTTE.*" The question immediately arises; why not exonerate the Muslim home guards, as no one testified before the CoI to seeing home guards in the ACF neighbourhood on 4th August? The LTTE too could validly claim similar exoneration. Blaming them simply on the grounds of being seen in town that morning could apply to anyone depending on how one plays with the time of the event.

That brings us to the main problem of the inquiry. The culprits were not identified, according to Udalgama's BBC interview, because 'he ran out of funds'. He also told the *Daily Mirror* (21 Jul.09) that '*the use of video conferencing was essential to hear evidence from the witnesses abroad but this practice was stopped by a Presidential directive*'.

Yet the report seems to confirm the LTTE's culpability for these murders by relying on a report of the pro-LTTE web site *TamilNet*, apparently the one on 5th August stating 'LTTE fighters returned to their positions Friday (4th)', to hold the LTTE was in control of the place on Friday 4th. The Chairman thus rejects the government spokesman's claim published in the government media on 4th August morning that its forces were in control of Mutur by the 4th morning. The CoI's claim, "*The evidence does not disclose the presence of the commandos anywhere near the ACF office during the period, that is, on the morning afternoon or evening of the 4th*", skates on thin ice. We cite below Peter Apps, who was told on 5th August by several Sri Lankan military commanders in Mutur that most LTTE fighters had withdrawn from the town by early Friday (4th) and about two dozen of them were sniping from the suburbs. Further by the 5th the Army had a post in Mutur hospital, very close to the ACF pointing to the area being well reconnoitred in advance. A police witness told the CoI that commandos were sighted in Al Hilal school nearby on the 3rd and 4th.

It was the difficulty in positing LTTE-control of the area throughout the 4th that impelled the CoI to advance the time of death to the early hours of 4th morning in accordance with the JMO's assessment; despite testimony from of Rev. Sornarajah who saw the ACF staff after 8.30 AM and others at the Methodist Church 400 yards away that makes it clear the killings did not take place before 11.00 AM.

What then one might ask is the value of a very incomplete and tendentious report? The answer surely is, propaganda aimed at a Sinhalese constituency. Using such a poor basis in evidence the report is generous with somewhat intemperate strictures on civil society lawyers as “*more interested in satisfying their paymasters*” and on the ACF as ‘*looking more for their comfort and convenience than that of the safety and security of their workers.*’ The CoI investigates Trincomalee based ACF staff members’ misjudgments in full. But appears to have failed similarly to inquire into the inactions by the army major, colonel and Senior Superintendent of Police. The three had been appealed to by the Trinco staff of ACF to ensure the safety of the marooned workers who were later murdered.

Naturally, journalists and those who were assailed were interested in copies of the full commission report. When they asked individual commissioners, they were directed to the office of the President, the proprietor of the report. Having failed, they concluded that the only use then being made of the report was to leak extracts to selected media through a privileged counsel.

What happens when a Commission Reports

The irony did not stop there. On Saturday 18th July this year, police in civil went to the homes of ACF families in Trincomalee and summoned them to Fort Frederick which functions as army HQ and the government's administrative centre. In that forbidding environment, they were confronted with a very lean, sickly looking, greying and slightly hunched man on the fairer side, flanked by two women in civil whom the families took to be from the police. There were several others in civil who struck the families as members a police intelligence unit. The latter took video shots of those brought there singly and in groups. The sickly looking man introduced himself as a private attorney from Colombo, who had come for their sakes, in order to get them more money from the ACF. He spoke in Sinhalese, which was translated into Tamil by one of the women next to him. The families thought the whole thing fishy, since if the man was a private attorney, he could have met them elsewhere, than at the seat of government in Trincomalee having the highest security. They were given two letters in English legalese to sign ([see Appendix I](#)), one addressed to the Attorney General and the other to the President.

The one addressed to the President stated: “*We are extremely grateful to Your Excellency for appointing a Commission of Inquiry and ensuring that justice prevailed. We agree with the findings of the Commission that the deaths were caused by the LTTE and the compensation as determined must be paid by the ACF for gross negligence to the heirs of deceased for a period of 10 years, based on the last salary.*”

The one addressed to the Attorney General stated: “*We thank your official counsel for the proper and impartial manner in which they presented evidence and the kindness with which they treated us when we came to give evidence. We greatly appreciate their services.*”

Despite the Commission running out of money and being wound up without identifying the killers, it took someone working closely with the Presidential Secretariat (and thus had access to the Commission's Report) a mere jiffy to complete the investigation. A parent who was present told us, “*I do not know English, but I gathered from others that the truth had been turned on its head and we were to give our assent. Some of us gave excuses trying to wriggle out of it. The Attorney was firm that we must sign. That is the situation now. If we do not sign, we must live on from day to day not knowing if we would have another night's sleep on our bed.*” On 25th July, police in civil came and summoned the families to Fort Frederick and in the same venue the letters were collected by the two women who were there earlier, although the attorney was not present. The truth was evidently thus signed, sealed and delivered as the Stevie Wonder hit goes. There are no prizes for guessing who is orchestrating this drama. The attorney was unmistakably one very close to the President.

The matter of the letters evoked adverse publicity. The BBC reported the fact of duress against the unwillingness of the families. On 1st August the letters were returned by post by an unknown sender, stamped at Thampalakamam

post office. The same day the families were called to a peace centre run by a priest. They were met by lawyers identifying themselves as from the Human Rights Commission in Colombo who spoke in English, which was translated. They expressed concern about the letters the victim families had been forced to sign. They asked them who was responsible for the killings. The people maintained as always their formal stance that the incident took place 18 miles away and they had no way of knowing. The visitors did not push the matter further.

This report, which deals with the proceedings of the Presidential Commission of Inquiry relating to the ACF killings in some detail, traces the rapid degeneration of the arms of an already fickle state in the last three years. The habit of treating the minorities and those who defend their rights as treacherous undesirables and liars who must be controlled by brute force is now deeply entrenched. The ACF and Five Students' cases reveal the mindset behind the repression. The State consequently makes itself far more venal than what its ideology attributes to the minorities, as evident during rounds of communal violence. If the trend continues, in the end there will be no standards or laws the citizen and communities could appeal to. Anarchy is complete where truth loses all meaning and the state itself incapable of rationality and foresight.

1. A short history of the Commission's inquiry into the ACF massacre

Sometimes we forget, before there was ever a Commission, there was a case. Thus in the criminal proceedings inquiring into the ACF case, officialdom prevailed upon the Judicial Service Commission, comprising the Chief Justice and two other Supreme Court Judges, all Sinhalese, to take the ACF case away from the Matur Magistrate, who was Tamil, on the eve of his delivering his inquest findings, and hand it over to a Sinhalese magistrate. The International Commission of Jurists criticised this as improper interference in the course of justice (Special Report 25). The original Magistrate had earlier ordered the Medical Superintendent of Trincomalee Hospital, where the leading doctors are Tamil, to do the post mortems. Again through an instruction that must be deemed political (see below), the Sinhalese JMO, Anuradhapura, was imposed, bypassing procedure, to do the post mortems. As in the 1980s appeals to Sinhalese partisan feeling of officials of the state and judiciary have been used to erode the rule of law, which would tell ultimately to the detriment of the Sinhalese themselves.

The killing of 17 ACF workers in early August 2006, and its implications for humanitarian services, gave the question of impunity a new urgency. The presidential commission of inquiry (CoI) assisted by an International Independent Group of Eminent Persons (IIGEP) emerged in late 2006 through discussions between the Government and the diplomatic community. Its task of investigating into 16 key violations commenced in 2007.

The Government was under two sets of pressures. One was to curb its resort to impunity

while fighting a war, which during 2006 had become reckless in the use of fire power against civilians in the LTTE-controlled areas of the East. The second set of pressures came from the section of the Government itself supportive of Sinhalese hegemonic ideology, which wanted the war fought ruthlessly without any meaningful political accommodation with the minorities.

The IIGEP quit in April 2008 after a series of differences involving among others the Attorney General's openly partisan role in the ACF inquiry. Even by this time the intimidation of witnesses by the Police was widely known in Trincomalee. Soon evidence by videoconferencing from witnesses who fled out of fear was stopped. Again the CoI surrendered to the President without arguing its case.

The departure of the IIGEP became the cue to remove any residual will among the commissioners to bring out the truth. Duly an active Tamil commissioner, Dr. Nesiya, was targeted with obscure charges of conflict of interest, vilified in the press, intimidated by the knowledge that he was being watched and effectively expelled on the President's order. The Commission itself became virtually a Sinhalese affair proceeding according to a script. Around this point, violence and intimidation became overt. There was intimidation of Tamil and Muslim witnesses in the ACF and Five Students cases, many feared for their lives and some lost their lives in the process, one was murdered.

When the Government and its machinery undermined the impartiality of the inquiry at every stage, the truth

becomes a difficult question. **What we do have are our report of April 2008 and attempts in the commission proceedings to undermine the findings of that report.**

This means that we must examine the commission proceedings as follows:

- Removal of an independent minded Tamil Commissioner due to pressure from Counsel for the Army;
- attempts to provide or assert alibis for certain persons named in our report;
- attempts to advance the time of the killings and demonstrate that the LTTE was in control of the area at that time;
- to post date by two days the Police's knowledge of the killings;
- to discredit the claim of commando involvement by denying that they ever went out with Muslim home guards,
- the flattering treatment of witnesses who supported the official line and the mistreatment or intimidation, inside and outside the commission premises, of witnesses and a commissioner who contradicted or refused to toe the official line.

If the reader concludes that the main positive evidence of our report of April 2008 has withstood attempts to discredit it (bearing in mind some of the means by which the CoI attempts to assert falsehoods); the reader must demand a fresh inquiry where fairness, impartiality and the freedom and security of witnesses is not in doubt.

First, we give a summary of what was contained in our first report on the case of April 2008.

2. Summary of Findings in Special Report No.30 with Additional Clarifications

We summarise our report with additional information from an eyewitness we had spoken to, which further clarifies the events in our report of April 2008. We have also been aided by discussions with the IIGEP's team. The only change with regard to our report is that the commandos were not naval special forces as reported, but army commandos and Special Forces (see Section 11).

The ACF field staff who were sent from Trincomalee to Mutur on Monday 31st July 2006 were stuck when Mutur was cut off following the LTTE's take over of the town by the 2nd August morning. 17 ACF workers, including four women were told by their Trinco(malee) office to stay in their Mutur office until they are rescued. Despite advice of locals to move to the either the Methodist or Roman Catholic churches or a mosque, they decided to follow their superiors' instructions. The ACF staff in Trincomalee as explained in our report made representations to the Police and the Army to secure their protection. Unintentionally, this may also have given ideas to those who saw an opportunity to kill some Tamils or had a grudge against some of the marooned staff.

On the morning of 2nd August 2006 Home Guard Jehangir's elder brother was killed by the LTTE. It was known widely at Mutur police station that Jehangir came there that morning, shouting furiously that he would kill all the Tamils in Mutur accusing them all of being LTTE. The same evening the police station was subject to a massive attack by the LTTE. Many of the policemen and home guards had run away. Miserable and low on ammunition, PC Punchinilame who was at the radio desk, cried that same night to a very senior police official that they were leaderless (the highest ranking officer being the Acting OIC) and pleaded with him to send relief, which the latter promised at the earliest. ([See Appendix II](#), Chart for the relevant police hierarchy.)

Around noon on 3rd August, additional military and police personnel arrived at Mutur jetty where the Navy had held its position. Two relief officers ASP Sarath Mulleriyawa and OIC Chandana Senanayake were dropped by a gun boat near the police station while the army commandos marched from Mutur jetty. By 1.30 PM, they relieved the siege of the Police Station in the northwestern edge of Mutur. By then the LTTE had largely moved out of this area. Along with the commandos came also men from the Special Forces, who had longer hair with black cloth covering their heads. The commandos called for artillery support from Trincomalee to hit suspected LTTE positions, including

Raalkuli and Sampoor. Some of the shells fell in town, near the bank and near the Hospital.

On 4th August, in the morning, the civilians who had been subject to heavy shelling decided to quit Mutur on foot. By mid day, most of them had walked out en masse.

Early on 4th August morning, a section of the commandos at the Police Station went out with some home guards, including Jehangir, to reconnoitre

During this period, ACF staff in Trincomalee had tried frantically to alert the security forces to the plight of their staff. By afternoon of 4th August, they had spoken to, among others, SSP Nihal Samarakoon of the Trinco Police. About 3.00 PM on 4th August, Mutur Police Station received a radio message from the Trincomalee Police. PC Punchinilame called the OIC Chandana Senanayake. The OIC told ASP Mulleriyawa that the call was about the ACF requesting protection for their staff who were stranded in their office. The ASP then talked to the OIC about rescuing the ACF staff. The commandos who went out in the morning too then returned.

The OIC then summoned the commandos, among whom were two officers, along with policemen Susantha and Nilantha and home guard Jehangir and had a conference where he was seen gesticulating. The group of Susantha, Nilantha, Jehangir and ten of the Special Forces and commandos, but not the two officers, went out, followed by other home guards, some of the latter perhaps along a different route to the ACF.

At the very outset sending Jehangir as part of the team to rescue Tamils appears highly questionable since he had been swearing to kill all Tamils in Mutur. Moreover both the Police and the local populace knew about Jehangir's notorious criminal record, which included raping several Tamil women and killing some Tamils who went into the jungle to collect firewood. Though he was detained a few times and the Police did not trust him, they did not produce him before the courts, because they thought him a useful minion.

Soon after the group of commandos, police and Jehangir left the Station, PC Punchinilame who was at the radio ran out calling the OIC. When he was about to speak, the OIC received a call on his mobile. From the OIC's responses in Sinhalese, it appeared the caller was telling him that not all the LTTE had left, but some were in the ACF office and surroundings.

The OIC then called Susantha on his radio handset and told him that according to information he received, the LTTE may be in the ACF office, but other information said the staff were there. He asked him to move carefully and if it was the ACF staff to bring them back safely. He also told them that if the inmates were the LTTE, to finish them off without any inhibition and he would protect them.

One factor that made the proceedings strange was that the home guards knew there were no LTTE in town. Also, Muslims on the road confirmed this. They knew that only a few Muslim civilians and the ACF were in town. It would thus appear that the second call was deliberate misinformation, intended to set up a pretext for the massacre of the ACF staff. It is very unlikely that an ordinary local informant would have called OIC Senanayake, who arrived in Mutur only the day before, on his personal cell phone, although he had reportedly served in Mutur before. The nature of the call points to an intelligence officer within the Police dealing with local intelligence (see Sec.15).

Five commandos went into the ACF office with Susantha, Nilantha and Jehangir, while five commandos took up positions outside. Jehangir shouted at the ACF staff to come out. Shooting was heard a little later. There had been no armed persons in the ACF office, only the staff, most of them in attire indicating their ACF affiliation.

Not long afterwards, Susantha, Nilantha and Jehangir returned to the Police station, sweating and highly excited. The commandos did not return to the Police station but apparently reported it to their superiors. The superiors were seen at the site a short time later by Witness 2. Jehangir was his garrulous self boasting that he, Susantha and Nilantha killed the ACF staff, disregarding the fact they knelt and pleaded. Several police officers congratulated him. Jehangir then looked at a Tamil officer and threatened anyone who leaked this information. The OIC then came out, signalled silence and asked Jehangir to shut up and go to his barracks. The OIC then went to the ASP's office and when they came out both looked happy.

The OIC and ASP then went apparently to speak to Jehangir. On their return, the ASP praised Jehangir to all present commending the work he had just done, adding that Jehangir is a great and courageous man, just the sort the Police needed.

While the Police started spreading the story that the LTTE had killed the ACF staff, Jehangir could not help boasting to outsiders. Many of the Muslim public continued to tell others that the ACF had done good work in Mutur and served the Muslims and Tamils without bias. They also said that it was members of the Police that killed the ACF staff.

At one extreme, one might seek to explain the killings as unplanned and incidental, arising out of trauma and frayed nerves of police officers, who lost a sergeant and were on the night of the 2nd following the attack on the station pleading for help, not knowing if they would live another day. This does not apply to the senior officers who arrived after the situation was relatively calm. There has been a suggestion that Jehangir set it up by insistently campaigning that the LTTE was at the ACF. But Jehangir was widely known to be undependable and a hardened criminal, swearing loudly to kill all Tamils. And senior police officers could hardly have taken him seriously. Unless the Police were being cynical about following orders to rescue the ACF staff, they could hardly have sent Jehangir as part of the team. Nor does it explain how a team ostensibly sent to bring the ACF workers to safety, simply massacred them with the commandos looking on; or the far reaching cover up involving the highest levels of the State and systematic terror against witnesses.

3. Main Elements of the Cover-up Strategy

3.1 Flimsy Alibis – Foretaste of a Cover Up

The fairness of the Commission's inquiry was vitiated from the start by the AG's Dept. The Department directed the evidence, advancing police versions of when they got to know of the murders, even when they were patently absurd. [\[2\]](#)

Deputy Solicitor General (DSG) Kodagoda who was in charge of directing the evidence and whose influence over the proceedings was so disproportionate, told the Commission very categorically on 2nd September 2008, “*ASP Sarath Mulleriyawa who was supposed to have congratulated [the killers according to the UTHR (J) report] was not even in Mutur at the time.*”

Since this contradicts our main witness's testimony, we began the painful process of rechecking (independent of our main witness) whether an ASP was present in Mutur at the time of the killings, and if so, who it was [\[3\]](#). The commission proceedings themselves suggested that no ASP was present in Mutur at the time of the incident.

Sub Inspector (S.I.) Sarath Wimalaratne (14 Jul.08) told the Commission that during the siege of Mutur Acting OIC Abeyratne was in charge. He stated that his permanent OIC Ranaweera and SSP Kapila Jayasekera arrived at the Police Station as part of the relief at midnight on 4th August 2006. He could not name anyone else of importance among the arrivals. No ASP was named among them. S.I. Wimalaratne was categorical that no one arrived by day on the 3rd or 4th. Asked about ASP Mulleriyawa's arrival, Wimalaratne said that he arrived in mid-August (2006). Thus according to him there was no ASP at the Station throughout the 3rd and 4th and the Acting OIC was in charge.

This presumed absence of the ASP attached to the station amounts to unbelievable dereliction of duty by the senior-most officer at a time of crisis for his men when all leave is routinely cancelled. We had reported that the ASP and OIC came at the first possible opportunity when the relief commandos arrived on the 3rd August afternoon. Some of the answers we received from those who made inquiries suggested attempts to spread disinformation.

One police source said that Mr. Saman Ratnayake was there in Mutur as ASP and not Sarath Mulleriyawa who took up the position after the incident. The source added that Actg. OIC Chandana Senanayake was on the peace keeping mission abroad at that time.

Another witness who knew ASP Saman Ratnayake well said, ASP Ratnayake was during that time operating from Trincomalee and was definitely not in Mutur at the time of the incident. Further cross checking with trusted sources confirmed that ASP Mulleriyawa was present in Mutur Police Station at the time of the killings along with OIC Senanayake as we had reported.

Two more alibis are instructive about the pressure on police officers to change their stories. PC Nilantha whom we identified as involved in the killing was questioned by the Commission for about a mere half hour, claimed that he had been away on leave and arrived at the station at midnight on 4th August with SSP Jayasekera's party – that is after the killings. Here again we checked with others who were in the station, who confirmed Nilantha's presence. One of them, not our main source, when asked privately recently changed his story saying Nilantha was on leave. He also admitted earlier that his superiors had instructed all police personnel not to tell the truth. Police officers had evidently been instructed to stick to a given version after our report of April 2008.

On Susantha, the other policeman identified by us as having been party to the killings, a police officer recently claimed when asked privately that Susantha was injured on the 2nd August 2008 and had been sent to Trincomalee on a naval boat the same day. However in his testimony before the CoI, Susantha implicitly admitted to his presence in Mutur. For example Susantha said he received a call on his mobile from OIC Ranaweera saying he is coming to Trincomalee and spoke of commandos coming to the Police station on the 4th.

3.2 Commandos and Home Guards

Since the publication of our report, it had been widely reported that the killer team comprised commandos, policemen and home guards going together. The Commission's movers, as we demonstrate, adopted several measures to break this. The more ambitious move was to discredit any suggestion that the commandos went out with home guards at any time. Ambitious, because S.I. Saratchandra in his closed door testimony before the Commission CoI on 2nd August 2007 said that a party of commandos left with home guard Jehangir from Bunker No.7 at 4.00 AM on 4th August 2006 and came back with the commandos at 4.00 PM. When he testified before the CoI on 24th/25th May 2008, Saratchandra greatly attenuated his earlier testimony by saying that he knew this, not from direct knowledge, but when he overheard Jehangir telling his 'friend' Cader. The Commission's movers went into a panic when Home Guard Cader appearing on 30th June 2008 said that he had seen home guards being dispatched with the commandos on the morning of 4th August, and as he had heard or inferred, on instructions from the Acting OIC Abeywardene. Such desperate games logically necessitated stopping video-conferencing and threatening local witnesses.

We also point to instances, where a Muslim witness Cader was assailed by the DSG Kodagoda at the public hearing on an apparent inconsistency between his not requesting protection at the closed door hearing in September 2007 and requesting for protection when he testified in July 2008 and embarrassed the State. The more pressing reason for the attack on Cader and denying him protection was that he at the closed door hearing in September 2007 denied seeing the commandos leaving the Police Station early morning on 4th August, but told the public hearing on 26th June 2008 that not only did he see them leaving, but moreover they went in the company of home guards. His testimony too gave strong indications that he was an eyewitness to the killings (see 8.3).

By contrast S.I. Saratchandra who altered his testimony conveniently on the same point about the commandos and home guards from the closed door to the public hearing was left unchallenged. On the other hand, when it comes to witnesses who may be inconvenient, we shall see that the investigation unit has been hyperactive to intimidate and suppress.

4. The Time when the Police knew of the Killings

The Police's claim that although they were barely half a mile from the scene of crime, they were informed of the crime of 4th August only two days later has gone deliberately unchallenged. The purpose of this late time is evidently

to push the line that the LTTE was in control of Mutur town throughout 4th August and even the 5th. Examining the evidence of S.I. Sarath Wimalaratne, the head of an intelligence unit based at Mutur Police Station who claimed that SSP Kapila Jayasekera had placed him in charge of a 'war crimes unit' apparently created by himself.

Questioned by Miss. L. Karunanayke of the AG's Dept., counsel to the Commission, with undue deference: "*Because of your expert knowledge and the intelligence you have, (what are your thoughts) regarding matters leading to the identification of perpetrators of the crime?*"

S.I. Wimalaratne answered, "*A special team led the investigations into the death of the 17. We have come to know certain things from this area. During this period the LTTE were in the city. The operations to rescue the city went on till the 7th. All roads to the city were closed down by the LTTE. It took some time to clear all these. I've no such expert knowledge to know who killed these 17, but sir, I firmly believe that since the city was in the grasp of the LTTE terrorists it would have been the LTTE terrorists who perpetrated this crime.*" This was dubious expertise.

An early Police report to the CoI claimed that an anonymous call received by an ACF staff member in Trincomalee told of the killings on 6th August 2006, which was in turn communicated to SSP Kapila Jayasekera. This was the line taken by DSG Kodagoda in his first briefing to the Commission on 14th May 2007. In fact the killings were widely known on the 5th morning. Let us look at some relevant evidence before the CoI.

SSP Kapila Jayasekera had been at the Mutur Police Station from midnight on 4th August. Policeman Abdul Raja Jawahid saw Kapila Jayasekera and Inspector Zawahir at the Pansala Junction when he went from the station to check on his family on the 5th August morning. This junction is barely 200 yards from the ACF office. This was the day journalists were given a conducted tour past this location to the hospital very close to the ACF and the area had been thoroughly combed after the incident at the Hospital on the 3rd evening where a commando was killed. A policeman who had taken refuge at Al Hilal School on the further (east) side of the ACF office told the CoI that army commandos had come to the school on both 3rd and 4th August. About 5.00 PM on the 5th evening, PC Jawahid heard persons who had arrived from Trincomalee talking about the ACF killings in the Mutur police canteen. How could Jayasekera and Wimalaratne not have known?

5. The Time of the Killings

Our report placed the time as around 4.30 PM on 4th August 2006. The time given by us was based on the corroborated account of an eyewitness (Witness-1) contacted and spoken to by us in early 2008. This corresponded with another eyewitness [4], an elderly local Muslim (Witness-2). Witness 2's testimony was available to us just over a month after the incident. He said that one group of armed men came to the ACF compound about 4.15 p.m., when he heard shooting (and later saw bodies) and a second group of 'STF' with a senior officer arrived in vehicles about 45 minutes later, spent about half an hour and went away. "STF" was used by him as a descriptive term for persons in commando uniform.

After consultation we decided not to use the information at that time. We felt we must know more about the circumstances and confirm the times. Later we received other accounts of phone calls made by the ACF staff and in Special Report No.23 made the error of supposing that the incident took place on the 5th morning. Further inquiries pushed the time back to the 4th. We had to start anew on a fresh slate.

We had the following information mentioned in Special Report No.30. At about 8.30 a.m. on 4th August, the Methodist priest in Mutur, Rev. Sornarajah had met the 17 ACF staff. At about 11.00 on the same day, several people left Mutur from the Methodist Church premises, about 400 yards south of the ACF, and are very sure that there were no bursts of gunfire from the location of the ACF compound before they left. Following afternoon prayers that day, some Muslims leaving Mutur had asked Jaufer (one of the deceased) to join them, but he decided to stay on. This indicates that the people were killed later than 4th noon.

Around 5.00 PM that day, testimony from within the Mutur Police indicates that four home guards, including Jehangir came back to the Police Station. One confessed to having come on a motorcycle. This corresponded with Witness-2's statement [5] that he saw Jehangir and another home guard leave the scene of crime on a motorcycle taken from the ACF office.

Witness-1 whom we spoke to a short time later in early 2008 was able to clarify matters. Witness 1 had first hand knowledge about the circumstances of the party that proceeded from the Police Station and what happened at the ACF office and corroborated Witness 2's statement that Jehangir was one of them. It removed any confusion regarding the day on which Witness 2 observed the event. Being late afternoon, it could only be Friday 4th as the staff was definitely alive in the morning and by 5th morning their death was known to ACF and their families. Both witnesses confirmed the time as late afternoon, around 4.00 PM. This is our principal evidence that remains unshaken.

A draft report on the ACF case, which we call Draft-1, prepared by an assistant secretary to the Commission and the secretary to one of the commissioners, had a dilemma with the time of death because of Rev. Sornarajah's testimony that he met the ACF staff after 8.30 AM on Friday 4th. This conflicted with the time of between 3rd night and 4th early morning given by the government pathologist Dr. D.L. Waidyaratna. The latter was more convenient for making a case that the killings took place when the LTTE was still in control.

When the Commission met on 2nd September 2008, the Chairman said categorically that their mandate ended on 3rd November 2008, and by early October 2008 four of the original eight commissioners had left or been thrown out. [6] But the mandate was renewed with some additional commissioners appointed, and it appears that new witnesses were called specifically to address difficulties caused by testimonies before the old set of commissioners. One of those called was Dr. Waidyaratna.

6. Questions about the Post Mortems and Peter Apps' Testimony

Dr. D.L. Waidyaratna, the JMO, reaffirmed before the CoI in January 2009 that according to his expertise he estimates the time of death to have been during the early hours of August 4th and that his assessment was in line with the time of the victims who had communicated with their families. Waidyaratna also said that he had been told by the Director General of the Health Ministry Dr. Athula Kahandaliyanage (now Secretary, Ministry of Health) to conduct post mortems on a few bodies without giving him relevant details. The acceptability of his evidence depends also on the propriety of his conducting the post mortems on what amounts to a political instruction without any consultation with the Mutur Magistrate, the Trincomalee Magistrate who was acting for him or the Hospital Superintendent, Dr. (Mrs.) Gunalan, to whom the Magistrate's post mortem order had been directed.

The CoI failed to do justice to our report that a pathologist had told Peter Apps of Reuters that the likely time of death was the 4th afternoon, in line with our account. It appears to have closed the matter at Waidyaratna's denial that he spoke to any journalist. We did what the Commission should have done – ask Peter Apps, who is a well known figure, about his report for Reuters which is in the public domain. We quote from our Special Report No.25:

A strong indication that the JMO had been under pressure to report a time different from that determined by them scientifically appeared in a Reuters report of 8th August 2006 filed by Peter Apps, where he stated, "*The pathologist said they likely died later on Friday [4th August]*". Apps clarified in a subsequent note, "*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 post mortem reports were signed by two pathologists. The other who assisted Waidyaratna is Dr. L. S. Dharmadasa. We have not seen reports of the latter appearing before the CoI. The Commission was having a difficulty with the early time given in the post mortem report as seen in Draft-1 of September 2008, which said: "*Time of death crucial. (Probable time of death after 8.30 AM on 4th August to 5.30 AM on 5th August.)*" After

summoning Dr. Waidyaratna, who did not add anything new, the *Island* report (14th July) said: “*The Commission led by Nissanka Udalagama, former Supreme Court Judge, has concluded that the death occurred on the morning of the 4th of August 2006.*” We still do not know how the Commission overcame the acknowledged difficulty. Its conclusion as we see cannot be defended.

7. Rev. Sornarajah’s Testimony

During the CoI proceedings, the state counsel’s flattering address of witnesses who supported the cover up contrasts with the hostility shown towards witnesses who challenged it. One was Rev. Sornarajah who testified to meeting the ACF staff alive after 8.30 or perhaps 9.00 AM on 4th August 2006, which questioned the official post mortem report. His harassment which began after his closed door testimony in 2007, continued into commission sittings, when officers from the police investigation unit forced an entry into the witness protection room at the commission premises.

Rev. Sornarajah told the Commission on 5th May 2008 that he and the Acting DS Manivannan met the ACF staff after 8.30 AM on 4th August. On the previous day the Tamils had planned to leave Mutur along with the Muslims. When the Tamils found the Muslims had left without them, they were worried that they were among the few left behind. In the course of Rev. Sornarajah discussing with Manivannan to move the Tamil people, the two of them also called on the ACF staff and advised them to leave with them. The two got back to the Church, left the elderly in a Muslim school where there were refugees and left Mutur, using a tractor to transfer the sick and the others walking behind it. Sornarajah clarified in response to another question, “*I think at around 8.30 AM [Manivannan and I went] to the Arabic College, but the Muslims weren’t there. Then we went and met the ACF staff. After that we gathered the people in [the Roman Catholic and Methodist] churches & by the time we left it was 11.00 [AM].*”

In answer to a question, whether they saw Army personnel in Mutur town and whether they were able to speak to them or just saw them?”, Sornarajah replied, “*We were afraid for our lives, they were firing and advancing towards us.*” Asked for the time, he gave it as 10.00 – 11.00 AM on 3rd August. When asked by us recently about this, he said that the ICRC had received a message on the 3rd asking the injured to be brought to the jetty to be conveyed to Trincomalee. He went with Manivannan by motorcycle while the ambulance with the injured followed behind. As they neared the jetty the army advanced towards them firing. It was then that he and Manivannan realised that the ambulance driver got scared and had turned back. They too retreated quickly.

The Tamils who left Mutur on 4th August are convinced that the ACF workers were not killed while they were there – not before 11.00 AM since gun fire from the ACF office would have been prominently heard at the Church and Al Hilal School. Not surprisingly Manivannan failed to support Rev. Sornarajah on seeing the ACF staff on the 4th morning. The information about Rev. Sornarajah seeing the army was itself an answer to a question put by a commissioner who was later thrown out. Testimony conflicting with the LTTE being the sole presence in the area at the time of the killings was not a favoured topic at hearings.

How inconvenient a witness Rev. Sornarajah had become surfaced in the tea break that followed, when members of the police investigation unit tried to intimidate him

8. The Cader Affair

8.1 Cader sets off an Alarm, while Jehangir claims having slept through

Home Guard Jehangir, one of those responsible for the killings, claimed before the CoI to have slept through from the 2nd to 5th August 2006 in a bunker. We reported that on the contrary he was noticed quite prominently by those at the police station after his brother’s death on 2nd August at the hands of the LTTE, very angry and swearing revenge. Other testimonies from the Police before the Commission placed Jehangir on active duty in Bunker 7

during the period he claimed to have been asleep in another bunker. As for the perpetrators, Jehangir said in November 2007 during the closed door hearings that he suspected the Karuna group, because in times leading to the war, “*They came in a three wheeler and took away someone, further they had killed a person in a bus and had shot several others.*” Police Constable L. Wijesiri testified that Jehangir was skilled in using a light machine gun (LMG). (In our earlier report on the case we quoted Witness-1 testifying to Jehangir’s expertise with weapons, including M-16 automatics firing 5.56 mm bullets, bullets of which kind were among types found at the scene by ACF staff.) SI Saratchandra’s and Cader’s testimonies have said that he had accompanied the commandos showing them the way. We have in Section 2 noted Jehangir’s notorious criminal record.

Cader had in the closed door hearings in 2007, as reported during the commission proceedings, said something cryptic about “*those who had committed the crimes will suffer*”. On being questioned at his first appearance before the open session of the Commission, contrary to what he told the closed door session, he hesitatingly admitted, seeing home guards Jehangir, Shiraj and Aniz leaving the Mutur police station along with commandos early in the morning on 4th August 2006.

His defensive manner of answering the DSG appears in the sample below, but he remained consistent on the commandos going out with home guards (the questions are underlined):

You are under legal duty to tell the whole truth and nothing but the truth. I’ve been without a job for two years; nobody came to my assistance (not the Police). Three people (Jehangir, Shiraj and Aniz) went out with the army from the Police Station. Will I have any problems if I tell the truth? You said a group went out of the Police Station? Not a group the army...How did you find out that these three (home guards) had left the police compound? Abeywardene instructed them to accompany the army because there was no one else. Not only I knew but the others also knew. Were you present when Inspector Abeywardene gave the instruction? I was also present. I received the instruction but I didn’t go.

Previously you told me Inspector Abeywardene gave instructions on the 3rd night?..... So Jehangir left the Police Station on 4th August around 4AM? Yes, after 12 O’clock the day changes. Did they leave the police station to a particular location? Opposite the 7th point there is a road that leads to the Pansala they took that. Did you see them? The dogs were barking and you can see the army moving.

8.2 The Demolition of Cader

Cader thus raised an alarm. Usually witnesses who helped in the cover up were dismissed quickly. PC Nilantha was allowed to go after about half an hour. Cader was questioned for five days. Some points in Cader’s revelations, threatened the planned cover up.

1. He had seen the commandos leaving with the home guards at 4.00 AM on 4th August. SI Saratchandra in his closed door testimony also confirmed this. During the public hearing he attenuated to merely overhearing a claim made by Jehangir to Cader.
2. His claim of having been to the scene of crime on the 5th morning with other home guards while commandos were on the road, means the crime was well known in police station circles.

Army Zarook (apparently a local intelligence agent) came to the Police Station at 1.00 PM on the 4th August bringing beedi (Local cigarettes) and food, and informed them that the entire town was under the control of the security forces implying that there was no longer a threat from the LTTE for their movement inside town. We will see that the Commission’s final report relies heavily for its conclusion on the supposed absence of the Army from central Mutur throughout 4th August.

Enormous effort was devoted by the DSG and counsels for the Army over five days to demolish the witness principally by foisting their bogus version over Cader’s slightly distorted story of the motorcycle theft from ACF. Both shied away from the truth for their own reasons.

An honest inquiry would first have obtained an inventory from the ACF to form some idea of what was stolen and when. DSG Kodagoda showed Cader photographs of the ACF premises taken on the 6th afternoon and the 7th displaying three motorcycles, two of which, Kodagoda and the Army's counsels insisted, were stolen on the 8th. Cader repeatedly stated that the photographs were different from the scene when he removed the motorcycles. Cader denied seeing the body of Jaseelan near the motorcycle shed. This is easily an oversight given that the CHA that visited the scene on the 6th and took photographs counted only 15 bodies. There were in fact 17.

Our inquiries revealed that there were originally five motorcycles (the photographs showed three). The two newly serviced Honda Hero bikes were the ones stolen. On the best evidence we have, this was done soon after the killings on the 4th. The three remaining, which were photographed on the 6th and 7th were old Yamaha bikes. This has been confirmed by ACF persons who collected the corpses on the 7th. The charge of lying against Cader was thus based on the counter-factual presupposition that the scene in the photographs was that before the motorcycles were stolen – it was the scene after two motor cycles had been removed. Of course the early theft of two motorcycles by home guards (who operated with the Police) was a taboo subject as it would discredit the Police's supposed ignorance about the incident for two days.

During the questioning Cader had stated that he had brought his family to Colombo because he no longer felt safe in Mutur because of threats from Army Zarook and Jehangir. There was no sympathy for him. In a grand inquisitorial gesture, Kodagoda, the virtual master of ceremonies, suggested that the witness' claim for protection was unfounded. What follows is from the final exchange between Kodagoda (underlined) and Cader on 8th July 2008.

I have an official record of what you informed the protection officers of the Investigation Unit. 30th June 2008: Before you came in the afternoon you didn't ask for protection. After you gave evidence you asked for protection at 1.45pm. I can't remember. On 13th and 15th of September 2007 – you have very specifically stated that you didn't need protection? I didn't have any problem in my village then. If you didn't have any problem why didn't you come out with the truth in September, 2007? I wanted to go home. That's why I said I didn't want protection. Why didn't you bring your family and ask for protection at that time? I didn't understand the situation.

The same problem confronted another policeman who lied to the Commission at the closed door session as ordered by his superiors because they knew the dire consequences of telling the truth, and Kodagoda knew this. Later when he told the truth to the IIGEP, Kodagoda dismissed him as a liar. Cader reappeared before the Commission a month later and changed the date he went to the ACF premises from the 5th as earlier stated to 6th August, while insisting that all else he said remained unchanged. This may have been to make the Police happier. While this made no material difference, it was ammunition for the Commission to deny him any protection. A source close to the Commission said a few months ago that Cader was believed to be in hiding in Colombo still but was not provided any protection by the Commission.

8.3 The Real Dilemma over Cader: Was he an Eyewitness?

A careful perusal of the proceedings involving Cader, taken with the actual time of the theft of the two Honda Hero motorcycles (4th evening) would strongly urge the conclusion that Cader was an eyewitness. His conduct suggests that if the Commission so wished, they could have got the truth out of him, but proved instead hostile to him. Often a ready pretext for this hostility was that the witness was going back on earlier testimony – a situation that is natural to a case where one could not speak the truth and live in peace. Besides, lying policemen were even complimented.

Behind Cader's attempts to negotiate hostile questioning, were also pleas for protection: *"I'm a poor person with a wife and children, I know nothing about these murders but some people may have or may not have gone from the Police Station and done it or not done it."*, and *"I was frightened [earlier] and because I may end up in further complications, I didn't tell the truth [at the closed door hearing that I saw the commandos leaving the Police Station at 4.00 AM on 4th August]. There are so many senior people in the station who have lied saying they didn't see the commandos coming to the police station."*

To place Cader's actual position in the drama, we must go back to the facts presented in our Special Report No.30. As Cader too confirms in relation to the arrival of Zarook at the Police Station, by the afternoon of Friday 4th August 2006, there was a sense that the danger from the LTTE had passed, leading to an eagerness to go out and see. After the commandos came back late afternoon, they went out again at the behest of the ASP and OIC to the ACF. It was also a pretext for those who wanted sight-seeing to join in. Cader's silence about the afternoon and evening is deafening.

Our own inquiries about Cader, yielded the information that he was a seasoned home guard, who was used in intelligence gathering as well as combat operations. Some of his relatives died or went missing during the siege of Mutur while it was subject to relentless army shelling as well to the LTTE's search for suspected enemies. On 3rd August, he left Mutur Police Station several times in civil clothes, as was his wont, to gather information about the LTTE presence and movements.

We have remarked on Cader's silence about his own doings on the 4th. He was hardly seen at his post in Bunker 7. We were told by persons at the Police Station that he again went out on the 4th, when the LTTE was pulling out, and was involved in burying weapons from the police station outside for future use. A sizeable number of weapons at the Station were disposed of in this way.

SI Saratchandra's testimony in 2007 mentions home guards HG 68071 Zahir, HG 62284 Cader, HG 65074 Ramazan and HG 26161 Jehangir as serving then in Bunker No.7. Another officer at the police station named Jehangir, Ramzan alias Ganguly and Rilvan as being among the home guards who went out on the 4th afternoon, and Rilvan had told him at that he came back on a motorcycle, which he had not brought to the Station. We also got back to the former ACF worker who knew Witness-2 well. He confirmed that Witness-2 stated that soon after the killings, Jehangir, went from the scene on a stolen motorcycle.

If we thus work on the basis that the motorcycles were stolen soon after the killings, and as Cader says he and Ramzan were party to the theft, we must conclude that they were at the scene about the time of killing of the ACF workers. Let us look at other facts that are relevant to this.

Cader stated that the commandos went out early in the morning on 4th August with home guards Jehangir, Shiraj and Aniz, but avoided saying anything about the crucial evening expedition described in our report, which led to the killings. SI Saratchandra referred to the morning expedition by commandos in his original August 2007 hearing adding that they returned at 4.00 PM, but Cader told the CoI in July 2008 that the commandos did not return, but stayed out in various other places. Cader also initially tried to distance himself from Jehangir saying wrongly that Jehangir was in Bunker No.4.

Cader appears to give (Army) Zarook, apparently an army spy, who came to the Police Station in the afternoon and told them that the roads were safe, a central role in their subsequent activity. Cader's evidence about Zarook, places the latter as present in the Police Station on the 4th afternoon.

Cader is silent on what they did afterwards although it was quite safe to go out. We said in our report that the presence of the ACF workers had been talked about and a call from the Trinco Police asked for them to be sent safely, but this instruction was travestied. Someone presumably superior to SSP Samarakoon gave other orders, which resulted in the ACF workers being killed.

A policeman, different from the others referred to above, disclosed that home guards Jehangir, Ramzan (alias Ganguly), Fahid Rilvan and Sultan Faseeth were among those who went out on the 4th evening. He added that Rilvan had told him upon his return that he came back on a motorcycle, which was however not brought into the station. The fact that Jehangir and Ramzan who were in Bunker No.7 went, would make one very surprised if Cader, who shared a bunker with them and was part of the crowd including Zarook, did not go with them to the ACF office.

Our contact in the ACF said that starting the Honda Hero bikes without a key was easy for someone who could get

into the starting circuit behind the headlight and below the switch. This would have been easy for Cader who is a mechanic. The fact that Cader claims Zarook as the person who forced him to go into the premises with the corpses and take the motorcycles suggests that Zarook was also present with the commandos and policemen. Police officer Jawahid also stated before the Commission that on 5th August he saw Cader and Ramazan riding a motorcycle on the streets in Mutur. Significantly, Cader also told the Commission (July 2008) that Zarook was remorseful about the killing of the Muslim ACF worker Jauffer.

Several persons close to the Commission felt that Cader wanted to tell the truth, but there was no eagerness on the part of the commissioners to pursue it, as there was an inbuilt fear of displeasing the Ministry of Defence, the AG and Sinhalese nationalists working as a front spearheading the cover up.

We have been able to confirm from persons close to the police investigation unit that Cader followed the commandos to the scene of crime on the 4th afternoon and on his own admission was on the spot just about when the killings took place. There were others present whom we know included Jehangir, Ramazan, Zarook & Rilvan.

These sources told us that the same evening (4th) after the killings, Cader went into the ACF compound to take one of the ACF motorcycles. Jehangir confronted Cader and asked him to get out when a blistering argument ensued. Cader took a motorcycle and went away, but not directly to the Police station. Cader's story to the CoI was along these lines, but with the time shifted to the 5th morning. The AG's Dept. wanted it to be the 8th. Later that month (August 2008) Inspector Zawahir produced Cader in court for motorcycle theft. Zawahir had claimed in his report that the motorcycle was stolen from Kinniya. Cader objected and said that it was stolen from Mutur. Cader then started talking about being tortured by the Police. Zawahir shut him up saying there is no need to talk so much before the Magistrate and took him away.

The foregoing further strengthens the testimony of Witness 2. It places in perspective why the officer requested by the Commission to head the investigation unit was rejected by the President's office in favour of someone who would take orders from them, the role of party men in the Commission and in particular the AG's Dept. and why Dr. Nesiah was effectively sacked from the Commission. Kodagoda certainly and very likely some commissioners knew that Cader was an important witness to the ACF killings.

8.4 'Hiding a Pumpkin in a Plate of Rice'

The matter has been rendered uglier and more dangerous for witnesses because the state machinery from the Justice Ministry and AG's Dept. worked in tandem with the lower levels of the security forces to cover up what is quite obvious to civilians. An easy case for the Police became treacherous because the Police was desperate to hide its culpability. People in Mutur who kept their ears open have heard a good deal.

A person whose family knew several home guards, and heard some of their conversations and is now out of Mutur, disclosed that there was an argument among home guards during a drinking party, where some were angry that the Muslim ACF worker whom they well knew and used to come to their homes had been murdered. Jehangir and Zarook were named in these discussions. Some graphic accounts of the killings were also overheard by the witness. The Driver Ganesh who was killed had for about 15 years been associated with Mutur and was well known. Before the shooting commenced, he had shouted, pleading the gunmen spare his daughter Kavitha.

Another development which resulted in tensions between the Police and Muslim home guards is relevant here. Earlier while the LTTE was active, the Government encouraged both Muslim and Tamil paramilitary units. They were used in attacks on Tamil civilians, particularly those suspected of LTTE sympathies and attacks such as on International NGOs. Special Report No. 30 gives an instance on 10th June 2006 when a Muslim home guard attack on passengers in a bus directed by an ex-STF police officer Kithsiri resulted in the death of two passengers, including a 12-year-old boy and the intimidation of the boy's aunt by Kithsiri to prevent her giving evidence.

About mid-2007 after the defeat of the LTTE in the East, the Government became alarmed by the large number of weapons missing from Mutur police station. According to local sources scores of Muslim paramilitary elements were

rounded up by the Police, taken to Colombo and tortured. Many weapons were recovered. The detainees were released and warned not to go to any doctor for treatment. The new situation in which local attempts seeking an inquiry into the government shelling of Mutur along with the LTTE's depredations was suppressed by intimidation and Sinhalese extremist groups started making claims on local land citing Buddhist cultural pretexts, resulted in alarm among the Muslims as well.

9. The Garage Owner: Recasting Awkward Chronologies

The Sinhalese garage owner Sarath Mahinda (58) was practically a lone civilian in Mutur West, while it was under siege. From our own experience in this case, when questioning witnesses, great care needs to be taken over dates. Times are easier to remember. After all, a good deal hinges on the day and time of the incident. One has to fix days by anchoring them to other events of an established public nature the witness remembers as happening about that time, or by ruling out alternative days on other grounds. Others in Mutur had one shared public event – their exodus on 4th August. Mahinda had been oblivious of this.

Official Counsel Miss. L. Karunanayake who questioned Mahinda on 19th June 2008, rather than trying to fix the days accurately was instead asking him leading questions. In a professional inquiry one does not charge the proceedings with one-sided terms such as calling the LTTE terrorists in distinction to the security forces who also committed many acts of terror during that period. If the Commission allowed it, it sacrificed its objectivity and competence and is one way or the other prone to prejudge the act of terror under review. In the samples below, the questions are underlined and the answers are plain.

Who were these people [you saw while you were hiding in Edirisinghe's house]? I think they are terrorists. Did you only look secretly through the toilet once and see terrorists? Several times... You are referring to Friday August 4th at 5pm? Yes... What did they say to you? You were here for 3 days you must be punished (in Tamil). What did you say to them? This is only a small mistake on my part. I have no where to go... They suggested in Tamil that I be given urine to drink. So I drank it...On the 5th did you go along this road near the ACF office? No. One would immediately suspect here that the script had been prepared and the witness was being helped not to get the important parts wrong.

There was a common thread guiding the conduct of the counsels for the State and the Army – to make out that the LTTE was in control when the killings took place. This meant advancing the time of the killings or delaying the departure of the LTTE. The bit about the urine gave added effect by drawing attention to the apparent proclivities of terrorists. We quote from the notes of a scholar interested in the goings on in Mutur who talked to Mahinda much earlier, and got his story shorn of the melodrama of imbibing urine:

"We then went back to Muthur, had lunch, and went to get the brake shoes changed at Mahinda Basuna's (Mechanic's) garage next to the DS office. He seemed happy to see me after such a long time, and started talking right away about all that had happened in Muthur in August 2006.

"Initially, when the Tigers came, about 25 came past his house; later more came. He stayed inside his house and hid against the wall. A shell hit his veranda and destroyed the roof over it, so the firing was very close. After the tigers came, he hid for three days. Once, when it was quiet, he crawled out into Sinnamattakalappu (on the south side of the road, behind the DS office. There he heard a bunch of cadres talking while they were eating. Interestingly, all spoke with an accent of Tamils from Kandy (this means they were upcountry Tamils). They did not have a Jaffna, Batti, Mutur or Toppur accent. When he was discovered after three days by the Tigers, he addressed them as 'annachchi' which is the LTTE way of addressing senior cadres (instead of 'annan' or 'sir'). As he spoke Tamil, they did not figure out that he was a Sinhalese, which must have saved him. They threatened him saying that since he had hidden from them for three days, he must be punished. Then he got scared that they would execute him. But when he pleaded with them (using 'annachchi'), he was sent off with a curt 'ni po' (get lost).

"On 'the third day', the army came to the hospital. (There was some confusion here, as my interpreter and I were not sure if he spoke about Friday (4th) or Thursday (3rd). My interpreter assumed it was Friday, but I believe it

must have been Thursday.) They came to the hospital, and went back to the Police Station. (This must have been the road past the pansala or Buddhist temple or the road past the ACF office). They did not come along the main road in front of his house. Only on the day after the LTTE left did he see army near his house.

“The next day he woke up in the morning and realised that there was nobody there. He then decided to go looking for his wife and children, and walked to the Methodist church. On the way, he met two Muslims who told him that everybody had left. There was no army, no LTTE on the road. One tea shop was open, and they wanted to give him food. But he said that since he hadn’t eaten anything for days, he only wanted a cup of tea. After drinking this, he walked back to his house around 1.30; by 1.40 he got home and there were soldiers...On one of the following days, a group of journalists came with the army and he sat with two female journalists in his door opening, and described to them what had happened.”

The scholar added, **“He got a bit confused when I asked if it was on Thursday or Friday, but he was absolutely sure that the LTTE were at the area near the DS office on ‘the third day’, and that the army came to the hospital on ‘the third day’, and that the day after, the LTTE had left, all was quiet, and he walked into town.”**

What is clear is that people often connected events not with the day of the week, but with the 1st, 2nd or 3rd day etc of the siege. Here too there is room for confusion. On Tuesday 1st August there was a confrontation at sea and the ferry service from Mutur to Trincomalee was stopped, but the LTTE took control of Mutur in the early hours of Wednesday 2nd. S.I. Sarath Wimalaratne takes the start as the night of 1st August when the LTTE attacked the old jetty in Mutur. Thus to fix the days in a useable manner, we need to look for other links. On the basis of testimony from sources at the Police Station, we stated that the commandos arrived in the afternoon of Thursday 3rd and went towards the Hospital, where they checked people sheltering there, during which an LTTE cadre wearing a prayer cap shot and killed a commando and injured two others. The Commission received other testimonies of the commandos having been seen sighted around Mutur on 3rd August.

On Friday 4th early morning, the commandos went out, and it is likely that Mahinda encountered some of them near his home about 1.30 PM. The party of journalists mentioned by Mahinda was in Mutur on the 5th. Mahinda’s evidence taken correctly corroborates our reading that having encountered the LTTE in the Hospital the previous day, the commandos were on the 4th morning advancing eastwards cautiously.

Mahinda faced considerable difficulty in connecting events with calendar dates, because that was not the way his mind worked. This is in sharp contrast to his assenting to dates and days of the week suggested to him by the state counsel. The testimony he gave is not his own.

At the end, the state counsel gave Mahinda a commendation, *“Having gone through the trauma of warlike conditions you have given a good description of what you did.”* The Counsel for the Army, Gomin Dayasiri, declined to question him further.

10. Other Senior Security Officials – the Hazard of Total Denial

With the departure of four commissioners by October 2008 and the appointment of replacements the Commission had become docile and toothless. Thus once more the Commission’s mandate was extended. It was by then a mere propaganda tool.

For a long time the Commission although acting apparently under presidential authority, was unable to obtain a list of the commandos, who went to the Mutur Police station, from the Defence Ministry under the same president. The Police investigation unit was to come back with a report on cell phone communications using phones owned by the victims, as the times of the latter calls around the time of death have a bearing on the inquiry. We are not aware of such a report being presented to the Commission. S. I. Wimalaratne who was at the Mutur Police Station reported to the Commission that he got to know the name of one commando officer as Captain Siranjeeva. In November 2008, a commando officer testified before the CoI.

We quote from the *Daily Mirror* of 19th November 2008: “*State Counsel Kodagoda said an assistant of the former IIGEP, David Savage had presented a report based on a testimony of a police officer R. Shanmugarajah who had been in Mutur and now in asylum contradicting his own statement made to the Commission’s investigating team. The report, allegedly an eye witness’s account by this police officer which holds the Commandos in charge of the massacre, Kodagoda said. The report presented by Savage states that the police officer had secretly followed the Commandos when they entered the ACF office, premises and once they entered the office he had heard gunfire while he was outside the parapet wall.*”

Deputy Solicitor General Kodagoda thus introduced the police officer’s statement dismissively by telling the Commission that he contradicted his own earlier statement to it. Set this against the following from the final commission report quoted in the *Island*: “*There is no evidence of any Army personnel being seen on the 4th in Mutur city centre. However, there is overwhelming evidence, in addition to TamilNet declaration that the LTTE were present in the town of Mutur on the 4th.*” Surely this claim is far from the truth. The Commission did not look for the evidence, turned a blind eye to the silencing of policemen and home guards and turned down evidence that was offered without looking at it.

Videoconferencing was stopped, according to commission sources, as soon as the alarm was raised that important witnesses, including Shanmugarajah above, were to be presented. When Shanmugarajah's appearance before the CoI through videoconferencing had been stalled, Shanmugarajah's testimony (on CD along with the transcript) was sent to the COI by David Savage, a police officer with wide international experience, who served as the IIGEP's Adviser Investigations and Witness Protection, and who had been assisting the COI with Video-conferencing. It appears that DSG Kodagoda's offhand dismissal had been the first and the last word on the matter as far as the CoI was concerned. The DSG was surely not naïve about how they were themselves complicit in arm twisting witnesses. We stated in Special Report No.30:

‘Having gone through over a year of deception by the Police and Attorney General’s Department, a simple policeman with a sense of shame, who was then in Mutur confessed, *‘Ape kattiya thamai marala dhamma. Kaatath kiyanda bahe. Api boruwata thamai satchi dhunna.*’ Rendering the Sinhalese idiomatically into Sri Lankan English, it reads, “*Our chaps only killed and dumped them. It is a shame we can’t tell anyone. For lies only we gave evidence [before the Commission].*” Indeed, just before the policemen went before the Commission of Inquiry, a senior officer told them to maintain that they were stuck in the Police Station and did not know what went on outside.’

This is not from the policeman whose testimony was described by DSG Kodagoda.

In the Five Students’ case which will be reviewed in a separate report, we will see how ASP Mahinda Serasinghe was forced to give SSP Kapila Jayasekera an alibi against his wishes. What chance does an ordinary Tamil policeman have in the face of this repressive state machinery that does not hesitate to kill? The fact that the Commission turned a blind eye and evidently took Kodagoda at face value, says much.

Under Kodagoda’s direction of evidence, the commando officer denied taking home guards with them when they went from the Police Station, saying impressively that home guards would have been an obstacle and a security liability, that in his career of 14-years, he had never been in a situation where the Commandos were being assisted or guided, since they move in a different way unique to their training and they use the compass and map; and are never assisted or guided. He said, “*We have been specially trained to sneak up on the enemy and we crawl, kneel and creep when we travel from place to place. It is impossible for anyone to follow us without getting fired if they were carrying a weapon and if he did not have a weapon we would have cornered them...I don’t remember telling them (Acting OIC Police) why we were going and where, if I told them that we were going to the Mutur town city it was to mislead the information (sic) that might have been passed to the enemy.*”

This drama should have placed the commandos in a weak position as testimony during the closed door hearing of August 2007 by S.I. Sarathchandra said that Home Guard Jehangir left with the army commandos at 4.00 AM on Friday 4th and came back in the evening. At that time neither the Police nor the AG’s Dept. thought this would cause controversy. After our report of April 2008 gave details of the ACF staff being killed by a patrol consisting of

commandos, policemen and home guards, someone hit upon the idea of denying the possibility of such a patrol. Saratchandra reduced his knowledge to hearsay at the public hearing in May 2008. The commando officer read out the script in November 2008. A proper inquiry should of course question more commandos.

Sarathchandra, while admitting that he was within hearing distance of gunshots fired at the ACF office half a mile away, said because there was intermittent firing from the east and west, it was difficult to identify shooting at the ACF office. Saratchandra, as we pointed out earlier had supported crucial elements of Cader's testimony and discounted that of Jehangir and the commando officer. A crucial difference between Sarathchandra's testimony in 2007 and the subsequent testimony above is that the earlier report said that Jehangir returned on the 4th evening in agreement with our report, but his later testimony says that Jehangir returned the next day, on 5th August after 11.25 AM.

The Commission was given a choice between trashing SI Sarathchandra and answering the all-important question why the commando officer and Jehangir lied.

The army major general then in charge of Trincomalee was evasive in his testimony before the Commission. He said, *"Some civilians told the Trincomalee GA about seeing bodies in the area and about two and half hours later my troops informed me about recovering the bodies"*, adding that the Army started entering Mutur town after 6th August – i.e. not before the 7th. In fact the bodies were not recovered by the Army. They were collected by the ACF staff on the 7th afternoon. He said that the LTTE was in Mutur town from August 2nd to August 4th or 5th based on the mortar and artillery attacks directed at the army. But sometime on the 4th evening and early morning of the 5th the LTTE had a considerably reduced presence in the area (*Daily Mirror*, 3rd Dec.08).

The Major General also denied that the ACF had approached the Army on the safety of their staff, saying if it had happened, he should have known about it. The ACF documents quoted by us were fairly precise on this point. We quote from our Special Report No.25:

"On 2nd and 3rd August the ACF sought the ICRC's help to evacuate its staff. The ICRC tried to evacuate them by boat from Trincomalee, but did not get guarantees of security. On 3rd morning, the ACF in Trincomalee contacted a colonel in the Army who advised them to ask their Mutur staff to stay in the office as fighting was going on.

"On the 4th afternoon Frank Kano of ACF/ Trincomalee spoke to an army major from its civil affairs office. The Major responded that he was aware of the problem and is working on it and would get back if he had any information. On the same afternoon, Frank Kano went to the office of Nihal Samarakoon, SSP Trincomalee, to hand over a list of their staff in Mutur. Although the SSP was not in, the list was handed over to an assistant who promised to pass it on.

"Also on the same (4th) afternoon another expatriate staff member Elias went by land with 9 staff members in three vehicles to try to evacuate those in Mutur. When they reached Pachchanoor, near Mutur, there was shelling. The Army told them that they cannot use the main road, but could try a short cut and advised them that the Muslims and Sinhalese must be offloaded if they proceed. Elias decided to abort the mission."

In the last instance, the Army had tried to direct the rescue party through Kinanthimunai, the detour through which the LTTE had directed the civilians fleeing Mutur on the 4th afternoon and were screening them using masked informants, whom the Army knowingly shelled. The Army had a position on a hilltop from which the proceedings were visible. The ACF rescue party did not trust the Army's intentions. This was around the same time the marooned ACF staff was massacred. These proceedings would have required a good deal of contact with the security forces and especially the Army. In a proper inquiry it should have been easy to trace the colonel contacted on the 3rd morning (apparently Colonel Abeywardene) and the major in the Trincomalee civil affairs office.

The ACF office in Trincomalee received a call from Mutur on 4th August a little after sunset informing them of the tragedy. This was soon after the party whose rescue attempt was thwarted had returned. It is incredible that the

Police in Mutur and intelligence officer SI Wimalaratne got to know what was widely known to several civilians in Mutur only on the '6th or 7th'. Of course they knew on the 4th! Surely, the Commission had the resources to trace news broadcasts. From contemporary reports BBC Tamil Service got the news from local councillor Rajees, who apparently saw the corpses on the 5th morning. Relatives who went to the ACF office in Trincomalee on the 5th morning knew about it by 9.00 AM (see Mr. Yogarajah's testimony Appendix III, Special Report No.30). Several reporters from the Tamil media were at the office. Sooriyan FM, whose editor Nadarajah Guruparan was abducted in Colombo and threatened 24 days later, carried the news that afternoon. NGO circles in Colombo knew it by mid-day.

11. A Clarification on the Commandos

Our inquiries began at ground level a short time after the tragedy. We did not know anything about the security forces hierarchy pertaining to events in Mutur. The first information we received from Witness-2 a month after the incident, who described one of the groups that came to the scene as STF – Special Task Force of the Police familiar in the East for two decades. From this we deduced that they were commandos wearing camouflage dress, and inquiries suggested that the STF was not inducted into the area. The Navy being the key actor in the area, it somehow through exchanges, we cannot now trace, got into our minds that the commandos were from the Navy, and the name Naval Special Forces Commandos somehow stuck. This appellation appears to be mistaken. We could have done better, but such is the persistence of human error.

We quote from a note written by Peter Apps that also supports Cader's information from Zarook that the LTTE had practically withdrawn from town by Friday afternoon:

“Mutur field commanders later told me that by Friday morning most of the Tiger fighters had withdrawn from town. By the end of the day, Colombo was clearly confident enough to arrange a trip for media the following day to demonstrate that the town was once again in government hands. There was also a suggestion that the head of SLMM might be taken into Mutur on Saturday by the Navy.

“[On Saturday 5th August] around 20 local journalists are flown up from Colombo to the military airbase at China Bay and then bussed to Trincomalee naval base, where my team joined them. We were taken first to the hospital in central Trincomalee to meet wounded evacuated by the Navy from Mutur. At this stage, it was unclear if we will be allowed into Mutur itself. Gossip amongst the journalists was that while authorities in Colombo were keen on letting them in the local commanders were not so keen. At the time, I assumed that was because the battle was not entirely over.

“Around one, we boarded two fast attack craft for Mutur, transferring in the middle of the harbour to smaller assault boats to land on the beach. On landing, we moved swiftly towards the temporary Navy HQ set up in the civilian ferry terminal buildings, the naval camp at the jetty having been left largely destroyed and burnt out. We moved around the immediate area, observing three to five (I think three) Tiger corpses, some destroyed buildings and dead cattle. I also interviewed the commander of the naval infantry attachment (rank Commander, name not given), the commander of the Sri Lankan Special Boat Squadron detachment and also the commanding officer of the first Battalion, Commando Regiment, who had been flown down from Jaffna on Thursday (?) to reinforce the Navy. All said that most of the Tiger fighters had withdrawn by early on Friday but that around 20 to 30 fighters remained moving from house to house in Mutur suburbs firing on the military. Distant sporadic gunfire could be heard at this time.

“We were then handed over to the Commando Regiment for a tour of the town, moving by foot along a road parallel to the coast in a westerly direction as far as the police station, then coming round onto the main road past the Bank of Ceylon as far as the hospital. We saw perhaps two to three civilians in this time. As we reached the hospital, firing could be heard getting closer and moved into the hospital compound. The military had a small post there, but the rest of the hospital was abandoned and we were told it might also be booby-trapped. After around 20 minutes, we began to move back towards the police station and the jetty area, by which time there was both outgoing army mortar and RPG fire into neighbouring rebel areas and small arms firing could be heard

from relatively close by. After another spell at the jetty, we returned to the beach and were extracted by assault boats and returned to Trincomalee naval base, from where we returned to our hotel and the remainder of the journalists were flown back to Colombo.”

Apps’ account suggests that there were naval commandos on the scene, but the group that went to the Police Station and moved inside was from the Army’s 1st Battalion Commandos. This information appears to have been denied to the Commission until fairly late. Lt. Meepalwala, who was at Mutur Jetty during the siege, testified before the CoI on 26th August 2008. Another witness who was at the Mutur jetty told us that there were navy commandos wearing white belts with a badge on the right chest having ‘commando’ written on it. Their uniform was like that of the STF, but of a lighter shade. Army commandos had darker leaves on the uniform. SI Wimalaratne, on 10th July 2008 named Siranjeewa as one of the commando captains who came to Mutur Police Station.

Also significantly, from Apps’ testimony, the Army had taken up position in the hospital, across the road from the ACF, some time before early afternoon on 5th August, whose surroundings must have been well-reconnoitred. We may deduce that it was knowledge of the massacre that prompted the Government to prevent SLMM head Ulf Henricsson from accompanying the journalists. Unlike the journalists, Henricsson was alive to the ACF issue, and would have wanted to investigate. The Government claimed it kept Henricsson away out of concern for his security!

12. Police Constables Susantha and Nilantha

We reported that two police constables were directly involved with Jehangir in the shooting. P.C. Susantha appeared before the CoI on 25th September 2008. We had reported that he was the OIC’s bodyguard and had been issued an Uzi sub-machine gun. Inspector Abeywardene who was acting OIC during the siege of Mutur, confirmed that Susantha was OIC Ranaweera’s bodyguard. Susantha denied this and held that he was no one’s bodyguard and had never seen an Uzi. He had however been in contact with OIC Ranaweera who was away in Trincomalee through a Hutch cell phone which was working at that time.

The other accused, P.C. Nilantha, based his defence on the ill-advised alibi that he was not in Mutur. He said, he was on leave, went to Trincomalee on 1st August 2006, and got stuck there because of the fighting, and eventually he sailed with ASP Ranaweera and 20 other policemen, reaching the Mutur Police Station about midnight on Friday 4th August, too late to be involved in the evening’s killings.

We rechecked on Nilantha and verified from another source at the Police Station different from Witness-1 that he certainly was there in Mutur during that period, and as mentioned in our report. Recently this source changed his story to Nilantha being on leave at that time. During the intervening period he had a chat with a senior OIC. We confirmed that, he was in the party that went on 2nd August to the naval detachment at the jetty for urgent supplies, came under fire from the LTTE and was injured.

13. The Bullet found in Romila, initially identified by Dodd as 5.56 mm.

Originally, Dr. Malcolm Dodd, the Australian pathologist who observed and photographed the second set of autopsies in October 2006, identified a bullet found in the head of victim Romila and photographed and certified there itself as 5.56mm. It resulted in a furore, first with government representatives saying that Dodd is not a ballistic expert and then the Attorney General doing a power point presentation at a press conference in Colombo in June 2007 to prove that the bullet was 7.62mm and not 5.56mm. The Government was very sensitive because the Special Forces commandos who were in Mutur carried guns firing 5.56mm bullets.

In Special Report No.30 we produced more evidence of the kinds of bullets used in the Addendum, where we stated: *“Despite the attempt at a cover up, we argued in Bullet for a Fig Leaf, Special Report No.27, that the Australian forensic pathologist Dr. Dodd’s original identification of the bullet found in **Romila** as 5.56 mm has far better*

standing than his revised opinion that it was the core of a 7.62 mm. The revision was made without asking for the original photograph taken and certified at the second autopsy that should have been with the Sri Lankan pathologist, but is now unaccounted. Dodd's claim that he had relied on three CID officers present who misidentified the bullet is absurd. Dodd's complete first report is appended to Special Report No.27."

We also pointed out that bullet fragmentation identified by Dodd in at least three of the eleven victims on whom a second autopsy was done was common for 5.56mm bullets, but exceptional for 7.62 mm. We cited the work of Dr. Martin Fackler.

The Addendum to Special Report No.30 contained evidence given to us by a staff member of the ACF who had gone to the scene to collect the bodies. It stated: "...the former member of the ACF said that they were casings of 9 mm bullets used by Uzi machine guns, commonly used by bodyguards – or 9 x 19 mm ammunition.

"This immediately agreed with the description of the weapon our sources told us that Constable Susantha was carrying. This former member of the ACF staff was among the team that went to collect the bodies of their dead colleagues and had since faced intimidation. He had the presence of mind to show these remains to a civilian very knowledgeable in weapons. The former ACF staff member told us that the expert had identified the remains.

"In the course of our exchange with the former ACF staff member, he drew the ellipses in a photograph taken when the bodies were collected. The photograph shows that the four women were in a group when they were killed. Kokila, Kovarthani and Kavitha had fallen forwards while Romila had fallen aslant. Her body could be seen enclosed in the red ellipse. The former ACF member told us that the casings found in the red ellipse were 5.56 mm and were hidden. They were in the bloody muck in which Romila's body was. This former ACF staff member collected some when he put his hand into the muck in the process of trying to pull out Romila's body, which was distinguished by a missing left arm. It was the bullet in Romila's head that Dodd had first identified as 5.56 mm." (See [http://www.uthr.org/SpecialReports/Addendum to Special Report No30.htm](http://www.uthr.org/SpecialReports/Addendum_to_Special_Report_No30.htm))

The Commission could not interview the former ACF employee after video conferencing was halted by a Presidential order. Wrongly and unethically, Dodd identifies the bullet shown in a photograph supplied by the Government Analyst in Colombo taken several months later, as the bullet he originally retrieved at the second post mortem. The least the Commission could have done to maintain its credibility was to demand the original certified photograph of the retrieved bullet. If the authorities could not produce it, Dodd's retraction has no value. To the best of our knowledge the Commission has made no demand for the original.

The *Island*, quoting the Commission's final report says, "*Furthermore, the ballistic expert has identified the weapons used for the death of the 17 workers as T-56 weapons; weapons identified in the UTHR (J) report as the instrument of death does not include T-56 weapons.*" We had said in Special Report No.30, "*...the fact that only one type (7.62 mm) turned up in the investigation, whereas the fact that at least three different types of bullets were used, along with controversy about the type of bullet found in Romila, questions the integrity of the process of collection, preservation and transmission of evidence and ballistic analysis.*"

The charge that we did not include T-56's among murder weapons is a misrepresentation. Our discussion centred on the bullet in Romila with Dodd's report as the background reference. The latter had identified several 7.62 mm bullets in the victims. These are mentioned in the Addendum to our Special Report No.30.

The point we made is that bullet fragmentation in three of the victims in Dr. Dodd's report was consistent with 5.56mm bullet injuries. We now come to an important aspect of the Commission's conduct which speaks of the extent to which its procedure has been debased to support the political compulsions of the regime.

14. Intimidation of Tamil Witnesses in the name of Investigation

Hope of compensation is one of incentives advertised that made ACF victims make the traumatic journey to testify. Governments have regularly made political mileage by promising compensation for crimes for which they were answerable.

The Sansoni Commission which went into the 1977 communal violence recommended that ‘*all persons who suffered damages arising out of the incidents which occurred during the period 13th August 1977 to 15th September 1977 be paid full compensation to the extent of such damages.*’ The Government accepted and in 1982 appointed a committee, which never sat. Mr. S. Thambyrajah, one of the victims who has regularly raised the matter, observed (*Daily Mirror* 12 Sept.08), “*Thus it will be clearly seen that Government not only defaulted in this matter but deliberately gave false hopes and cheated the victims.*”

Human Rights Minister, Mahinda Samarasinghe, speaking at the commemoration ceremony of the slain ACF workers in Mutur said the government is to implement a scheme to compensate family members who lost their loved ones during this fateful period (*Daily Mirror*, 9th August 2007).

Perhaps the most telling and scandalous aspect of the Commission is the systematic intimidation of Tamil witnesses, causing so much misery in place of the justice promised by the Commission and the death of at least one – an ACF widow. From the early days of the Commission, witnesses who were suspected of knowing something that might implicate the state forces, or whose testimony would be an obstacle to a cover up, were systematically targeted for harassment and intimidation by the security forces and the Commission’s police investigation unit. The pressure became very high in 2008 when witnesses were being summoned to testify in public.

Even before a summary of the Col’s alleged findings exonerating the security forces appeared in the Press (Island 14 Jul.09), the Commission’s investigation unit rounded up the victim families or their close relatives in their absence and gave them letters to sign and hand over to the Trincomalee Kacheri, agreeing with the findings, praising the AG’s Dept officers for their professional pursuit of the truth and making further claims on the ACF blaming it for the tragedy.

14.1 Mrs. Priya Sritharan

Priya cried before the Commission on 18th September 2008. The AG’s Dept counsel and the counsel for the Army were mainly interested in using ACF families to detract from the issue of the killings and to throw mud at the ACF. Having lost the sole breadwinner, she was obliged to look after two young children. When Mrs. Sritharan appeared before the Commission on 18th September 2008, one of the women commissioners asked her about compensation while, according to those present, the lawyers and other commissioners looked amused. Here is an excerpt with the commissioner’s remarks underlined.

Would you appreciate an allowance for your children’s education as they will need to be educated for the next 10 – 15 years? Yes I would appreciate that. In the past we depended on the Rs.25, 000 salary of my husband but now we are left with nothing. I asked for a monthly payment from the ACF office but they closed down. The State has schemes (she referred to the fact that families of service personnel killed in the conflict receive compensation). Therefore the state may have some plan that might help this witness.

The counsels for the state and the Army were extremely interested in using the families to fault the ACF. Here is an example:

Witness do you know how your husband was killed? I don’t know... Why do you say that if the ACF took the necessary steps they could have brought him back? He went to work on Monday and on Tuesday they could have brought him back.

A counsel for civil society raised the matter of harassment of the witness, which we shall see is the thin end of the wedge. A caller had demanded money from her a year after the ACF paid her Rs. 700 000. In the following exchange, the first question is from State Counsel Jayakody and the rest by a counsel for Civil Society, Ratnavale:

Did you complain to the Police Station about the telephone call? When I go to the office on my return home they tried to stop the vehicle and threaten me. So I didn’t go to the police station to complain. Some times they asked about my husband but I didn’t say.

Who are they? They (traffic police) came behind me following me. I went into a house and hid for an hour. Was it uniformed persons harassing you? Yes. Could you categorize whether they were police or the army? They are the army and the police so when I see them I am scared that they might harm me. Did they come very close to your house? I went and stayed somewhere else and didn't give them the chance to come to my house. Is there a check point near our house? Yes, on my way to work. Did they trouble or harass you? They asked for my telephone number and my address. I avoid the road. Can you identify those people if you saw them again? I don't know. Did you give a statement to the CID? Yes. Did the CID come to your house and question you? Yes. After taking the statement did they contact you thereafter at any time on any pretext? No. Were they courteous to you? Yes.

At the end the Commission surmised that she was probably being harassed because she was a woman. What perhaps the Commission did not want to face up to is that the harassment of witnesses though sometimes incidental to their surroundings was often planned and systematic. The Commission's police investigative unit has in several instances been named. In several cases the harassment became intense once the Commission started calling them from early 2008. One of the intentions was to scare them off from blaming the security forces.

14.2 Mrs. Niranjaladevi Muralitharan

Her daughter Kavishka was three when her husband was killed. Niranjala was admitted to Trincomalee Hospital on 18th September 2008 with her blood pressure very high causing paralysis problems and brain haemorrhage. She died while being transported to Kandy Hospital by ambulance. Some of those who knew her thought the pressures on her were social in nature. She cared for an extended family and worked for the Norwegian Red Cross, but had not complained to anyone at her work place.

Her late husband's colleague told us that there were social pressures that all women in her situation face, but what she faced because of the Commission were extraordinary in nature. Once the police investigation unit moved and she was brought to the attention of the local police, the latter too got into the act of harassing her. Besides, her late husband's colleagues, Raj, Siva and Sudarshan had been a source of moral support to her, had to quit Trincomalee in a hurry. These three were compelled to live in hiding elsewhere after the Police started going to their homes in the wake of commission sittings in mid-2008, searching them and asking questions as though they were LTTE suspects.

Niranjala was called by both the police investigating unit as well as the local Uppuveli police. She was called twice to the Uppuveli Police Station in January/February 2008 and twice later in May/June. Once the Police stopped her under the Banyan tree near the Uppuveli station and asked her distressing personal questions. Among them were why she, being a Trincomalee girl married a man from Batticaloa, and whether she could not find a man in Trincomalee? One objective as mentioned earlier is to scare these witnesses from saying who killed their loved one. On the day before she died, she had called Raj who was out of Trincomalee. She told him in a tone of distress that she had received a letter asking her to appear before the Commission. She asked him anxiously what she should do. Raj called the same number the next day and on asking for Niranjala was told that she was dead.

14.3 The Cost of Being Honest With the Dead

Miss. Kokilavathani Vairamuththu was from Menkamam near Muttur. She is survived by her mother and a younger sister Kausalya, and brother Senthokkumaran. The Police have acted seemingly out of a fear that being from Muttur, the family knows more about the ACF incident. From friends of the family we have heard that they were under pressure to give a statement saying that the LTTE were present at the time of the killings.

We got to know from a friend of Kokila that her younger brother Senthokkumaran had been receiving calls to give a statement against the ACF. This friend told us that *'the phone calls were made by persons who would not give their name and whose number was traced to the BMICH – the centre where the Commission was sitting – They were very much afraid, but I heard that since their visit to ICRC and NVPF they were feeling somewhat better.'*

Senthokkumaran: Following further inquiries we obtained a more complete history of the plight of Senthokkumaran. Four months after the massacre in which his sister died, Senthokkumaran, who is now 25, was abducted by men in plain clothes coming in a white van while he was talking to friends on the road just after a

temple festival. By this time the family was living in Linganagar near Trincomalee. He was chained with his eyes tied and was on the third day he was brought in a vehicle and released near his home at the Linganagar grounds. No questions had been asked.

He had been beaten and the skin around his neck and back was bruised. He had been beaten with a stick having prickly fibres and had been trodden on his chest and back with booted feet after being made to lie on the ground. This had been at an unofficial place of detention, where others working there, probably paramilitary elements, had also been encouraged to join in. There were no uniforms seen to identify the branch of the security forces. Those close to him believe the action was meant to coerce him into submission to the state in the ACF case that was then in the courts.

One and a half months later, about January 2007, he was chased by a man whom he now knows to be from army intelligence, mounted on a motorcycle. He ran and surrendered at a police checkpoint. Later the Trincomalee police apprehended the man from his motorcycle number. The man Jagath Kumara, alias Demala Aiyah, alias Jegan, believed to be a Tamil working for Military Intelligence, had evidently told the Police that Senthokkumaran belongs to the LTTE and he would kill him. The Police had restrained him saying that they knew the intended victim. Jegan is now believed to be attached to the Mutur Police Station.

In November 2007, his family was contacted by the investigation unit of the Presidential Commission, who were directed to them by the Trinco Police. The family was photographed, and the investigation unit asked them whom they thought had killed Kokila. When they said they did not know, the investigation unit told them that the LTTE was in control of Mutur when the massacre took place and it was they who killed Kokila. The investigation unit, we reliably understand, told them that if they come before the Commission and say this, they would give them a house in Colombo, find work for them or even make arrangements for them to go abroad. They received summons to appear before the Commission, but did not go and gave medical certificates instead. They kept receiving calls from the commission office asking them to come and testify, repeating the same assurances, until October 2008.

The family has consistently refused to go against their conviction and give false testimony regarding Kokila's murder. During Deepaveli of 2008, October 27th, just before the unexpected renewal of the Commission's mandate, Senthokkumaran was taken to Trincomalee Police Station, detained from 6.00 AM to 6.00 PM. This time about four different police officers questioned him in turn, giving the names of various LTTE leaders and asking whether he knew them. He answered truthfully that he did not. They were threatening to detain him under a three-month detention order. He thinks that since the ACF families had become noted and well known, the policemen questioning him must have known about it, but did not refer to it until he brought it up later. They said the LTTE must have done it, but released him. Since then groups of two to four policemen have been calling near his home every Sunday, looking around, talking among themselves and going away. The family found that Senthokkumaran was the object of their visits because the policemen had called on his Sinhalese neighbour and asked about him. The Sinhalese neighbour had innocently pointed him out (he was then reading a newspaper in front of his house) and introduced him to the policemen. They questioned him at length, inquired where he worked, for his off days and went away. The family thinks that because of this accidental introduction, the Police have postponed whatever they were planning to do, but kept calling almost every Sunday.

Owing to this harassment, Senthokkumaran who was working at a cooperative store some distance from his home, had to stop working and is forced to change his residence regularly. His maternal uncle, Kantharasa (68), who is now the male help in the family, said, *"When we were told of Kokila's death, we only collected the body and performed the last rights. We never blamed one party or the other and do not want to. But this boy is being subject to such continuous harassment that we fear that we might lose him as well."*

One of our contacts who had a meeting with ACF families reported, *"They were being harassed and threatened by the 'security forces'. One man recounted having been taken to the China Bay military camp for four consecutive days in September or October and forced to sign a letter in English, which he cannot read, saying that the ACF was to blame for everything. I believe this letter was signed by other families as well. They were angry with ACF, but more so with the Sri Lankan government."* Rev. Sornarajah's experience presents a more bizarre example of the possibilities in Sri Lanka.

14.4 To be Haunted by those who Fear the Dead

Those who tried several times to rescue their marooned colleagues in Mutur and finally succeeded in collecting their bodies, had no idea that they would be at the receiving end of harassment by the security forces, terrorized and driven out of Trincomalee where they were born and bred. We spoke to two of them who did not want to be named. There was no doubt in Trincomalee who was behind the killings and once it became an international issue, the security forces began fearing those who went to the scene to collect the bodies and what they had learnt. In consequence the ACF sent eight of them to live at a house rented by them in Colombo from September 2006.

As things were not looking bright, those with contacts began trying to leave the country. Meanwhile the ACF stopped paying their salaries and the last two of them staying with the ACF in Colombo were asked to leave the house at the end of July 2007 and make the best of what they could find. They found work with a foreign Red Cross organisation in Trincomalee. Our report on the ACF killings was published in April 2008. On 24th April 2008, the *Virakesari*, a Tamil daily based in Colombo, published anonymously an interview with one of the eight colleagues who collected the bodies on 7th August 2006, giving their names.

From the very next month, some of those who had settled down to some work in Trincomalee began receiving calls just asking where they were and the caller must talk to them. The caller to one person spoke in Tamil, somewhat threatening, but the recipient did not take it seriously. Two others received calls. One was spoken to in Sinhalese rather roughly. During the coming weeks, when they shared this information, they found that all the calls had come from the same number. It was then that they began to fear. A friend took them to the Human Rights Commission and to Rachel Manning of UNHCR. The latter advised them to leave Trincomalee. From that time they have been living without jobs with relatives in the South who were kind enough to accommodate them. That was not the end.

On 5th October 2008, persons in a vehicle went to the home of one of the fugitives in Orr's Hill, which is opposite the Trincomalee police station. The youth's mother and sister were at home. The ruffians who went into the house identified themselves as being from the CID and asked for the fugitive without showing any identification. When the mother asked why, they replied it is regarding ACF inquiries. On being told by the mother that her son had gone to India for a holiday, they searched the house, took some of the fugitive's certificates, including his ACF work certificate and went away.

It appeared that the raiders had been asking around for where the three lived before going to their homes. To the knowledge of the locals the white van raiders are a mixed group made up of the army, navy and Tamil and Muslim paramilitary elements. This kind of harassment went on continuously for the fugitive's family as well as the families of his two friends from the ACF who were in a similar position. Then things started getting stranger as happens in Sri Lanka.

On Sunday 24th October 2008, another unknown group of men came home and asked for the fugitive by name, introducing themselves as from the Navy. The mother and sister could hardly understand Sinhalese. The men said they had suspicions about the young man. Someone who spoke Tamil asked them to come to the TMVP (the pro-government breakaway group of the LTTE) office on 26th October.

At the TMVP office they found all those who came to their home two days earlier, including the Sinhalese. The mother said that her son would return from India after three months. They also asked about other former ACF colleagues some of whom are now abroad. They told her to bring her son to the TMVP office on his return, adding a warning, *'If he doesn't come to us, you know what is happening here.'*

On 18th January 2009, armed men who described themselves as TMVP went on the same day to the house of the fugitive as well as the houses of his two former ACF colleagues. They asked for the youths and on being told that they were not home, threatened to shoot them on sight.

About this time, one of the three former ACF workers received a letter in Tamil on a TMVP letterhead, addressed to all three by name:

“This is to inform you that we have received information that you and your colleagues Mr. ...and...have been assisting the inquiries in many ways to collect evidence relating to the killings of 17 ACF staff. This is an anti-government action and treachery against the nation. We also know that you are living underground. However, we will soon give you the due punishment for covertly aiding the investigations into the ACF case. TMVP, Meenaham.”

14.4.1 A Note on Security for Tamils in Trincomalee

In Part III, 3.4 of Special Report 31, we dealt with the killing of Sivakururaja Kurukkal the priest of Koneswaram Temple, Trincomalee, on 21st September 2008. He had been outspoken on violations by the security forces and had a number of times crossed swords with Major Gen. T.T.R. de Silva Rtd., who was in 2006 posted as chief government administrator in Trincomalee, as part of the militarisation of Trincomalee. The circumstances immediately ruled out the LTTE. We stated that the killing was planned and executed by the government machinery in Trincomalee, including Gen. de Silva, the Navy which was in charge of security in Trincomalee and other arms of the security forces, using Tamil paramilitary agents. The chief suspects among the latter were the TMVP Pillayan group.

The testimony above on the harassment of former ACF employees makes the situation significantly clearer. The harassment described above was in the same period when the Koneswaram priest was killed. We also see two different kinds of action. In the first kind, elements of the security forces go along with the paramilitary groups. In the second, the paramilitary groups act on instructions from their handlers, the Navy, Army or possibly the Police, while the handlers keep out of sight. The TMVP had no interest in the ACF case. They were being used by their handlers for their dirty work.

The TMVP office on Orr’s Hill was closed in March 2009, after it came out that the abductors and killers of the six-year-old school girl Jude Regi had operated out of the TMVP office. Several of the suspects were killed by the Police in fake encounters to prevent the backlog of dirt from spilling out.

These events in combination give an interesting comment on how the State looks after the security of Tamils in Trincomalee. It kills their natural spokesmen and relentlessly persecutes those who help the cause of justice against its misdoings.

14.5 The Price of Keeping the Children Alive

The father of one of the ACF victims, who attracted much attention, and reputed by the others to have been on good terms with the Commission’s police investigations unit, had his very human story to tell:

“I am advanced in years and my main responsibility is to keep my surviving children safe. You want the truth to come out and you want justice. I agree these are important. You can afford to demand these. But for me the priority is to protect my family while I am alive. I am not an educated man, but I can be decisive and proceed without wavering. I could say what I know and I have a great deal to say, but then what would happen to us? First guarantee our security, and then I will talk.”

Like the parent of another family quoted earlier in the report, this father too admitted that they have little choice but to sign the two letters referred to, if they are to continue living in Trincomalee.

14.6 Rev. Albert Sornarajah

Rev. Sornarajah, who was among the last persons to see the ACF staff alive after 8.30 AM on Friday 4th August 2006, appeared before the Commission at a closed door hearing in 2007 a confident man, who impressed the commissioners as a good witness. Given that the Commission’s staff and the investigating unit was appointed by the President, there was from the start a problem with confidentiality. Once the word got around that Rev. Sornarajah’s testimony was damaging to the security forces, he began experiencing harassment including from Kapila Jayasekera’s sidekick Inspector Zawahir, who was in charge of the area where the clergyman lived. One might have

expected more caution from Zawahir who had been in a tight spot in the Five Students case.

Zawahir, who was a top cop in the Trincomalee Harbour Police, had the Reverend booked for taking his son on the motorcycle without the latter wearing a helmet, charged in court and fined. It was a policeman's show of power and a warning. Having a passenger without a helmet is common practice in Trincomalee and not regarded an offence. Another instance was more menacing.

When concern was being expressed for Sornarajah's security, a policeman under Zawahir's command was posted at his home. Sornarajah then received a tip off from a well-wisher in the Police that Zawahir planned to play the old trick (see Special Report No.24) of discovering a bomb in the priest's premises and charging him as a terrorist. Rev. Sornarajah and his family became thoroughly alarmed and they quit their residence in Trincomalee on the morning of 4th May. The next day 5th May 2008, he testified before the Commission, a very different man from the confident person who attended the closed door hearing in 2007. The Police who were trying to plant something on him must have been very angry as seen below.

The counsel for the Army put on a show of friendliness and concern for the well-being of Rev. Sornarajah. At the end of the session, Commissioner Dr. Devanesan Nesiiah, owing to the witness being very upset that day, walked with Sornarajah up to the witness protection room. It did not seem amiss when Gomin Dayasiri, the counsel for the Army too went behind them. He snapped a picture of Nesiiah and Sornarajah with his cell phone camera. Later he flashed it in the Commission complaining that the commissioner was talking to the witness and influencing the evidence. This was part of the campaign to get Nesiiah out and also to discredit Sornarajah's evidence as part of a propaganda campaign. Dayasiri's accusations against Nesiiah, which had begun earlier, went on for several weeks thereafter until the victim quit.

During the tea break at 11.00 AM, Fr. Sornarajah after being escorted to the witness protection room was left with three lady constables. The two inspectors who had brought him went to get refreshments for him. Three men from the Commission's investigation unit barged in despite protests from the women constables from the protection unit and started questioning him. The questions as repeated later by the father were apparently of a trivial nature leading up to where he was currently staying. But this was not the first time and sustained over a period by persons who impose themselves threateningly behind trivial chatter, which makes it clear to the victim that he is in their power and there is no one he could appeal to, breaks a man down and Fr. Sornarajah was left in tears.

Back before the Commission, Fr. Sornarajah still crying complained that the Counsel for the Army had taken a photograph of him as though something underhand were going on. He said, *"I have been put in to a bad situation today. They have made me feel very uneasy. I have been threatened by a lot of people from the time I gave evidence. I was even threatened in the morning today. But still I came to give evidence today. Now people have been questioning me even after my statement was over today, during the break. Now I've been pushed into a situation where I can't give evidence or statements any more. I now fear for my life and my family's life."* The father later also revealed that this same incident had taken place the previous week as well.

Although the men from the investigation unit were identified and the Commission said they would deal with the matter later, it is doubtful if the Commission that had compromised itself repeatedly would do anything to check the investigative unit imposed by the President.

The Commission has a responsibility towards witnesses who are mistreated. This witness had acted heroically during the Muttur siege. Amidst the shelling which killed 50 civilians in Muttur including a young boy in his church, he had been on the streets rather than in a bunker, escorting the injured to the jetty, interacting with Muslim leaders on securing the safety of the people, inquiring into the safety of the Magistrate and ACF folk and going to the Hospital under shell fire to find medicines for the injured. Sadly, the Tamil Christian commissioner who felt the need to make visible amends after the raw treatment Sornarajah received under the Commission's hospitality was punished for it.

The hearing had a postscript, revealing further the vulnerability of witnesses whom the State finds embarrassing. After testifying, Sornarajah did not return to Trincomalee. Security men in plainclothes who spoke Tamil with a Sinhalese accent went to Sornarajah's sister's house in Batticaloa and asked threateningly where Sornarajah was.

This was repeated for about two days and the men were not seen again. The **Commission's investigation unit should more correctly be termed the intimidation unit that never did an iota of honest investigation.**

14.6.1 The Commission Report's Defamatory Stance on Rev. Sornarajah

The Commission's final report placed a most uncharitable construction on Rev. Sornarajah's trials before it. It refused to accept that Rev. Sornarajah faced threats from the State as described above and deems it could have been from the LTTE because his testimony, of seeing the LTTE on the 4th morning, was not favourable to it. That had no demonstrable relation to the killings. More pertinently, had they forgotten the trouble his testimony caused them in fixing an early time for the killings? Having heard that Fr. Sornarajah had sought asylum abroad, the commission mused, ***"One wonders whether all these "theatrics" and uproar were to facilitate his seeking asylum."***

It went on, *"The Rev. Father "felt threatened" when Counsel for the Army, Mr. Gomin Dayasiri, "used a mobile phone camera to take pictures of him and a Commissioner" during a Commission tea break. In actual fact Commissioner Dr Nesiah had been talking to the Father at a critical stage of his evidence during the adjournment, and a picture had been taken for the purpose of establishing the said fact by evidence. It must be noted that Mr. Dayasiri had raised the propriety of Dr Nesiah sitting as a Commissioner due to his relationship with the Centre for Policy Alternatives, a party before the Commission."*

This was a commission that exerted itself to impugn a fellow commissioner *ex parte*, while running out of money to identify the killers. As pointed out above, Dr. Nesiah was escorting Rev. Sornarajah to the witness protection room at the end of the session as a matter of courtesy, as the witness was a broken man, not at a critical stage of the evidence as claimed. The Report takes this opportunity to defend the charge of conflict of interest against Dr. Nesiah brought by the counsels for the Army and STF, but not by the Commission itself as then constituted.

Unfortunately, in its speculative attempts at undermining Rev. Sornarajah's reputation and in implicitly dismissing the State's intimidation and harassment of Tamil witnesses, the Commission has revealed its majoritarian mindset.

14.7 Manivannan, Acting Divisional Secretary Mutur

On events on the 4th August morning, Manivannan admitted in his testimony that he had gone with Rev. Sornarajah to Arabic College at 9.00 AM and found the people gone, but he denied going with Sornarajah to the ACF office. Given the pressure the Police applied on Sornarajah, we could be certain that Manivannan was under enormous pressure from the time the CID questioned him on 16th January 2007. As to the nature of the pressure, Manivannan was questioned at the Commission on one of his subordinates, Paranitharan, who worked on projects in Mutur East that was earlier under LTTE control. When questioned by the counsel for the Army he admitted bringing Paranitharan's project reports to the Commission. This had nothing to do with the subject of ACF killings.

Manivannan had also on 26th July 2006 as reported in the *TamilNet* been present at a meeting in Senaiyoor, where the LTTE was present. Severe shortages of food and aid because of a government blockade were discussed and he was requested to resume the delivery of government supplies. He played a difficult role in the line of duty, and it doesn't take much to guess how the Police would have used this to ensure that his testimony does not damage them.

14.8 R. Shanmugarajah, former Police Constable

Even the august premises of the Commission of Inquiry seemed no deterrent for the authorities to intimidate witnesses. We quote from the testimony of former Police Constable R. Shanmugarajah given to the IIGEP's support staff:

"While inside the Commission's Investigation Office, a large man introduced himself to me as an ASP. He was Sinhalese and he spoke to me in Sinhala. There were about 4 or 5 other Commission staff in the room with us. The ASP then told these people to leave. After they left the room he locked the door and he said to me:

“Son, you are a policeman; I don’t want to teach you anything new; you have to give evidence in support of the Police. Do not forget that we are all wearing the same uniform. While you are in the Commission, we are looking after your wife and children. As long as you tell the right story, they will be safe.”

Our inquiries suggest that the officer giving this advice was Superintendent of Police P. Ratnatileke of the Commission’s Investigation Unit. [7]

In the same testimony, Shanmugarajah said that he had wanted to relate what he knew to Magistrate Ganesharajah whom he worked with in the Mutur Court and held in high esteem. He decided against it because he was afraid as others knew he was a witness, and the Magistrate would begin investigations. The Magistrate too had taken shelter at the Police station with his security staff.

Another example of the role of the Commission’s police investigation unit was when another police officer went to testify. He was only mildly surprised when, under conditions similar to the preceding, an investigation unit officer asked him whether the Magistrate knew the truth. The officer answered that he did not think so. The Judicial Service Commission had removed the Magistrate from the case a month after the killings before he could deliver his inquest verdicts. The officer disclosed long afterwards that they had hoped the Magistrate would leave the country for some time. There need be no more surprises concerning the AG’s Dept., the Judicial Medical Officer and the ballistics expert in the Government Analyst’s Department. The system of justice was hopelessly flawed and politicised.

14.9 Failure of Witness Protection and the Plight of Witnesses

Kanapathy, living near the Pillayar Kovil in Selvanayakapuram, Trincomalee, was a heart patient and the guardian of ACF driver Koneswaran, who was among the 17 killed. Koneswaran was originally from Matale. Kanapathy had helped the family to identify the body. In September 2008 there was a dispute in the local temple over a drama to be staged at a festival. One party informed the Navy which was in charge of the area. The naval officer in charge with a reputation for being a ruffian, beat up some boys and detained them temporarily. An angry Kanapathy scolded the naval officer from outside the camp reportedly also blaming the security forces for Koneswaran’s killing. **The naval officer beat him up and Kanapathy became ill. He died while being taken to hospital by an auto rickshaw.**

On 6th February 2008 at 6.45 PM some youths were chatting on the road at Anbuvelipuram. Ten security forces men on five motorcycles appeared accompanying an auto rickshaw with its sides draped in black like a hearse. The funeral procession stopped. A man in the auto rickshaw, who could not shoot straight, opened fire. The intended targets, who participated in LTTE demonstrations during the peace process escaped. Two innocent youths were killed. A bystander who is an important witness in the ACF case was injured on the foot and later found asylum in Europe. The next day the Army washed the bloodstains from the road. For the State, murder is so simple. No newspaper reported this.

The best advice that the witness protection unit has given witnesses is that they cannot give any protection. It was never meant to work. It is headed by a Senior DIG, whose choice for heading the investigative unit was turned down by the President. He was shunted off to the protection unit, which has been undermined from the start. When Australia offered to train persons in protection, first funds were refused by the Sri Lankan government for the DIG to travel, and the means had to be raised privately. Protecting witnesses was made to seem unpatriotic and **Preman de Silva, a Sinhalese officer who grew up in Trincomalee and was fluent in Tamil, quit the protection unit after reportedly saying that he has to go back and live in Trincomalee.** The DIG himself began to have fears for his safety following cautionary warnings from within the department. On one occasion he went to his parked car and found persons meddling with a wheel. Seeing him they calmly walked away. It is not the kind of thing people would dare to try on a senior police officer.

15. Thompson and Thompson go to Mutur

It is perhaps right that as harrowing tale as the ACF tragedy is, should be relieved with a little comedy. In reporting a commission sitting, the *Daily Mirror* of 23rd November had the following: “*OIC Ranaweera (Mutur Police) and I*

left for Mutur on August 4 at 9.00 PM the Witness said. According to notes kept by the SSP Trincomalee Police Nihal Samarakoon, the witness and the Mutur Police OIC Ranaweera were in Muttur at 10.30 AM and traveled through the town, a fact the witness denies. The witness said that they were to leave the Trincomalee Naval Headquarters but due to an instant artillery attack on the Mutur jetty, their departure was delayed and they finally left to Mutur at 9.00 PM.”

A senior officer who traveled with Inspector Ranaweera we reported was SSP Kapila Jayasekere. “Both of them after arriving in Mutur had entered their arrival on the Mutur Police station register originally as 12.00 noon according to the notes maintained by SSP Samarakoon, which had been later changed to 12.00 midnight, the Counsel said”, the report added. The report continued:

“I first looked at the clock and wrote 1200hrs but later realized that it should be 2400hrs since it was midnight,” the Witness said, “SSP Nihal Samarakoon might have assumed that the witness and OIC Ranaweera had left as planned, he would not have known that we were delayed, the witness said. ‘It is important to note that the same mistake had been made by OIC Ranaweera too,’ the Witness said. Both of them had originally written 1200 hrs and later altered it to 2400 hrs, Counsel added.”

This story was not corroborated, the report said, “The navy had not maintained a record of people whom they transported to and from Mutur at the time and therefore the statements of the witnesses cannot be verified.”

Two senior police officers together apparently getting the time wrong by 12 hours – mistaking midnight for noon and changing it later may read like pure comedy, except that the three officers concerned are intimately connected to the tragedy. Kapila Jayasekere was the officer superior to ASP Mulleriyawa who was the senior officer at the Mutur police station at the time of the incident.

The ACF Trincomalee office had been in contact with SSP Nihal Samarakoon during afternoon the same day seeking his help in securing the safety of the ACF workers (Sec.2). Based on this, we concluded that the police radio message reaching the communications desk at Mutur police station about 3.00 PM calling upon them to ensure the safety of the ACF workers, originated on instructions from Samarakoon.

Samarakoon had not only recorded that the two senior officers arrived at Mutur police station at 12 noon, which might be accounted for by the information being taken from the Mutur register, but has apparently gone further to give specific information that they arrived in Mutur at 10.30 AM and had gone through the town. The CoI seems to have accepted this as a genuine mistake.

However the officers have also made a specific claim that their departure from Trincomalee to Mutur had been delayed from around 9.00 AM to 9.00 PM on 4th August because of an LTTE artillery attack on the Mutur Jetty. Peter Apps’ testimony has no reference to the alleged artillery attack on the 4th morning. Had there been one it would hardly have been thought feasible on the 4th evening to take journalists there.

Testifying on 26th August 2008, Navy Lt. Chamara Meepawala, who was at the Mutur Jetty, told the CoI the arrivals of vessels. Arrivals at the jetty between 12.00 and 1.00 PM on 3rd August 2006 included commandos lead by Major Pathirana from the commando regiment. It is not clear whether Navy Commander Serasinghe and Lt. Commander Raymond came with this group or arrived separately on the 3rd evening. A group of about 50 naval personnel arrived at 6.30 AM on the 4th. There is no mention of other arrivals until late night on the 4th. Meepawala was assenting to arrivals put to him by Kodagoda.

Meepawala answered other questions (underlined): Did you hear sounds on the 4th? Yes but not only on the 4th but sounds of artillery could also be heard till the 6th. So you heard intermittent sounds on the 4th and the 5th and artillery sounds on the 6th? Is that correct? I can’t say whether I heard small firing sounds and artillery firing separately. Asked about the situation from morning to noon on 3rd August, Meepawala replied, “Throughout the whole day artillery and military attacks prevailed. On the evening of the 2nd I heard terrorists were 40-45m away

from the Naval HQ and were using civilians' houses to attack the Naval HQ. However by the morning of August 3rd the attacks from civilian areas had completely stopped."

Lt. Meepawala's testimony makes the police officers' claim of an artillery attack on the Mutur jetty on the 4th an uncorroborated story like the rest. Our inquiries from persons who were nearby yielded the response that there definitely was no such attack. Through all goings on during that period SSP Samarakoon appears a silent background figure, powerless and unassertive, but not regarded a bad man. We are unaware of his story being in the public domain.

We pointed out in our report of April 2008 that Kapila Jayasekera who was instrumental in the killing of five students in Trincomalee on 2nd January 2006, including Yogarajah Hemachandran had also shown a marked interest in his brother Kodeeswaran who was among the 17 ill-fated ACF workers. We had argued that the Police in Mutur would have countermanded the order to protect the ACF staff, presumably SSP Samarakoon's, and carry out the killing of the ACF workers only if further instructions had come from someone powerful and had the backing of the present government like Jayasekera and his boss DIG Abeywardene. Under these circumstances, SSP Jayasekera's and Inspector Ranaweera's movements on the 4th carry more than academic interest. We confirmed from persons present that they arrived at the Mutur police station late night on 4th August as reported. Why did they bring up an apparently fictitious artillery attack on Mutur Jetty on 4th August? Where were they really on the 4th if they reached the police station only at midnight? The other explanation for the killings is gross, inexplicable negligence on the part of senior officers in Mutur. Then the truth should not have been too difficult to face.

There is a need to get to the bottom of the second call to the OIC on the afternoon of 4th August just as a team was leaving for the ACF office ostensibly to fetch the ACF workers to safety. We have no evidence as to whom the call came from, except to say that it was mischievous. There is a need to look into the workings of local police intelligence. It is very unlikely that anyone outside the police would have called OIC Senanayake, who arrived only the day before, on his personal cell phone.

15.1 Wimalaratne and Jayasekera

At the commission hearings on 10th and 15th July 2008, Wimalaratne declines to say much about himself, except that he had some secret intelligence assignment that required dealing with agents. He denied knowing much of what happened in the police station. Some of his answers are incredible. For an intelligence man, he claimed to know about the ACF killings only when told about it by the OIC on 6th or 7th August. He went out of the station for the first time only on 10th August. He did not know ACF by name.

Where he does reveal his connections is when he was forced to admit reluctantly, over two questions on different days, that SSP Kapila Jayasekera appointed him to head a war crimes unit created by Jayasekera. It meant that he was Jayasekera's man and Jayasekera was SSP Operations. Being the head of the war crimes unit, he could not say when it was created. He was very evasive about whether the unit conducted investigations into war crimes and recorded them. He could not identify any investigation by his unit into the ACF killings, but admitted that his unit was created to look into those killings. Yet it was not a subject of discussion among the Police. He was not even sure how the ACF killings were categorised.

Wimalaratne has not said much on what he did on the 4th. But obviously what passed between him and his boss Jayasekera on that fatal day is of great interest.

Some of these areas obviously need greater investigation. The Government and those directing the Commission have been intent on directing the blame for the death of the workers on to the ACF. The ACF staff members in Trincomalee certainly misjudged the situation in Mutur. Once the initial mistake was made and their co-workers were trapped in Mutur, ACF staff in Trincomalee did several things right. They undertook rescue missions. They contacted an army colonel on the 3rd and a major on the 4th. They also contacted SSP Samarakoon. While the Commission investigated the ACF staff members' actions in detail, they did not inquire into the follow up taken by

the military and the police after they had been requested to help save the 17.

Instead, we are given some unhelpful information. An army Major-General told the Commission that if the Army's help had been sought he should have known about it. Also, SSP Samarakoon denied sending a message to the Mutur Police to safeguard the 17 workers. This seems an acceptance of gross negligence. Obviously, the matter cannot end here.

16. Getting rid of inconveniences: Interfering with the Composition of the Commission

When Counsel for the Army Gomin Dayasiri starting from early 2008 raised the issue of conflict of interest pertaining to Commissioner Dr. Nesiiah's link as a consultant to the Centre for Policy Alternatives (CPA), he had stated that the entire Commission proceedings up to that point should be treated as invalid. The CPA was one of the NGOs that as part of Civil Society interest had hired lawyers to represent the interests of the victims at the Commission. Mr. Dayasiri had also stated that they would file a complaint individually against each commissioner to recover the costs of the inquiry up to that point. At that stage, Javid Yusuf also joined Commissioner Premaratne in asking Dr. Nesiiah to step down from the ACF inquiry. The other commissioners made no comment.

The inquiry was adjourned and a few days later, at the end of June 2008, Dr. Nesiiah submitted his letter of resignation from the Commission to the President, stating "*I find it incongruent that my 'prudence, ability and fidelity' can be selectively found lacking for some of the cases before the commission, and not for others.*" The President had wanted Dr. Nesiiah to step down from just the ACF and Five Students cases, among the 16. Mr. Yusuf, who had played a political role at the Commission in pushing strongly to limit the role of the IIGEP, which had left three months earlier, also resigned after this second shot.

We will not argue it here, but several commissioners held the view that a conflict of interest was a charge trumped up to get Dr. Nesiiah out. As for conflicts of interest, Javid Yusuf was for a long time associated with the ruling SLFP. Mr. Douglas Premaratne, a former additional solicitor general, was closely associated with the extremist JHU, which is a party to the government. More importantly the Chairman had no less serious a conflict of interest. He was in the three-member Judicial Service Commission that removed improperly two magistrates in August 2006, who had shown a determination to conduct investigations into the ACF case and the disappearance of Fr. Jim Brown. Both were cases under the CoI. One wonders why the Commission report offered a defence for the Counsel for the Army's charge against Dr. Nesiiah, which was not even the position of the Commission at that time.

17. A Question of Sources: The Real Issues

Some caustic remarks on our report were made at the Commission on 2nd September 2008 by Deputy Solicitor General Kodagoda and by the Counsel for the Army Gomin Dayasiri. Kodagoda said that we seem to have copious amounts of information but no sources and Mr. Dayasiri said that they should also look at the defamation aspect of the UTHR reports. In an earlier presentation posted on defence.lk on 29th July 2008, Mr. Dayasiri accused us of dealing in testimonies of persons who are '*unidentified, unknown, uncontactable and untraceable*' (http://www.defence.lk/new.asp?fname=20080728_05).

Our report gives a good deal of background information from persons and sources not cited as evidence, but finally gave us the confidence that the key witnesses on whom we based the story got it right – that personnel from the commandos, the police and home guards were involved in the killings about 4.30 PM on 4th August 2006. Our crucial reliance was on Witness 1 whom we questioned at length. He was in the Police Station, heard and saw a good deal and was present when the killings took place. Witness 2, the Muslim elder, as we explained was the first from whom we heard, and he became very frightened. The Police starting from Inspector Zawahir, identified him as a witness, and undoubtedly warned him. He has left Mutur and we are not in a position to reveal his whereabouts. What transpired at the CoI, has despite attempts at disinformation, left our conclusions of April 2008 unimpaired.

Mr. Dayasiri has missed the central evidence of our report. He has criticised our report citing selectively information used as indicators telling us what to seek. We also pointed out that the evidence from the bullet found in Romila has been mishandled, and evidence on the types of bullets given in the Addendum to the report came from a witness now abroad and in touch with the ACF. We stated all this confidently because evidence from different directions evolved into a coherent picture. In all fairness the Commission cannot ask us to reveal sources, when information coming to the Commission has been at the root of several of the witnesses being subject to threat and intimidation, as could be seen in the abominable treatment of Tamil witnesses cited above.

A human rights report stands or falls on its contents and the organisation's reputation for being faithful to the truth. There is in a situation such as prevailing in Lanka a need for human rights organisations to be intermediaries between vulnerable witnesses who could speak only at enormous peril and placing the truth in the public domain. It becomes needful because the system of justice has failed abysmally. Human rights reporting by its very nature cannot be infallible. The work needs to be carried further and the Commission had an opportunity of doing so.

The least one could have expected from the Commission is that it would take good evidence when it comes and use it critically. Videoconferencing initiated by the IIGEP provided such an opportunity. This was arbitrarily stopped by presidential directive, citing concerns like national sovereignty and asking the Commission to wait for regulations which never came. Thus good evidence was shut out, discredited or distorted.

DSG Kodagoda who told the Commission at the outset that the Police came to know of the killings in the well-reconnoitred area two days after the event, referred dismissively to the testimony of a policeman, Shanmugarajah, now abroad, reasoning that he had earlier given a different story, due to what Kodagoda knew were instructions from his superiors. He was among those instrumental in the presidential directive stopping video conferencing at the end of May 2008 just when some key witnesses were to appear. The Commission accepted this interference without protest. With such trust in the state apparatus, the findings of the inquiry were preordained.

Saddled with an investigation unit whose job was to intimidate witnesses remaining in the country and squash evidence, what the victims got was torture and not relief. Some were terrified of going before the Commission. Interested persons are free to say anything about our report and manufacture alibis and misleading evidence reminiscent of honour among thieves. Mr. Dayasiri cannot be faulted for doing his job as counsel for the army. Except the power relations governing the Commission's workings enabled him to throw his weight around in an unsportsmanlike manner. But the AG's Dept. acted under the pretence of leading the evidence impartially. Its role was contemptible.

The protection unit had been rendered ineffective while witnesses were being actively intimidated by the investigative unit and the plight of the witnesses above shows that anyone giving testimony against the security forces and remaining in Lanka would face a serious threat to sanity and security. Kokila's family was being harassed not for wanting to testify against the security forces but for their reluctance to endorse lies. On top of this facile arguments citing sovereignty and other abstruse principles were being cited to stop good witnesses who had fled abroad from testifying – that was the only way they could tell their experience and live. The integrity of anyone serving on the Commission under these conditions must be severely strained.

One early event virtually preordained what the Commission would come up with. A witness present at a meeting in the Defence Ministry between the time of the ACF killings and before the President appointed a commission of inquiry told us that DSG Kodagoda suggested to the Army Commander that the Army should inquire into the killings. The Commander immediately rejected it citing demoralisation of the troops. Kodagoda responded by stating his meaning as in effect having an inquiry for name's sake and closing the file in order to stave off international demands for a full inquiry. The DSG against constant expressions of concern was virtually made the director and script writer for the ACF inquiry and the result was a long and tortuous rendering of the simple recipe he gave the Army Commander in 2006.

This foregoing tells us a good deal about a state that has lost the capacity to respect the rule of law. The ACF and Five Students' cases became emblematic because justice was promised, foreign observers were involved with considerable hope and expectation and the inquiries ended a damp squib or even a bizarre comedy. The Col's earlier ACF draft, Draft-1, of September 2008, which we have cited, while aimed at covering up was professionally drafted.

The language was rational. Those who drafted it clearly had problems with advancing the time of the killings. Its conclusion was the best they could hope to get away with, i.e. *'Both parties had the opportunity to kill the ACF workers'*. From media reports it seems the final report is crafted in a language, which is more that of the Government's xenophobic and Sinhalese-centric support base that is eager to throw bricks all around. It is not the language of Justice Udalgama or Commissioner Mrs. Jezima Ismail.

The commission report meant to bring justice and healing only further reinforces the division in the country. The Commission itself, its ceremony in the BMICH and what it produced are less important than the drama behind it largely concealed from public view, to which the commissioners chose to be oblivious and which made a mockery of the Commission. That drama represents the attitude of the State to the minorities and how it would deal with them. What is reflected in the excerpts from the Commission report is that the Sinhalese are encouraged to turn a blind eye to what the minorities suffer under the jackboot of the State.

18 The Cost of a Lawless State and Minorities

18.1 Degradation of the Rule of Law and the end of Constitutional Rule

The State's unwillingness to face the truth in a number of cases that attracted international attention and the means it has adopted to stifle the truth, has been dehumanizing for both the majority community and the minorities. The developing power relations as exemplified at the Commission leave the minorities in the country hardly any breathing space. Had the Government treated these cases as means to adopt corrective measures and win over the minorities, the prospects for Lanka would be looking brighter today. That refusal to face the truth was rooted in a Sinhalese hegemonic agenda and it spelt the precipitate decline in respect for the rule of law that we have experienced.

The whole array of abuses the Government resorted to went far beyond the need to combat the LTTE. The STF-instigated murder of 10 Muslim farmers south of Pottuvil in September 2006 had nothing to do with fighting terrorism. It was an act of state terror motivated by ideologically inspired claims over land. Once the Government began moving on this track, what followed was predictable. The attitude, from which the families of victims have suffered in the ACF and other cases, logically entailed the detention of hundreds of thousands of IDPs who came from the Vanni. The main reason being to cover up the Government's use of bombing and shelling.

The law and constitution may deem all citizens equal, but the rule of law is in abeyance, there is no right to life and no right to appeal against arbitrary detention. The prisons are filling up not only with Tamils but also Sinhalese who are deemed traitors to state ideology. Shantha Fernando, secretary to the National Christian Council felt a burden for fellow Tamil citizens, who were stuck in Colombo facing impossible security regulations and accompanied some to police stations to register. Frequently, the Police saw this man who should have been given a medal for building national unity as a traitor. What is very disturbing about Shantha Fernando's detention is the use of the PTA merely to silence someone for wanting to discuss problems faced by Tamil civilians.

The present regime has not shown any interest in encouraging a healthier dialogue among communities to enable a reevaluation of 60 years of corrosive conflict so as to put us back on track. Instead it is bent on manipulating the state machinery and institutions towards a narrow "family-centred power agenda" at the expense of democratic norms and the long term interest of the people. Illusions work only in the short term.

Espousing equality and justice in words without structural change cannot bring real benefits to the life of ordinary people. It is easy for the ruling elite to promote polarising ideologies and at the same time form bizarre alliances among themselves to consolidate power until the cracks appear. Thus the eastern leader of LTTE, Karuna (Muralitharan), who was party to massive human rights abuses against Tamil and Muslim civilians and to massacring hundreds of surrendered policemen, became a minister in the present government acting against those who challenge him from within his allotted patch without the slightest remorse, with police complicity guaranteed. It is not a problem for those in power as it is the same culture they all promote and thrive on. For the people it is an unmitigated tragedy.

A similar irrational and counterproductive use of state power applies to the case of the war zone doctors who, whatever their motivation, served at great risk the sick and injured in the Vanni during the latter months of the war. After 54 days of detention reportedly under the CID, they were produced before the Press on 8th July 2009. Despite Human Rights Minister Mahinda Samarasinghe asserting that, “*I can't reveal all the details of the confessions [by the doctors], but you will see when they appear in court.*”, the doctors appeared not in court but at the Defence Ministry, accompanied by handlers and not lawyers, one of whom pulled up a doctor for admitting that he was a prisoner. One doctor at this Truth Circus gave the number injured from January to mid-April as 650; whereas during the same period the ICRC shipped 5000 injured.

A proper accounting for the dead and injured would mean first making up lists by talking to the IDPs. But this is what the Government appears intent on preventing.

The alleged confession by the doctors reveals the tremendous growth of arrogance among the rulers and their minions in uniform leading to the draining of common sense and atrophy of intelligence. Sadly, unlike in the 1980s, no Sinhalese medical professionals are supporting the cause of their Tamil colleagues who did their best for the injured in the war zone.

It is the tragedy of the country to be stuck with such paranoid rulers who see spectres and imagined enemies of the state everywhere and drive the country towards superfluous militarisation and repeated conflict. The case of the doctors makes clear the real reason why the IDPs from the Vanni are detained en masse. While their principal anger is with the LTTE, the Government is afraid they would tell the world about bombing and shelling by the State while they ran from place to place.

The recent long and congenial interview with President Rajapakse carried in the *Hindu* (6th – 8th July 2009), in response to a question about the three doctors, the President was too much the politician for a direct answer. His secretary Lalith Weeratunga filled in without mincing words, “*They were lying through their teeth [about civilian casualties in the No Fire Zone]. And they are public servants, paid by the government. If they go scot-free, it will set a very bad precedent.*” Weeratunga was according to those familiar with the workings, the virtual behind-the-scenes director of the ACF inquiry.

The course of the government in Lanka has a significant resemblance to Macbeth on stage. The rulers do not seem to be able to grasp that the war is over and the new challenges are very different and require statesmanship. Instead the rulers appear even more obsessed with finding a Tiger behind every bush and to build Tiger castles in the air so as to justify the enormous political cost and drain on resources involved in perpetuating the Defence Ministry's stranglehold on the country and disregard for the law.

Against this, a common thread runs through the handling of the ACF and other cases and the detention of the doctors. The Government will use any fraud, violence or intimidation to subvert any inquiry that would find the security forces guilty of serious crimes, and indeed some like the killing of the five students were orchestrated from a high level. It is a reflection of Sinhalese hegemonic ideology to make the security forces a holy institution that would put the minorities in the right place. The attacks on the media show that this trend is deeply inimical to the Sinhalese themselves.

18.2 Incompatibility of Justice with the Mores of the Regime

It makes the position of minorities hopeless and the rulers cannot help imagining Tigers everywhere. They can be relatives of victims of state atrocities and also those in positions of authority who had the courage to do the right thing by the victim. Kayts Acting Magistrate **Mrs. Srinithy Nandasekaran** had after the shelling of Allaipiddy in August 2006 gone there with three ambulances defying the Navy's threat to open fire and brought relief to the injured. A few days later, on 20th August 2006 the parish priest Fr. Jim Brown disappeared together with an elderly parishioner Wenceslas when they went to the church after signing a log book at the navy check point.

Upon hearing about it two days later Mrs. Nandasekaran went to Allaipiddy with the Police and ordered the Police to take custody of the log book at the navy checkpoint. The Navy refused to give it. The next day the Chief Justice

acting in his capacity of chairman of the Judicial Service Commission removed her from the position of Acting Magistrate, Kayts. Over this and her courageous stand in two child protection cases that were embarrassing to the LTTE, Mrs. Nandasekaran was selected the 2009 South Asian Regional Finalist for the US Secretary of State's Women of Courage Award. **Stephen Suntheraraj** who worked as a child protection officer in Jaffna and earned the ire of the LTTE for assisting Mrs. Nandasekaran in a child abuse case by one of its senior advisors, was arrested in Colombo in February 2009, released on a court order on 9th May and abducted soon afterwards at a traffic light junction, after which he has disappeared.

The navy log book pertaining to Fr. Jim's case was never handed in. It was along with this circumstantial evidence, an eyewitness account of armed men on two motorcycles following Fr. Jim to the church in that navy-controlled zone and the witnessed hostility of the local navy commander Commodore Nishantha to Fr. Jim, a clear cut case for a commission of inquiry.

As for Fr. Jim Brown's case, Justice Udalgama, the Chairman of the Commission of Inquiry, told the *Daily Mirror* (16th June 2009) "*We were unable to investigate the disappearance of Rev. Fr. Jim Brown as his body was not found...*" The least the Commission could have done is to demand the log book that Mrs. Nandasekaran was refused. Here again it needs to be pointed out that Justice Udalgama was one of the three members of the Judicial Service Commission that transferred Mrs. Nandasekaran, and earlier the same month removed Magistrate Mr. M. Ganesharajah from the ACF case on the eve of his delivering the post mortem verdict, having already issued orders for a rigorous investigation of what his undelivered verdict described as a crime against humanity. (See UTHR(J) Special Report 25.)

What is the most urgent issue now is the restoration of the rule of law. Unless there is freedom of expression and open discussion, talking about a political settlement has no meaning. It is only the voices of those who see any political settlement as giving too much to the minorities and standing in the way of their Sinhalisation schemes that would dominate. This poisonous air creates its own dynamism.

In the present situation where benign political movement is unlikely, our energies are best directed towards the restoration of democratic norms and the rule of law. Emblematic cases like the ACF and Five Students cases serve as good starting points to focus on issues. Information about these cases is available from IIGEP archives, the Commission proceedings and reports like ours. The countries that sent eminent persons have an obligation to see these cases through and ensure that justice is done. They created expectations among victims and their families, and because of this attention a number of them have suffered enormously and have been harassed to this day as we have shown. When some of them badly needed asylum or relief, there was no IIGEP or ACF to help them.

Let it not be said that international humanitarian agencies are generous with sacrificing their local staff and doing so little to see that justice is done, without which humanitarian work becomes a nightmare. Others blamed the ACF in 2006, but several more had local staff working in the Vanni. The ICRC itself lost three workers. They all have an obligation to support fully a proper inquiry into the ACF tragedy.

The next time Sri Lankan representatives come to the UN Human Rights Council calling themselves a human rights minister, an attorney general or deputy solicitor general, claiming to improve human rights for all the people of Lanka, it would be time to say the joke has gone too far. If the government continues to show disregard towards accountability, an international inquiry becomes essential, taking into consideration there are many witnesses outside the country and the long term interest of humanitarian work in conflict zones. The IIEGP too needs to demand such an inquiry.

Appendix 1 : Two Letters

Letter 2:

The Attorney General,

Holtzdorf,

Colombo12

The Attorney General,

Dear Sir,

Death of Muttur ACF Workers in a French NGO

We are annexing the recommendation of the Presidential Commission of Inquiry on the matter of the death of
-----.

The said Commission has after hearing evidence of several witnesses including Contre Le Faim (ACF) found the ACF guilty of gross negligence. ACF is a French NGO operating with their head office in Paris.

The deceased ----- was in receipt of a monthly salary of Rs ----- I am making this claim as the next of kin of deceased ----- on the basis -----X 120 (months) amounting to Rs.----- I place my claim in being the next of kin of the aforesaid deceased in the following manner:-

We trust that you are possessed of a copy of the Report of the Commission of Inquiry. We requested you to recommend to the Sri Lanka Government through the Foreign Ministry to inform the French Ambassador in Sri Lanka and our Ambassador in France where the ACF is situated, to give directions to make the payment of compensation in terms of the recommendation.

Please be sympathetic toward the hardships we have undergone and ensure ACF which is based in Paris gives effect to this recommendation. In giving evidence before the Commission ACF agreed to make a further payment of compensation accepting the compensation paid was not based on any rational basis but purely ad hoc.

We thank your official counsel for the proper and impartial manner in which they presented evidence and the kindness with which they treated us when we came to give evidence. We greatly appreciate their services.

Letter 3

HE the President,

Presidential Secretariat,

Fort,

Colombo

Your Excellency,

Mutur Commission of Inquiry

We are extremely grateful to Your Excellency for appointing a Commission of Inquiry and ensuring that justice prevailed. We agree with the findings of the Commission that the deaths were caused by the LTTE and the compensation as determined must be paid by the ACF for gross negligence to the heirs of deceased for a period of 10 years based on the last salary.

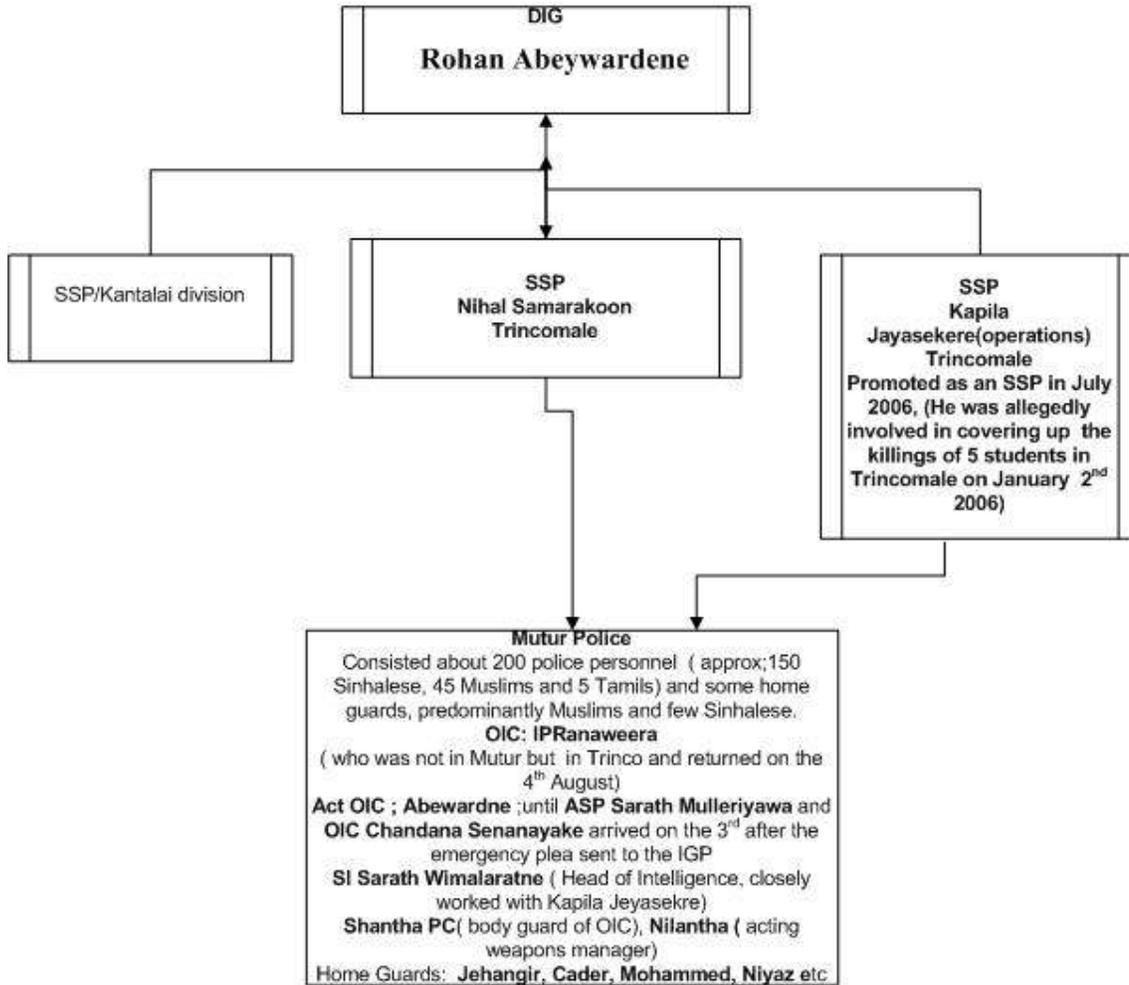
We humbly request your Excellency instruct the Ambassador/Embassy in France to take this matter with the ACF organization based in Paris.

We are very poor people and very thankful to your Excellency for ensuring that justice was done and that in obtaining an order payment for compensation by the Commission of Inquiry, appointed by Your Excellency. We humbly seek your Excellency's intervention to help us to recover our dues.

If the compensation is not paid by the ACF we shall reveal the hypocritical double standards maintained by them.

Yours faithfully,

Appendix 2: The Relevant Police Hierarchy



[1] i.e. the Five Students case that we will be dealing with in a separate report

[2] A police witness (Wimalaratne) who was lying was complimented by a state counsel on his supposed expertise. Tamil witnesses, and even a commissioner, as would be seen below, were treated deplorably.

[3] In our report we had named two ASPs. One was Saman Ratnayake who we said was one of those in Trincomalee who was in communication with the Mutur Police Station. The other was ASP Mulleriyawa.

[4] This witness was interviewed by a young Muslim concerned to bring out the truth, working with us then to document the tragedy of the people in Mutur in August 2006 caught between the pitiless shelling of the Government and the matched callousness of the LTTE

[5] From an ACF employee who was helping us

[6] Dr. D. Nesiya was forced to resign in July 2008. Three other commissioners resigned during July to September 2008 citing mainly personal reasons. They were Javid Yusuf, K.C. Logeswaran and Mrs. Manouri Muttetuwegama.

[7] The police officers present at the hearing in late September 2007 were Mr. S. Sunderalingam Attorney at Law, Mr. M. G. W.M. Muthubanda Mr. P. Hettiarachchi, Mr. P. Ratnatilleke SP.

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