

**CASE NO 02**  
**KILLING OF 17 EMPLOYEES BELONGING TO THE NON**  
**GOVERNMENTAL ORGANIZATION (NGO) ACTION**  
**CONTRE LA FAIM (ACF) IN MUTTUR IN AUGUST 2008**

**Terms of Reference**

His Excellency the President of Sri Lanka appointed the Commission of Inquiry (COI) on 3<sup>rd</sup> November 2006 to investigate and inquire into alleged serious violations of human rights since 1<sup>st</sup> August 2005, under the provisions of the Commissions of Inquiry Act No 17 of 1948.

Specifically including 16 cases of serious violations of human rights mentioned in the schedule to the Warrant.

In a politically unprecedented initiative the Government of Sri Lanka invited an International Independent Group of Eminent Persons the (IIGEP) to observe such investigations and inquiries in order to ensure the transparency of such investigations and inquiries and that such investigations and inquiries are conducted in accordance with basic international norms and standards.

Commission commenced sittings in January 2007. Investigation proceedings in camera in Case No 2, (the ACF case) under Clause 8 of the mandate, Structure and Rules of Procedure of the COI began in May 2007. The initial investigation proceedings where the Commission directly interviewed and recorded the statements of witnesses for the purpose of a) facilitating investigations by the Investigation Unit b) to arrive at a preliminary view of facts and circumstances pertaining to any matter relevant to the incident being investigated by the Commission c) considering the nature of investigations conducted into such incident by the routine competent authorities."

The investigation proceedings before the Commission continued over a period of 7 months with over 48 sittings, which was not envisaged at the time the investigation commenced.

**Investigations**

Cases referred to the COI for investigation and inquiry have already been investigated by the area police/ or the Criminal Investigation Department (CID) of the Police and the relevant reports filed in Court.

Due to the on-going operations of the armed forces or terrorist activity or civilian demonstrations in certain areas, conduct of proper investigations may have been hampered in some instances. Hence there is a need to examine the adequacy of investigations done earlier.

Prior to commencement of investigations by the COI a plan of investigation had been prepared by the officers of the Investigation Unit of the COI. In order to conform to international norms and standards investigations into human rights violations in particular had to satisfy the following conditions. Viz:-

- Investigations had to be conducted by independent investigators, other than those involved earlier.
- Victims and Witnesses had to be assured and afforded protection and assistance.
- Civil society and NGOs were consulted in the process of investigations.
- Investigations took into account all sources of information such as statements of victims and witnesses, medical reports, police investigation files, court files, media reports, information from NGOs etc.
- Investigations were provided with expert assistance, of independent professionals other than those involved earlier, in areas of forensic medicine, ballistics etc.

### **Steps Taken by COI**

- Appointment of teams of investigators consisting of carefully selected police officers to function under the direction of the COI.
- Counseling of victims and witnesses by specially selected police officers, counselors, psychologists etc. before they are allowed access to investigators, who questioned them in their presence and provided assistance and protection to them under a scheme formulated by the Commission.
- Appointment of a panel of experts other than those who took part in earlier examinations, to assist investigators.

### **Delay Due to Need for a Quorum**

Since the Commission of Inquiry Act No 17 of 1948 required the full membership of the COI to be present at inquiries, this tended to hamper the efficiency of the Commission. For instance if a Commissioner was absent due to unavoidable circumstances the Commission had no locus standi to hear the case. This need for a quorum was rectified by the Amendment to the Commissions of Inquiry Act of 5<sup>th</sup> March 2008 which dispensed with the requirement of the full complement of Commissioners being present at a hearing. The amendment enabled – “where the Commission consists of more than one member, not less than one half of the total number of members present (which shall include the Chairman) may notwithstanding any vacancy in the membership of the Commission exercise the powers of the Commission under the Act”.

## **Statements of CID**

(Extracted from the B File relevant to the investigations C/408/06/CM of the Special Investigations Branch II, CID)

The CID had commenced investigations on 11/08/2006. The CID had taken comprehensive statements from persons who had been in the vicinity of the ACF office at Muttur, all persons with whom the 17 ACF employees had communicated by mobile and telephone, including family members of the deceased. They had also recorded the statements of the permanent employees of ACF at Muttur.

CID has also obtained a report of all details in respect of incoming and outgoing telephone calls from the Muttur ACF office during the period 20/07/2006 to end of August 2006 from the Dialog Telecom Company.

The CID has also collected the cartridges found at the scene of the crime and forwarded them to the Government Analyst for his report.

The CID investigation findings state that Muttur was under the control of the LTTE as from early hours of 02/08/2006 to early hours of 05/08/2006, until Government troops took full control of the area and restored normalcy.

According to the J.M.O. who held the autopsies on the 17 bodies, the possible time of death has been either on the 3<sup>rd</sup> night or on the 4<sup>th</sup> morning of August 2006. the Government analyst in his two reports dated 19/02/2007 to the Magistrate's Court, Anuradhapura has identified the gun shot injuries on the deceased were from 7.62 caliber bullets. Dr Malcolm Dodd, Consultant Senior Forensic Pathologist, Victoria Institute of Forensic Medicine, Australia in his report of 15/11/2006 has also identified the caliber of the bullets in the gun shot injuries of the deceased as those from 7.62 caliber projectile. However, in the case of Romila Sivapragasm on of the 17 deceased he has identified that the injuries are from a 5.56 caliber projectile. However, in his supplementary report of 20/07/2007 he has stated that, "based on the information that I have now provided page 68 of my 72 page report needs to be in part, revised. Dot point 7 & 8 in page 68 should now be ignored, the inference being now that all projectiles retrieved from the bodies examined were of the same caliber (7.62)."

According to the CID Report submitted by the OIC Special Investigation Branch II CID on the instructions of the DIG.CID they had commenced investigations on 11/08/2006.

## **Findings of the CID Report**

1. The above named NGO is being maintained with French assistance and its operations are being carried out by a French national Claude Martin. To conduct their social service activities they have established their

Head Office at No 104, Barnes Place, Colombo 7 and in addition they have established Sub-Offices in the areas in which they operate their social service programmes. It was revealed that this NGO is carrying out social service activities within Sri Lanka in Trincomalee, Muttur town, Navaladi, Patalipuram, Sandanavate areas. Among these areas with the exception of Muttur town, it was revealed that other areas are in un-cleared areas.

2. The Trincomalee area district office has been established at Orr's Hill, Trincomalee, and French national Frank Kamo serves as its head. In addition to him there are 93 Tamil and Muslim officers including 6 foreigners engaged in social service activities. Their role is to provide material assistance for drinking water projects, food projects, health and other infrastructure projects and self-employment projects for the benefit of under privileged families with an income not exceeding Rs 2000/- per month who have been displaced due to the war or the tsunami.
3. For the above purposes a regional office has been established in the Muttur area on the Main Road, in Muttur and it was revealed that the under mentioned persons were engaged for duties as permanent employees.

1.	M.M.M. Rizvie	-	House Keeper
2.	M.M. Riyas	-	Watcher
3.	M. Rafeek	-	Asst. Store Keeper
4.	J. Firaz	-	Watcher
5.	D. Gunaseelan	-	Asst. Data Controller
6.	M. Mushafik	-	Skilled Labourer
7.	A. Ramesh	-	Skilled Labourer
8.	Ali Mohammed Thaseer	-	Skilled Labourer
9.	S. Sathan	-	Watcher
10.	M. Sailalsri	-	Cleaner
11.	M.M.M. Ahamed	-	Radio Operator
12.	E. Anthony	-	Temporary Labourer
13.	M.I. Rakeef	-	Watcher
14.	K. Wimalasekeran	-	Temporary Labourer
15.	K. Ganiston	-	Temporary Labourer

4. On 31/07/2006 and on 01.08/2006 based on previous intimations made to the Grama Niladharis of the Muttur area to identify under privileged families who should benefit from the projects referred to in paragraph 2 above, the following officials had been sent from Trincomalee to the Muttur regional office to collect data relating to them.

1.	A. Jayaseelan	-	Health Officer
2.	M. Narmathan	-	Field Officer
3.	R. Arulraj	-	Field Officer

4.	T. Pradeepan	-	Field Officer
5.	M. Risikeshan	-	Field Officer
6.	A.L.M. Jaufer	-	Skilled Labourer
7.	K. Kovarthani	-	Health Officer
8.	P. Kavitha	-	Health Officer
9.	S. Romila	-	Health Officer
10.	V. Kokilavadani	-	Health Officer
11.	P. Sritharan	-	Senior Field Officer
12.	Primus Anandaraj	-	Asst, Project Manager
13.	Y. Kotheeswaran	-	Filed Officer
14.	M. Ketheeswaran	-	Field Officer
15.	S. Ganeshu	-	Driver
16.	I. Muralitharan	-	Driver
17.	S. Koneswaran	-	Driver

5. On 01/08/2006 in the Trincomalee and Muttur areas a war situation had emerged between the LTTE Organization and the Govt. Forces and by dawn on 02/08/2006 the LTTE had intimidated the civil population living in Muttur town from the direction of Navaladi and Raulkuli, around the Kattaparichchan army camp and the area around Knox Junction and established control over the area. On account of this situation about 24000 civilians had left the area and found shelter in schools and Muslim Mosques in the surrounding area. It was revealed in the statements recorded during the investigations, which are referred to at para 7 of folio 3, that the Navy camp at Muttur Jetty and the Muttur Police were under attack and that LTTE cadres had taken action to confine the Government Forces to their camps until 04.08/2006.

6. On 04/08/2006 at about 9.00a.m. the entire civil population in Muttur had left Muttur and started to arrive at Serunuwara and Kantale through Pachchanur and Pahala Thoppur.

Accordingly, by the evening of 04/08/2006 the entire civil population had left the area and this is revealed in the statements recorded from the under-mentioned witnesses.

1.	Yamarullah Mohammodu Firaz	-	Watcher
2.	M.I. Rakeef	-	Watcher
3.	A.M. Nazeer	-	Skilled Labourer
4.	Kutturasa Mussadeek	-	Skilled Labourer
5.	M.M. Rafeek	-	Asst. Store Keeper
6.	K.A. Rahuman	-	Agri. Instructor/Muttur
7.	Ahamadu S. Mansoor	-	Attendant/Muttur Hospital
8.	S.M. Zakeel	-	Filed Officer/C.E.B.
9.	M.S. Rafeek	-	Regional Council Muttur, Member

7. It was revealed during the recording of statements of the relatives of the deceased NGO employees that those who were trapped in the Muttur Office were in contact with their relatives and with the Trincomalee district office Head, French national Frank Kamo until 6.30 a.m. on 04/08/2006. In these conversations the said employees have requested their relatives to inform ACF district office and put pressure to evacuate them from Muttur town as there was a serious war situation in the area.
- i. As a result of the pressure exerted on the Trincomalee ACF by the relatives of the 17 deceased persons to take action to bring them back, the district office Head, Frank Kamo and the Purchasing Manager Anthony Rombal Pereira had discussed with the SSP the possibility of obtaining security through the heads of the Army and Navy to bring them back, but the statements recorded reveal that the security heads had informed that there was no possibility of proceeding to Muttur by sea or by land, during this period. It is further revealed that the reason for this was that during this period the tiger terrorists were attacking the armed forces from within the Muttur town limits.
  - ii. In the above circumstances, the district office head, French national Frank Kamo, had given instructions through the Trincomalee ACF representatives to their employees who were stationed at the Muttur Sub-Office not to move out of the office and to stay within the office premises. But even at that stage, district office head, Frank Kamo had been informed that the civil population in Muttur had left the area.
  - iii. M.I. Rafeek who was one of the permanent employees, who worked as a Watcher at the Muttur Sub-Office stated that as the sound of shots in the Muttur area was becoming louder and the entire civil population was leaving the area, employees who were stationed at the Muttur office were also told to leave. However, Sritharan who was stationed at the Muttur office who died, had informed him that he has not received an order to leave from the district office officials and that he would leave, once instructions are received, and even otherwise there is no danger for them because they are members of an NGO. Thereafter, (M.I. Rakeef) has informed that he left the area for his security with his relatives.
8. On 06/08/2006 a person by the name of Premi who worked at the district office had received an anonymous telephone call to the effect that the Muttur office employees have been killed in the office premises. After receiving confirmation of the incident, ACF representatives had informed Trincomalee Senior Police Suptd. As a result, on the same evening a team of special police officers led by Police Inspector Zavahir had commenced investigations. On

07/08/2006 ACF officers with the assistance of the police officers had brought the 17 dead bodies to Trincomalee. After identification of the dead bodies by the relatives, as the Trincomalee J.M.O. was on leave at the time, the services of the Anuradhapura JMO had been obtained to conduct the Postmortem. Thereafter, the dead bodies had been handed over to the relatives for burial on a Court Order.

9. The Special Police Team after an examination of the crime scene has recovered 30 bullet casings of the T 56 type and one such projectile. Investigation notes of the police officers in this connection and extracts of statements recorded from witnesses have been taken over by officers attached to this department. Instructions have been given to the Police Officers to refer case exhibits to the Govt. analyst. The scene of the crime and the property around the area were examined by the Finger Print Officers.
10. It has been revealed from the statements recorded from the police officers who participated at the postmortem that the dead bodies of the persons killed and their clothing were largely spoilt, and that due to the provocative environment created by the relatives of the deceased persons in the Trincomalee Hospital premises it was not possible to recover the clothes of the dead bodies as case exhibits and to obtain finger prints.
11. In view of the existing war environment, the Muttur Magistrate's Court, is being held temporarily in the premises of the Trincomalee Magistrate's Court. In regard to this incident, the Muttur police have reported facts to the Muttur Magistrate under B 843/06 and investigations were continuing. As at present, the evidence of the relatives of the deceased persons, except Anandaraja, has been led before the Magistrate N. Ganesharajah. The case was called again on 22/08/2006 but as none of the witnesses appeared before the Court, further inquiry was postponed to 29/08/2006. This department has not upto now reported to the Court regarding the investigations and due to the danger in traveling from Colombo to Trincomalee and later to Muttur, the OIC of the Muttur police has been instructed to further proceed with the case. Although instructions have been given to the Trincomalee Harbour officer in charge to obtain the reports of the post mortem, these have not yet been received. Action is being taken to obtain them expeditiously.
12. Of the 17 persons killed, the relatives of the following deceased persons named in folio 7 paragraphs 04, 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 13, 14 and 15, were summoned on 18/08/2006 and 19.08/2006 to the cemeteries where the bodies were buried, to identify their places of burial. These were photographed, observation notes made and surveyed.

13. The other three deceased persons, Nos 05, 16, 17 referred to in folio 02 para 05 were buried in Ambulipuram area and it was not possible to provide adequate security to proceed to the area. Therefore, no action was taken in this regard. In addition, no relative of deceased Primus Anandarajah came forward to assist the investigation and they have left the area. On 14/08/2006 Action Faim representatives reported to the Muttur Magistrate in open court at Trincomalee that the relatives have gone to Kilinochchi.
14. Between 01/08/2006 and 15/08/2006 there was a conflict prone environment in Trincomalee and surrounding area and from time to time there was an exchange of artillery fire between the tiger terrorists and the government forces and therefore it was not possible to proceed to Muttur either by land or by sea. On 16/08/2006 was a hartal in the Trincomalee district about the Kilinochchi air attacks and the normal daily life and routine was disrupted and it was not possible to carry out investigation activities. On 17/08/2006 even though the conflict prone environment prevailed, it was possible to proceed to Muttur. Under police protection the crime scene was examined, investigation notes made photographs and video films taken, and measurements done to prepare scale drawings.
15. The place where the NGO members were killed was subjected to a minute examination deploying CID officers and it was possible to find 10 projectiles entrenched in the soil about 1 inch below the surface at a point in the premises which can be believed to be the place where the dead bodies fell and 2 empty bullet cases lying on the surface. These were found without using any technical tools and every such item has been numbered, photographed and measured.

## **Background**

Since the commencement of the separatist war in the North by the LTTE its spill over effect has reverberated in the adjacent Eastern province. The Eastern province which comprises an ethnic mix of Muslim 37% Tamil 41% and Sinhala 22% was constantly infiltrated by the LTTE causing turmoil in the region.

It is against this backdrop that the tragic events unfolded in early August 2006. Muttur lies approximately 100 kilo metres to the East of Trincomalee. During this period the following areas in Muttur district were under the control of the LTTE terrorists. Namely, Sampur, Kattaiparichchan, Pallikudiuruppu, Patalipuram, Konativu, Eechalampattu, and Raulkuli. That is, 12 out of 42 Grama Sevaka divisions. The Muttur city was under the control of the Government.



On 1<sup>st</sup> August 2006 at about 1500 hrs the LTTE had launched an attack on the Muttur Jetty which had been clearly visible from the 9<sup>th</sup> bunker of the Muttur Police station. At the same time the LTTE had attacked the Army camp at Kattaparichchan and captured the Town Police Post and the Telecom Check Point in Muttur.

The civilian population had panicked and started leaving Muttur for Kantale. There had been continuous gunfire and at mid night on 1<sup>st</sup> August the power supply had been cut off. The gun fire had continued unabated on 2nd August and at about 4.30 p.m. there had been heavy mortar fire in the direction of bunkers 8 and 10. A police sergeant manning check point No.1 had died during the shooting. See Annex I – Map of the police station and bunkers

On 1<sup>st</sup> August as there had been military operations South of Muttur the ICRC had withdrawn from the area. However, on 1<sup>st</sup> August the INGO Action Contre La Faim from its Trincomalee base office had sent a group of local workers from Trincomalee to Muttur. Their modus operandi was to remain in Muttur attending to work and return on Friday. The workers had been sent to Muttur despite reservations expressed by some of the workers and against the advice of the Non Violent Peace Force not to do so.

On 2<sup>nd</sup> August with the on set of violence people were leaving Muttur or taking refuge in Churches, Mosques and schools. The priest Fr Swarnaraj of the Methodist Church along with the Divisional Secretary Mr Manivannan had requested the ACF workers to go to the Methodist or Catholic churches for safety. The ACF workers had continued staying in the ACF office at Muttur as the ACF district office at Trincomalee had instructed them to remain in the office. On Friday the 4<sup>th</sup> of August the people who had taken refuge in the churches had started leaving Muttur for Trincomalee on foot through Kiliveddy.

The shooting had continued on 3<sup>rd</sup> August 2006, and the LTTE were freely moving about the town. At about 3.00 p.m. about 50 Army personnel had approached the Muttur police station from the direction of the Jetty. The Commanding officer of the army contingent had left the Muttur police station on 4<sup>th</sup> August 2006 at about 4.00 a.m. to clear the path between the police station and jetty leaving behind a few army personnel to guard the Muttur police station. On 5<sup>th</sup> August 2006 the police personnel at Muttur police station had got to know that the Army had cleared the Muttur town of the LTTE.

The Muslims who had remained in Muttur had become aware of the killing of the ACF workers on Saturday 5<sup>th</sup> Aug. 2006.

## **The ACF Workers who were Found Killed by Shooting at the ACF Office in Muttur**

1. M. Narmathan	Male	Age 25 yrs	Field Officer
2. R. Arulraj	Male	Age 24 yrs	Field Officer
3. T. Pradeepan	Male	Age 27 yrs	Field Officer
4. M. Risikesan	Male	Age 23 yrs	Field Officer
5. K. Kowarthani	Female	Age 28 yrs	Human Development Officer
6. G. Kavitha	Female	Age 27 yrs	Human Development Officer
7. S. Romila	Female	Age 28 yrs	Human Development Officer
8. B. Kokilavadani	Female	Age 28 yrs	Human Development Officer
9. A. Jayaseelan	Male	Age 27 yrs	Human Development Officer
10. P. Sridharan	Male	Age 36 yrs	Senior Field Officer
11. S. Primus Anandaraj	Male	Age 23 yrs	Manager Planning
12. Y. Kodeswaran	Male	Age 31 yrs	Field Officer
13. M. Kedeessvaran	Male	Age 36 yrs	Field Officer
14. S. Ganeshu	Male	Age 54 yrs	Driver
15. I. Muralidaran	Male	Age 34 yrs	Driver
16. S. Koneswaran	Male	Age 24 yrs	Driver
17. Abdul Latif M. Jaufer	Male	Age 31 yrs	KKS

## **Circumstances Surrounding the Incident**

Evidence elicited from the witnesses at the public inquiry before the COI revealed the facts of the case as follows –

### **M.S. Rajesh/Member Muttur Pradeshiya Sabha**

Prior to the LTTE attack the Muttur town had been under the control of the Government. The police and the security forces had dominated the Muttur town.

The LTTE had attacked the Kattaparichchan Army camp on the eastern border of Muttur city on the night of 1<sup>st</sup> August 2006. After the out break of violence he had ventured out on the morning of 2<sup>nd</sup> August 2006 between 6.00 and 6.30 a.m. and gone towards the hospital. He had seen the Army as well as the LTTE moving around the town.

The hospital was located at the entrance to Abdul Cassim Road. The ACF Office was about 50 metres from the beginning of Abdul Cassim Road. Straight opposite the project office is the rear side of the hospital.

He had observed about 15 to 20 injured persons had been brought to the hospital in the early hours of 2<sup>nd</sup> August. These people may have been injured by artillery or gun fire. At that time he had not seen security forces or police present either at the hospital or its vicinity. However, he said that even at normal times they were not present near the hospital.

On the 2<sup>nd</sup> Morning he had visited other parts of Muttur and seen utter confusion and tension among the populace. On the afternoon and evening of 2<sup>nd</sup> August he had not seen either police or members of the Tri Services in any part of the Muttur city. He had seen LTTE cadres at various locations in the Muttur city. For eg. He had seen LTTE cadres in the Main Street, Arabic College Road, and in the evening of 2<sup>nd</sup> August they were seen generally every where. So much so that by the evening of 2<sup>nd</sup> August LTTE Cadres had been dominating Muttur city. Most of the people had started evacuating by the evening of 2<sup>nd</sup> August. Many people had taken refuge at the Arabic College.

On 3<sup>rd</sup> August he had left his residence in the morning and gone to the refugee camps to help the civilians. He had seen LTTE cadres moving about the city. They had been more or less dominating the town. On the 2<sup>nd</sup> of August he had seen police near the Mosque but after that until Saturday 5<sup>th</sup> August he had not seen any members of the Tri Services or the police. On 3<sup>rd</sup> August after he had gone back home he had not come out of the house until Saturday 5<sup>th</sup> August. Due to the intensity of the attack he had thought it prudent to stay indoors on the 4<sup>th</sup> of August.

On Saturday the 5<sup>th</sup> August he had left his residence at about 7.00 a.m. First he had gone to the refugee camps and then he had gone to the Main Street. Even on the 5<sup>th</sup> he could hear gun fire in the town area. Heavy artillery shelling had gone down. By 5<sup>th</sup> morning the attack on the city centre had subsided. However, in the peripheral areas of the town there were signs that fighting was continuing.

He had observed the movement of security forces on the 5<sup>th</sup> morning around the Main Street and New Jetty Road. They were all wearing camouflage uniforms. He had not seen LTTE cadres in any of the places that he had visited. He said it was correct to infer that LTTE cadres had fled Muttur city. He stated that medical personnel of the Government Hospital had abandoned the hospital and fled on the 2<sup>nd</sup> of August and that steps were taken to evacuate the hospital. They had decided to evacuate because artillery shells were falling inside the hospital premises and they feared for their safety.

He had seen dead bodies of LTTE cadres on the 5<sup>th</sup> of August when he went out, at Pallai Nagar, Annaichenai cemetery junction and on the beach at Needal Nagar.

On 5<sup>th</sup> August he had heard about the killing of the ACF workers. He had gone to the scene of the crime and seen the dead bodies. He stated that a person who was going along the Main Street towards Abdul Cassim Mawatha had gesticulated to him in the direction of Abdul Cassim Mawatha, to indicate that something was happening in that direction. He had not identified this person. When the man signaled he was standing in front of the ACF office.

It is to be noted that this witness did not complete giving evidence, as he failed to be present at the subsequent date of inquiry before the Commission.

**Mrs Ravi Shantha/Aunt of deceased Jayaseelan**

Mrs Ravi Shantha has stated that she had spoken to her nephew at 8.30 p.m. on Thursday 3<sup>rd</sup> August 2006. At 10.30 a.m. on 5<sup>th</sup> August 2006 she had received a call from a person who had identified himself as a Pradeshiya Sabha Member, who had informed her that Jayaseelan had been killed along with the others at the ACF office.

**Rasiah Thuraijah Brother in Law of Deceased M. Ketheeswaran**

He has stated that his father in law had received a telephone call from Ketheeswaran, on 3<sup>rd</sup> August at about 9.00 p.m. and 4<sup>th</sup> August at 6.30 a.m. The fighting had commenced on 1<sup>st</sup> August around 12.30 and 1.00 a.m.

**Paramjothy Paraneedaran/ Cousin of deceased T. Pradeepan**

He states that T. Pradeepan had contacted him in the morning of 4<sup>th</sup> August between 6.00 and 6.30 a.m. When Pradeepan had spoken to Parameedaran on the 3<sup>rd</sup> morning he had said that the LTTE were there in Muttur town.

Parameedaran had heard of the death of his cousin on 5<sup>th</sup> August at about 10.00 to 10.30 a.m. from his Aunt Ravi Shantha. Rajesh the Pradeshiya Sabha Member had informed Ms Ravi Shantha on 5<sup>th</sup> August about the killing. Even on the 5<sup>th</sup> morning ACF had told the relatives of the deceased that the workers were alive and safe.

The bodies had been brought to the Trincomalee office on the 8<sup>th</sup> August at 1.30 a.m. Paraneedaran in his statement to the Magistrate at the inquest had stated that the last call he received from Jayaseelan was on 3<sup>rd</sup> August. The witness has contradicted himself.

**M.R.J. Hashim**

He is the Deputy Director of the Consortium of Humanitarian Agencies.

In the first week of August there was an impending exodus of people coming from Muttur. What they had heard in Colombo was that there would be a humanitarian crisis if people started fleeing Muttur - the estimate was about 40,000 people coming out of Muttur. On Friday 4<sup>th</sup> August, CHA had heard that the people were leaving Muttur. It was thus, that CHA had decided to go to Kantale to assess the situation. On 5<sup>th</sup> August CHA had received an SMS message to say that 17 Aid workers were missing. SMS messages were passed on through the network of NGOs to give awareness of the ground situation in conflict affected areas. By this time messages were floating around and they had received several indicating that ACF workers were

missing. 6<sup>th</sup> August he had traveled to Muttur. He had asked a person on the road the way to the ACF office and one Rajesh had showed him the way and come behind him on his motor bike. When they came to the entrance of the ACF building they had seen the dead bodies which were bloated lying on the ground. When he had gone inside the house he had found the place ransacked. The front room was padlocked. It was then that he had taken the photographs.

Thereafter, he had gone towards the naval jetty. He says that he did not think of going to the police station to lodge a complaint about the killings because it was a war situation that prevailed. The Jetty was under the control of the Navy at this time. He had discussed the reason for the ACF workers remaining behind in Muttur when all the civilians were leaving Muttur. He had realized they had stayed behind because the guidelines required them to remain in office until ACF Trincomalee came to take them.

He had prepared a report of his visit to Muttur (W2 Inquiry/ACF/W2/E1). See Annex II

### **Mohammed Yusuf Imami**

He was the Watcher attached to the Cultural Centre which belonged to the Muttur Pradeshiya Sabha. Muslim Cultural Centre was situated on the Main Street. The ACF office is situated behind the Cultural Centre. There were two entrances to the Cultural Centre. The rear portion would be towards the front portion of the ACF office. The ACF office faced the rear of the Muttur hospital. The road on the side of the hospital is Abdul Cassim Road.

The ACF office stored some of their goods in the Cultural Centre premises. He had reported for work at 6.00 p.m. on 1<sup>st</sup> August. At that time Muttur town was under the control of the police. The attack had started around 12.00 a.m. on 1<sup>st</sup> August and Mortar shells had landed on the MOH office which was in front of the Cultural Centre between 12.00 and 3.00 a.m.

On the 2<sup>nd</sup> morning since his duty shift was over, he had proceeded to go home taking the by lanes, as there were LTTE around the place. He had left his motor cycle at the Cultural Centre and gone on foot. He said the LTTE cadres were trying to put up their own defense positions in the town. When he reached home, he found his family had already left to a refugee camp. People were going towards the refugee camps and he too had then joined them. At about 8.00 a.m. he had gone to the Al Hilal refugee camp.

He had found that some of the families in the camp had already left for Kinniya and Kantale. They could not leave as the LTTE had surrounded the refugee camp. The LTTE had been at the main gate of the Al Hilal camp and prevented the people from leaving the camp. Therefore, they had continued to stay at the camp. On the 2<sup>nd</sup> evening other than for the LTTE he had not seen any personnel from the Tri services.

There had been about 233 families taking refuge at Al Hilal College. On 3<sup>rd</sup> August they had not made any attempt to leave the refugee camp as they feared the LTTE. On the 3<sup>rd</sup> too the LTTE were all over the place, surrounding the camp and other places. Through out the 3<sup>rd</sup> night they heard the noise of fighting and gun fire.

On 4<sup>th</sup> August around 12.00 p.m. LTTE cadres had come inside the camp saying that there were armed groups inside the camp. As the LTTE did not find any armed groups they had gone out of the camp and continued to stay near the gate.

On the 4<sup>th</sup> at about 3.00 p.m. he had seen many army personnel on the road. There had been a confrontation between the LTTE and Government forces. Thereafter, the army had taken control of the area. At about 3.30 p.m. to 4.00 p.m. on the 4<sup>th</sup> August the LTTE had continued to fire whilst they started retreating towards the east of Muttur. On 4<sup>th</sup> evening at about 4.00 p.m. the army had arrived and cleared the area and he had gone along with the army personnel to bring provisions from the stores, and take a look at the shop he owned which was on the Main Street. On the night of the 4<sup>th</sup> many injured people had been brought to the Al Hilal camp and he had assisted in treating the injured.

On the 5<sup>th</sup> morning at about 8.00 a.m. he had gone to the Cultural Centre to retrieve his motor bike. He had gone on the Main Street towards the Cultural Centre. He could not enter the Cultural centre through the front gate as it was damaged. Therefore, he had entered the Cultural Centre from the rear entrance. To go to the rear entrance he had to go on a small by lane. He had taken his motor bike to return to the refugee camp.

When he had taken his bike and was passing through the by lane he had seen blood, crows and dogs hovering about, and a strong stench had come from the area in front of the ACF office. This was at about 9.00 a.m. on 5<sup>th</sup> August. He had not gone inside the ACF premises. The ACF gate had been half open. He had seen the dead bodies lying on the ground.

When he went to the refugee camp, he had mentioned what he had seen to a Pradeshiya Sabha Member by the name of Rajesh, who was at the camp. He had met Rajesh at about 11.00 a.m. He had told Rajesh to inform the Trincomalee ACF office by telephone. Rajesh had given his hand phone to him to make the call to ACF Trincomalee but he couldn't get the connection. The Trincomalee office had returned the call by contacting Rajesh who had informed the ACF of the deaths.

After 5<sup>th</sup> August, he had continued to remain in the refugee camp with other civilians for two more months, as most of the houses in Muttur were damaged by mortar fire. From 6<sup>th</sup> August onwards during the day he worked in the shop and returned to the refugee camp for the night.

## **Anthony Rombal Pereira / Purchasing Officer, ACF**

According to Rombal Pereira ACF always ascertained whether the conditions prevailing was safe to proceed to a particular project area. When NGO's carry out activities in conflict areas they categorize the security situation for the protection of their workers. Security was categorized as levels 1, 2, 3, and 4. Level 3 was a situation where you could go to a place but it had a volatile environment. Level 4 was a type of situation prevailing where you could not go at all. The levels of security were applied to the whole of Eastern province, including Batticaloa district.

During the relevant period the ACF had categorized the area as level 3. When any person was sent on field work in the Northern and Eastern provinces an evaluation was made on the prevailing security situation by the ACF. The levels of security were evaluated for the safety of persons who were sent out on project work.

Leveling of security was done by the security officer attached to the Head Office and stationed in Colombo but he visited all the areas. He discusses and collects information from all the relevant people. Namely, the three security services and the police and then did the leveling at the Head Office. There were instances such as when hartal is held, on such days they never go to those areas. "First we ask from the Batticaloa office about the security situation, then Muttur office and then only we proceed." There was an officer in charge of the Trincomalee office who contacted the police and security forces and coordinated the activities. He had a good rapport with the security forces. This person had returned to France and a new person by the name of Frank Kamo had taken over.

On 31<sup>st</sup> July 2006 two teams had left on project activities. One team had left for Muttur and he had gone with the team that went to Kattakulam. Of the 17 staff workers that left for Muttur a section of that group had gone on 1<sup>st</sup> August. In the course of questioning he contradicts his earlier statement by saying his group left for Kattakulam on 1<sup>st</sup> August Further that on the same day they had got a message requesting them not to return to Trincomalee as the situation was not good. Therefore they had remained over night at the sub-base in Kattakulam and returned to Trincomalee on the 2<sup>nd</sup>.

He had gone with Frank Kamo, Head of Base to meet the DIG to expedite the evacuation of the ACF workers, stranded in Muttur. The response from the DIG had been that, due to the conditions prevailing at that time they were not in a position to do anything. They had first attempted to go to Muttur by boat, but shells had fallen due to LTTE attacks and they had abandoned going to Muttur by sea.

There had been radio communication between ACF office Trincomalee and Muttur office. Every conversation by way of radio would be recorded in the Radio Log Book maintained by the Trincomalee Base office. The Radio Log

book records all those who took the calls and the time the calls were taken. The Radio Log Book was in the custody of the Radio Officer Mr Bowen. According to the Log Book entries on 4<sup>th</sup> August at 2.20 a.m. one Sri had spoken from Muttur ACF office. On 4<sup>th</sup> August at 8.10 when they had tried to contact Muttur office there had been no response.

On hearing of the deaths of the ACF workers they had been unable to proceed to Muttur due to the unstable situation. It was only on the 6<sup>th</sup> of August that they were able to proceed to Muttur by land route. When Counsel cross examining asked whether there was any investigation being done at the crime scene at the time he went to collect the dead bodies, accompanied by the Muttur police, he had answered in the negative. The radio set in the ACF office had been dashed on the ground, and the radio inside the van had been destroyed.

He has stated that given the ground situation the ACF workers should have used their discretion and taken refuge in one of the churches or at the several refugee camps irrespective of the instructions given by the ACF Trincomalee office.

#### **Fr. Albert Swarnaraj/Methodist Church, Muttur**

Fr. Swarnaraj has stated that on 1<sup>st</sup> August he had heard the bombardment at about 5.30 p.m. From 6.00 p.m. onwards refugees had started trickling in to the church.

On the 2<sup>nd</sup> of August Fr Swarnaraj on his way to the hospital to collect medicine had seen the ACF workers outside and in the compound of the ACF building and had requested them especially the female workers to take refuge at the church as it was safer, since shells had already damaged the hospital which was adjacent to their office. The ACF workers had said they were very sorry they were unable to do so, as they were under orders to remain in the ACF office.

On the 3<sup>rd</sup> of August at 9.30 a.m. he had gone with Mr Maniwannan, the Divisional Secretary of Muttur and met the ACF workers and advised them to take refuge in a church.

On the morning of the 3<sup>rd</sup> at about 8.30 a.m. to 9.30 a.m. when Fr. Swarnaraj and the Divisional Secretary were taking the injured from the Arabic College towards the Jetty, they had encountered army personnel coming from the Jetty towards the hospital firing their guns. Because of the gunfire they had turned back and proceeded towards the Muttur hospital. He had also seen LTTE cadre at the petrol shed junction, near the hospital, close to the post office and on the Pansala side. When they had come near the ACF Office he had seen people standing in the ACF compound. The time would have been about 11.00 a.m. At that time the Actg. DS Mr Manivannan had shouted at them saying, "Don't stand there like fools, immediately go to the church". He



had seen army personnel by the side of the Jetty and LTTE cadres in the Muttur town.

On the morning of 4<sup>th</sup> August when Fr Swarnaraj and the Divisional Secretary had gone to Arabic College, they found that almost all the people had left for Trincomalee, other than the old and the feeble. Therefore, they had returned to the church and on the way had gone to the ACF office. This was at about 8.30 a.m. on 4<sup>th</sup> August. They had told the ACF workers they were leaving for Trincomalee, and had asked them to join. Their response had been that they have to receive instructions from Head Office. When they were leaving they had seen the LTTE cadres near the hospital and the Pansala area. Fr Swarnaraj had left Muttur town at about 11.00 a.m. on 4<sup>th</sup> August and at about 6.30 p.m. they had reached Kiliveddy School.

According to Fr Swarnaraj there had been refugees in the Muttur Methodist church for a long time even prior to the incident of the present inquiry. On the road to Kattaparichchan there is a village Palai Nagar, where it was usual for killings to take place against Tamil youth in the area. These incidents caused people to come and take refuge in the church. There had been a background of tension between the Tamils and Muslims in the area. The conflict had been due to ill feeling between Muslim Home Guards acting against Tamil youths in the area. He said that even the Roman Catholic people used to come and stay the night in the church fearing for their safety. Four policemen used to be on duty morning and night at both churches.

#### **D.M. Abeywardena – Inspector of Police/Muttur**

On 1<sup>st</sup> August 2006 at 10.00 a.m. the Muttur Police Station IP Keerthi Ranaweera had left for Trincomalee by boat for a discussion with the Senior Superintendent of Police. Therefore during the relevant period IP Abeywardene had been the OIC of the Muttur Police station.

Due to terrorist attack the power lines had been damaged and on 1<sup>st</sup> August there had been a power failure at about 12.00 a.m. The LTTE had been attacking the town on the 2<sup>nd</sup> of August and were in control of the town.

He said that on the 3<sup>rd</sup> afternoon a group of army Commandos had come to the Muttur police station from the jetty area. On the 4<sup>th</sup> of August 2006 in response to his request for reinforcements from Trincomalee, SSP Kapila Jayasekera had landed in Muttur in small boats at about 11.45 p.m. They had come to the Muttur police station from the rear gate.

I.P. Abeywardena had sent a posse of police officers along with Home Guard Cader to the Town Police Post on the 2<sup>nd</sup> of August at about 9.00 to 10.00 a.m. They had returned to the station at about 12.00 p.m. to 1.00 p.m. He said he came to know later that Home Guard Cader along with another Home Guard had stolen a motor bike belonging to the ACF office.

The Commandos' had left the Muttur police station on 4<sup>th</sup> August at 4.00 a.m. A Home Guard who was on duty in bunker No 7 Jehangir had also accompanied the Commandos.

SI Sarathchandra who was OIC of the Town Police Post retreated to Muttur Police Station on 2<sup>nd</sup> August between 11.00 and 12.00 noon. As soon as he arrived he was given in charge of Bunker No 7. Home Guard Jehangir was under the supervision of SI Sarathchandra in bunker No. 7.

During this time he had sent a team under the leadership of SI Lekamge, to bring back the weapons that were left behind when the LTTE attacked the Town Police Post.

Other than that, he had not allowed anyone to go out of the police station during this period. There had been 156 Home Guards and 223 police officers attached to the Muttur police station. Home Guards were given only 2 weeks of army training. Every Home Guard is issued with a personal weapon.

During the conflict in Muttur family members and the residences of Home Guards had been affected. Their next of kin had suffered serious physical injuries.

The Army Commandos' had come to the Muttur police station on 3<sup>rd</sup> August around 1.00 p. m.

### **Shanmugarajah Kamalendran – Employee Telecom**

According to Kamalendran there had been a power failure on the 2<sup>nd</sup> night at about 11.00 to 12.00 p.m. At about 5.00 a.m. on 3<sup>rd</sup> morning he had gone to the Telecom office to start the generator. A police officer on security duty had told him not to start the generator and to go inside the office and stay for safety.

Soon thereafter, LTTE cadres had arrived, and when they found that Kamalendran was a Tamil, they had taken him with them to the Town Police Post. They had kept him there till noon and at about 2.00 p.m. asked him to go to a church for safety. He had spent the night at the church with the other refugees and on the 4<sup>th</sup> morning at about 10.00 a.m. left for Trincomalee on foot with the other refugees. He had not seen any security forces on their way out of Muttur. At Kiliveddy they had got into vehicles sent by the church. On the way at the 64<sup>th</sup> Mile Post they had seen a group of LTTE. At mid night on 4<sup>th</sup> August they had reached St Anthony's church, Trincomalee.

### **A.L.M. Fasmi/Police Constable**

Due to the LTTE attacks the police officers had abandoned the Telecom Check Point and retreated to the main Muttur police station at about 10.30 to 11.00 a.m. on 2<sup>nd</sup> August. Thereafter, he had been assigned duties at the 9<sup>th</sup> bunker situated inside the Muttur police station. He was there on duty from 2<sup>nd</sup> August to 7<sup>th</sup> August.

### **M.E.M. Sarathchandra/SI**

He was OIC Town Police post from 29<sup>th</sup> July onwards. At the time there was on duty at the Town Police Post 3 police sergeants, 8 police constables, and 5 Home Guards.

Town police post is located near the Main Street opposite the Divisional Secretary's office. The distance from the Town police post to the ACF office would be approximately 250 to 300 metres. On 2<sup>nd</sup> August 2006 after 4.30 a.m. the attack on the Town Police Post commenced. They had requested reinforcements from the Muttur police station and a group of police officers had arrived. The terrorist attack had then subsided. Therefore, the reinforcements that came had returned to the Muttur police station. Then the LTTE had commenced attacking with greater intensity. He had asked the police sergeants Pakkijarajah a disabled police officer to leave the police station some how or other.

As a result of the attack he and the other officers other than sergeant Pakkijarajah had retreated from the police post. They had reached the Muttur Main police station at about 8.30 a.m. or 9.00 a.m. The arms and ammunition left behind at the Town police post were taken by the terrorists.

Early morning of 4<sup>th</sup> August the terrorists were attacking from the following locations. Viz: Muttur Jetty area, Muttur town, Palainagar area, Knox Junction and Market Road as well as Sampur and Kattaparichchan. They had come to know the presence of terrorists in the area due to the mortar and other gun fire launched from these directions. The ACF office was close to the Muttur town.

According to Jehangir, he had been directed to show the way generally as the commandos were not familiar with the area. Jehangir had not communicated with him directly, but he had over heard Jehangir speaking to his friend Cader who was a Home Guard.

On the 5<sup>th</sup> Jehangir had returned to the Muttur police station.

Jehangir's brother had been killed by the LTTE.

Jehangir had informed Cader the other Home Guard that he was being sent as a guide to point out the road way to the army personnel and for this

purpose he had been instructed to leave the bunker. SI Sarathchandra had gone on duty to bunker No 7 on the same day that he had retreated from the Town Police Post and returned to Muttur police station. That is, on the morning of 2<sup>nd</sup> August. SI Sarathchandra has stated that Jehangir had been frequently leaving the bunker and going towards Muttur police station and coming back. The other officers too frequently left the bunker and returned.

Jehangir had not returned to the bunker even by 11.25 a.m. on 5<sup>th</sup> August. He had been away from the bunker for a day and 6 hours.

SI Sarathchandra admitted when questioned by Counsel whether he had ascertained from the Acting OIC Muttur Police Station D.M. Abeywardena, if he had actually given such an order to Jehangir to accompany the Army officers, OIC Abeywardena had said that he had not given such an order, for Jehangir to leave the police station premises. When Jehangir left he had taken his weapon and a magazine with him.

SI Sarathchandra had left the bunker No 7 on 5<sup>th</sup> August. Up to that time Jehangir had not reported for duty to bunker No 7.

In Muttur district the following areas were under the control of the terrorists. Viz: Sampur, Kattaparichchan, Patalipuram, Konativu, Eechalampattu, Pallikuduiruppu and Raulkuli. That is, 12 out of 42 Grama Sevaka divisions.

The distance between ACF office and bunker No 7 was 1½ KM. Gun shots from ACF office could have been heard up to bunker No 7 as it was within hearing distance. However, on the 4<sup>th</sup> of August there had been intermittent firing from the direction of the East and Raulkuli area and from around Muttur. So it would be difficult to identify the shooting at the ACF office.

The closest police post to the ACF office was the Telecom police post, about 300 metres as the crow flies. This was the first police post to have been abandoned due to terrorist attack. On the morning of 2<sup>nd</sup> August the Telecom Police Post was abandoned due to terrorist attack.

Telecom Police Post was re-established on the 6<sup>th</sup> August 2006. The area around the Telecom Police Post was under the control of the LTTE until 6<sup>th</sup> August. The Town Police Post was about 300 to 400 metres from the ACF office. He had asked Sergeant Pakkiyarajah to leave the Town police post. But instead, he had gone to his room. Three days later when the Army had gone there they had found Pakkiyarajah had been killed. The strong box had been in the custody of Pakkiyarajah. 20 grenades had been found missing in the strong box. He has stated that due to the heavy terrorist attack they were unable to take the weapons in the strong box.

Wanguwa Check Point police post too had been abandoned due to terrorist attack. The Wanguwa Check Point was about 800 metres from the ACF office.

The entire Muttur Town had come under the control of the LTTE from the morning of 2<sup>nd</sup> August.

The Army and the police had regained control of the Muttur city on 6<sup>th</sup> August.

### **Nagarasa Manivannan / Acting Divisional Secretary, Muttur**

On the morning of 3<sup>rd</sup> August, when he went to the Arabic College with Fr Swarnaraj he had seen members of the LTTE in civil clothes in the area near the Arabic College and here and there on the road with firearms. He had not seen personnel of the 3 armed services in the area around Arabic College. However, when he went to the Jetty he had seen a group of security personnel. He had gone towards the Jetty to speak to the ICRC to get the injured civilians transferred from Muttur to Trincomalee.

He had met 2 ACF workers opposite the hospital on the Main Road on the 3<sup>rd</sup> of August. He had asked them to come to the Church for safety. But they had said they were awaiting instructions to go to Trincomalee. He knew the ACF workers as they had worked in the water and sanitation project in collaboration with the Divisional Secretary's Office. When he had gone to the Telecom Office on 3<sup>rd</sup> evening at about 4.30 p.m. in the evening he had seen these two workers again.

On the 2<sup>nd</sup> and 3<sup>rd</sup> the LTTE cadres were near the Divisional Secretary's Office, near the hospital and in the vicinity of the Arabic College.

The ACF had done relief work in the sphere of water and sanitation in the areas controlled by the LTTE. All projects initiated by NGOs have to go through the Government Agent. There was no need to obtain approval of the LTTE but the LTTE were informed through the Grama Sevakas.

Mr Manivannan had discussion with Muslim dignitaries, Fr Swarnaraj and other social workers at about 2.00 p.m. on 4<sup>th</sup> August. A decision had been taken on Friday 4<sup>th</sup> August to evacuate the refugees on the following day. He had left Muttur on 5<sup>th</sup> August with the refugees from the two churches. In answer to a query by Counsel he said Muttuur Division also encompassed Sampur. He affirmed that one Paramjothy Paraneedaran had worked in the DS Office in 2006. Paraneedaran had taken over the work in this area when the permanent officer had gone over seas. Mr Manivannan had brought with him Paraneetharan's programme reports.

### **Mrs M. Chandrawathie Herath/WPC**

She had lived in a rented house opposite the MC Courts about 1 ½ KM from the Muttur police station. After the LTTE had attacked the police station and surrounding areas on 1<sup>st</sup> August at about 11.00 p.m. the attack had continued till 5<sup>th</sup> August.

During that time they had been confined to the house and through the ventilation aperture, when they had peeped they had seen only LTTE cadre. It was only on 5<sup>th</sup> August at about 2.30 to 3.00 p.m. that her husband with a team of army officers had come to their house and rescued her.

### **Mr Sarath Mahinda / Garage Owner**

His evidence too corroborates WPC's evidence. His garage was situated about 50 metres from the MC Court house. He had seen LTTE cadres shooting in the direction of the Town Police Post on the 2<sup>nd</sup> of August, which was about 50 metres from the garage. He had gone across to his Cousin Lal Thomas' house and stayed for 3 days up to Friday 5<sup>th</sup> August. On the 5<sup>th</sup> Saturday he had gone up the road to the police check point i.e. the Town Police Post. It had been deserted. Then he had seen two Muslim civilians cycling from the direction of the market and going towards the town. He had a meal at a Muslim friend's house and returned to the garage at about 1.30 p.m. By that time he had seen army and police officers near the garage.

### **Jehangir / Home Guard**

Jehangir's one brother who was in the army had died when he was on home leave, killed by the LTTE. The other brother who was a Home Guard had been killed in Thoppur in an LTTE attack. Another brother Jawad had lost both his legs in 1990 while in a refugee camp due to a mortar attack. His second sister had gone missing when she was 12 year and the rumour was that she was taken by the LTTE. His brother in the army had died when Muttur was under attack in the first week of August 2006. His brother had been attached to Trincomalee Fort army camp. He had received information about the death of his brother on 2<sup>nd</sup> August at about 10.00 a.m. In his agitated state of mind he had gone into an isolated bunker. Viz, bunker No 4. He had not observed who was in charge of bunker No 4. He had come on duty at 5.30 a.m. on the 2<sup>nd</sup> of August and had remained in the bunker for 4 days.

He says he went inside bunker No 4 at about 10.30 a.m. on the 2<sup>nd</sup> of August and came out only on the 6<sup>th</sup> of August. During this period the officer in charge of bunker No 4 had been Inspector Ratnasiri Perera. He had met the Magistrate at about 9.30 a.m. on 2<sup>nd</sup> August.

This contradicts the Magistrate's statement where he gives the time of arrival at the Police station between 12.00 p.m. and 2.00 p.m. on 2<sup>nd</sup> August. Jehangir further states that he did not carry any firearms on the 2<sup>nd</sup> of August when he was in the bunker. However, according to S.I. Sarathchandra he had left bunker No. 7 he had taken with him his weapon and a magazine.

### **A.J.A. Cader/ Home Guard**

Cader had undergone a one month's training period prior to becoming a home guard. He had been trained in handling weapons. Along with him 15 other youths had been trained as Home Guards. Out of the 15 youths trained as Home Guards half had been posted to Safinagar and the balance at the Muttur police station. All these police posts came under Muttur police station.

During the time of the conflict he resided at Nadativiu which is about 500 to 600 metres from the police station. When he went off duty he handed over his gun before going home. On 1<sup>st</sup> August he had reported for duty in the morning. On the night of 1<sup>st</sup> August he was on duty at the Town Police Post. At about 2.30 a.m. he had heard the sound of gun fire. Along with him there had been Sgnt. Abeysinghe and PC Fazny, Home Guard Riyaz and a member of the Telecom staff. On the morning of 2<sup>nd</sup> Aug along with a group of police officers Jehangir had come to the Town Police post to give support to the beleaguered checkpoint. It was about 8.00 or 9.00 a.m. when they started retreating from the Town Police post. Jehangir had come behind them. All of them had run towards the Muttur Police station.

When he reached Muttur police station he had been instructed to be on duty at bunker No. 7. Others who were detailed for duty in bunker No. 7 were, PC Ayub Khan, home guard Zahir and there were 2 policemen. SI Sarathchandra was in charge of Bunker No. 7. He had accompanied Sergeant Abeysinghe and a group who had been assigned to take the injured and to collect ammunition from the Jetty near the beach head. On his return, as his family was at the Al Hilal camp he had gone to see them at about 8.00 and 9.00 am on the 2<sup>nd</sup> of August. He had been unable to return to the police station. He had returned to the police station on 3<sup>rd</sup> morning. At that time the whole of Muttur was under LTTE control.

After he returned to the police station on the 3<sup>rd</sup> morning he had continued doing his duties at bunker No. 7. On the 2<sup>nd</sup> and 3<sup>rd</sup> August Muttur was under LTTE control. The army commandos came on the 3<sup>rd</sup> at about 2.30 p.m. He stated that Acting OIC Inspector Abeywardene had asked Jehangir, Shiraz and Aneez to accompany the army officers to show them the way and that he had also been asked to go, but had not gone as he had pricked an iron nail on the sole of his foot. The army officers had called him. He had declined to go, because he was finding it difficult to walk due to the injury. When Counsel had asked, "Now did you see Inspector Abeywardena giving instructions to these 3 people?" He had answered, at the 7<sup>th</sup> checkpoint near that Jehangir was asked to go, and after that all 3 were taken." When asked, did you see Inspector Abeywardena giving these instructions to Jehangir at a location near bunker No. 7?" he had answered, "Yes, I saw and all those at the checkpoint knew." Inspector Abeywardena had given the instructions near the OIC's quarters at about 8.00 p.m. to 9.00 p.m. on 3<sup>rd</sup> August. At the time of giving the instructions the OIC had been near the 8<sup>th</sup> Point. At this time Cader had been near the 7<sup>th</sup> Point. Cader had heard the OIC request

Jehangir and the other two, "the Commandos are new to the place, they don't know the way so please take them to that place."

Cader further states that Jehangir on receiving instructions from IP Abeywardena had left the police station with the Army Commandos at about 4.00 a.m. on 4<sup>th</sup> August. There had been about 16 army personnel in the group. They had left from the road opposite the 7<sup>th</sup> Point, which led to the Pansala. He had seen them leaving the police station premises.

On the 4<sup>th</sup> at about 12.30 to 1.00 p.m army Zarook was the first outsider to enter the police station bringing provisions. He was armed with a gun. Cader stated that army Zarook had been arrested by the police 2 days later for threatening to shoot somebody and that the Navy had got him released. It was from Zarook that he and the others had got to know that the town had been recaptured by the army.

Cader stated that the commandos who had left the police station at 4.00 a.m. on the 4<sup>th</sup> of Aug. had not returned to the police station. He had seen them deployed in some areas of Muttur.

On 5<sup>th</sup> August when he and another Home Guard Ramzan heard that the town had been recaptured they had come out of the Police station and walked towards the town centre. This had been at about 8.00 a.m. and people were on the street and shops were being looted. Thereafter, he had seen Jehangir, near the hospital on 5<sup>th</sup> August at about 9.00 a.m. The hospital was on the Main Street at a junction where Abdul Cassim Road meets the Main Street. Abdul Cassim Road comes straight and goes to the Main Street. He had seen Jenahgir at that particular point in the lane. That is at the junction where Abdul Cassim Road falls onto the Main Street. Shiraz and Aneez had also been there as well as Jehangir's brother Jawad. Jawad was in a wheel chair. About 15 army personnel had also been there. Jehangir and the army personnel had asked them not to stay and to go away. They had then gone to the Al Hilal school camp. There he had met a person called Zarook. He had told them that there was a motor bike. As he and Ramzan wanted to go to Kantale to see their families, they had agreed to go and take the motor bike. Zarook was attached to the Navy and had a gun. They had gone to the ACF office and seen the dead bodies. When he refused to go inside, Zarook had aimed the gun at his forehead. There had been 3 motor bikes in the ACF compound. A small bike and 2 blue coloured bikes. They had been compelled to take the motor bikes under duress on being threatened by Zarook. Along with Zarook, Cader had gone into the office with 3 others. Namely, Ramzan, Munafer and Ziaul. All 3 were Home Guards. He had then hidden the bike at a house in Nadativu which was very close to the police station. They had taken 2 motor bikes and returned to the police station. Cader had admitted that he has a case pending in the MC Court, Muttur for having stolen a motor bike which had been filed against him in Case No 11870 Muttur on 26/11/2007. The trial date is scheduled for 25/08/2008.



On the 8<sup>th</sup> when the OIC of the police station had given them leave to go home, they had come out of Muttur Police station. When he reached home he had found the entire village had evacuated. Thereafter he had searched for a vehicle to go to Kantale. He had seen Ramzan riding the motor bike and gone with him to Kinniya to Ramzan's wife's place. When they returned to the police station he had handed over the bike.

Cader's accusation with regard to intimidation by army Zarook seem more likely to be a defense ploy to extricate himself from the charge of theft. He had been traveling on the road on the motor bike without a number plate and had been arrested by the police and remanded. He had also got a key cut at Kinniya for the bike. He had taken the bike on the 5<sup>th</sup> from the ACF premises and on the 21<sup>st</sup> he had been accosted by the police for riding without a number plate and been remanded for theft upon finding out that the bike belonged to ACF.

Cader states that army Zarook was in Navy commando uniform when he met him at the Al Hilal refugee camp on the 5<sup>th</sup>. Counsel for the defense rebuts this. Records indicate that there was not a single Muslim or Tamil attached to the Muttur Navy during the month of August. When confronted by defense Counsel that army Zarook was a poor labourer, Cader rejoinder is that army Zarook was in the intelligence section of the army. Asked as to who would testify to the fact that he had left the police station on the 5<sup>th</sup> August. He replied that Home guards Zahir, Sgnt. Abeysinghe, Thoppu Ralahamy and Sergeant Khalideen would testify that he left the police station on the 5<sup>th</sup> and that Ramzan, Ziaul and Munafir would testify to the fact that they accompanied him. He stated that on the 8<sup>th</sup> they had gone on the bikes to Kinniya to see his family.

During the examination by Counsel Cader has stated that army Zarook came and confessed to him regarding the killing of these victims and there is repentance on his part, that in the process he had killed a Muslim youth amongst the 17 killed without any justification, whom he had even known, as he had come to his house and had meals. Previously, Cader very clearly alleged that army Zarook to have been one of the perpetrators of this crime.

When examined by Counsel he acknowledged the photograph marked E 72 which depicted the 2 motor cycles in the premises of ACF. He had stated that the bicycles in the photographs were the ones taken by him on the morning of 5<sup>th</sup> August. When further questioned as to the 2 stolen bicycles depicted in the photographs taken on the 6<sup>th</sup> or 7<sup>th</sup> by Mohammed Hashim, Deputy Director, of the Consortium of Humanitarian Agencies and the 2 police photographs taken by PC Pradeep Kithsiri Udaya and Sgnt Fernando. His answer was that he was telling the truth. However the photographs belie his credibility.

Cader's position had been that he had seen Jehangir in Bunker No. 4 from where he was stationed in bunker No. 7. When confronted by Counsel with

the actual position that due to various structures between bunkers 7 and 4 Cader could not have seen Jehangir inside bunker No 4, he admitted that he could not have seen Jehangir from his vantage point in bunker No. 7. When questioned by Counsel for ACF he states that Jehangir came to his house and threatened him not to reveal truth before the Commission and that is why he said that Jehangir was in bunker No 4. When confronted with facts which are at variance with his narrative he has given evasive, contradictory statements. In the course of examination by Counsel for the ACF he has admitted that when he removed the 2 motor bikes the Production Labels had been hanging from the roof near the bikes and he states, "during the inquiry we realized that they (police) had come and put the PR." From Cader's own admission it is evident that he has removed the motor bikes on the 8<sup>th</sup> of Aug. This position is corroborated with the evidence of CHA representative Mohammed Hashim, PC Pradeep Kithsiri Udaya and Sgnt. Fernando. No weight can be given to Cader's evidence which is unreliable.

Cader has requested to appear before the Commission as he wished to make a clarification. He states that he had erred when he stated that he went to town on the 5<sup>th</sup>. In actual fact he went with Home Guard Manafir to the ACF Office on the 6<sup>th</sup> as directed by Zarook and taken the motor bikes.

Also that on the 5<sup>th</sup> of Aug. he had left the Police Station and gone towards the town, where he had met Jehangir who had asked him to go back and he had proceeded to Al Hilal refugee camp. There he met army Zarook who had taken him and his friends Ramzan, Munafir and Zahir to the ACF Office. He had also stated that he Munafir and Ramzan had entered the ACF compound and removed the motor bike, whilst Zarook and Zahir remained outside.

This seems a strategy to avoid a criminal prosecution as it has transpired that the police were going to charge him with theft of the motor bike on 5<sup>th</sup> August. It appears that he has changed his stance for his advantage.

### **Segudawood Zahir/Home Guard**

According to Zahir, PC Ayub Khan, PC Kithsiri, home guards Cader and Ramzan were in bunker No 7. S.I. Sarathchandra who came from the Town Police Post was also in Bunker No 7. He has stated that Jehangir was in bunker No. 4 during the height of the attack on the Muttur police station. However, he has later modified his statement to say that he did not actually see Jehangir in bunker No. 4, but was aware that Jehangir was in bunker No. 4.

### **S.I. Ratnasiri Perera**

He was in charge of bunker No. 4 and has stated that Jehangir was on duty in bunker No. 7. He states that Jehangir was not at any time inside bunker No. 4. The terrorist attack had ended on the afternoon of 5<sup>th</sup> August.

### **Zainulabdeen M Kamil/Teacher, Arabic Madrassa College**

Abdul Latif Mohammed Jaufer one of the deceased was his brother in law. Jaufer had given a call to his elder brother Hakeem on the night of 3<sup>rd</sup> August.

### **Velupillai Dharmarajah/Uncle of Deceased K. Kovarthani**

Kovarthani had spoken on her mobile phone to her sister Kala, his niece at 6.30 a.m. on the morning of 4th August 2006.

### **Dr M.A.M. Shukri/DMO, Muttur Base Hospital**

He has been the DMO attached to the Base Hospital Muttur since August 2003.

He confirms the statement given to the Investigation Unit of the COI where he has stated the attack on Muttur had commenced on 1<sup>st</sup> August 2006 at about 10.30 p.m. to 11.00 p.m. When the Mortars hit the hospital the patients had started evacuating from the hospital, that is, on the morning of 2<sup>nd</sup> August after 7.30 a.m.

### **S.I. Sarath Wimalaratne**

He had been attached to the Muttur Police station from 13/03/2006, and thereafter was OIC Police Special Intelligence Unit to date. He has maintained an Information Book in his Unit and entries have been made from 24/04/06 until 25/05/07.

Initially, the LTTE had attacked a Navy vessel at about 3.00 p.m. on 01/08/2006. The attack on the Muttur Police division was directed from the area of Sampur. The attack had continued on 2<sup>nd</sup> August with a very forceful attack on Kattaparichchan army camp. The LTTE had taken control of the Old Jetty, Wanguwa Junction and a section of the Kaktaparichchan army camp. The LTTE had also taken control of the Town Police Post and the police personnel at this check point had withdrawn to the Muttur police station. The Telecom Security checkpoint personnel too had withdrawn to the Muttur police station. By this time almost all the areas of Muttur town was under the control of the LTTE and the residents had started abandoning their homes and going towards Kantale. Some of the people had gone to refugee camps.

During the period of these attacks he had stayed at the old bunker near bunker No 9 at the police station. Bunker No 9 was situated near the officers quarters to the rear of the police station. Electricity had been out at this time and he had maintained communications with Trincomalee on mobile and celltel phones. Until the early morning of 3/08/2006 the Muttur town had been under heavy attack by the LTTE. It had been at about 12.45 p.m. on 3<sup>rd</sup> Aug. that an army commando unit comprising 50 officers had been sent as

reinforcements to Muttur from Trincomalee. There was a Major and a Captain accompanying them. The Captain's name was Shiranjeewa.

On 04/08/2006 at 4.00 a.m. the army commando unit left for operations in the town leaving behind the captain and 8 commandos to guard the police station. On the night of 4/08/2006 SP/Crimes and Operation, Kapila Jayasekera, and OIC Muttur Police station IP Kirthi Ranaweera and a group of officers had come to the Muttur police station bringing with them provisions and other requirements.

On 6/08/2006 Muttur town and the surrounding areas were completely taken over from the control of the LTTE. SP Kapila Jayasekera, IP Ranaweera and a group of officers had left to visit the Kattaparichchan army camp. On their return he had got to know about the killing of the ACF officers and that a special team of officers dealing with war crimes had been appointed to conduct investigations.

The one and only duty officer in his Sub-Unit had been PC Bashir. The weapons brought along by the commandos comprised T 56, LMGs, rocket launchers and RPGs.

### **Police Sergeant H.M. Suriyakumara**

He was functioning as Caretaker of the Armoury when the LTTE attacks took place in August 2006. On the evening of the 2<sup>nd</sup> of August he had been sent to the New Jetty Naval camp to bring ammunition to the police station. On their way they had come under mortar attack and he and several officers and home guards who accompanied him had been injured. When they came under attack they had been about 400 metres away from the New Jetty. There had been naval gun boats approaching the beach and he had got into one and gone to Trincomalee. He had returned to Muttur and resumed duties at the Armoury on 10<sup>th</sup> August 2008.

When he was reconciling the arms issues and the arms returned to the Armoury he had observed that some arms were missing. After completing his investigations he had prepared a report and had handed it over to the OIC of the Muttur Police station. After he had inquired into the missing arms he had come to the conclusion that there was a shortage of 10 T56 weapons. The weapon issued to PC Kabir bearing No 29013735 had been with him in Trincomalee when he went on the 2<sup>nd</sup> for treatment. The weapon issued to Home Guard Rinoon who had left on the 2<sup>nd</sup> to Trincomalee for medical treatment for injuries had been handed back on the 19<sup>th</sup> by CVF 1561 Shirabdeen. However, he could not definitely say who had this firearm on the 4<sup>th</sup> of Aug. He had been able to trace 7 of the weapons that had gone missing. 5 weapons had been recovered by IP Athula. Weapons given to Rinoon and Kabir have been returned.

The following weapons had gone missing as at 10<sup>th</sup> August 2006:-

1. Firearm 28039143 = Issued to PC Ellepola 50160 on 2<sup>nd</sup> July, 2006.
2. Firearm 28041545 = Issued to PC Wijesiri 24657 on 15<sup>th</sup> Nov. 2005.
3. Firearm 28019333 = Issued to PC Asela 59514 on 14<sup>th</sup> Jan. 2005.
4. Firearm 28032832 = Issued to Home Guard Nazeer 58954 on 24<sup>th</sup> Dec/2005.
5. Firearm 270534 = Issued to Home Guard Nazly 68062 on 1<sup>st</sup> Aug. 2006.
6. Firearm 28048386 = Issued to Home Guard Majeed 31421 on 22<sup>nd</sup> June 2006.
7. Firearm 28043821 = Issued to Home Guard Mubarak 56099 1<sup>st</sup> Aug. 2006.
8. Firearm 2686343 = Issued to Home guard Jallel 68059 on 2<sup>nd</sup> Aug. 2006.
9. Firearm 29013735 = Issued to PC Kabir 59485 on 4<sup>th</sup> March 2007.
10. Firearm 1401655 = Issued to Home Guard Rinoon on 17<sup>th</sup> June 2006.

T56 issued to Ellepola No 50160 had gone missing during the LTTE attack on the Town Police Post where he was on duty on 2<sup>nd</sup> August. No statement has been recorded from PC Ellepola with regard to the missing firearm. However, it had been subsequently found and handed over to the Government Analyst on 27<sup>th</sup> October 2006. It had been taken into custody from Home Guard Nizam 65079, by IP Athula. For 2 months this weapon had been in the custody of Nizam, who had vacated his post. PC Ellepola had lost custody of his firearms during the attack on the Town Police Post on the 2<sup>nd</sup>. IP Athula and his team had recovered the weapon on 27<sup>th</sup> October 2006. However, he had no knowledge how they recovered the firearm.

The 2<sup>nd</sup> firearm in the custody of PC Wijesiri too had been lost during the attack and had been recovered by IP Athula and his team on 27<sup>th</sup> November 2006. IP Athula had found the firearm in the custody of former Home Guard Nizam. Both the above mentioned firearms were found in the custody of Nizam.

The 3<sup>rd</sup> firearm had been issued to PC Asela on 14<sup>th</sup> January 2005. This gun too had been recovered by IP Athula on 27<sup>th</sup> Oct. 2006. This firearm too had been recovered by IP Athula in the custody of Nizam.

Suriyakumara had submitted a report at the request of the COI on the T56 weapons lost or missing during the LTTE attack in August 2006. He had examined the Information Book of the Armoury, and the Firearm Issue Book to make the report.

Given below are particulars of the missing firearms as stated in the report.

1. Firearm No 28039143 – Issued to PC Ellepola 50160 on 28/07/06.

This weapon has not yet been returned to the Armoury. This weapon had been found by IP Athula along with 4 other firearms together with the suspect, former Home Guard Nizam. Ellepola had lost custody of the weapon on 2<sup>nd</sup> August 2006 during the LTTE attack on Muttur. At present the weapon is at the office of the Govt. Analyst.

2. Firearm No 28041545 - Issued to PC Wijesiri 24656 on 15/11/05.

This firearm too had been missing and recovered by IP Athula on 27/10/06. This weapon too had been in the custody of Nizam.

NB: From Zephyr's evidence under the Clause 8 Investigations it had transpired that the empty cartridges recovered from the scene of the crime are now with the Government Analyst. According to witness some of these weapons that went missing are also with the Government Analyst. It was suggested that the Government Analyst should be requested to do a ballistics report on these firearms and the bullets recovered from the scene of the crime.

3. Firearm No 28019333 - Issued to PC Asela 59514 on 14/01/05.

This weapon too had been recovered by IP Athula on 27/10/06. This weapon too had been recovered from the custody of former Home Guard Nizam.

4. Firearm No 28032832 - Issued to Home Guard Nazir on 24/12/05.

This weapon too had been lost in the attack on the Town Police Post on 2<sup>nd</sup> August 2006. It had been recovered by IP Athula from the custody of former Home Guard Nizam.

5. Firearm No 3702524 - Issued to Home Guard Nazly on 1 Aug. 2006.

This firearm too had been recovered by IP Athula on 27/ 10/06 in the custody of Home Guard Nizam.

6. Firearm No 28048386 - Issued to Home Guard Majeed on 22/06/2006.

Majeed had served in the Town Police Post and when he left for home after finishing his duty at the Town Police Post on 1<sup>st</sup> August 2006 he had handed his weapon to the Reserve Officer. However, no entries have been found to prove that Majeed handed over his firearm to the Reserve Officer. Sergeant Pakiyarajah had been in charge of the reserve service at the Town Police Post during this period. He had succumbed to his injuries during the attack. This firearm has not been recovered by the police.

7. Firearm No 28943821 - Issued to Home Guard Mubarak 56099 on 01/08/2006.

Mubarak had died during the attack and the firearm has not been recovered. Suriyakumara had been injured on the 2<sup>nd</sup> after he had left the Armoury at 2.00 p.m. to collect ammunition from the New Jetty. After he left the Armoury Jayalal had replaced him. He had locked the Armory when he left. However, he has stated that there were 2 keys to the Armoury and one key was with Jayalal. The firearm T56 – 28043821 had been issued by Jayalal, Asst. at the Armoury at 5.45 a.m. on the 2<sup>nd</sup> of Aug. That is whilst Suriyakumara was on duty at the Armoury.

8. Firearm No 3686343 - Issued to Home Guard Jaleel on 02.08/06.

Home Guard Jaleel had died in the attack on 2<sup>nd</sup> August 2006. His firearm has not been recovered.

9. Firearm No 29013735 - Issued to PC Kabir 59488 on 04/05/2006.

PC Kabir had been injured and taken to Trincomalee. He had handed his weapon to the Trincomalee Police Station on 04/08/2006.

10. Firearm No 1401655 - Issued to Home Guard H.G. Rinoon on 17/06/2006.

On the 2<sup>nd</sup> of Aug. Home Guard Rinoon was injured and taken to Trincomalee. He had handed his weapon to CVF Surabdeen.

Since there was evidence to show that weapons were missing from 10<sup>th</sup> August 2006, there is also a possibility that a 3<sup>rd</sup> party may have had access to these weapons and could have perpetrated this deed.

### **Abdul Wahid Rilwan/Home Guard**

On the 2<sup>nd</sup> of Aug. when the LTTE started attacking the Muttur town he had gone with his family to Al Hilal Refugee camp. He had seen Home Guard Cader about the 5<sup>th</sup> or the 6<sup>th</sup> come to the refugee camp on a motor bike.

### **Zia Ul Haq/Home Guard**

He has been a Home Guard attached to the Muttur Police station for 11 years. On the night of the 1<sup>st</sup> he was staying at home with his family. When the fighting broke out in the early hours of 2<sup>nd</sup> August he took his wife and children to Al Hilal camp and had reported to the police station at about 6.30 a.m. He had been assigned duties in bunker No. 9 which was under SI Lekamge. Home Guard Rajudeen had also been on duty in bunker No 9.

On the evening of the 5<sup>th</sup> he was informed that his child was injured and that his family has relocated to Kantale. He had left the police station premises on the 6<sup>th</sup> at about 10.00 a.m. The OIC had given a pass which had enabled him to go in a Navy gun boat to Trincomalee. He had found his family in the Kantale refugee camp on the 8<sup>th</sup>.

### **J. Mohammed Ramzan/Home Guard**

He was attached to the Muttur police station during the period when Muttur was under attack in 2006. At the commencement of the LTTE attack he was on duty at the main entrance to the police station. During the attack he was stationed inside the bunker near the main gate. Namely bunker No 1.

He left the police station premises on the 8<sup>th</sup>. He met Cader near the Telecom Police Post. They had seen a motor bike lying near the Ibrahim hotel which they had activated and ridden to Kinniya to see his parents. On the way they had been arrested by IP Zavhir and goaled.

This position is contradicted in his statement made to the police in Aug. 2006, where he has stated that he went inside the ACF office with Cader and removed the motor bike on 6<sup>th</sup> August 2006.

He had seen Jehangir on duty at bunker No 4. He said that he served in bunker No. 1 at the Main Gate until the 4<sup>th</sup>. He had continued to be on duty in bunker No. 1 until the 4<sup>th</sup>. From the 4<sup>th</sup> he had been assigned to bunker No. 7. He said that they were assigned duties on a rotational basis and that thereafter he was moved to bunker No 9. He had been on duty at the Muttur police station from 1<sup>st</sup> August to 7<sup>th</sup> August and had left the police station for



the first time on 8<sup>th</sup> August. According to Ramzan, Cader and he had taken the motorbike that was lying in front of Ibrahim hotel on the 8<sup>th</sup> of Aug. Cader has stated that they took the motor bike from the ACF premises on the 6<sup>th</sup> of Aug. It seems obvious that Ramzan is lying.

### **Abdul Cader Munaifdeen/Home Guard**

He has been attached to the Muttur police station from 10<sup>th</sup> Feb 2006 until Dec. 2007.

When the attack commenced on the 1<sup>st</sup> about mid night he had been in his home which was situated about 50 metres from the police station. He had then gone to the police station. At about 6.00 a.m. on the 2<sup>nd</sup> he had been requested with 4 others to go to the Town Police Post.

On the way they had come under attack and he had sustained a leg injury. They had returned to the Muttur police station without proceeding to the Town Police post.

The OIC had instructed him to leave the police station and go towards the jetty to proceed to Trincomalee for treatment. They had left the police station at 2.30 p.m. on the 2<sup>nd</sup>. As the Jetty area was surrounded by the LTTE they had gone from the rear of the police station to the sea beach and signaled a boat to pick them up. The others who accompanied him were Cader, Haris Ralahamy and Sgnt. Gamini. Cader was his brother in law.

He had returned to Muttur from Trincomalee on the 7<sup>th</sup> or 8<sup>th</sup>. On the 8<sup>th</sup> he had gone back to Trincomalee and from there to Kantale to see his wife at the refugee camp. Cader in his testimony has stated that Munnafir was at the Al Hilal refugee camp on 5<sup>th</sup> Aug. and had left the camp along with army Zarook, Ramzan and Zia Ul Haq.

### **Abdul Jabbar Rajudeen/Home Guard**

When the attack commenced he had been in bunker No 9 at the Muttur police station. Bunker No 9 was situated at the entry/exit point leading to the jetty road.

On 3<sup>rd</sup> afternoon a group of about 40 army commandos had come to the police station. They had left the police station at about 4.00 a.m. On the 4<sup>th</sup> morning the fighting had peaked at about 11.00 a.m. and there had been high intensity attacks up to about 3.00 p.m. On the 4<sup>th</sup> there had been heavy artillery and mortar fire. On the 5<sup>th</sup> morning around 9.00 a.m. to 10.00 a.m. they had been informed that the whole of the Muttur town was under the control of the army.

As most of the Home Guards lived with their families in Muttur they had been allowed to visit their families on the 5<sup>th</sup>. He had taken the road behind the

police station to get to the town centre. That is, Nadativu Road. He had first gone to the temple near the Telecom police post. Security force personnel had stopped them near the Pansala. Security force personnel had also been near the telecommunication tower complex and the town police post. The security force personnel had told them that senior officers were near the hospital and they would be allowed to go about once the senior officers had left. The security personnel had told them, "bodies are lying here and there higher authorities have come to see them, wait a little." He had also seen SP Kapila Jayasekera and IP Ranaweera near the Pansala Junction.

When he was turned back by the police at the Pansala Junction and he was proceeding towards his home via a rear side road, he had met home guard Cader riding a motor bike with Ramzan on the pillion. The time had been between 11.00 to 12.00 p.m. on the 5<sup>th</sup>.

Thereafter he had gone to his house and found it abandoned. He had then gone to Al Hilal refugee camp. He has stated that during the general period of July – August 2006 the following armed Muslim group was in existence. Viz: Osama group. The Osama group has split into several groups. The Jihad group refers to the Osama group. The splinter groups did not have names.

On the 5<sup>th</sup> at about 5.00 p.m. he had heard in the police canteen some person who had come from Trincomalee discussing the killing of employees of ACF.

### **PC Ayub Khan/Muttur Police**

From 31<sup>st</sup> March 2005 he was been attached to the Muttur police station. He was on duty in Bunker No 4 on the 2<sup>nd</sup> of August.

Subsequently, he has stated he was on duty in bunker No. 7. He has given contradictory statements and his evidence is totally unreliable.

### **PC K. Ellepola/Muttur Police**

On August 2<sup>nd</sup> 2006 he was attached to the Muttur police station and assigned duty at the Town Police Post. In the early hours of 2<sup>nd</sup> August the LTTE had attacked the town police post. The eight officers who had been manning the Town Police Post had been out numbered by the terrorists. On the morning of 2<sup>nd</sup> August a group of officers had been sent as re-enforcement from the Muttur police station to the Town Police Post. The group comprised Sgnt. Gamini, PC Asela and home guard Jehangir. They had assisted in launching the counter attack. When they realized they were outnumbered. SI Sarathchandra had given the order to retreat. They had retreated in two directions. The support group that came from Muttur police station had gone back to the Muttur police station, when they found they could not withstand the LTTE attack.

They had left from the rear side of the Town Police Post, towards the Muttur police station. They had retreated with the arms in their hands and had taken refuge in a house belonging to a Muslim family until evening. In the evening they had gone to another house, after hiding their weapons in the Muslim house and had dressed as civilians to hide their identity. Three of the officers including himself had hidden their weapons underneath a heap planks. Two of the officers had buried their weapons in a spot unknown to the others.

Hey had entered another residence and spent the night of the 2<sup>nd</sup> at this house. On 3<sup>rd</sup> August they had left the house and gone into a nearby Mosque. 3<sup>rd</sup> night they had spent at the Mosque at Safinagar. On the 4<sup>th</sup> morning they had left for Kantale. They had taken the main road but they had avoided the Muttur town and had gone towards Pachchanoor. Four of the group other than Wijesiri had headed towards Kantale with the refugees and reached Kantale at about 6.30 p.m. on the 4<sup>th</sup>.

When he returned to Muttur on the 7<sup>th</sup> or 8<sup>th</sup> of August he had gone with Sergeant Ananda to recover his weapon from the Muslim house and found the weapon missing from under the heap of planks. The inmates of the house had not returned after they evacuated from the Muttur town.

He had not made an entry about losing the weapon but had informed the OIC.

In his statement to IP Zavahir, Head of the war crimes unit at Trincomalee he has stated that when he hid under a bridge he had dropped the weapon into the water and that he could not pick it up. He has given contradictory accounts of what happened to his gun in his statements to IP Zavahir and before the COI. His weapon has been subsequently found in the house of home guard Nizam who had buried it in his garden.

### **Lt. Chamara Meepawala/Sri Lanka Navy**

From June 2005 to October. 2006 he was attached to the Muttur Naval Detachment. The Naval detachment in Muttur was located near the new Jetty. He was concerned in safeguarding and protecting the naval equipment, its bases and the people.

On the 1<sup>st</sup> of August at about 2.00 p.m. the LTTE attacked a naval vessel called the Jetliner which was going to KKS from Trincomalee harbour. The Jetliner transported civilians, essential food stuff, equipment and troops to the Northern areas.

At about 11.00 p.m. on 1<sup>st</sup> August the electricity supply to the Muttur city was disrupted by the LTTE by disconnecting the transformer at Upparu which was under the control of the LTTE. At about 11.45 p.m. the attack had commenced. During the attack they had to abandon 3 points and had to shift

their forward defense line at Waddama to the rear as many of the soldiers at Waddama camp had been injured and succumbed to their injuries.

On the 2<sup>nd</sup> August at about 5.30 p.m. 30 to 40 army personnel from Gemunu Regiment led by a Captain and a Lieutenant had landed at the New Jetty. They had remained at the naval headquarters at Muttur that is, at the FDLs newly established by Lt. Meepawala between Waddama camp and the new landing point. On the 3<sup>rd</sup> at about 7.00 to 8.00 p.m. they had left the premises to go to Kattaparichcan camp.

According to Meepawala the commandos had come in two segments. The first group had come between 10.00 and 10.30 p.m. on the 3<sup>rd</sup> of August. The first groups of commando had comprised 30 to 40 members. This group had been led by 2 captains and 2 lieutenants. He had learnt that the commandos had got instructions to proceed the Muttur police station which was under heavy attack by the LTTE. These commandos had left the New Jetty Naval Detachment HQ and gone towards the Muttur police station.

The 2<sup>nd</sup> group of commandos comprising 10 to 12 members had come on the 3<sup>rd</sup> at about 12 noon. The 2<sup>nd</sup> group of Commando had been under the command of a Major. The 2<sup>nd</sup> group had left the naval detachment HQ at the New Jetty at about 1.00 p.m. and proceeded towards the Muttur police station the Major who had come with them had remained at the New Jetty.

### **PC L.W. Wijesiri**

PC Wijesiri had been on duty at the Town Police post during the LTTE attack on the town of Muttur. The terrorist attack had commenced on the 1<sup>st</sup> of Aug. 2006. On the 2<sup>nd</sup> morning they had launched an attack on the Town Police Post. Home guard Jehangir had been sent from the Muttur police station to assist in the counter attack. Jehangir had brought with him his own T56 weapon. In the counter attack he had used the LMG belonging to the Town Police Post.

Town Police Post personnel had retreated towards Nadativu village, when they realized that the counter attack was unsuccessful. The group had included Sgnt. Sirisena, PC Ellepola, PC Ananda, PC Asela and Home Guard Nazir. They had hidden their weapons behind a house, about 500 metres from the Town Police Post. The inmates of the house had been Muslims and they had not objected to the presence of the police officers.

On the 3<sup>rd</sup> morning he had gone to Al Hilal college refugee camp. On the 7<sup>th</sup> after reporting to the Muttur Police station he had gone in search of the weapons and found that the pits had been dug up and the guns missing.

## **SSP U.K. Dissanayake/Central Armoury**

The Central Armoury keeps a record of the type of gun, its caliber and the number of the weapon of all guns issued to the police.

The weapons issued to police officers are categorized into 2 groups.  
Namely –

1. Firearms issued to police officers permanently as his personal weapon;
2. Weapons that are temporarily issued to police officers if and when necessity arises.

Weapons issued to the Inspectorate and above are issued only from the Central Armoury. In the case of ranks below the Inspectorate such issues are entered in the Service Register and also in the Information Book at the Police Station. This information is not transmitted to the Central Armoury.

When weapons are received at the Central Armoury a report on the weapon is sent from the factory. The Central Armoury does not test fire the weapons but examines the weapons regarding serviceability. The test firing is done when the weapon is issued to a particular police station. The test firing is carried out under the authority of an ASP. According to the Regulations all officers must go for test firing every 6 months and at the test firing the weapon is examined.

All weapons including those issued temporarily are checked and examined at the test firing. The new weapons that have not been test fired should not be issued to anyone and it is the responsibility of the OIC not to issue weapons that have not been test fired.

Only a few types of weapons issued to the STF are issued from the Central Armoury. The other types of weapons are directly imported by the STF. The STF also has a separate Central Armoury.

## **SI H.M. Athula Herath**

He had joined the Police Service in 1999. From June 2006 to Dec. 2006 he was attached to Muttur Police station. He was serving in the Muttur Police station during the first week of Aug. 2006, when Muttur town came under LTTE attack. However at the time the attack was launched he had gone on home leave. The letter approving his leave came a day prior to the attack. He had been allowed 6 days leave but had returned on the 11<sup>th</sup> of August. That is, he had been away from the Muttur Police Station from the 1<sup>st</sup> to the 11<sup>th</sup> of August.

A particular information had been received by the Special Investigation Unit (SIU) of Trincomalee which functioned under the SSP/Trincomalee. A group

of SIU officers were attached to the Muttur Police Station. The OIC of the SIU Unit at the Muttur Police Station was SI Sarath Wimalaratne. It was the OIC of this Unit who provided him with this information on 24<sup>th</sup> Oct. 2006. The said information was given orally and he had not recorded it. Counsel pointed out to him that under Police Dept. Regulations any information received orally had to be recorded. When asked whether there was a reason for him to have not followed this requirement, he had answered that there was a reason. Namely, when the information was conveyed to him by the SSP of the Unit his duty was to conduct the raid. He had gone on the raid with SI Sarath Wimalaratne. However, this information has been recorded in the Information Book maintained by the SIU. He had gone with SI Wimalaratne and the following officers.

Police Sgnt.	3834	Chandalal
Police Sgnt.	59118	Navaratne
Police Sgnt.	23917	Navaratne
Police Sgnt.	59143	Dhammika
PC`	32024	Ranjith
PC	12045	Hemachandra
PC	752037	Basheer
CVF	1079	Salam

The information conveyed was that certain weapons have been buried at a place and those weapons have to be recovered. SI Wimalaratne had informed him that some weapons were inside the house of one Nizam. The details of this information has been recorded in the Register maintained by the SIU.

In response to the information received he had left the Muttur police station at about 9.05 a.m. He had proceeded to Saheed Thamby Nizam's house at Annaichchenai, Muttur. This Nizam had served as a home guard. On 27<sup>th</sup> Oct. 2006 Nizam was serving at the Muttur police station as a home guard.

When they entered the house, Nizam, his mother and elder sister were inside having a meal. They had explained to him that they were going to search the house. They had also body searched him and found an SFG bomb/87 type in the right hand side of his pocket. He had questioned him on how he got the hand grenade. Nizam had been evasive in replying and had merely said that these bombs were available in that area.

After lengthy questioning Nizam had showed them where the weapons were buried. They had recovered the weapons from the 2 kitchens in the rear of the house. The weapons were recovered from both these kitchens. Three T56 weapons were recovered from the left hand kitchen, bearing Nos T56 28019353, T56 3702534 and T56 280415545. Two firearms were recovered from the right hand side kitchen. Viz: T56 28039143 and T56 28032232. They had arrested Nizam and taken him with the articles to the Muttur Police station. Nizam in his statement to the police has stated, "I saw them hidden

in a scrub jungle near Al Hilal Maha Vidyalaya. Thereafter, he had gone and removed the weapons at about 6.00 p.m. on 25<sup>th</sup> Sept. 2006. Nizam had transported the weapons by tying them on to his luggage carrier and he had removed the cartridges from the guns and hidden them in a separate place. It was pointed out that according to further investigation it was revealed that one Basheer had given this information. SI Wimalaratne had discussed this incident with the following police officers. IP Ranaweera, SSP in charge of Trincomalee Division, Rohan Abeygunawardena, and DIG in charge of Eastern Range.

He had come to know when he reported for duty on the 11<sup>th</sup> of Aug. that 5 officers had lost their weapons. And that 5 T56 weapons had been originally issued to officers on duty at the Muttur Town Police Post. On the 1<sup>st</sup> day of the attack the officers to whom these weapons had been issued had abandoned the Town Police Post leaving the weapons behind.

He had heard a rumour that the officers of the Town Police post had hidden their weapons, when they abandoned the police post. SSP Kapila Jayasekera was in charge of this investigation. IP Ranaweera was the officer in the field. The weapons had been identified by the relevant officers who had been on duty at the Town Police post at the time of the incident. Subsequently, the weapons had been sent to the Govt. Analyst's Dept.

Home guard Nizam in whose house these 5 weapons were found, was on duty at the Town Police Post on the day of the attack on 1<sup>st</sup> Aug. When officers of the Town Police Post retreated Nizam had also fled with them. That is how he had seen these officers hiding their weapons. Witness had also noted that when these 5 weapons were discovered they were found to be greased and buried, so that it was not possible that anybody else would have used these weapons to commit a crime. The weapons had been individually covered in polythene bags and they had in turn been put into plastic manure bags.

The witness had served at the Muttur police station only for 6 months. He had requested for a transfer as he had served 4 years in the Trincomalee district and also because his mother was sick.

During this period there had been 8 police posts under the under the Muttur police station. Viz:

1. Wanguwa police post
2. Town police post
3. Jetty police post
4. Pachchannoor police post
5. 58 police post
6. Safinagar police post
7. Thoppur police post
8. Telecom police post

Witness Suriyakumara in his evidence had submitted to the Commission a document Inq/ACF/W27/E95 where it is categorically stated the particular weapon number and to whom that weapon was issued. Viz:

1. T56 bearing No 28041545 had been issued to PC Wijesiri 24656
2. T56 bearing No 28019333 had been issued to PC Asela 59514
3. T 56 bearing No 3702534 issued to home guard Nazli 68062
4. T 56 bearing No 28039143 issued to PC Ellepola 50160

Athula Herath has confirmed that those were the firearms recovered in the possession of Home Guard Nizam and that they had been officially possessed by the above mentioned persons.

He has stated that he has made an oral report of his findings to the OIC of the Muttur police station. Following the discovery of the weapons Home Guard Nizam had been taken into custody.

Athula Herath has stated that when they found the 5 weapons they were in a greased condition. He says the significance of this is that when a weapon is properly greased it cannot be used. Furthermore, according to his observation the way it had been buried covered in polythene, so that they had to dig the ground to take them out and the fact that the weapons were well greased indicated that he had a plan to sell these weapons. He has said that the above observations have been recorded.

Nizam has stated in his evidence that he had found these 5 T56 weapons on the 25<sup>th</sup> of Sept. and that he had buried them 3 days later on the 28<sup>th</sup> of Sept.

He has also stated that Home Guard Nizam had no previous record of criminal activity and was presently under interdiction. His brother in law Pakir Nalim had been involved in a incident of taking ransom money at a church. He had investigated the incident and taken 4 persons into custody. He had also recovered the ransom money. The Home Guard who was involved in the ransom case is in remand. He was of the view that the weapons would have been kept in order to obtain money to bail out Nizam's brother in law. He had come to this conclusion because the suspect had earlier been refused bail but later the Court had ordered that he may be released on cash bail.

From the incident related to the witness's testimony it is evident that there had been an environment in Muttur in which quite a number of young home guards were in possession of weapons and hand grenades. The witness himself has admitted that there was information to the fact that youths in Muttur area are in possession of firearms.

The owners of these firearms had stated in their evidence that they had hidden these firearms in a Muslim civilian's house in the Nadativu area, on the 2<sup>nd</sup> of August.



## **Kandasamy Sivapragasm**

Kandasamy Sivapragasm of 89, St. Anthony's Road, Nithyapuri, 3<sup>rd</sup> Mile Post, Uppuveli is the father of deceased Sivapragasm Romila who had been 25 years of age at the time of her death.

The deceased Romila had spoken on the telephone to her sister in law's daughter's husband on 3<sup>rd</sup> Aug. at about 7.30 a.m. They had come to know of her death on the 5<sup>th</sup> or 6<sup>th</sup> of that month. He had no idea who the perpetrators were of his daughter's killing except for what he has read in the media.

He felt that the way the ACF conducted themselves during this time was not correct. When questioned as to why he takes this view, he had said, "The police report stated that these killings had taken place on the 4<sup>th</sup>. They could have got together with the Govt. and made a proper effort to save their lives." The ACF had paid Rs 402,514.00 as compensation for the death of his daughter. They had received Rs 15,000/- from the Divisional Secretariat on behalf of the Govt. for funeral expenses. At the time of her death his daughter received a salary of Rs 17,000/-. She had been the breadwinner of the family. He had heard from the other relatives of the deceased that ACF had asked them to remain in the ACF office at Muttur, because it was troublesome for them to have the workers collected from different places, when they came to Muttur.

## **M Sathiavel/Father of S. Koneswaran**

His son Koneswaran was employed as a Driver at ACF. On the morning of 4<sup>th</sup> Aug. his son had given a call to his nephew Gopalan who lives in Selvanayagam Puram, Trincomalee. He had spoken to Gopalan's wife Shanthi and to their daughter Latha.

His son had said there is a problem in Muttur and that they have been advised by ACF/Trincomalee to stay inside their office for security, and that they are unable to come to Trincomalee. His niece Latha had asked Koneswaran to take one of the vehicles at the Muttur office and return to Trincomalee. The ACF had paid him Rs 418,000/- as compensation for his son's death. The Govt. had paid Rs 15,000/-.

His nephew Yogarajah had telephoned him on the 6<sup>th</sup> or 7<sup>th</sup> of Aug. and asked him to come to Trincomalee immediately.

His son had earned Rs 15,000/- salary at ACF, with overtime he earned about Rs 20,000/- per month. He was 24 years of age at the time of his death. When his son had contacted Shanthi on the phone on the 4<sup>th</sup> he has said, that there is a scarcity of things, but no one would do anything to us, we are inside the office wearing our uniform." The ACF office in Colombo too had confirmed this position.

### **Ms G. Sivaneswary**

Mrs Sivaneswary is the mother of Kavitha Ganesh and wife of Selliah Ganesh. Her husband Ganesh had left for Muttur on the 31<sup>st</sup> of July and her daughter on the 1<sup>st</sup> of Aug.

Her husband Ganesh was a driver. On the 31<sup>st</sup> of July he had left for Muttur by launch. Her daughter had spoken to her on the 2<sup>nd</sup>. Her daughter had told her that they could hear the sound of fighting from outside. But that they were staying indoors and they were wearing the ACF uniforms. The Trincomalee office had asked them to hoist the ACF flag inside the ACF compound. She had also said that lot of people were going towards the church for safety.

Her husband had spoken to her on the land phone on the afternoon of 3<sup>rd</sup> Aug. ACF had contacted them by phone at about 5.00 p.m. and informed that the staff at Muttur office were safe. The ACF office Trincomalee had assured her that some how or other they would bring back the staff from Muttur.

It is an accepted legal principle that an employer should exercise duty of care towards employees. In this instance ACF has neglected to observe this obligation. The LTTE had launched their attack on the Muttur town in the early hours of 2<sup>nd</sup> Aug. The people in Muttur were evacuating the area and going to refugee camps for safety.

The ACF office in Trincomalee had advised the Muttur staff not to go to refugee camps, as it would be difficult to locate the staff at refugee camps.

Therefore, though the ACF office at Muttur had 3 vehicles and 3 drivers they were not used to take staff either to the refugee camps or even to the safety of Kantale. It is obvious that there has been a dereliction of duty on the part of the ACF.

She had received Rs 600,000/- compensation for her husband and Rs 400,000/- compensation for her daughter from ACF.

Commission observes that some of the victims relatives had received Rs 100,000/- as compensation from the Govt. through the Divisional Secretariat, whereas some have received only Rs 15,000/- only as funeral expenses from the Govt. For eg. Kandasamy Sivapragasm had not received Rs 100,000/- from the Govt. for the death of his son.

### **Ms Sridharan Wijeyapriya**

Ms Wijeyapriya is the wife of deceased Sridharan. The deceased Sridharan had spoken to her at 8.00 a.m. on 3<sup>rd</sup> Aug. He had borrowed another person's hand phone to speak to her. She had been working as a govt.

servant until her husband's death. She had resigned from her job to look after her 2 children after her husband's death.

The ACF had given Rs 680,000/- as compensation and the govt. Rs 15,000/-. She had also received Rs 100,000/- from the Divisional Secretariat. Her husband had left for Muttur on Monday. From Tuesday onwards the conflict between the LTTE and the security forces were going on in Muttur. The ACF could have brought back the 17 workers on Wednesday itself.

She had got to know about the death of her husband on Friday 4<sup>th</sup> morning when she contacted the ACF office. A lady at the ACF office had informed her that the Trincomalee staff had left for Thoppur, and that they will bring back the staff in Muttur. However, again on 4<sup>th</sup> Friday when she had telephoned, she had been informed by the ACF office Trincomalee that there was no ACF staff at Thoppur and that the vehicle had returned. On the 5<sup>th</sup> Saturday a reporter had gone to the Muttur and photographed the bodies and the pictures were published in the Internet. After that only they were aware of what had happened.

They had then gone to the Trincomalee ACF office that is on the morning of Sunday the 5<sup>th</sup>. The ACF has said that they had lost communications with the ACF office Muttur from the 4<sup>th</sup> onwards. The ACF thereafter had gone to recover the bodies, but had not been able to proceed due to some problems with the Navy and they had returned. Someone from Colombo had gone and retrieved the bodies which were handed to the relatives on Tuesday the 7<sup>th</sup>.

## **I. Chitra Vallaudan**

He is the uncle of deceased Yogarajah Kodeswaran. He had been informed by Kodeswaran's father that Kodeswaran had contacted home by telephone on the night of 3rd Aug. Kodeswaran had told his father that they were all in a state of fear and that they did not know where to go. He did not know the exact amount of the compensation paid by ACF for the death of Kodeswaran. Kodeswaran's father's sisters who were dependent on him are still living in Trincomalee. Ponnadurai Yogarajah had earlier lost a son in the Trincomalee incident. Kodeswaran was the 2<sup>nd</sup> son whom he had lost within a space of 8 months.

At the time of his death only Kodeswaran was employed. His parents were both unemployed. The entire family was dependent on the deceased's salary.

## **PC G. Susantha Punchi Nilame**

He had joined the Police Dept. as a PC in February 2001. After his training he had been posted to the Trincomalee HQ Police station. The ACF office in Muttur was about 900 metres away from the Muttur Police Station. However, the ACF office was closer to the Town Police Post. The ACF office was situated along Abdul Cassim Road.

The Muttur attack had started with the attack on the Navy vessel called Jetliner which was transporting soldiers on leave from Jaffna on 1<sup>st</sup> Aug. 2006. During the first week of Aug. 2006 he had been attached to the Muttur Police Station. It was a war situation that prevailed at this time and it started on the evening of 31st July 2006 when LTTE started attacking the Muttur area. On 1<sup>st</sup> Aug. they had started attacking the Muttur town. During this period he had been serving at the Muttur Police Station as an Electrical Technician. He was in charge of the generator that provided electricity to the police station. For the safety of the Armoury there was a T81 Mortar Launcher and he was in charge of that as well. It has to be kept stationed and positioned and in addition to him 2 other officers were helping him to operate this weapon. They were PC Kiribanda 22968, PC Halaldeen 7844. Officers going on operational training are given a special training in the use of T81 weapons. Bunker No 8 was close to the Mortar launcher. During the attack on 2<sup>nd</sup> Aug. he had been deployed near Bunker No 8 which was near the T81 weapon, with PC Kiribanda and PC Halaldeen.

Bunker No 8 is an underground bunker. Bunker No 7 is situated on ground level. It is difficult for a person in Bunker No 8 to see what is happening in bunker No 7 because the window like aperture was very small.

The OIC's bungalow was situated between bunker No 7 and bunker No 8. Therefore, a person operating the T81 mortar launcher would not be able to see what was happening at bunker No 7.

On the evening of 1<sup>st</sup> Aug. the normal electricity supply as well telephone connections had been disrupted. This situation had continued for about 3 weeks until the situation became normal.

On the 2<sup>nd</sup> at about 11.00 a.m. the Magistrate had come with SI Sarathchandra and some officers from the Town Police Post. He had seen SI Sarathchandra in bunker No 7. The OIC Muttur police station IP Ranaweera was at the Trincomalee HQ Police Station during this period and IP Abeywardena was the Actg. OIC. On the 3<sup>rd</sup> of Aug. too he was attached to the Generator and the mortar launcher. They had received a telephone message from Trincomalee HQ that ammunition and food have been sent to the Jetty and if possible to go and collect them. Accordingly, he and other officers with IP Sarathchandra had left for the Jetty at about 3.00 p.m. on the 3<sup>rd</sup> of Aug. by tractor to, collect the provisions and ammunition. That is, Police Sgnt. Sooriyakumara, Police Sgnt. Wijetilleke, PC Wasantha, PC Hemantha, PC Kabir and some home guards had gone to the Jetty. During this time there was continuous firing from the Sampur area. When they were approaching the Jetty they had come under shell attack and several had sustained injuries. Therefore they had been unsuccessful in their mission and had returned to the police station empty handed.

They had left for the jetty from the rear of the police station, towards the beach. When they were proceeding along the jetty road they were attacked

by the LTTE. Some of the group were injured and they were unable to accomplish their mission. The injured people were loaded into naval dinghies and taken to Trincomalee. The others had returned to the police station with the arms of the injured persons, at about 5.30 p.m.

When he returned to the Muttur police station he had continued with his duties of minding the generator and the T81 weapon near bunker No. 8. The Magistrate was in the bunker near the OIC's bungalow. The bunker was called bunker No 7-1, as it was near bunker No 7.

On the 5<sup>th</sup> or 6<sup>th</sup> Jehangir had come up to him and told him that his brother had succumbed to his injuries.

The Commission notes that on the 24<sup>th</sup> April 2008 when the witness had made a statement to the Investigation Unit of the Commission where in reply to the question whether he had seen Jehangir on duty anytime during the period 1<sup>st</sup> to 5<sup>th</sup> Aug. he has stated, "I did not see him stationed at one spot but I saw him on duty at bunker No 8 and bunker No 4 from time to time."

On the 3<sup>rd</sup> of Aug he was stationed near the generator and the mortar launcher. He states that a group of army persons 12 to 18 numbers had come in camouflage uniform on the 3<sup>rd</sup> of Aug. at about 3.30 or 4.00 p.m. and entered the police station from the rear entrance near bunker No 9. He had not seen them leaving as there was an exit near bunker No 8.

During this period there were disputes between the Muslims and the LTTE cadres in the Muttur area. He had heard of organizations called the Jihad and Osama operating in this area.

### **PC Nilantha Podinilame**

He had been attached to the Muttur police station from May 2003 to March 2008. He was the Assistant at the Armoury. During this period the OIC of the Armoury was Police Sgnt. Sooriyakumara.

The LTTE had started attacking Muttur on 1<sup>st</sup> August 2006. On 1<sup>st</sup> of August he had come to Trincomalee police station on his way to Muttur police station, which was his duty station. He had been on leave and he had reported at the Trincomalee police station, on his way to his duty station at Muttur. Due to the LTTE attack he had not been able to leave Trincomalee police Headquarters. On the 3<sup>rd</sup> too he had not been able to proceed to Muttur and had stayed the night at Serunuwara police station. As it was not possible to take the sea route they were traveling overland and had come to Serunuwara on the land route. The OIC of the Muttur police station IP Keerthi Ranaweera had also come with him. From Serunuwara they were unable to proceed on the land route due to LTTE attack, therefore they had returned to Trincomalee. On the 4<sup>th</sup> of Aug. they had gone to Muttur by Naval vessel. They had left Trincomalee harbour at about 7.00 p.m. on the

4<sup>th</sup> about 20 police officers including SSP Kapila Jayasekera traveled on the vessel to Muttur. They had landed at about 11.30 to 12.00 midnight at a place between the Muttur police station and the jetty. SSP Jayasekera, IP Ranaweera and some police officers first went to the new jetty and when they returned the whole party had proceeded to the Muttur police station. When they reached the Muttur police station the time would have been about 12.00 mid night. Home guard Jehangir as far as he could recollect was in bunker No. 4. He had seen Jehangir on 5<sup>th</sup> morning seated near bunker No. 4. Nilantha had been functioning as the Assistant to the Armoury. When OIC Sooriyakumara left on account of his getting injured, the duties of the Armoury were handed over to PC 59498 Jayalal.

### **Major N.P.C. Shiranjeewa**

He had joined the Commando squad of the army as an ordinary soldier in 1986. In year 2006 when he went to rescue the Muttur town from the terrorist control he was in the rank of Captain. He was in the support group of the Commando Regiment during that period. He was serving in Muhamalai, in Jaffna when he was requested to come to Point Pedro with the Commandos to rescue the Muttur city. His commanding officer was Lt Col. Ravindra Handunpathirana. Lt. Col. Pathirana was Commanding Officer of the First Commando Regiment. There would have been about 18 to 20 officers in the support Group. He and the rest of the men in the Support Group had met Major Pathirana at Point Pedro on the 2<sup>nd</sup> of August.

From Point Pedro he and the rest of the support Group had gone by helicopter to Palaly. Major Handunpathirana had gone separately by chopper to Trincomalee. From Palaly they flew to Trincomalee. From the Air Force Base in Trincomalee they had gone to the Naval Headquarters.

At the Naval camp he had met Major Handunpathirana. He had been informed that Naval Jetty camp and Muttur police station have come under terrorist attack. Since there had been withdrawal of troops due to the attacks, he had been directed to go and hold onto these places. If by any chance the Naval Jetty camp came under terrorists, the security forces would lose control of the area. As commandos they had been instructed to protect the Navy camp. Whilst they were at the Naval camp, there was another group of Commandos. That Group was attached to the First Commando Regiment under Major Handunpathirana. That Group was under the command of Capt. Nalin Jayatilleke and was known as Bravo Group. The Alpha Group under the First Commando Regiment was engaged in rescuing the Mavil Aru area.

During the 1<sup>st</sup> week of August 2006 the only Commando personnel to join the operation to save Muttur was the Bravo Group and the Support Group. Subsequently, the Alpha Group had joined them at Muttur. They had left by Naval attack craft to Muttur on the 2<sup>nd</sup> of August at about 6.30 to 7.00 p.m. When they were approaching the Jetty, they had come under attack from the

direction of Raulkuli and Sampur. There was also machine gun fire from LTTE Sea Tiger crafts. It was too dangerous to proceed further therefore the boats drew back. They had waited till it grew dark and then proceeded towards Muttur. They had landed close to the Naval camp, about 10 to 15 metres away from the Jetty. From there they had proceeded towards the Naval camp. By this time it was about mid night on the 2<sup>nd</sup>. They had been informed that some points were captured by the terrorists and that the security forces had to withdraw.

The Naval Jetty was the only point from Trincomalee where you could land. It was also the main supply route. If New Jetty point was captured, the police station and Kattaparichchan camp would also fall to terrorists and it would not be possible to evacuate the injured or send supplies to these locations. Therefore, they had been instructed not to allow the Naval Jetty to fall into the hands of the enemy by any means.

3<sup>rd</sup> morning he was informed by Major Handunpathirana that Muttur police station was under attack and they were running short of food and ammunition. The situation was such that if they did not get any support they would have to surrender or desert the police station. If the police station was captured by the terrorists, they would not be able to hold onto the Naval Post camp. So they had been ordered to go to the rescue of the police station. They had got the order at about 10.00 a.m. His group and the group under the command of Major Jayatilleke had set off towards the police station. When they landed at the New Jetty naval camp there were some other army officers as well. These army officers were from the Gajaba and Gemunu Regiments. These army officers had left about half an hour after they landed stating that they were going to the Kattaparichchaan army camp. This was a little after mid night on the 2<sup>nd</sup> of August.

The Commando had divided themselves into small groups and had set off towards the police station at about 10.00 to 11.00 a.m. on 3<sup>rd</sup> Aug. taking a route parallel to the beach head and proceeded towards a stretch of land where the lagoon joins the sea, and had taken a path from the rear to enter the police station. It would have been about 4.00 p.m. when they entered the police station. The commandos had entered the police station in small groups on a staggered basis.

Whilst they were on their way to the Muttur police station they had come under attack from the LTTE at certain places. By this time the Wanguwa Police post had been captured by the LTTE. The Naval boats approaching the New Jetty were fired at by terrorist boats fixed with heavy weapons coming from the Raulkuli area which made the police officers to believe that they would not be able to get re-inforcements and as a result their morale was very low.

The reason for him to take his men who had landed at the New Jetty to the Muttur Police station was because his Commanding officer Major

Handunpathirana had informed them that the police officers were short of food and ammunition and they were thinking of surrendering themselves or abandoning the police station and withdrawing.

They had reached the police station at about 4.00 p.m. The commandos had taken up positions in the bunkers around the police station. He himself had been stationed near the bunker in front of the OIC's quarters. Namely, bunker No 8. The Magistrate too was kept inside this bunker. When shells started falling he too had gone inside the bunker. He had spoken with the Magistrate Mr Ganesharajah.

He and Capt. Nalin Jayatilleke had assessed the situation and realized if they did not repulse the Wanguwa Murapola it would become difficult for them to stay at the police station and they would have more casualties. So they decided to first neutralize the situation. Therefore, they attacked the Wanguwa Police post. The mortar attacks ceased thereafter. This was on the night of 3<sup>rd</sup> Aug.

In the night they had spoken to their Commanding officer Major Ravindra Handunpathirana. They had been informed that Major Handunpathirana would be coming to the Jetty with another group of commandos in the morning.

Therefore, Capt. Nalin Jayatilleke was instructed to clear the route from the New Jetty towards the police station along the beach, because even they had come to the police station amidst gun fire. He had been instructed to remain at the police station to protect it. Capt. Nalin Jayatilleke had left in the morning before sun rise at about 4.00 a.m. on 4<sup>th</sup> Aug. to secure the route from the New Jetty to the police station. This group had comprised 40 to 50 persons.

However, Major Shiranjeewa very categorically states that their instructions were to secure a route from the new Jetty to the Muttur police station. For if either the Muttur police station, the New Jetty or the Kattaparichchan camp fell to terrorist hands the entire area would become insecure and the morale of the troops in other locations too would have gone down.

After Capt. Nalin Jayatilleke left with his group he had remained at the police station with the other commandos. According to what he heard from the police officers when he arrived at the Muttur police station, and also the information he received from the communication system, the security forces were confined to the their camps and the LTTE were controlling the town.

He did not have any contact with Bravo Commando Group under Capt. Nalin Jayatilleke after he left the police station. This was because they were operating their communication system on different channels. The reason for this was that if they communicated with each other on the same frequency there would be a communication jam. Therefore, they maintained separate



frequencies. After Capt. Nalin Jayatilleke left with his team, the Muttur police station was attacked with mortar from the direction of Raulkuli. In order to control the situation he had to get air cover. The aerial attack was launched in the Raulkuli area where the terrorists were concentrated. Capt. Nalin Jayatilleke had been ordered to secure the supply route and remain there. On the 4<sup>th</sup> they did not encounter heavy attacks but from the direction of Raulkuli and from Muttur city centre they experienced random attacks.

Major Shiranjeewa had left Muttur before the overall military operation ended on 6<sup>th</sup> Aug. On the 5<sup>th</sup> he had been given an assignment, therefore on that day he had left the Muttur police station premises.

The aim of the terrorists were to hold on to the Muttur city and had taken into their grip the camps in the area. The armed forces and the police did not allow them to do so. They held on to their positions. Therefore, there were many casualties among the terrorists and they withdrew. As far as he knew there were no face to face encounters. Muttur town was liberated. What is meant by liberation is the transfer of power where the security forces gain some degree of control depriving the LTTE of controlling that area. That does not necessarily mean that all terrorists have been fully eliminated from that area.

The assignment he had been given on the 5<sup>th</sup> was to rescue two women police constables and other persons stranded in two houses in an adjoining area in the town. He had been requested to undertake this assignment by the Actg. OIC of Muttur Police station. Two police officers and the husband of one of the female officers had accompanied him on this assignment. They had returned with police personnel who were in these 2 houses to the Muttur police station at about 4.30 or 5.00 p.m. He had spent the night at the Muttur police station.

On the 6<sup>th</sup> morning he was summoned by his CO back to the Navy camp in order to proceed to Colombo to take part in a free style parachute event at the SAARC Games. Four of the team mates accompanied him to the naval Jetty camp. They had returned to the Muttur police station and joined the rest of the group. At that time there were no attacks. Even at the New Jetty Naval camp the situation was normal and boats were plying about.

Major Handunpathirana was the CO of the First Commando regiment. Major Handunpathirana was under the Commander of the Jaffna Peninsula. He had come to Muttur from Trincomalee on the 4<sup>th</sup> and had remained at the New Jetty Naval camp.

### **Major R.M.N. Jayatilleke**

He had been attached to the Charlie Group of the First Commando Regiment of the SL army. In July 2006 he was on duty at Point Pedro. The Charlie group had been disbanded in 1998. In the year 2006 he was serving in the

Bravo Group in Point Pedro. He was the CO of the Bravo Group at that time. His CO Major Handunpathirana had directed him to proceed to Trincomalee. He had been briefed by Major Handunpathirana that Muttur Jetty, the Kattaparichchan army camp and Muttur police station were under attack and that the city was completely controlled by the LTTE. His team of 40 members had left Point Pedro at about 3.00 p.m. to Trincomalee on the 2<sup>nd</sup> of Aug. At sunset on the 2<sup>nd</sup> they had traveled by naval vessels to Muttur.

They had landed not at the Jetty but to the west of the Jetty about 150 to 200 metres away. The time would have been about mid night. After landing they had proceeded to the Naval Detachment Headquarters at the New Jetty. He had met soldiers of the Gemunu Watch at the Jetty. He had been informed by the naval officer at the Jetty that they were under attack. Major Shiranjeewa's Support Group had also come in boats at the same time.

At this time, that is on the 3<sup>rd</sup> morning, he had received a communication from his CO that the Muttur police station had been entirely surrounded by the LTTE and if no supportive groups were sent to help them, they were getting prepared to surrender themselves to the enemy and that if that happens the entire personnel in the police station would be killed. He was requested to proceed to the Muttur police station along with Capt. Shiranjeewa's team to strengthen the police station. They had left for the Muttur police station at noon. Capt. Shiranjeewa's support Group had followed behind them with supplies and ammunition. They would have reached the police station at about 3.30 to 4.00 p.m. on the 3<sup>rd</sup>. The Actg. OIC had also told him that the Magistrate was also inside the police premises. On the night of the 3<sup>rd</sup> he received a message from CO Handunpathirana that he was coming that night along with a team to Muttur Jetty and had instructed him to secure a passage from the Muttur Jetty to the police station to enable them to bring supplies.

For this purpose he had left the Muttur police station on the 4<sup>th</sup> morning between 4.00 to 5.00 a.m. All of his team had left the police station with him. Capt. Shiranjeewa had been instructed to remain at the police station.

He had seen a number of home guards at the police station. However, he had not taken any home guards as a guide to show him the way. It was at about 10.00 a.m. that the LTTE had attacked some of his commandos. They had remained at the spots they were stationed until dark. They had not gone into the town.

The LTTE were present in the Telecom Tower area until the morning of the 5<sup>th</sup>. Right through out the night of the 4<sup>th</sup> they had heard firing from the centre of the town.

On the 5<sup>th</sup> morning his CO had informed him that Alpha Group would join him and to go with them to the town centre and to Kattaparichchan and guard all the junctions leading to Kattaparaichchan camp. First to go to the Town

Police Post and them to proceed to Kattaparichchan camp. At about 9.30 a.m. they had reached the town police post. He had established several security points in the town. He had spent the 5<sup>th</sup> night at the Jetty. On the 6<sup>th</sup> he had been directed to clear the road leading from the Jetty up to the police station. On the 6<sup>th</sup> while they were engaged in the clearing operations he had got a message from his CO that some civilians attached to an organization were killed.

One of his team Commanders Lt. Ranasinghe had told him that he had gone to the ACF office and seen the dead bodies.

Questioned whether home guard Jehangir accompanied them, Major Jayatilleke's response was that no one could follow commandos going on an operation because if they had observed him, they would have shot him or if he was a civilian taken him into custody. Furthermore, that usually outsiders are not taken by commandos on operational activities as they would be a liability and cannot guarantee their safety. Sometimes they have to go crawling, hiding, taking cover behind trees and for that they have to be dressed in army fatigues.

### **ASP Sarath Weeratunga Mulleriyawa**

From mid 2002 up to July 2006 he was attached to the police Public Relations and Media Section at Police Headquarters in Colombo. From 20<sup>th</sup> Aug. 2006 to Sept. 2007 he was attached to the Muttur Division in the Trincomalee District.

The witness had been called to give evidence due to the fact that his name is mentioned in UTHR Special Report No 30 (date of release 01/04/08) which has stated that two PCs Nilantha and Susantha and a home guard by the name of Jehangir had carried out the assassination of the 17 ACF workers with the assistance of commandos of the SL Navy. Furthermore, that these officers have been given a hero's welcome by the ASP Mulleriyawa.

On the day he resumed duties at the Muttur police station on 20<sup>th</sup> Aug. 2006, SSP Samarakoon and ASP Sisira Weerakoon had accompanied him. He had not been aware of his name being mentioned in the aforesaid UTHR Report alleging his complicity in the ACF incident. The police had not inquired from him either about the allegations.

It must be noted that U. Henrikson the Head of the Sri Lanka Monitoring Mission has made the following statement in his report. Namely, "The killing of the 17 civilian aid workers in Muttur on the 4<sup>th</sup> of Aug. 2006 is ruled by the SLMM as a gross violation of the Ceasefire Agreement by the security forces of Sri Lanka."

According to the UTHR report it has been alleged that ASP Mulleriyawa was present at the Muttur Police station on the 4<sup>th</sup> of Aug. However, according to

ASP Mulleriyawa he had assumed duties at the Muttur police station from 20th Aug. 2006. Therefore, at the relevant period he had been in Colombo. The veracity of the UTHR Report is in question. Though he was transferred with effect from 17/08/06 due to a family function he had reported for duty only on 20/08/06. He has also produced a letter of a notice he had issued dated 02/08/06 to the OIC of the Public Relations Bureau with regard to what should be included in the monthly inspection of the PR Bureau.

ASP Mulleriyawa has also produced the transfer Circular dated 10<sup>th</sup> Aug. 2006 signed by the then IGP Chandra Fernando. According to the Circular the transfer had come into effect from 17<sup>th</sup> Aug. 2006. The Commission has obtained the original Circular which carries the signature of the issuing authority. He has also produced a copy of a message transmitted at 10.40 p.m. on the 20<sup>th</sup> of Aug. 2006 in the Telephone Register of the SSP of the Trincomalee division, stating that, "ASP Sarath Mulleriyawa had returned for duty today 20<sup>th</sup> Aug. 2006 at the Trincomalee Division – for your information please."

### **Ali Mohammed Nazir**

He was employed as a manual labourer. He had worked for the ACF from 2005. His work entailed loading items into lorries for distribution at different sites. He had worked in Akkaraichenai at Muttur. The ACF had used the Cultural Hall premises as a store house. The ACF project office was on Abdul Cassim Road.

The ACF had a residential centre opposite the Cultural Centre, in front of the Main Street for accommodating over night stay for ACF workers coming to Muttur from Trincomalee.

He had left Kantale Refugee camp on the 5<sup>th</sup>. From the time the attack commenced he had not reported for work. The last day he reported for work was the 1<sup>st</sup> of Aug. He had met the ACF workers on that day. On 1<sup>st</sup> Aug. he had worked at the Store house located at the Cultural Hall. There were two security officers on duty at the Cultural Hall premises. He recalled the name of one of the security officers as Rakeeb. There was a caretaker by the name of logistic Gunaseelan who was the caretaker of the ACF premises. There was also a cook by the name of Shailasiri akka Kala attached to the ACF office. He had seen her on the 1<sup>st</sup> when he returned to office after supplying water in the bowser. At the time the ACF workers were in Muttur Shailasiri was doing the cooking for them. Shailasiri lived just two houses away from the ACF office. However, he did not know where Shailasiri was at present. He had last spoken to the dead ACF workers on the 2<sup>nd</sup> of Aug.

He had gone to Kantale Refugee camp on the evening of the 5<sup>th</sup>. He came to know of the ACF killings only after he went to the refugee camp. It was the ACF manager for the Muttur district Mujeeb who had told him of the killings, when he had brought his pay to the refugee camp. Mujeeb was a resident of

Kinniya. He has also stated that one M.M. Rizvy was the office caretaker. On the 5<sup>th</sup> he had returned home from the refugee camp.

The ACF had paid him a sum of Rs 14,000/- inclusive of ETF when they terminated his services.

### **M.I. Razikoon**

He lived about  $\frac{3}{4}$  to 1 mile from the ACF office. When the attack commenced he had spent the night at the Al Hilal College Refugee camp. His house was about a  $\frac{1}{4}$  mile from the Refugee camp. There were about 4000 refugees at the Al Hilal MV therefore, it was not convenient to do cooking. They went home to do the cooking and returned in the night.

On the 3<sup>rd</sup> morning he had shifted to another refugee camp. Namely, the Arabic College refugee camp. He had remained in that camp for 1  $\frac{1}{2}$  days. He had seen LTTE cadre on the Main Street, near the Muttur public grounds. On the 4<sup>th</sup> morning they had left the Arabic College refugee camp to Thoppur at about 10.00 a.m. On the 4<sup>th</sup> when they were proceeding along the Batticaloa road the LTTE cadres had stopped them at the 64<sup>th</sup> mile post. The LTTE had made them take an interior route. They had allowed the women and children to go first and then the men. They had spent the 4<sup>th</sup> night at a school near the 59<sup>th</sup> mile post near Kiliveddy and reached Kantale on the 5<sup>th</sup>.

### **M.A.A. Aneez/Home Guard**

He had been arrested by the military police on 22/09/08 as an army deserter, when he was getting ready to attend the Commission. He had been attached to the 19<sup>th</sup> Unit of the Sri Lanka National Guard.

He had joined the Home Guard Service in July 2006, and had been attached to the Muttur Police station. He had taken over duties as a Home guard on the 1<sup>st</sup> of Aug. 2006. He had been assigned to the 7<sup>th</sup> point. Thereafter, to the 9<sup>th</sup> point. (Bunker No 9).

He had been given a T56 and ammunition and had been on duty in the night. In the morning he would hand over the gun and return home. On the 1<sup>st</sup> night he was in bunker No 9.

On the 2<sup>nd</sup> of August too he continued to stay in bunker No 9. On the 3<sup>rd</sup> he had heard that an army contingent had come from the rear of the police station. He had seen the army personnel. The OIC of the Muttur police station had gone to Trincomalee and Actg. OIC Abeywardena was in command. He knew Home Guard Jehangir who was senior to him.

He had heard that a group of army personnel had left the police station. However, he had not seen them as he was inside bunker No 9. It was only on the 6<sup>th</sup> that he had come out of the police station and had gone to see his

family. Having left the police station he proceeded towards the New Jetty and then to Al Hilal MV Refugee camp. Thereafter, he had gone to Kantale and found his family. He had returned to Muttur police station 12 days later.

### **W.M. Mohammed Mihilar**

The witness confirmed that he was engaged in running a printing press. This press is situated on ACK Mohammed Road. There is a parapet wall between the rear of his compound and the ACF Office which is on Abdul Cassim Road. Immediately behind his compound apart from the parapet wall there was a barren land and the residence of a person called Saroja. The parapet wall between his compound and ACF Office would have been about 5ft in height.

The ACF workers when they were on assignments stayed overnight usually in the pink house. He had left his house and gone to the Al Hilal Refugee camp on the 2<sup>nd</sup>. On the 3<sup>rd</sup> also they had gone to the refugee camp as shells were landing in the area due to the fighting. From the 3<sup>rd</sup> of Aug. they had been at the Al Hilal refugee camp continuously for 2 weeks. He had come out of the refugee camp on the 6<sup>th</sup> to have a Look at his house. He had then heard that people have been shot dead in the ACF premises.

His son Mohammed Fahik had picked up a SIM between his house and the press. When the CID came to interview his son he had got to know that this SIM had previously been used by one of the deceased aid workers.

The witness's position was that who ever killed the aid workers had picked up the SIM and on the way back from the crime scene, whilst walking across his compound had accidentally dropped the SIM near his press.

He did not know who was responsible for the crime. There had been talk among the refugees in the camp on the 6<sup>th</sup> that killings had taken place in the ACF office.

### **Capt. D.S.A.A.P. Samarasinghe/Sri Lanka Navy**

He is presently serving as ground Commandant, Trincomalee. His functions are with regard to the security of Trincomalee. During the 1<sup>st</sup> week of Aug. 2006 he was serving in Trincomalee as CO of the Special Boat Squadron. The Special Boat Squadron carry out their duties in a manner separate from the duties performed by other Naval personnel. They have been trained to work in small units for both land and sea attacks. Their work is similar to work done by commandos of the army. They are also known as the Special Forces of the Navy.

The LTTE had commenced their attack on the 2<sup>nd</sup> of August 2006. The attack was successfully repulsed with the support of the Sri Lanka Navy, Sri Lanka Army, Sri Lanka Air Force and the Sri Lanka Police.

On 1<sup>st</sup> October 2008 officers of the Investigation Unit of the COI had met the witness at the Trincomalee Tissa camp and obtained a statement from him. In the statement he has given details of transporting Navy and Army personnel from Trincomalee Eastern Area Naval command to Muttur. Also a detailed note of the duties performed by the personnel from the Special Boats Squadron after they reached Muttur. The statement contains details of damage caused by terrorists to the 3 Naval camps Alpha, Bravo and Charlie at Muttur and the action taken by the Army and Navy personnel to repulse the attack.

Alpha is the Jetty camp, Bravo is towards the Sampur area and Charlie camp was situated beyond the lagoon towards the South. The Charlie camp had been attacked by the LTTE and as result the Naval personnel stationed there had to abandon the camp temporarily and withdraw to the New Jetty.

The first group of Army personnel who were inducted to Muttur from Trincomalee was from the Gemunu Watch. Col. Waduge was in charge. They had started inducting troops to Muttur by 2.30 p.m. on the 2<sup>nd</sup> of Aug. There was heavy resistance from the LTTE from 3 sides. That is, from Sampur, Muttur Town and Raulkuli. The first group was landed at about 6.00 p.m. They had been landed at a spot which was about 50 to 100 metres west of the New Jetty area. However, before the first group of SL army personnel were landed, they had landed Navy troops which included personnel from the Special Boats Squadron.

Rear Admiral S.R. Samaratunge was the Commander Eastern Naval area. He directed the entire operation in the Muttur area carried out by the SBS and any communications with Rear Admiral Samaratunge regarding these operations had to go through him as Commanding Officer of the Special Boat Squadron (SBS).

After repulsing the LTTE attack they had not withdrawn the entire personnel of the SBS but after the 5<sup>th</sup> or 6<sup>th</sup> changed troops as the need arose and withdrawn them in batches.

The first 2 eight man teams were taken to Muttur by Lt Commander Weerasinghe. Thereafter, several teams were sent under different leaders. He had gone to Muttur on the morning of the 5<sup>th</sup>. By that time the Navy had re-established their position at the Jetty and Bravo sector.

He had got to know that the LTTE were at the city centre at about 3.15 p.m. on the 2<sup>nd</sup> of Aug. He states categorically that the LTTE were present in the town area of Muttur until the evening of 4<sup>th</sup> Aug. They had re-captured Bravo sector on the 4<sup>th</sup> and this battle had gone on till evening, and there was terrorist attack from the town centre.

On the 4<sup>th</sup> of Aug. witness was in the command operations room at the Naval Headquarters. It is the CO who decides from where the operations should be launched.

The witness was asked whether the Navy employed civilians as cooks as there had been a suggestion that a person called army Zarook had been employed as a cook in the Muttur naval camp. The witness has stated that the Navy has a special Dept. call the Catering Dept. and that it is from that Dept. that they get their cooks who are all from the uniformed staff and given weapons training.

**P.A. Karunaratne/Assistant Secretary, Police Commission**

The witness has brought with him a document containing a list of transfers of 17 police officers. The document is a copy of a letter sent by Mr Loganathan, Secretary to the National Police Commission (NPC). The first name in the list bore the name of ASP S.W. Mulleriyawa. The letter has stated that ASP Mulleriyawa has been transferred to Trincomalee Division Police Headquarters. However, this letter does not contain the date on which the transfer should come into effect. The letter from the NPC to the IGP is dated 4<sup>th</sup> Aug. 2006 approving the transfer. However, the IGP's Circular which has been marked as E 133 mentions, "the following transfers are ordered with effect from 17/08/2006, by the National Police Commission."

**Capt. H.M.A. Hasantha Bandara Herath/SL Army**

At the beginning of 2005 he was serving in the Muttur area, Kattaparichchan and lower Thoppur. During the relevant period, namely Aug. 2006 he was at the Kattaparichchan camp and was serving as CO of a detachment which was located below Kattaparichchan on the A15 road in an area called Pansalwatte.

At 4.30 a.m. on the 2<sup>nd</sup> of Aug. as the situation at Kattaparichchan worsened they had got instructions to move towards Kattaparichchan. Two officers and 40 soldiers all left for Kattaparichchan. They had proceeded parallel to the A15 road on its western side. On the 2<sup>nd</sup> before 6.00 a.m. in the morning he had proceeded to Kattaparichchan passing Galkande. He had been the last person to cross Galkande on the 2<sup>nd</sup>. About 10 mts after passing Galkande he had realized that the police post had been captured as he had seen LTTE cadres deployed on either side of 2 hillocks at Galkande. Therefore, they had been unable to get food, ammunition etc from the police post.

On the way to the Kattaparichchan camp they had to fight with the LTTE at 3 points. That was an area where the majority were Muslims who had helped them. From these villagers they had come to know that LTTE were present in the city area. On the way from Galkande to Kattaparichchan at Hyria Nagar they had come under attack from the LTTE. There were about 50 cadres and they had tried to stop them from going. The Muslim villagers had brought a CDMA phone so that he could communicate with his OIC. They had provided



batteries to activate the GPS and had provided them with food and water etc. It was a war situation that prevailed. Especially from the 3<sup>rd</sup> evening. The camps were under severe attack by the LTTE. Therefore, they had no way of knowing the situation in the Muttur town.

When they entered Kattaparichchan army camp it was about 11.45 a.m. on the 2<sup>nd</sup>. They had remained at the Kattaparichchan camp until the 9<sup>th</sup>. On the 9<sup>th</sup> he had left with a Sub-Group to the 64<sup>th</sup> camp. The attack on the Kattaparichchan camp had continued until 4<sup>th</sup> mid night. However, the entire attack came to a close around the morning of the 5<sup>th</sup>.

There had been mortar and artillery attacks at the Kattaparichchan camp from the direction of Raulkuli and there were shell and artillery attacks from Sampur as well. The ground attack came from the direction of the Red bridge. During the attack the check point near the bridge manned by the troops had been taken over by the LTTE. They also attacked the camp from the North. In other words it was a multi-directional attack.

On the 3<sup>rd</sup> of Aug. re-inforcements had come, who were from the 7<sup>th</sup> Gemunu Watch. Soldiers from the 7<sup>th</sup> Gemunu Watch had come towards the evening of 3<sup>rd</sup> Aug. On the 4<sup>th</sup> morning with the assistance of the Gemunu Watch soldiers they had evacuated the injured soldiers. The soldiers would have taken the injured to the Navy jetty by- passing the LTTE. The 7 GW soldiers all left with the injured soldiers.

When the army recaptured Galkande base the attacks on Kattaparichchan lessened.

### **Chief Inspector R.M.K.N. Ranaweera**

He had been promoted to the rank of Chief Inspector on 2<sup>nd</sup> Oct. 2008. He is presently OIC Padukka police station. From 1<sup>st</sup> October 2005 to 4<sup>th</sup> July 2007 he had functioned as OIC Muttur police station.

On the night of 1<sup>st</sup> Aug. 2006 that is early dawn of 2<sup>nd</sup> Aug. Muttur town had come under LTTE attack. He was not in Muttur at that time, as he had gone to Trincomalee on official work on the 1<sup>st</sup> of Aug. He was due to return to Muttur by the 3.00 p.m. vessel.

However, after 1.30 p.m. there was artillery attack on the Naval camp at Trincomalee. There was also an attack on the "Jetliner" that was transporting armed service personnel between KTs and Trincomalee. He had spent the night at the residence of OIC Trincomalee Headquarters. On the 2<sup>nd</sup> he had attempted to leave but had been unable to do so due LTTE attack. On the 3<sup>rd</sup> Aug. he had attempted to take the land route through Serunuwara. The terrorists were attacking from Pachchanoor and Thoppur area. Therefore, they could not make it to Muttur from Serunuwara.

He had remained at Serunuwara and had been instructed to travel with the army. On the 4<sup>th</sup> he had contacted SSP Trincomalee who had instructed him to return to Trincomalee as the Navy had agreed to take him from Trincomalee to Muttur.

Serunuwara area came under ASP Serasinghe. There was no permanent ASP in charge of supervision in the Muttur police station. Acting ASPs, ASP Weerakoon and ASP Stanslaus from Trincomalee police station attended to the supervisory work of the Muttur police area. The police had taken advance precautions by having under ground bunkers etc. that was the reason they could finally save the Muttur police station. ASP Saman Ratnayake had been supervising ASP of Muttur area from Jan. to April 2006. After he went on sick leave the IGP had named the two ASPs to function as the supervising ASP of Muttur area. But these 2 officers had got transferred elsewhere. Therefore, there was no permanent ASP during this period.

ASP Sarath Mulleriyawa had come as permanent ASP about the 20<sup>th</sup> of Aug. 2006 when the situation was returning to normal and resettlement of civilians was being made. He had been able to leave Trincomalee to Muttur on the night of the 4<sup>th</sup> at about 7.30 to 8.00 p.m. SSP Kappila Jayasekera/ Crimes and Operations had also traveled with him.

Susantha and Nilantha were not his body guards. Susantha was a PC skilled in technical matters, he was in charge of the electricity etc. of the entire police premises including police posts and attended to breakdowns and other technical matters. PC Nilantha was the assistant to the OIC of the Armoury. He states that they may have gone with him along with other police teams who accompanied him on duty, but he had never taken them as body guards. Nilantha was working in the Armoury and he had experience and skill in using weapons.

The two body guards he had taken to Trincomalee on 1<sup>st</sup> Aug. had returned with him to Muttur on the 4<sup>th</sup>. SSP Kapila Jayasekara and he had left Trincomalee on the night of the 4<sup>th</sup>. He had commenced his return journey to Muttur at 7.30 to 8.00 p.m. Since he was asked come directly from Serunuwara to Naval Headquarters at Trincomalee he had not made an entry at the harbour police or at the Headquarters police station. However, he had obtained a team to go with him on the 3<sup>rd</sup> from the Trincomalee police station and they may have made entries at the Trincomalee Headquarters. Even at that time the Muttur Jetty and surrounding area were under LTTE attack and the Navy boat could not proceed, therefore while they were in mid ocean they had called for dinghy boats. They had got into the dinghy boats which had brought them to land at a place between the New Jetty and the Muttur police station. They had first gone to the Jetty and met Lt. Meepawala. There had also been army personnel with a senior officer in the rank of a Major with the Commandos by the name of Handunpathirana.

They had learnt that the LTTE were in the Muttur town and they were attacking from the town. They had been advised not to proceed to the police station as the LTTE were attacking with mortars which were falling along the beach. However, he and Kapila Jayasekera had insisted on leaving for the police station. They had left the New Jetty at about 11.30 p.m. They had reached the Muttur police station at about 12.00 mid night. Mr Ganesharajah the Magistrate of Muttur had been at the police station. Even prior to reaching the Muttur police station he had obtained information regarding the situation over the telephone. He was aware before he left for Muttur that army officers had gone to the Muttur police station to safeguard it. He was also aware that a sub-group of commandos were remaining at the police station. The commandos who were remaining had left on the following day. That is, on the morning of the 5<sup>th</sup>. The commando who accompanied Mr Ganesharajah and the women police constables to reach the New Jetty safely returned to the police station. After coming to the Muttur police station premises he had visited every bunker and encouraged and congratulated the officers for safeguarding the police station until he came. At that time he had seen Nilantha and Susantha in their bunkers.

On the 5<sup>th</sup> he had sent the Magistrate and the women constables to Trincomalee. He had personally gone to the Magistrate's residence in the evening to collect some valuable items including his brief case. The Magistrate's residence was about 600 metres from the police station. However, he had not gone towards the town area as it was still under attack by the LTTE. He had been told that the brief case contained money exceeding Rs 50,000/- that is why he had personally gone to collect it. He had found the brief case open and the money missing.

On the morning of the 6<sup>th</sup> he had taken steps to protect the police station and was also engaged in welfare activities of the officers. On the 6<sup>th</sup> after 10.00 a.m. he had left with SSP Kapila Jayasekera to the Kattaparichchan army camp. He had been informed by Col. Mangala Wijesundara that there were dead bodies of LTTE at the camp. They had proceeded along the A15 route passing the Govt. hospital. He had not seen any army officers along the way. He had remained in the Kattaparichchan army camp till about 3.00 p.m. Whilst he was there at about 1.00 p.m. he had received a telephone message from the SP's office in Trincomalee. He had been asked whether there was an institution called the ACF and that there had been some killings at that office and to go and investigate. It was only then that he had got to know of the killings of the ACF Aid workers. He had been requested to accompany SSP Kapila Jayasekera to the crime scene and investigate the matter. It would have been about 4.30 p.m. when he and SSP Kapila Jayasekera visited the scene of the crime. They had sent a team of police officers first and he and Kapila Jayasekera had remained at the turn off on the main road, at the top of Abdul Cassim Road. About 1 ½ hrs thereafter, they had followed. When they entered through the gate they had seen bodies strewn in a heap. The bodies were bloated and unrecognizable and there was a very strong stench. All the bodies were facing one direction, they were seated with face

downwards and shot dead. The police team that went ahead was the police team that came with Kapila Jayasekera. SI Galnewa was in charge of the team.

There was only one entrance to the house. The main gate consisting of two flaps was half open. There were 16 bodies in a heap at one place. One body was lying near the front walk. There were two cabs and a jeep parked within the premises. Near the place where the bodies were lying the earth was drenched with blood. There were empty cartridges lying all over between the wall where one body was lying and the place where the 16 bodies were lying.

He had been instructed by SSP Kapila Jayasekera to hand over the investigation to the special team that had already been appointed. Accordingly, he had taken action to hand over the investigation to the team headed by SI Gunasekera, who was present at the scene of the crime on the 6<sup>th</sup> of Aug. Thereafter, he had not taken any action regarding the investigation.

On the 7<sup>th</sup> officers from the ACF office had come having obtained permission to remove the dead bodies. SI Gunasekera had been present at the time.

There was a field office of the ICRC on the on the road commencing from Al Hilal Vidyalayam leading towards the Kattaparichcan camp. During the 1<sup>st</sup> week of Aug. 2006 when the LTTE started attacking Muttur the ICRC had evacuated from Muttur. The ICRC had made a complaint to the police on 5<sup>th</sup> Feb. 2007 with regard to a theft of goods. According to the complaint the ICRC personnel had left the field office on the 4<sup>th</sup> of Aug. 2006.

SI Gunasekera to whom the investigation of the case was handed over was attached to the War Crimes Special Investigation Unit. The War Crimes Unit had been established consequent to a Circular issued by SSP Mahinda Balasuriya who was in charge of the Eastern Range, to investigate and inquire into crimes committed from 1<sup>st</sup> Aug. 2006. IP Zavhir functioned as the OIC of the War Crimes Special Investigation Unit.

When he visited the scene of the crime at about 4.00 p.m. on the 6<sup>th</sup> Aug. there were 2 motor cycles parked inside the open garage. He had also noticed that the documents inside the office room had been ransacked.

In his report following the attack on the Muttur police station on the 2<sup>nd</sup> of Aug. he has noted that he found certain arms, T56 weapons in the armoury as well as in the personal custody of certain officers missing or lost.

### **Francois Danel/ACF**

He refused to give evidence under oath and also refused to be cross examined. However he has made a statement on 25<sup>th</sup> October 2008 vide appendix ix. This statement is attached to the related documents.

### **Brig. H.M.H.A. Herath**

From April 2005 he has been Director, Joint Operations, Army headquarters. His responsibilities are coordinating and monitoring joint operations activities.

When Muttur came under LTTE attack in Aug. 2006 he was holding the present appointment. When the LTTE attacked Muttur in Aug. 2006 the SL army along with other forces and the police had launched an operation to regain control of Muttur. He had dispatched 100 soldiers of Gemunu Watch from Trincomalee to Muttur. There was a General Officer Commanding in charge of the Commandos, and it is he who coordinated and controlled their movements. At that time the GOC was at Mavil Aru. That was why the combined operations centre got involved, to prevent the police from abandoning the Muttur police station. When the GOC arrived in Trincomalee he took over these duties.

### **Capt. G.S. Pandigamage**

In Aug. 2006 he was stationed at Pansalwatte, south of A15 road at Pachchanoor. On the 2<sup>nd</sup> of Aug. he had left Pansalwatte with his men and gone to assist Kattaparaichchan army camp, when it came under LTTE attack. Whilst they were traveling from Pansalwatte to Kattaparaichchan they had come under LTTE attack, when they passed the 64<sup>th</sup> Mile Post and gone about 500 metres. The second attack had come at the Kanatte cemetery. They had been traveling to the west of A15 road and this area was predominantly Muslim. They had reached Kattaparaichchan at 11.45 a.m. on the 2<sup>nd</sup>. They were attacked from the Sampur and Raulkuli areas.

From the 2<sup>nd</sup> until the 15<sup>th</sup> they had stayed at the Kattaparichchan camp. Until the 6<sup>th</sup> morning they had not gone out of the Kattaparichchan camp, as the terrorists had surrounded the camp. Furthermore, during the LTTE attack they could not leave their bunkers. After the attack was repulsed the police had come to take charge of the bodies of the dead LTTE.

From the Kattaparichchan camp the Muttur city centre would be approximately about 3 Km or a little more.

Situation became more serious on the 3<sup>rd</sup>. The Gemunu Watch soldiers had come to the Kattaparichchan camp on the 3<sup>rd</sup> towards nightfall. On the 4<sup>th</sup> also there were attacks. By the 5<sup>th</sup> the attacks had lessened. Towards the evening of the 5<sup>th</sup> the attacks had completely subsided. He had been stationed at the bunker at the main entrance of the Kattaparichchan camp. Lt. Col. Wijesudnera came on the 5<sup>th</sup> at noon.

### **PC W.M. Jayalal Abeykoon**

He had joined the Police Department in 1994. From Sept. 2002 to Dec. 2006 he had served in the Muttur police station.

The OIC had instructed them if there was a surprise attack to go near the mortar No 81 weapon. He was the Assistant to the Armoury. Sgnt. Suriyakumara was the OIC of the Armoury.

On 1<sup>st</sup> Aug. there was a message received at the police station informing that ammunition had arrived at the Jetty. Suriyakumara had left to bring the ammunition and in the meantime he had been in charge of the Armoury. Short while after Suriyakumara left a message was received by the police station that they had come under LTTE attack and that Suriyakumara was injured and a Home Guard had died. They were being sent to Trincomalee hospital. There was another officer called Nilantha who was the Assistant to the OIC of the Armoury. Nilantha went on leave on the 24<sup>th</sup> of July and he had returned on the 4<sup>th</sup> or 5<sup>th</sup>. Until that time he had been in charge of the Armoury.

PC Susantha was in charge of ordinary security duties. In addition to his duties Susantha also attended to the electricity generator. On the night of the 4<sup>th</sup> or early morning of the 5<sup>th</sup> the permanent OIC of the Muttur police station and a set of police officers came and Nilantha also came with them. All these officers had met at Trincomalee and as there were transport difficulties at that time, when it was possible they come together to the Muttur police station.

Nilantha was only the assistant and since Suriyakumara was not there the OIC instructed him to assist Nilantha.

ASP Mulleriyawa had come to Muttur police station several days after the attack. On the evening of the 4<sup>th</sup> an army contingent came to the Muttur police station.

### **M.H. Zarook**

He is living presently at a place called Akkaraichchenai, Muttur. He was known as army Zarook, because he had been assisting the army in the year 1991. He had worked for the army for 7 years. Initially he had been helping in the Mess. Later he had been posted as a driver. Thereafter, he had been working in the Middle East. He had returned to Sri Lanka in 2005. Thereafter, he had been engaged in fishing.

The attack on Muttur commenced at about 2.00 a.m. on the 2<sup>nd</sup>. The following day people had taken refuge at Al Hilalal College. He had gone to the Refugee camp at Al Hilal College at about 5.00 a.m. There he had heard that his brother was lying at the junction because he was a polio case and disabled. That is, others had left him near the petrol shed Mosque when they were fleeing the city. He had gone at about 6.00 a.m. and brought him to the refugee camp. This Mosque was situated on the Akkaraichchenai road. On his way he had seen armed groups. The armed groups were positioned

near the junction and they were asking the people to go to the Mosque. He would have seen about 20 LTTE cadres.

He had remained at Al Hilal College from the 2<sup>nd</sup> to the 5<sup>th</sup>. On the 5<sup>th</sup> they had been informed that all terrorists have gone and that they could go back to their houses. After the 5<sup>th</sup> there were injured people in the camp. The army had come at about 2.00 to 2.30 p.m. and he had been asked to show the way to the jetty. One Jameel Gaffoor, Chairman of the Pradeshiya Sabha was the leader of the refugee camp.

The security forces were able to regain control of the town on Friday 4<sup>th</sup> Aug. The security forces who had come to the refugee camp had informed of this to Mr Jameel. He remembers the day as Friday because the Muslims go to the Mosque for Jumma prayers.

He knows the home guard referred to as Cader. However, he is generally known as Ramu. He did not know that a person called Jauffer worked for the ACF. After the incident he had come to know that Jauffer used to visit his sister's place and had meals with them. Zarook in his statement to the Investigating Officer of the Investigation Unit of the COI, had stated, "I know home guard Cader, I do not know his number." At the public inquiry he was reluctant to admit that he knew Cader. At the same time he says that he had assaulted Cader for stealing his bicycle.

On the morning of the 5<sup>th</sup> the LTTE were staying opposite the school gate which was locked. The LTTE had asked the people to stay indoors and not come out. The LTTE used to come and demand money from the Muslim villagers. The villagers had to give them money. They could not do anything as the LTTE were armed.

It is obvious that he is being evasive about his relationship with home guard Cader.

### **Capt. K.H.M.U.B. Kolongahapitiya**

In Aug. 2006 he was serving as a Captain in the 7<sup>th</sup> Gemunu Watch, attached to the Trincomalee town area. He had a platoon Commander by the name of Weerakkody. Capt. Senadheera was the officer commanding Delta Company. During the 1<sup>st</sup> of Aug. he was on home leave. He had been contacted by telephone at about 2.00 p.m. on the 2<sup>nd</sup> of Aug. and asked to report for duty as there was an emergency situation. On the 3<sup>rd</sup> he had reported for duty at the Trincomalee office between 12.00 noon and 2.00 p.m. He had been informed that LT. Weerakkody had set off with a group of his men to the Muttur Jetty as the LTTE had launched an attack on the Kattaparichchan army camp.

About 50 to 60 men had gone on this mission. This group under Lt Weerakkody had gone to Muttur on the night of the 2<sup>nd</sup>. They had gone to

Kattaparichchan to defend the camp. On the 3<sup>rd</sup> at about 4.00 p.m. he had set off by Navy boat to Muttur to go to Kattaparichchan to join his group. Because of LTTE attack he was able to reach Muttur at about 9.30 to 10.00 p.m. in the night. He had traveled with soldiers of the Delta Group under Capt. Ruwan Senadheera. He had set off for Kattaparichchan camp on the morning of the 4<sup>th</sup>, with Capt. Ruwan Senadheera and his men. They had proceeded in small detachments along a road leading from the Jetty towards Kattaparichchan. Mortar and small arms fell on their way. They had reached the camp at about 9.30 to 10.00 a.m.

Capt. Weerakkody and his men had reached the camp on the 3<sup>rd</sup>. As the camp had been surrounded by the LTTE, there was no possibility of anyone going out of the camp. Right throughout the day mortars fell on the camp. Even on the 4<sup>th</sup> the situation was the same and there was no opportunity for anyone to go out of the camp. He had been at the camp until 12.00 p.m. on the 5<sup>th</sup> of Aug. The attack on the camp had ceased at about 7.00 to 8.00 a.m. on the 6<sup>th</sup> of Aug. He had been directed to proceed to the Jetty with his men and meet the CO.

On the 4<sup>th</sup> afternoon Capt. Senadheera and his men had left with the injured towards the Jetty. When they reached the Muttur Jetty camp they had rested as they had not slept for 3 days.

Thereafter, he had been instructed to take charge of the Lower Thoppur camp and a bus had taken them at about 5.30 in the evening. He had met Capt. Senadheera at the Muttur Jetty.

He had heard about the killing of the 17 ACF aid workers only about the 15<sup>th</sup> or 16<sup>th</sup> of Aug. on reading a newspaper.

### **Major S.W.P.M.H.R. Senadheera**

In the year 2006 he was CO of the Bravo Group which comes under 7<sup>th</sup> Gemunu Watch. On the evening of the 3<sup>rd</sup> he had received orders from his CO to proceed to Kattaparichchan army camp with food, supplies and ammunition and to bring back the injured.

Accordingly, he had set off with his group along with another group called the Delta Group. The officer in charge of the Delta Group was Capt. Kolongahapitiya. They had landed in the evening in 2 groups. There was continuous terrorist attacks on the boats. They had landed at the Muttur Jetty at about 7.00 – 8.00 p.m. They had spent the night at the Naval Jetty camp and had left for kattaparichchan at about 6.00 a.m. on the 4<sup>th</sup>. The two groups had comprised two officers and about 100 soldiers.

Capt. Kolongahapitiya and he had gone together to the Kattaparichchan camp. Their mission was to take the ammunition and supplies to the Kattaparichchan camp. So they had not deviated but gone straight to the



Kattaparichchan camp. On the 4<sup>th</sup> at about 12.00 to 1.00 p.m. they had reached the camp. The aim of the soldiers at the Kattaparichchan camp was to safeguard the camp and his mission was to evacuate the injured soldiers to Muttur Jetty. Apart from these two missions the persons who were there did not have any necessity or opportunity to leave the camp. They had left the Kattaparichchan camp at about 2.00 p.m. to 3.00 p.m. on the 4<sup>th</sup>. On his return to the Muttur Jetty he had faced an attack from the terrorists. When he left he had taken with him all his soldiers. They had been attacked about 200 to 300 metres from Al Hilal College. He had left the injured at the Al Hilal refugee camp and gone to repulse the LTTE attack. They had been able to chase the LTTE to the Sampur area from which direction the attack was launched. The LTTE had attacked from an RPL mounted on a cab, which can destroy tanks. RPL attack had been launched at about 4.00 to 5.00 p.m on the 4<sup>th</sup>.

By the night of the 4<sup>th</sup> the Muttur Jetty was facing artillery fire from the LTTE. They had spent the night securing the FDLs. Whilst at the Jetty camp he had seen a group of army personnel but cannot say whether they were commandos. Both navy and army personnel were there. They could hear heavy attacks on the Kattaparichchan army camp and from the direction of the city centre. As far as he was aware normalcy had returned only on the morning of the 6<sup>th</sup>. Because even on the evening of the 5<sup>th</sup> there was an attack on the Muttur Jetty, and it was only on the morning of the 6<sup>th</sup> that these attacks subsided. Even on the evening of the 5<sup>th</sup> a small Navy base near the Muttur Jetty was under the control of the LTTE. They had it under their control until the morning of the 6<sup>th</sup>.

The situation had subsided by the morning of the 6<sup>th</sup> and he had taken his men to the Lower Thoppur army camp at Selvanagar along the Ella – Kantale road. He had come to know of the killings on the 8<sup>th</sup> or 9<sup>th</sup> of Aug.

### **Lt Commander H.M.U.I. Samarakoon/Sri Lanka Navy**

During Aug. 2006 he was functioning as the executive officer of the Sri Lanka Navy Special Boats Squadron. He had been performing Actg. duties of the CO. The CO was Ajith Samarasinghe. On the 2<sup>nd</sup> of Aug. around 2.00 to 3.00 a.m. the Executive CO had given him the information that the LTTE was attacking Muttur.

The CO of the naval detachment was Lt. Chamara Meepawala. On the evening of the 1<sup>st</sup> of Aug. the terrorists had fired artillery on the Trincomalee Dockyard. This attack was launched from the Sampur area east of Muttur. They also launched an attack on the Jetliner ship which was bringing security force personnel from KTs to Trincomalee.

On the orders of the CO he had got ready two teams of eight personnel of the Special Boats Squadron to be sent to Muttur. He had not gone with the teams but had sent Lt. Commander Weerasinghe. The first team led by Lt.

Commander Weerasinghe had reached Muttur at about 5.00 to 6.00 a.m. on the 2<sup>nd</sup>. He had gone with his team at about 10.00 a.m. But they could not proceed because the terrorists attacked the vessel. Therefore, they returned to Dockyard and had boarded a small craft and reached Muttur at 2.00 p.m.

There were attacks on and off, especially when Naval boats carrying additional troops were increased. On the evening of the 2<sup>nd</sup> a team of army officers came from Trincomalee to Muttur in Naval vessels. He had come to know they were a detachment from the Gemunu Watch, comprising about 50 to 60 men. In the night at about 11.00 p.m. a team of Commandos of the Sri Lanka army also came to the New Jetty from Trincomalee under the command of Major Nalin Jayatilleke. They had remained till about 11.00 a.m. on the 3<sup>rd</sup>. On the 3<sup>rd</sup> SL Navy SBS team under the command of Lt. Herath had also come to the New Jetty camp. They had left for Kattaparichchan camp at 4.00 a.m. on the 3<sup>rd</sup>.

The commandos were engaged in securing the Forward Defense Lines (FDL). They had come specifically to assist the naval Jetty camp. However, they had received instructions to proceed to the Muttur police station on the 3<sup>rd</sup>. Therefore, the commandos had left for the Muttur police station at 11.00 a.m. on the 3<sup>rd</sup>.

On the 3<sup>rd</sup> afternoon Commander Serasinghe and Lt. Commander Raymond had reached the New Jetty. Another group of commandos with Major Ravindra Handunpathirana had also reached the New Jetty. From the time he went to the New Jetty until the 4<sup>th</sup> there was mortar and artillery attacks. He had felt that the attacks were directed from Sampur and Raukuli.

On the morning of the 4<sup>th</sup> they had decided to retrieve Bravo Division and steps were being taken to act accordingly. The SBS commanded by Lt Herath and Naval officers commanded by Lt. Commander Raymond had jointly conducted the operation at about 12.00 noon on the 4<sup>th</sup>. At about 4.00 p.m. they had successfully completed the operation.

It is to be noted that even by noon of the 4<sup>th</sup> LTTE were very strong in the Bravo Division. While they were engaged in this operation there had been a attack on the New Jetty Naval camp. As a result of the artillery fire, the camp had caught fire, and the entire Naval detachment camp was burnt down.

At this stage Counsel read out an extract from a special report of the UTHR dated 1<sup>st</sup> April 2008 which states,

"The ASP and OIC asked Jehangir, the OICs body guard Susantha and another favourite Nilantha, who received a minor injury on the 2<sup>nd</sup> from LTTE fire in an incident described above, to go with the Special Forces to see if there were any LTTE cadres at the ACF. A party of about two dozen went including a dozen commandos (Naval Special Forces) and the rest home guards and policemen. On the way Jehangir spoke to a man who came on a

bicycle who confirmed that the ACF staff was there. Led by the commandos, Jehangir and the rest of the party including policemen and home guards left from the main road past the hospital, and went to the ACF office. The commandos surrounded the place. Those at the ACF were drinking tea and eating biscuits, and stuff they had bought a little while ago.

The commandos call the ACF staff and asked them in Sinhalese what they were doing there after every one else had left. The latter had replied that their Trincomalee office had asked them to remain. Jehangir butted into the conversation and without giving ACF staff a chance to explain, insisted that the staff were LTTE. Susantha and Nilantha, and the two policemen with him said nothing. The commandos remained passive. Jehangir got the staff to kneel and the victims were fired upon as they begged for mercy. It was all over within 5 minutes from the time they arrived. Two killed away from the others, apparently trying to run away, and their bodies were found separately.

The main persons who fired at the ACF staff were home guard Jehangir, police constable Susantha and police constable Nilantha. The party got back to the police station by 5.00 p.m. The word of a mere home guard and a servitor of dubious reputation sufficed apparently for the commandos and policemen to commit the atrocity.

Upon their return there was an air of celebration. Jehangir, Susantha and Nilantha were given a hero's welcome by the ASP Sarath Mulleriyawa and OIC Chandana Senanayake who warmly shook hands with them."

The witness rejected the allegations contained in the above report and reiterated that all the Naval officers through out this period remained only at the Jetty area. There is no Commando Unit called "Naval Special Force".

### **SI P. Gunasekera Banda**

SI Gunasekera Banda has served in the Trincomalee Police Division from 1<sup>st</sup> April 2005. By Aug. 2006 he was functioning as the OIC of the Divisional Crime Investigation Unit in Trincomalee.

The SSP Trincomalee Nihal Samarakoon had instructed him to proceed to Muttur to investigate the deaths and damages caused as a result of the LTTE attack.

They had proceeded to Muttur on the 5<sup>th</sup> of Aug. at about 8.30 a.m. with a team comprising Sgnt. Samsudeen, PC Anura and Photographer Fernando. They had been unable to proceed in the naval boat due to LTTE fire and had changed over to a small boat and as they could not get to the New Jetty, and landed at a separate point.

When they reached the Muttur police station he had met OIC IP Ranaweera and SSP Kapila Jayasekera. He had been instructed by them to remain in the bunker that night as they feared an LTTE attack and that he would be informed of his duties later. On the 6<sup>th</sup> morning he had been requested to get ready to go on investigation duties. He had left the police station with a team of police officers at about 9.00 a.m. They had left in a tractor. SSP Kapila Jayasekera had left in a jeep.

When he visited the Town police post he had met army commandos stationed there who had come to protect the post. They had first gone to the town police post. He had been asked to investigate the attack that was launched on the town police post. His investigations had revealed that when the terrorists attacked the personnel at the post had retreated except PC Pakkiyarajah and that the weapons that were locked in the strong box had been removed by the terrorists.

Whilst he was conducting investigations at the Town Police post he had been informed by Sgnt. Navaratne at about 4.20 p.m. that SSP Kapila Jayasekera and IP Ranaweera had directed him to go near the hospital as there were certain dead bodies and to make his observations. SSP Kapila Jayasekera and IP Ranaweera had come up to the Town Police Post with them and then proceeded towards Kattaparichchan camp.

In the witnesses recorded notes he had written, "there were certain dead bodies at the Action Faim office near the hospital and I was asked to go there and make observations." He had not known the location of the ACF office. It was Sgnt. Navaratne who had taken him to the office.

When he approached the Govt. hospital they had seen the large number of crows gathering overhead and a bad stench. He had reached the scene of the crime at about 4.30 p.m. on the 5<sup>th</sup>.

It is to be noted that the COI had during the Clause 8 Investigations had found that no guard had been kept over night even though these officers had commenced their investigations. He had remained at the crime scene until 5.45 p.m.

When he returned to the Muttur police station and met SP Kapila Jayasekera and IP Ranaweera, he had got to know that these two officers had visited the crime scene before him.

It is to be noted that the approximate distance to the ACF office from the Town police post is about 500 metres on the Main road, then a slight turn to the left 50 metres down the road.

He states that his investigations had revealed that that the Town police post had been reestablished on the 5<sup>th</sup> by SI Sarathchandra and his officers. However, SI Sarathchandra in his statement has said that on the 2<sup>nd</sup> of Aug.

the LTTE attack was so severe that they had to abandon the Town police post and retreat to the Muttur police station.

SI Gunasekera stated that he was accompanied by 5 officers namely SI Sumathipala, Sergeant 12329 Samsudeen and PC 24170 Anura on the 6<sup>th</sup> when he visited the ACF office between 4.30 to 5.30 p.m. He had stationed 2 officers for guard duty and thereafter made his observations. He had observed that the bodies were in a putrid condition. He had observed 3 vehicles (2 cabs and a jeep) parked in the compound and there were 3 motor cycles in the garage. The equipment inside the house had been ransacked. The front room of the office had been locked and padlocked.

On the first day he had not observed any spent cartridges about the place. His excuse for this for this lapse was that it was a war situation that prevailed. Hence he was not able to examine the place for cartridges. It is basic investigation procedure to look for evidence relating to the deaths.

His explanation was that at that time there were bomb blasts and shooting. Therefore, he had done a "brief survey, with the intention of coming later to do a thorough investigation. It is to be noted that other witnesses including army officers who came before the Commission has not stated that a dangerous situation prevailed on the 6<sup>th</sup> of Aug.

On the 7<sup>th</sup> of Aug. he had visited the ACF office when the bodies were being removed. He had not deployed anyone to guard the place due to the insecure situation prevailing at the time. His explanation was that he had been told only to make his observation notes and return.

The Magistrate had not been called to examine the scene of the crime due to the unsettled security situation. Subsequently, he had gone to inspect the scene of the crime with IP Zavahir on the 9<sup>th</sup>. On that day 30 empty cartridges were found at the scene of the crime. He has said that he saw only one motor cycle on the 9<sup>th</sup>.

When it was pointed out to the witness he had made a statement to the Investigation Unit of the COI on 10<sup>th</sup> Aug. 2007, he had stated that he had come to know that SSP Kapila Jayasekera and OIC Ranaweera had visited the scene of the crime before he did. He has admitted that he came to know of it later.

### **Capt. W.K. Alexander**

In Aug. 2006 he was the CO of the Kattaparichchan camp. He had taken over duties at the camp on 29<sup>th</sup> July 2006. Three days later the LTTE had attacked the camp. The camp was located to the North East of the Muttur city towards Sampur. During this time Sampur area was under the control of the LTTE. The Kattaparichchan camp is about 1 ½ to 2 Km from the Muttur city.

The LTTE attack had been launched between 2.30 to 2.45 a.m. on the 2<sup>nd</sup> of Aug. A group of about 150 to 200 LTTE cadre had attacked. They had invaded the bunkers. Therefore, his men had to retreat to the 2<sup>nd</sup> Defense Line. About 8.00 a.m. the attack had lessened and about 14 of his soldiers were injured. Most of the RPG and mortar attacks came from Sampur and Raulkuli areas.

At about 11.45 a.m. on the 2<sup>nd</sup> a team of 40 soldiers with Lt Herath and Lt. Pandigama had come from Pansalwatte camp and reinforced their strength. They too had faced severe attack on the way to the camp.

The entrance to the Kattaprichchan camp faces the east. That is, towards the city. The attack which had started on the mid night of 1<sup>st</sup> Aug. had continued till the end of 5<sup>th</sup> Aug. He had been able to come out of the camp on the 7<sup>th</sup>.

After suppressing the attack they had been engaged in repairing the buildings that were damaged. Therefore, they did not have the opportunity to go to the town area. There was an operation launched by the SS of the SL army at Kandakadu and Raulkuli and there was a request for reinforcements. His team had to take part in that operation. Therefore, they had no time to go to Muttur town. He had come to know about the ACF killings only about a month later through the print media.

### **Major G.A.K.J. Gamaarachchi**

He was attached to the First Commando Regiment in 1994. The First Commando Regiment is divided into several Groups. He had joined the Alpha Group. Aug. 2006 he was functioning as the CO of the Alpha Group of the First Commando Regiment of the SL Army.

On the 3<sup>rd</sup> of Aug. 2006 he was at the Ella-Kantale camp, when the CO of his Regiment informed him that they were to report to Trincomalee. They had flown by helicopter and reached Trincomalee at 6.30 to 7.00 p.m. There were about 40 to 50 members in his team. His team had divided into 8 small groups and they had gone in small boats to Muttur. Due to Mortar and artillery attacks they could not reach Muttur Jetty and their boats were taken one by one and beached at different places at a point west of the New Jetty. Between 4.15 a.m. and 6.00 a.m. on 4<sup>th</sup> Aug. all the groups had beached at Muttur. He had proceeded to the New Jetty Naval Detachment Headquarters.

His CO Major Handunpathirana had informed him that Bravo Group led by Major Nalin Jayatilleke were positioned in various locations on the northern side of the marshy land approximately about 100 metres south of the Navy camp. His duty was to clear a passage from the Naval Headquarters to the Muttur police station. See Annex III Map of Muttur town area

They had spent the 4th night at the Naval Detachment Headquarters. On the 5<sup>th</sup> they were instructed to secure the road to the Kattaparichchan camp and establish points along the road.

He had come to the Town police post on the 5<sup>th</sup>. He had seen the Telecom Tower from the distance.

On 5<sup>th</sup> Aug. they were able to secure the area from the town Police Post up to Kattaparichchan by about 2.30 to 3.00 p.m. Their intention was to encircle the centre of the city by establishing pockets surrounding the city centre so that they could prevent the terrorists who were inside the city going out or anyone from outside entering the city centre. By the 2<sup>nd</sup> or 3<sup>rd</sup> of Aug. the civilians had either gone into refugee camps or they had crossed towards Kantale through Thoppur. By the 4<sup>th</sup> of Aug. there were no civilians present in the city centre. After he had accomplished the task given to him he had been directed to spend the night at the Kattaparichchan junction.

On the 4<sup>th</sup> LTTE were at the city centre, because the Bravo team came under attack from the direction of the town. However on the 5<sup>th</sup> they did not come under any terrorist attack.

On the 6<sup>th</sup> when he came to the camp the CO had informed him of the killings at the ACF office. Some of the members of the Bravo Group during the clearing operations in the morning of the 6<sup>th</sup> had gone to the crime scene. On the 7<sup>th</sup> he had gone on leave and thereafter had reported to Jaffna.

### **DIG Mahinda Balasuriya**

In mid 2006 he was DIG in charge of Transport and Communications. On 20<sup>th</sup> May 2006 he was appointed Senior DIG Ranges III, including North and East.

During the first few day of Aug. 2006 the entire Muttur area was attacked by the LTTE.

The IGP had wanted him to ensure the security of the public who were fleeing to Kantale and to look after the welfare of the security of the policemen and then inquire into what has happened. He had proceeded to Trincomalee on the 5<sup>th</sup> of Aug.

It was DIG Rohan Abeywardena who had informed him of the ACF incident. The initial inquiries were done on the directions of DIG Rohan Abeywardena. Subsequently, the CID had taken over the inquiry.

IGP Chandra Fernando had instructed the setting up of the unit to conduct investigations into War Crimes and other Crimes committed since 01/08/2006 in the Trincomalee Division with special reference to Muttur police area.

It is to be noted that DIG Balasuriya had summoned a meeting with officers of the Trincomalee Division on 7<sup>th</sup> Aug. 2006. Nearly 20 senior officers had participated at this meeting, about the prevailing situation in the area at the time. However, according to Balasuriya none of these officers had informed him of the incident at ACF office.

However, on the 6<sup>th</sup> afternoon when ASP Ranaweera and SSP Jayasekeera were at the Kattaparichchan army camp they had got information regarding the ACF murders. This is clear evidence that the police hierarchy knew about the unfortunate incident around 4.00 p.m. on the 6<sup>th</sup> of Aug.

### **Lt. Col Ravindra Handunpathirana**

From the year 2004 to March 2007 he was the CO of the First Commando Regiment of the Sri Lanka Army.

When the first attack commenced in Muttur in the first week of Aug. 2006 he was stationed in the Jaffna peninsula. He was the CO of the Commando operations in Jaffna. At that time the First Commando Regiment had two divisions, Alpha and Bravo Groups and in addition a Support Group. The most senior officer of the Alpha Group was Major Gammarachchi. The most senior officer of the Bravo Group was Major Nalin Jayatilleke. At that time both of them were Captains. The most senior officer of the Support Group was Capt. Shiranjeewa.

He had got a message from the Commander of the Jaffna Peninsula requesting him to proceed to Trincomalee with his team and that air passage will be provided from Point Pedro. They had gone in two groups. His group had left at about 2.00 to 3.00 p.m. on the 2<sup>nd</sup> of Aug. by helicopter to Trincomalee. The other group was unable to go directly and had gone to China Bay and then been air lifted by helicopter to Trincomalee. In Trincomalee he had been told by the Divisional Commander that Muttur was being attacked and its 3 main bases i.e. Kattaparichchan army camp, New Jetty naval Camp and the Muttur Police Station were strategically important. The only land route to Muttur to the south of Galkande had been taken over by the LTTE. There were 4 routes to reach Muttur. 1) A15 road which goes through Galkande 2) Route through Kattaparichchan Bridge that reaches Muttur. 3) Next route is via Kinniya where you have to cross by ferry. 4) The sea route from Trincomalee to Muttur. By that time Kaattaprichchan, Muttur Jetty naval base and Muttur police station were surrounded by LTTE and under attack. The only route available was the sea route which was under Govt. control. Therefore it was necessary to strengthen the security positions at Muttur Jetty which was the only landing point in Muttur. This was the only point available to transport ammunition, provisions, food, water and evacuate casualties. Therefore it was necessary to secure that point. The Alpha Group under Capt. Gamaarachchi had joined them on the 3<sup>rd</sup>.



He had instructed the two Bravo Groups to go by boat to Muttur and take action to repel the enemy. Due to terrorist attacks by the time the two groups reached Muttur it was past mid night. The order given to them were to attack the enemy, chase them out and expand the area that was available to them. Therefore on the 3<sup>rd</sup> they were engaged in expanding the Naval Detachment Headquarters area.

On 3<sup>rd</sup> noon the Commander of the 22 Division Brig. Samarasinghe had informed him that the Muttur police station was facing difficulties and they were either going to surrender or vacate station. He had been instructed to take food and ammunition and stabilize the police station. He had received information that Bravo Group and the Support Group had reached the police station after 4.00 p.m. By that time the police station was under mortar and ground attack from various directions from LTTE. From the Wanguwa police post the LTTE had attacked the police station. He had instructed the Bravo Group on the night of the 3<sup>rd</sup> to secure a supply route linking the police station to the naval camp at the New Jetty and to make it secure from the southern end. He had instructed them to engage in this operation before the first light of 4<sup>th</sup> August.

He had come to Muttur on the 3<sup>rd</sup> night with the Alpha Group. They had reached Muttur after 5.00 a.m. on the 4<sup>th</sup>. He had been informed by Capt. Nalin Jayatilleke that they had covered all the likely approaches of the enemy. Capt. Nalin Jayatilleke's group would have comprised about 40 men.

Even by 10.00 a.m. on the 4<sup>th</sup> there were attacks launched on the commandos from the south of the marshy land by the LTTE. He could also state that from the way the firing came that the LTTE were present in the town which was also to the south of the marshy land.

By the night of the 4<sup>th</sup> he had summoned the Alpha Group to the Jetty and stationed them at various points round about the naval base and had directed the Bravo Group to cover possible approaches of the enemy towards the police station.

He had wanted to open an alternate route to Kattaparichchan camp, to use as an emergency route. Up to the police station there was no problem, but beyond that he wanted to secure the important junctions and other locations. The army was becoming strong in their respective positions by the evening of the 4<sup>th</sup>. Therefore, from about the 5<sup>th</sup> the LTTE may have started leaving the town centre.

Around mid day on the 6<sup>th</sup> Divisional Commander Samarasinghe had informed him that he had heard from the Divisional Secretary, that there was a rumour that inside an NGO office which was located in Muttur town there were some dead bodies. He wanted him to check on the veracity of this information and report back to him. He had thereupon directed the officer commanding the Bravo group to check on the matter whilst engaging in operations in that

area. One hour later Bravo group had informed him that members of the Bravo team had encountered some dead bodies and that the bodies were in a state decomposition and therefore difficult to approach the area.

### **Maj. General Mendaka Samarasinghe**

In the year 2006 he had functioned as the 22 Divisional Commander with his headquarters at Plantain Point, Trincomalee. His area of responsibility was the Trincomalee district. In mid June 2006 he had taken command of the Division. At that time there were no major conflicts as the Cease Fire Agreement was in effect. However, there were sporadic incidents like claymore mines being triggered off by the LTTE. On 21<sup>st</sup> July 2006, Mavil Aru anicut had been closed by the LTTE, which was about 12 Km south of Muttur. The SLMM were unsuccessful in negotiating with the LTTE to open the sluice gate.

Therefore he was given instructions by the Army headquarters to launch a humanitarian operation to seize control of the anicut. Along with 2 battalions he had been given 2 groups of commandos for this mission. Namely, members of the Alpha Group of the 1<sup>st</sup> Commando Regiment under Capt. Gamaarachchi. This incident had taken place on the 28<sup>th</sup> of July.

It is to be noted that this incident was the cassus belli for breaking of the Cease fire Agreement and the gradual escalation of war.

On the 2<sup>nd</sup> of Aug. about 1.30 to 1.45 a.m. three camps under his area namely, Kattaparichchan, which is east of Muttur, Selvanagar further south of Muttur and Mahindapuram the naval Detachment on the Muttur Jetty and the main police station at Muttur came under heavy attack. Muttur was of immense strategic importance as it is an even more closer location than Sampur in order to target the Dockyard.

He had deployed a group of soldiers from the 7<sup>th</sup> Gemunu Watch and two groups of commandos for this mission. He had deployed the commandos to go to the rescue of the police station. Since the brunt of the attack was on the Naval camp and Kattaparichchan camp he had asked the CO commandos to send a small group to assist the police station.

During this period the no NGO had requested his assistance to secure safe passage to their personnel. The attack that commenced from 1<sup>st</sup> Aug. by the last light on the 4<sup>th</sup> had gone down. Even on the 5<sup>th</sup> there was artillery fire aimed at the camps.

His priority had been to tactically gain control of the 3 specific locations. Viz: police station, Navy Jetty and Kattaparichchan camp, which were all in the outskirts of the town. Once the army gains control of these locations and consolidates the defenses it would be untenable for the LTTE to remain in the

town. Therefore, Muttur town was not a very high priority. The troops would have entered the town only on the 6<sup>th</sup> or the 7<sup>th</sup>.

On the 6<sup>th</sup> he had deployed troops to clear the town and a retired Maj. General Ranjith Silva who is the G.A had contacted him to inform him about a rumour that some people were dead in a house. He communicated this information on the evening of the 7<sup>th</sup> to CO Ravindra Handunpathirana. The CO had telephoned about 2 to 2 ½ hours later and confirmed that a patrol had been sent to the house where they had found decomposed bodies.

He had informed the GA about this matter. On the following day police had come and cleared the bodies. The JMO had come and the judicial process had already commenced. Therefore, it was not necessary for him to report the matter.

If a request had been made through the French Embassy or from the NGO itself to the army or to the govt. it would have come to him and he would have given it high priority. Once a fortnight all defense attaches or the consuls who are looking after defense meets with the Director/Operations at Army Headquarters for a formal briefing. No defence Attache had informed him of the plight of the workers attached to ACF.

In the Muttur operation tactically they were very careful to avoid the Muttur town. Initially, because they had not wanted to get the civilians sandwiched between the army and the LTTE. For that reason they had first secured the peripheral strategically important locations and had waited for a while, to show the LTTE that it was impossible for them to hold on to the town. It was only when they were certain the LTTE had really gone out of the town that they had gone in.

It was pointed out that ULF Henrikson, Head of SLMM had stated at that time, "that the killing of the 17 Aid workers was the work of the security forces and that they have been killed on the morning of the 4<sup>th</sup> as the SL army was dominating that area".

### **DIG Rohan Abeywardena**

From June 2005 to Dec. 2006 he had functioned as DIG Eastern Range and in particular Trincomalee and Kantale Divisions.

He states that he does not recollect any ACF officer approaching him to obtain assistance to bring down the ACF staff stranded in the Muttur office.

The war started from the evening of 1<sup>st</sup> Aug. When artillery fire started falling on the Jetty and naval base. On the morning of 2<sup>nd</sup> Aug. Muttur town was attacked. It had taken about 2 or 3 days for reinforcements to reach Muttur. It was after the Muttur town came under Govt. control that he had got to know of the ACF deaths. The police party that was sent in support of

Muttur police in charge of SP Operations, Kapila Jayasekera that had informed him of the ACF killings.

### **DIG Nihal Samarakoon**

From 1<sup>st</sup> Feb. 2006 up to Dec. 2006 he had functioned as SSP in charge of Trincomalee Division. His immediate superior was DIG Rohan Abeywardena in charge of Trincomalee and Kantale Divisions. Mr Abeywardena reported to senior DIG Ranges III in charge of the North and East. During this period there was another police officer serving in the Trincomalee Division. Namely, SSP Kapila Jayasekera who was in charge of Operations. In the organizational structure Kapila Jayasekera reported through him to the DIG Rohan Abeywardena.

The permanent ASP of Muttur police station was on sick leave at this time, and his duties were covered by ASP Serasinghe who was stationed in Trincomalee. A permanent ASP was sent to Muttur on the instructions of the Police Commission on the 20<sup>th</sup> or 21<sup>st</sup> of Aug. 2006. His name was ASP Sarath Mulleriyawa.

On the 1<sup>st</sup> of Aug. the passenger ship known as "Jetliner" which carries passengers from KTs to Trincomalee, mainly personnel of the three forces came under attack, around 2.40 p.m. Due to the attack on the naval dockyard IP Ranaweera was unable to return to the Muttur police station. Therefore, IP Abeywardena was appointed Actg. OIC of the Muttur police station.

On the 4<sup>th</sup> he had arranged with the Navy to send a police party to Muttur. The team comprised among others SSP Jayasekera, and IP Ranaweera. The said police party had reached Muttur at about 10.00 or 11.00 p.m.

On the 4<sup>th</sup> he had been informed by OIC Abeywardena that the army commandos had reached the Muttur police station at 3.00 p.m.

On the 6<sup>th</sup> he was informed by ASP Stanislaus Trincomalee II that the staff attached to INGO Action Faim have been killed at Muttur. He had contacted OIC Ranaweera to inquire into this and inform SSP Operations.

He confirms that he had attended a meeting chaired by Senior DIG Mahinda Balasuriya on the 7<sup>th</sup> at 5.00 p.m. At that meeting they had discussed recent developments including security issues and the attack on Muttur. He has however, admitted that at this conference he had not discussed the issue relating to the killing of the 17 aid workers. They had discussed matters pertaining to security, welfare, the redeployment, re-establishment of police posts and the threat to the town area and enhancing security in the town area. Prior to his leaving for Habarana ASP Stanislaus had informed him of the ACF killings. On the 6<sup>th</sup> he had gone to Habarana to meet Senior DIG

Ranges III Mahinda Balasuriya. He had been at Habarana from 10.30 a.m. to 1.00 p.m. and discussed the security situation with the DIG.

He states that on the 11<sup>th</sup> the CID had taken over the investigation into the ACF case.

### **IP A.K.A.Zavahir**

On the 7<sup>th</sup> of Aug. he had received a message from the SSP Nihal Samarakoon of the Trincomalee Division asking him to report on the 8<sup>th</sup> with regard to investigating this crime.

The SSP had informed him that he was appointed to be the OIC of the War Crimes and Other Special Crimes Investigations Unit. He had been instructed to investigate into the killings of the 17 ACF workers. He had left for Muttur by boat on the 8<sup>th</sup>. SI Gunasekera had gone to the scene of the crime on the 6<sup>th</sup> of Aug.

According to his information the first officers to have visited the scene of the crime were SSP Kapila Jayasekera and IP Ranaweera, on the evening of the 6<sup>th</sup> of Aug. SI Gunasekera had visited the scene of the crime after they had left.

It is to be noted that it is of evidential value to protect the scene of the crime, especially when the bodies were there. This has not been done. Furthermore, because of the prevailing situation they had the possibility of getting the assistance of the Sri Lanka army in addition to police officers for protecting the scene of the crime. Even after the bodies were removed on the 6<sup>th</sup> SI Gunasekera Banda had not taken steps to protect the scene of the crime.

He had gone to Muttur on the 8<sup>th</sup> but had visited the scene of the crime on the 9<sup>th</sup>. He has stated that the security situation in the Muttur city was not that good for him to have visited the scene of the crime on the 8<sup>th</sup>.

The CID had started their investigations about the 11<sup>th</sup> or 13<sup>th</sup>. It is to be noted that from the 6<sup>th</sup> to the 9<sup>th</sup> the scene of the crime was not protected.

He had visited the scene of the crime at about 10.45 a.m. on the 9<sup>th</sup>. He had observed the blood patches at the scene of the crime. He had also observed small holes made in the ground that would have been caused by shooting. He had noticed empty cartridge cases strewn about and had collected 30 cartridges at the scene of the crime.

A cab (WP JP 4377) was parked to the right of the house. There was another cab (WP JK 7894) behind it. There was a jeep (65 – 0569) parked under the portico.

He had noted that the radio in the cab was removed and only the wires remaining. He had also seen a motor cycle in the garage.

In the investigation file he had included documentary evidence obtained from various telephone companies. The deceased persons had telephone contacts with outsiders and they had also received telephone messages from outside until the 4<sup>th</sup>. That is why it was necessary to get the details of these telephone calls.

However, he had not been able to inquire from the persons contacted by the deceased about the conversations they had with them. This was because the Court had issued an order that all the telephone numbers he had received should be handed over to the CID.

It has been pointed out that by the time police investigators went to the scene of the crime none of these mobile phones were available, either in the victim's pockets or in the house. So obviously somebody has taken them, either the perpetrators or any body else who visited the scene of the crime. It is to be noted that even the Motorola system in the car had been removed.

The last telephone call from one of the ACF workers, namely Arulraj had been around 6.50 a.m. on the 4<sup>th</sup> to Rengaiiah Kanagaratnam.

When SI Gunasekera Banda went to the scene of the crime on 6<sup>th</sup> of Aug. there had been 3 motor cycles in the premises. When he visited the scene of the crime on the 9<sup>th</sup> two motor cycles were not there. He had questioned Uma Lebbe Mujeeb who was in charge of the stores at the ACF office. It was revealed that they did not remove the 2 motor cycles. It would have been somebody else that stole the motor bicycles. He had taken steps to inform all the police stations within Trincomalee Division and the road blocks with regard to the theft of the motor cycles.

He had obtained information with regard to the person involved in the theft of the motor cycles but he had not recorded this information. He had subsequently, taken Home Guard Cader into custody when he was apprehended riding a motor bike without number plates. Home guard Cader and Ramzan had admitted taking the motor bike from the ACF office, as there was no transport available for Cader to go and see his wife and children at Kinniya. Cader has stated that he had gone into the ACF office and removed the bikes on the 8<sup>th</sup> of Aug. This may be true as the bikes were there on the 6<sup>th</sup> when the CHA representative visited the ACF office.

Ramzan too in his statement has said, "as there was no key for the motor cycle available we removed the wire and started the bike and at the time we removed the bike there was no one present there"

It is evident that the investigation into the ACF killings have been conducted in a very careless manner by the fact of the failure of the police to observe

basic investigative procedure. According to Cader he had seen home guard Nizam taking away the second motor bicycle. Cader had requested Nizam to hide the second motor cycle at a friends place. The second motor cycle was recovered from the premises of another Cader a relative of Home Guard Cader.

Zavahir has also produced before the Commission a list of phone numbers belonging to the deceased with the calls taken between the 1<sup>st</sup> and 4<sup>th</sup> Aug. He gives details of 11 mobile phones owned by the 17 deceased persons. The last telephone call received from the ACF office Muttur was to Rengaiyah Kanagaratnam to whom Arulraj had taken a telephone call from mobile phone No 0723560744 belonging to Arulraj at 6.50 a.m. on the 4<sup>th</sup> of Aug 2006. Kanagaratnam was an Asst. Field Officer of ACF. The last telephone call is helpful to determine the last time at which the ACF employees were alive. According to Rengaiyah Kanagaratnam, Arulraj had told him they were remaining inside the house with doors and windows closed as there was continuous shooting every where in the Muttur area and had requested Kanagaratnam to come to Muttur and take them away. Kanagaratnam had conveyed this message to ACF office at Trincomalee.

Zavahir has stated that out of the 11 mobile phones belonging to the deceased two phones, namely 0776093544 belonging to Primus Anandarajah and phone No 0773548427 belonging to Pradeepan had been used after the 4<sup>th</sup> of Aug. Pradeepan's had been used at 12.49 on the 10<sup>th</sup> of Aug. 2006 and the call had been taken on phone No 0777082082. He had not been able to ascertain to whom the aforementioned second phone belonged as the case was handed over the to CID thereafter. The CID had taken over investigations on the 12<sup>th</sup> or 13 of Aug.

Zavahir had questioned the following persons on the 9<sup>th</sup> when he visited the crime scene. Viz: Katchcha Mohommed Abdul Rahuman whose residence was situated close to the scene of the crime on the Main Street. Katchcha Mohammed has said that "army personnel came into the town on the 5<sup>th</sup> of Aug. 2005. Ahamadu Shah Mansur was an employee of the Govt. hospital. He has aid, "there were a large number of LTTE cadres near the Telecom Tower and opposite the ACF office. From the 2<sup>nd</sup> to the 5<sup>th</sup> of Aug. the LTTE had taken over the Muttur area."

He had handed over a summarized report of the findings through SSP Trincomalee to the Magistrate's Court on 12<sup>th</sup> Oct. 2006.

### **Able Patrolman W.M.I.I.M. Wijesundera/SL Navy**

In Aug. 2006 he had been serving in the Muttur Old Jetty area. The CO of the Naval Detachment camp at the New Jetty was Lt. Meepawala. CO of the Old Jetty Naval base was Lt P.R.P.G. Bandara. There had been 17 officers stationed at the Old Jetty camp.

By the 2<sup>nd</sup> of Aug. the LTTE had captured Waddama camp. The Old Jetty was also attacked. The attack had continued until 11.45 p.m. on the 2<sup>nd</sup>. When their CO was injured they had evacuated to the New Jetty base. They had taken with them all their weapons. They had stayed the night at a building near Al Hilal College and had left with the support party sent by Lt. Meepawala to the New Jetty camp at about 8.00 a.m. on the 3<sup>rd</sup>. When they reached Al Hilal College they were informed, "that LTTE were right round the city carrying arms and it would be dangerous to go forward in our uniforms with arms."

On the 4<sup>th</sup> Waddama camp and the Old Jetty camp had been captured by the LTTE. The LTTE were attacking the Kattaparichchan camp and the Muttur police station on the 4<sup>th</sup>.

### **Dr. D.L. Waidyaratne**

He had served as the Consultant Judicial Medical Officer, General Hospital, A'pura from 1991 until the 14<sup>th</sup> of Feb. 2007.

He had attended to the first postmortem examinations which were done at the A'pura hospital with the assistance of Dr Lakmal Dharmadasa.

He was the Forensic Pathologist who had conducted the postmortem examinations on the remains of the 17 deceased persons.

He had conducted the 2<sup>nd</sup> postmortem examination on the 24<sup>th</sup> October 2006. on all the exhumed bodies later in Colombo.

On the evening of 5<sup>th</sup> August Dr Athula Kahandaliyanage had got in touch with him and had requested him to assist in a postmortem examination of some deaths that had occurred in the Muttur area.

He had got the second call on the 7<sup>th</sup> evening from Dr Kahandaliyanage, who was the Secretary of the Ministry of Health and Director General Health Services. Thereafter he had been contacted by DIG Trincomalee, who had assured him that all facilities would be made available to conduct the postmortem examinations. Later in the evening of 7<sup>th</sup> Aug. the Base Commander of the Air Force base had contacted him to inform him that he had been ordered to give air transport. He had arrived in Trincomalee at about 9.30 a.m. with his team.

When he went to the Trincomalee base hospital he had been met by Dr Gnanagunalan the Medical Superintendent.

He had been served with a Court Order on the 8<sup>th</sup>. Thereafter, he had commenced the postmortem examinations.



He had conducted the postmortem examinations on the following deceased persons. Viz:-

1. Yogarajah Ketheeswaran
2. Abdul Latif Mohammed Jauffer
3. Gangadharan Sridharan
4. Vyramuttu Kokilavadani
5. Mutulingam Narmadan
6. Sivapragasm Romila
7. Sathyavel Koneswaran
8. Mohandas Ravichandran Risikeson
9. Sinharajah Primus Ananda rajah
10. Kanakaratnam Kovadani
11. Richard Arulraj
12. Ganesh Kavitha
13. Madawarajah Ketheswaran
14. Thrairajah Pradeepan
15. Ambiaiwathi Jayaseelan
16. Sellaiah Ganesh
17. Muralidharan Darmaratnam

During the postmortem examinations he had observed that there were injuries on the bodies suggestive of those caused by projectiles of a firearm.

Yogarajah Ketheeswaran – TR No 1

Yogarajah had a fracture of the skull bone. In his opinion a projectile discharged from a firearm caused these injuries. He had identified two separate entry wounds from two projectiles. That is the entry was from the front of the face. The matter of gauging the distance of the shooting was beyond his expertise. That is for a Ballistics expert to express an opinion after test firing. He cannot tell the distance exactly, but could say it was not close. In the case of contact and near contact one could see burning and tattooing. Multiple star like lacerations would be visible in contact wounds. The external wound did not appear as if it was a contact. He would have been shot from some distance. The injuries he had observed on the anterior aspect of the face of the deceased were all entry wounds. There would have been more than one projectile that entered through the victims mouth. The entry of the projectile is on the face and the exit is on the back. The deceased would have been facing the person who shot him. He would say the victim would have been sitting or standing facing towards the perpetrators with the upper part of his body raised. All the injuries would have occurred in quick succession by several bullets fired by a gun. The injuries were fatal and death would have been instantaneous.

He had been asked to complete the postmortem examinations by 4.00 p.m. He had very limited time to do postmortem examinations on 17 dead bodies. The dissection of one body would take about 1 ½ hours.

Taking into consideration the conditions of humidity and temperature around Trincomalee and Muttur area he has approximately calculated the time of death as 3 or 4 days prior to his seeing the dead bodies. His rough estimate was that the deaths would have taken place in the early morning of 4<sup>th</sup> Aug.

At the initial stage, that is, on the day of the postmortem examinations on the 8<sup>th</sup> of Aug. he had asked to visit the scene of the crime. He had been informed that it was not safe enough to visit the scene of the crime on the 8<sup>th</sup> and that the police could not provide the security that day. He had not made a request thereafter.

He had been shown photographs of the scene of the crime obtained from the following source. 1) From the representatives of the ACF who had handed over a CD containing some photographs of the scene of the crime, taken by some outside authority may be by an NGO representative. 2) Some photographs were shown by the CID who were later involved in the investigation.

The condition of the bodies as shown in the photographs indicate that these photographs would have been taken 2 or 3 days after death. That is, rigour mortis disappears as a result of putrefaction. The reverse of rigour mortis naturally occurs only due to the onset of putrefaction. Generally, rigour mortis starts disappearing from 18 hours onwards.

At the time of the postmortem examination, he was of the impression that these deaths had occurred in the early hours of the morning. The absence of food in the stomach indicates a period longer than 5 hours between the last meal and death, which leads him to think of the possibility of these persons being killed in the morning. That means after several hours, namely, 8 to 10 hours after the usual dinner. The cause of death of Yogarajah Ketheeswaran was head and brain injuries caused by projectiles from a rifle firearm. It is a homicide and not a self inflicted injury.

Abdul Latheef Mohammed Jaufer – (TR No 2)

The postmortem was carried out by Dr Lakmal Dharmadasa.

Gangadharan Sridharan – (TR No 3)

Gangadharan Sridharan's postmortem examination was done by him. Though there were putrefactive changes the facial features to a certain extent could be identified by close relatives. He had last contacted over the phone on 2<sup>nd</sup> Aug. at 9.30 p.m. The cause of death is head and brain injuries caused by projectile from a rifle firearm. It is a homicide and not self inflicted. Death would have been instantaneous.

Vairamuttu Kokilawadani – (TR No 4)

He had conducted the postmortem. The cause of death was head and brain injuries caused by projectiles from a firearm. He cannot exactly say whether in this case death was instantaneous.

Mutulingam Narmadan – (TR No 5)

He had conducted the postmortem. At the time of death he was wearing a T shirt and towel. The relatives had told him that Narmadan was specifically in the habit of wearing a towel in the morning. He was not wearing an under garment underneath the towel.

It is to be noted that Sri Lankans generally in the mornings wear the towel when they are engaged in their washing up ablutions. He had a keyhole fracture of the occipital bone. A keyhole fracture is a peculiar type of bone fracture caused in firearm injuries. Death would have been instantaneous.

Sivapragasm Romila – (TR No 5)

A female 25 years of age. Her body was identified by Kandasamy Sivapragasm the father and a person called A. Kamaladas. Deceased had contacted relatives around 10.00 a.m. on the 4<sup>th</sup> (her mother). The mother had not been present herself and somebody who was present had said she had called her mother at 10.00 a.m. on the 4<sup>th</sup>. This is, however, hearsay evidence.

The victim had been lying face downwards on the ground with the right hand curled upwards near the head. There is a high probability of being shot while lying face downwards.

Sathiavel Kodeswaran – (TR No 7)

He had carried out the postmortem. Projectile from firearm had entered the neck and exited from the back fracturing the cervical vertebrae. The injury would have been fatal.

Mohandas Ravichandran Risikesan – (TR No 8)

He had conducted the postmortem. Death was caused by projectiles discharged from a firearm.

Primus Anandarajah – (TR No 9)

He had done the postmortem. Head and brain injuries caused by projectiles from a firearm.

Ms Kanakaratnam Kovadani – (TR No 10)

The postmortem had been done by Dr Lakmal Dharmadasa.

The postmortem examinations on TR No 11, TR No 12, TR No 13, TR No 14, TR No 15, TR No 16 and TR No 17 had also been done by Dr Lakmal Dharmadasa.

There was a judicial order on the relatives not to cremate the bodies but to bury them. Namely, to facilitate an exhumation if the need arose. After completing the postmortems he had forwarded the death certificates to the Magistrate.

Subsequently he had taken the decision to have the bodies exhumed for the purpose of subjecting the remains for a further examination under better and more scientific conditions.

The primary objective of this exercise was to see whether any projectiles were stuck inside any of the remains, the locations of which could not be determined since he did not have facilities of X raying the remains, when he conducted the first round of postmortems. Furthermore, in the event of there being evidence of foreign metallic bodies to extract such foreign bodies for further examination by the relevant competent authorities. The CID had made an application to the Magistrate and obtained a Judicial Order that authorised him to conduct the exhumation of these bodies in the presence of the Magistrate.

It was decided to conduct the exhumation of the bodies in two phases. In a pilot phase, first to exhume two bodies and based on the experience gathered in the pilot phase, to arrange for an exhumation on the rest of the bodies at the second stage. The Magistrate of Anuradhapura acting on behalf of the Magistrate, Muttur issued an order on 13<sup>th</sup> Sept. 2006.

They had exhumed two bodies on the 16<sup>th</sup> of Sept. They were Madawarasa Ketheswaran (TR No 13) and Mutulingam Narmadan (TR No 5). The bodies were buried at the Trincomalee General Cemetery, Hindu Section.

The Magistrate had made an order to conduct the exhumations on the balance dead bodies on 18<sup>th</sup> of Oct. 2006. Out of the 17 families one family had objected to the exhumation due to religious reasons. The Australian Forensic Pathologist Dr Malcolm Dodd was not present at the exhumation of the bodies. However, he took part in the subsequent examination of the bodies at the JMO's Office, Colombo. The bodies were exhumed from 3 locations on the 18<sup>th</sup> of Oct. Namely, Trincomalee, Uppuveli and Ambalipuram. On the 18<sup>th</sup> they had exhumed 9 bodies. Exhumation of two bodies, namely, Primus Anadarajah and Kanagratnam Kowadani had to be abandoned due to wrong identification of the grave site.

R. Arulraj (TR No 11) could not be exhumed due to the absence of relatives who had left the country. TR No 9 and TR No 10 could also not be exhumed as they were unable to identify the bodies. In the case of TR No 17 Muralidharan Dharmaratnam, the relatives were present but the CID did not have information as to where he was buried. TR No 7 Satiavel Kodeswaran, the CID had no information where he was buried. Romila Sivapragasm's body was exhumed from the Roman Catholic cemetery at Trincomalee.

The second round of postmortems commenced on 24<sup>th</sup> Oct. 2006, and was concluded on the 25<sup>th</sup> of Oct. 2006. The team consisted of himself and Dr Malcolm Dodd, Forensic Pathologist and Ballistics expert from Australia.

### The Second Postmortem Examinations

#### Yogarajah Kodeswaran – (TR No 1)

This body was exhumed on 18<sup>th</sup> Oct. 2006 at 1.00 p.m. in the Uppuveli cemetery, Trincomalee in the Christian Section. The relatives were not present as they had left the country but had given a statement to CID officer SI Sanjaya Perera who was present.

In the radiological examination they had detected several metallic fragments in the head area and a few metallic fragments and a relatively intact bullet in the left thigh.

#### Gangadharan Sridharan – (TR No 3)

No metallic fragments were detected in this body.

#### Vairamuttu Kokilawadani – (TR No 4)

In this body on two locations metallic fragments were found. One was on the right side of the chest. Extensive cranial fracture, with separation and other fractures. They were satisfied that the findings in the original postmortem examination with regard to trauma were confirmed in the second pathological examination.

#### Mutulingam Narmadan (TR No 5)

The postmortmen confirmed the skull fracture and found a metal fragment identified to be a relatively intact projectile in the left side of the chest.

#### Romila Sivapragasm – (TR No 6)

The body had several metal particles within the area of the head.

Mohandas Ravichandran Risikeson – (TR No 8)

A projectile was extracted from the cranium.

Madawarajah Ketheeswaran – (TR No 13)

No metal fragments were found. Radiologically they found only cranial trauma.

Thuraiarajah Pradeepan (TR No 14)

A metal object found in the knee area of the left lower limb.

Ambigapathy Jayaseelan – (TR No 15)

Radiologically confirmed only the bone trauma and no metallic fragments were found.

Selliah Ganesh – (TR No 16)

X ray showed only skeletal trauma. The only injury was behind the right ear.

After completion of the 2<sup>nd</sup> postmortems he had re issued death certificates dated 26<sup>th</sup> Oct. 2006 on the bodies exhumed.

After the conclusion of the 2<sup>nd</sup> postmortems he had issued a conclusive report relating to each of the postmortems on the exhumations and re-examination of the bodies. The final postmortem Report relating to TR 17 has to be obtained from Dr Lakmal Dharmadasa. There are 4 final reports which he did not issue because he had not examined these remains either at the 1<sup>st</sup> or 2<sup>nd</sup> postmortems.

Dr Malcolm Dodd had issued an initial report in which he ventured to give specific technical names and labels to these projectiles that were recovered in the 2<sup>nd</sup> postmortems. He has mentioned specifically that some projectiles were 7.62 calibre and one projectile belonged to 5.56 calibre bullet. This differed with the opinion expressed by Sri Lanka Ballistics expert Deputy Govt. Analyst Mr Gunatilleke, who was of the view that the entire set of projectiles related to the 7.62 calibre bullets. When Dr Dodd was confronted with scientific reasons supportive of Mr Gunatilleke's opinion, Dr Dodd went back on his opinion and agreed with Mr Gunatilleke. Ballistics have three areas. 1) Internal ballistics which refer to the way of movement of the projectile within the gun. 2) External ballistics (mode of movement of the projectile after emitting from the muzzle end into the air. 3) Terminal ballistics is the behaviour of the bullet or projectile within the target, that is the human body.

It is terminal ballistics that come within the purview of a Judicial Medical Officer or a Forensic Pathologist. As a rule, Sri Lankan Forensic Pathologists

never express any opinion on internal or external ballistics including the distance of firing.

### **Dr. Lakmal Samanpura Dharmadasa**

From April 2004 he has served as Asst. JMO at the Anuradhapura Hospital. At present he is attached to the Anuradhapura Teaching Hospital as a Medical Officer.

On the evening of the 7<sup>th</sup> of Aug. 2006 Dr Dananjaya Waidyaratne, Consultant JMO, Anuradhapura Hospital had requested him to be his assistant to perform certain postmortems in a region outside Anuradhapura. Dr Waidyaratne had received orders to proceed to Muttur to perform postmortems on the dead bodies of the murdered ACF employees, and he was asked to get prepared to go with him.

Accordingly, on the 8<sup>th</sup> of Aug. he accompanied Dr Waidyaratne to Trincomalee Hospital. There had been 17 bodies for the postmortem. Both of them had separately attended to the postmortems. He had performed 9 postmortems. He had done the postmortems under the supervision of Dr Waidyaratne. They had allocated numbers to the dead bodies in the form of TR/2006.

Before they commenced the postmortems they had got the relatives of the deceased persons to identify the bodies.

He had performed postmortems on the following bodies. Viz:-

TR No 2/2006	-	Abdul Lateef Mohammed Jaufer
TR No 10/2006	-	Kanagaratnam Kovadani
TR No 11/2006	-	Richard Arulraj
TR No 12/2006	-	Ganesh Kavitha
TR No13/2006	-	Madawarajah Ketheeswaran
TR No 14/2006	-	Thurairajah Praddepan
TR No 15/2007	-	Ambigapahty Jayaseelan
TR No 16/2006	-	Selliah Ganesh
TR No 17/2006	-	Muralidharan Dharmaratnam

#### Abdul Lateef Mohammed Jaufer – (TR No 2)

He was identified by his brother. He had an entry wound on the front side of his neck towards the right side. There was an exit wound on the rear side of the neck. These injuries showed signs of firearm shooting, especially rifle wounds. These wounds have damaged the main blood vessels of the neck and spinal cord. These are fatal wounds sufficient to cause death. Death would have been instantaneous.

Generally in a postmortem the stomach contents are exhumed, however because of the tense environment that prevailed and the limited time available to do the postmortems, the stomach contents were not examined.

At the time of the postmortem the body was subjected to putrefaction. The body was highly swollen and in addition it showed marbelling. Further, there were maggots all over the body.

To a certain extent one can tell how long before death would have occurred after examining the body, subject to putrefaction, but there are other causes also that have to be taken into consideration. Namely, the temperature of the environment is one such thing. In addition the levels of humidity either advances or retards the putrefaction process.

Dr Waidyaratne and he had both come to the conclusion that death would have occurred roughly about 3 to 4 days prior to the date of the postmortems. Accordingly, he had determined that Abdul Lateef Mohammed Jaufer had met with his death on the 3<sup>rd</sup> or 4<sup>th</sup> of Aug.

Kanagaratnam Kowadani – (TR No 10)

Witness produced before the Commission the contemporaneous notes he had prepared on the postmortem of K. Kowadani (TR 10/2006).

Richard Arulraj – (TR No 11)

Witness produced before the Commission the contemporaneous notes he had prepared on the postmortem of R. Arulraj. (TR 11/2006).

Ganesh Kavitha (TR No 12)

Witness produced before the Commission the contemporaneous notes he had prepared on the postmortem of Ganesh Kavitha (TR No 12/2006).

Madawarajah Ketheewaran – (TR No 13)

Witness produced before the Commission the contemporaneous notes he had prepared on the postmortem of Madawarajah Ketheeswaran (TR 13/2006).

Thurairajah Pradeepan – (TR No 14)

Witness produced before the Commission the contemporaneous notes he had prepared on the postmortem of Turairajah Pradeepan (TR 14/2006).

Ambigapathy Jayaseelan – (TR No 15)

Witness produced before the Commission contemporaneous notes he had prepared on the postmortem of Ambigapathy Jayaseelan (TR 15/2006).



Selliah Ganesh - (TR No 16)

Witness produced before the Commission contemporaneous notes he had prepared on the postmortem of Selliah Ganesh (TR 16/2006).

Muralidharan Dharmaratnam - (TR No 17)

Witness produced before the Commission contemporaneous notes he had prepared on the postmortem of Muralidharan Dharmaratnam (TR 17/2006). In conclusion with each of the aforementioned postmortem examinations he has performed, he has issued the following documents. Viz:-

1. Notes of the postmortem examination.
2. Cause of Death Certificate
3. Final postmortem report to the Magistrate.

Dr. Danajaya Waidyaratne had performed postmortems on 8 bodies.

**SSP Kapila Jayasekera**

In August 2006 he was the SSP Operations in the Trincomalee District Police Division.

During the first week of August 2006 the LTTE attacked Muttur violating the Ceasefire Agreement which was in force at the time between the Government of Sri Lanka and the LTTE. The terrorist attack commenced on the 1<sup>st</sup> of August 2006.

The LTTE launched an unsuccessful attack on the Naval vessel 'Jetliner' operated by the Sri Lanka Navy to transport 3,600 unarmed personnel of the three Defence Forces from Trincomalee to Kankesanthurai. On the night of the 1<sup>st</sup> of August LTTE had launched an attack on Muttur from Samapur and Raulkuli, which areas were under the control of the LTTE at that time. As a result of this terrorist attack in the morning of the 2<sup>nd</sup> of August police who were manning the Muttur Town Police Post as well as the Police Post near the Sri Lanka Telecommunication Tower had to abandon their police posts and retreat to the Muttur police station, which was towards the north west of the Muttur town.

The terrorists in addition to controlling the Muttur city area, continually attacked the Muttur police station and the Kattaparichchan army camp which was towards the south east of the city.

Due to the severity of the attack launched by the LTTE he had got to know that there was a risk of the police officers abandoning the Muttur police station. He had received information that the Actg. OIC and the junior police officers had sought permission to abandon the police station or surrender to the enemy.

When he went to the Muttur Jetty on the evening of the 4<sup>th</sup> he had got to know that a group of army Commandos had gone to the Muttur police station towards the evening of the 3<sup>rd</sup>. He had been unable to go to Muttur on the 3<sup>rd</sup> because there was heavy attack on the Muttur Jetty area. He was able to leave Trincomalee naval Base only around 7.00 p.m. on the 4<sup>th</sup> and had reached Muttur Jetty at 9.00 p.m.

Counsel for the Official Bar pointed out to the witness that under police regulation E 21 issued to Gazetted police officers of the Sri Lanka Police Dept. there is a requirement to submit weekly reports. For this purpose officers from the rank of ASP and above had to maintain daily notes in their personal diaries and they have to submit the weekly reports based on these notes.

SSP Nihal Samarakoon in his weekly report contemporaneously made commencing from Sunday the 30<sup>th</sup> of July 2006 in accordance with E21 police Departmental Regulations has said in the entry made on 4<sup>th</sup> Aug. – "At 10.30 hrs visited Naval Dockyard with SSP Operations Kapila Jayasekera. Managed to send SSP Operations with OIC Muttur in naval gun boat. They had reached Muttur safely and thereafter visited the town area.

Between 4.00 p.m. and 6.30 p.m. on the 4<sup>th</sup> he had come to know that the army commandos had reached Muttur for the protection of the Muttur police station and that they had gone to the police station at 3.00 p.m."

In Kapila Jayasekera's oral evidence he has stated that on the 4<sup>th</sup> of Aug. he had set off by 7.00 p.m. from the Trincomalee Naval base and it was by mid night that he had reached the Muttur Jetty.

According to the witness the diary entry of SSP Samarakoon is inaccurate. However, in the OVB Register of the Muttur police station he has indicated under entry column 12.00 noon on 4<sup>th</sup> Aug. 2006. Thereafter in darker hand has written 24 hours. His stating 12.00 noon tallies with the contemporaneous notes made by SSP Nihal Samarakoon. And a similar alteration had been made by OIC Ranaweera who went with SSP Jayasekera. He too has also altered the time from 12.00 hours to 24.00 hours.

It is to be noted that SI Gunasekera Banda of the Trincomalee Crime Division and IP Zavahir /OIC of the War Crimes and Special Crimes Unit had both stated that they were aware that SSP Kapila Jayasekera had visited the scene of the crime before them. This indicates that Kapila Jayasekera would have come to know of the murders by mid day on the 4<sup>th</sup> of Aug.

He claims he got to know of the ACF murders on the 6<sup>th</sup> Aug. when he went to Kattapparichchan army camp. And OIC Ranaweera had been informed of the incident by telephone between 10.00 a.m. and 2.00 p.m.

SSP Nihal Samarakoon in his evidence before the Commission under oath has said that he had informed SSP kapila Jayasekera in the afternoon of Aug. 6<sup>th</sup> about the dead bodies in the ACF office, and had requested him to visit the place, hold inquiries and report to him.

He had gone to the scene of the crime at about 4.00 p.m. on the 6<sup>th</sup>. He had visited the ACF office with a police team. The police had videoed the scene of the crime. The team comprised himself, OIC Ranaweera, and SI Galnewa. The officer in charge of the photography, Trincomalee police had videoed the the scene. When he observed the dead bodies and their decomposition, he felt that the killing would have taken place 2 or 3 days earlier.

He had seen 3 motorcycles parked in the premises. He had been in Muttur till the 12<sup>th</sup> of August.

### **W.D.G.S. Gunatilleke/Deputy Government Analyst**

He is the Head of the Forensic Division at the Government Analyst's Department His areas of speciality are 1) Forensics and Ballistics 2). Explosives.

He had received the first set of productions on 5<sup>th</sup> Oct. 2006 from the Magistrate's Court, Anuradhapura. The second set of productions he had received on 8<sup>th</sup> December 2006 from the Magistrate's Court, Muttur. The third set of productions he had received from the Magistrate'e Court Muttur on 26<sup>th</sup> of March 2007.

The parcel he received on the 5<sup>th</sup> of Oct. 2006 contained 32 spent cartridges and 11 projectiles. The 32 spent cartridge cases were of 7.62 x 39 mm caliber bullets.

According to the Government Analyst a minimum of 3 weapons had been used to discharge the 32 spent artridges. There were a number of weapons of the caliber 7.62 x 39 mm. The commonest ones are T56, AK 47 and there is Tabuk, but this is not very common here.

Dr. Malcolm Dodd had identified exhibit No 7 as being a bullet of a 5.56 x 45 mm caliber. If it is 5.56 calibre bullet the outer surface is soft metal and not steel. The core of a 7.62 x 39 mm bullet is of hard steel. The core of the bullet in exhibit No 7 was of hard steel. In this instance Dr Malcolm Dodd has erred.

### **SI Sanjaya Perera/CID**

He had been directed by his OIC to investigate into the ACF Killings. It was on the 17<sup>th</sup> of Aug. that CID officers went to investigate the scene of the crime. They had found 32 spent cartridges and 11 projectiles at the scene of the crime.

They had made investigations into the mobile phones used by the deceased. IP Zavahir had submitted reports regarding telephone conversations that had taken place using these numbers.

He had received information from the Dialog Company that these telephone calls have been taken from the mobile phone used by deceased Pradeepan after 4<sup>th</sup> Aug. 2006. The mobile phone used by Kavitha No 0779799984 had also been connected after the 4<sup>th</sup> of Aug.

Kodeswaran's mobile number too had been used after the 4<sup>th</sup> of Aug. He had located a resident of Muttur, by the name of Mohamedu Migular Paheek who had used this mobile number. Paheek had said that he found the SIM card in his compound when he was clearing it. This house is situated in the land adjoining the scene of the crime.

It is to be noted that if the original owners have died, thereupon the telephones would have fallen in to other hands if the calls originated from these telephones. He had found in the course of his investigations that certain telephones and SIM cards have in fact been transferred by certain agents who have sold these items.

His conclusion is, the fact that since the records show different names that most of these numbers were being operated by persons who were not duly registered.

### **Capt. R.A.S.I.P. Ranasinghe**

He had participated in the Commando operations which were launched in the month of Aug. 2006 to liberate Muttur in the Trincomalee districts from the LTTE. At that time he was in charge of a group within the Bravo team of the 1<sup>st</sup> Commando Regiment and he reported to his immediate senior Major Nalin Jayatilleke. He was at that time the officer in charge of the Bravo Team of the 1<sup>st</sup> Commando Regiment.

They had landed at the New Jetty on the 3<sup>rd</sup> of Aug and had proceeded to the police station. They had reached the police station at about 3.00 p.m. and stayed at the police station over night. On the 3<sup>rd</sup> night he had been instructed that a team of commandos will be coming on the following day under Maj. Handunpathirana to open a supply route between Muttur New Jetty and the police station and there was a suspicion that LTTE will attack this route. Therefore, they were ordered to proceed to this area where there is a marshy land between the police station and New Jetty and asked to provide cover to the officers who were engaged in opening the supply route from possible terrorist attack from the south. They had operated from the northern side of the marshland.

They had left the Muttur police station at about 4.00 or 4.30 a.m. There were about 35 to 40 Commandos in the Bravo team. All these officers came out of

the police station on the 4<sup>th</sup> on this operation. His assignment was to station his team towards the New Jetty area. The Commandos were stationed in small units of about 4 to 5 persons. From the night of the 3<sup>rd</sup> to the 4<sup>th</sup> morning there was continuous firing from the terrorists from the Kattaparichchan direction and the Muttur town direction. By the morning of the 4<sup>th</sup> towards 10.00 a.m. the attacks from the Kattaparichchan direction had lessened. At about 10.00 a.m. there was a direct attack launched towards them from the Muttur area. There was heavy firing from both sides. Lance Corp. Ubayasekera was injured during this crossfire and succumbed to his injuries. Through out the day as well as the night of the 4<sup>th</sup> they were stationed in this area. Even at 11.00 or 11.30 a.m. on the 4<sup>th</sup> the LTTE were dominating the area to the south of the marshy land as well as the southern part of the lagoon at that time.

The normal practice of the LTTE was to keep on firing to indicate that they were present in the area and that they were in full strength. They are in the habit of firing from time to time to indicate their presence and to point out that they are dominating the area. They go from place to place and fire about 2 or 3 shots and shift to another place, that is their normal strategy. They may have continued this firing till about dusk of the 4<sup>th</sup> just to indicate they are in full strength and they are dominating the town area.

On the 5<sup>th</sup> their orders were to open a supply route between Muttur police station and the Kattaprichchan army camp. They had moved towards the Kattaprichchan camp not through the city centre but through a road lying south of the town. They had passed the Town Police Post and proceeded towards the south of the main road which lay across that police post and moved gradually towards the Kattaparichchan camp on the southern direction of the town whilst establishing small points.

They had spent the night of the 5<sup>th</sup> at the Muttur Naval Jetty. On the 6<sup>th</sup> morning they had left the Jetty at about 8.30 a.m. and started clearing up operations in the town area. Whilst they were engaged in the clearing operations they had been informed by Maj. Nalin Jayatilleke that he had heard that certain civilians had been killed and to try and locate the place and to report back to him immediately.

He had been informed by one of his groups that they had located dead bodies in front of a building. In response to that message he had visited the place at about 2.00 to 2.30 p.m. on the 6<sup>th</sup> with 2 or 3 other Commandos. The house was located adjacent to the Muttur Government Hospital. The dead bodies were in the front of the compound. He had not entered the premises but peeped through the gate. He had however instructed 2 commandos to go round the house and see whether there were any other dead bodies. After informing Maj. Jayatilleke they had carried on with their clearing duties.

When commados go on operations they do not take outsiders along to help them. They are given training to locate any place and they do not get the

assistance even from other army personnel outside the commando regiment. It will be a hindrance to take any outsiders because very often commandos do not use words but use body language and sign language and the coordination would be disrupted if there were any outsiders who were alien to the group.

Whilst on their clearing operations they had come to the Telecom Tower. From the Telecom Tower one could see the surrounding area very clearly, so it was necessary to take control of the Telecom Tower. According to him it was usual for commandos to leave a mark when they capture a place. It was possible that the commandos may have marked Bravo on the Telecom Tower.

On the night of the 5<sup>th</sup> they had gone back to the Naval Jetty, because they had run out of rations. Furthermore, their batteries had run down and they had to be re-charged.

### **Chief Inspector G. Subasinghe**

He is the Registrar of Finger Prints. He had sent 2 officer at the request of the OIC Muttur police station to obtain finger prints from the scene of the crime at the ACF office. They had obtained a set of finger prints and a palm print. They were found on the vehicle WP JP 4377 which was parked under the portico.

Furthermore, on the 17<sup>th</sup> of Aug. PC 1708 Gunatilleke had been deployed to examine the house. However, this officer had not found any prints inside the house.

The photographs of the palm and finger prints found on the door of the vehicle No WP JP 4377 were developed and and handed over to the Registrar of Finger Prints. However these finger prints have not been compared with any suspect who is believed to have been concerned in the committing of this crime. They had not been sent finger prints from any suspects by any police agency.

It is to be noted that on the 5<sup>th</sup> of December 2008 the Secretary to the Commission had forwarded a letter to the Registrar of Finger Prints requesting a comparison of the palm prints and finger prints obtained from the vehicle described above with that of two suspects Abdul Jaleel Abdul Cader and Jamaldeen Mohammed Ramzan. He acknowledged receipt of the letter but has stated that they were unable to do comparison since the finger prints of these two suspects had not been sent to the Registrar of Finger Prints. However, since Cader and Ramzan has already admitted having gone to the scene of the crime and removing the motor bikes, a comparison of their finger prints revealing that they tallied, would not make much of a difference to the evidence already available.

## **The Role of INGO Action Contre Le Faim**

The seventeen workers all Sri Lankans, 16 Tamils and 01 Muslim killed in Muttur in the first week of August 2006 were attached to the ACF, a French international NGO. The 16 victims were from Trincomalee and had traveled to Muttur to engage in assistance work mostly in the Tsunami affected areas under the control of the LTTE.

When the attack commenced on the 1<sup>st</sup> about mid night the Head of the Trincomalee ACF Office who was a foreigner and had assumed duties only recently. By the time he came to Sri Lanka his predecessor had already left the island. Therefore, he would not have had the opportunity to be briefed on the ground situation in the conflict affected region of Sri Lanka. This would have resulted in his naivete with regard to his erroneous dismissal of the assessment of the war situation prevailing in the area and his evaluation of level 3 as a non critical gauge.

Mrs Ravi Shantha, Aunt of deceased Jayaseelan stated that her nephew had spoken to her on the phone and told her that people were proceeding to refugee camps for safety. He had said that they were thinking of going to the church for safety. However, when they had asked the ACF office in Trincomalee they had been instructed to continue remaining in the Muttur office, as it would be easier to collect them from the office rather than search for them in the refugee camps.

As referred to earlier it must be emphasized the ignorance of the Head of the ACF Regional Office at Trincomalee on the ground situation, led to his ill judged decision of sending the workers to Muttur in a tense situation and then deciding to keep the workers in the ACF office at Muttur, instead of advising them to go to a refugee camp.

There had been three vehicles parked in the ACF compound. Namely, two double cabs and a Land Cruiser. Among the dead were three drivers. The 17 ACF workers could easily have evacuated to Trincomalee or Kantale when they had three vehicles and three drivers available at Muttur. It is intriguing why they did not make use of this opportunity, unless they were afraid to disobey orders received from their superiors at the Trincomalee office to remain in the Muttur Office. The workers were working under the direct supervision of ACF Office Trincomalee where foreign staff of the ACF were in executive control. No evidence has transpired that the 17 workers had a supervisor working in Muttur. Therefore, they were unable to take an independent decision on the course of action they should take with regard to their safety, in a volatile ground situation, as they had to abide by the orders given to them from the Head Office.

One witness for the ACF in his evidence has stated that they had contacted the military which was denied by the witnesses for the army. However, one of the ACF foreign officials denied contacting the army or the LTTE with

regard to obtaining security for the ACF workers on the principle, "They are combatants and on principle we don't deal with combatants." If that be the case the next prudent course of action for the French organization in Sri Lanka having encountered a war situation should have been to first turn for assistance to the French Embassy. There is no evidence of representations being made in this regard to the French Embassy. The first thing the ACF should have ordinarily done was to seek the assistance of the French Embassy, which they have not done. This is also borne out in the evidence of Maj. Gen. Mendaka Samarasinghe who stated that they have fortnightly briefings with the Defence Attaches and Consuls of foreign countries at the Army Headquarters in Colombo, and this Muttur incident had never been brought up by the French Defence Attache'.

Rasiah Thurairajah brother in law of the deceased M. Ketheeswaran stated that his father in law received a telephone call from Ketheeswaran. When Ketheeswaran's father in law had called the ACF office between 1<sup>st</sup> August to 3<sup>rd</sup> August ACF office had told him that they were at an important meeting and that they would take steps to go to Muttur to collect the staff after the meeting was over.

This is clear negligence on the part of ACF and the lack of knowledge of the prevailing ground situation. This is corroborated by the evidence of Paramjothy Paraneetharan cousin of T. Pradeepan who has stated that on the 3<sup>rd</sup> of August, when he spoke to Pradeepan on the phone, Pradeepan had told him that the ACF office Trincomalee had wanted them to stay on in the Muttur office instead of going to a refugee camp.

According to P. Paraneetharan's evidence they had got to know of the killings on Suriyan FM Radio on the morning of 6<sup>th</sup> August. The ACF office had still not confirmed the deaths. ACF had withheld information about the killings to the relatives.

The Muttur civilian population had evacuated to Trincomalee on the 3<sup>rd</sup> and 4<sup>th</sup> August. If ACF workers had gone with the civilians they could have been saved.

The ICRC is geared to be present at scenes of combat, even during high intensity fights. However, notwithstanding the overall profile of the ICRC due to the intensity of the fighting in Muttur after the eruption of hostilities by the LTTE, the ICRC had decided to close down its operations and left Muttur. According to evidence the ICRC had fled as they had not even lock their premises properly.

The ACF failed to fully cooperate with the Commission of Inquiry by refusing to give evidence, at the investigations and at the public inquiry, where evidence and statements of 80 witnesses have been recorded. Soon after the incident the relevant international official who was responsible for the deployment and movement of local workers at the relevant period had been



moved out of Sri Lanka and the ACF failed to produce this material witness at the Commission of Inquiry. The ACF representative Francois Danel who came as a witness to the public inquiry on 25<sup>th</sup> October, 2008 refused to be cross-examined and he merely gave a statement in the open forum. Two others who came with him did not give evidence. Three of them after having come all the way from France left the Commission hurriedly after two hours stating that they have to catch the flight that day. The COI consider this to be very unfortunate on the part of the ACF especially when one of the members of the International Independent Group of Eminent Persons appointed to observe the investigation and the inquiry of the Commission was the current Foreign Minister of France who was succeeded by a Senior Member of the French Judiciary. Even after the withdrawal of the IIGEP an official from the French Government continued to observe the proceedings of the Commission.

### **Probable Time of Death**

Sridharan from Muttur ACF office had spoken on the VHF Radio set to Trincomalee office on 4<sup>th</sup> August at 2.20 a.m. as recorded in their Radio log book. The last communication from Muttur office to Trincomalee office had been at 6.40 a.m. 4<sup>th</sup> August.

It can be safely presumed that the deaths occurred after 8.30 a.m. on the 4<sup>th</sup> of Aug. The ACF and relatives of the deceased lost contact after 6.40 a.m. on the 4<sup>th</sup> and Fr Swarnaraj and Addl. Divisional Secretary Maniwannan had seen the ACF employees when they passed the ACF Office on their way to Kantale at about 8.30 a.m.

The deceased persons had maintained contact with their relations and the Trincomalee Head Office of the ACF until 6.40 a.m. on 4<sup>th</sup> August 2006. But thereafter, until the discovery of the bodies there was no further information. All the information to the relatives had come through the victims handphones.

The hand phones of the deceased were missing from the scene of the crime. They may have been robbed by the killers after committing the crime.

According to statements until the night of 4<sup>th</sup> August 2006 the Muttur town and the surrounding area were subjected to LTTE attack. There is indisputable evidence that the LTTE were present in the Muttur town on the morning of 4<sup>th</sup> August.

It is reasonable to assume that since the last communication from the ACF office in Muttur was 6.40 a.m. and as Rev. Father Swarnaraj has said, that he had seen ACF workers at 8.30 a.m. on the 4<sup>th</sup> of August, that death would have occurred in the morning of the 4<sup>th</sup>.

It may also be inferred that the persons killed were made to surrender and lie down on the ground and shot execution style based on the manner in which the bullets were located and the manner in which the bodies were lying.



ACF Office Premises



dead bodies lying at office premises

Cader states that he took the motor bikes from the ACF compound on 5th August. The photographs taken by CHA representative on 6<sup>th</sup> August shows the bikes were still in the ACF premises. This is contradictory which creates a doubt as to the veracity of his statements.

On the 7<sup>th</sup> evening Senior DIG Mahinda Balasuriya had chaired a meeting with senior police officers. However, at this meeting SSP Nihal Samarakoon had not divulged the information he had received 24 hours before the conference notwithstanding the fact of having received a feed back from SSP Kapila Jayasekera and ASP Ranaweera. The conference was convened specially for the purpose of reviewing the ground situation.

On the 8<sup>th</sup> Senior DIG Mahinda Balasuriya acting on the instructions of the IGP had established "the Special Investigation Unit into War Crimes" to investigate this incident as well as other incidents during the relevant period. IP Zavahir had been appointed as the OIC of the Special Investigation Unit. There is reason to conjecture why an inexperienced officer who had admittedly inquired into only two previous homicide cases was put in charge of a special unit of this nature.

Furthermore, ASP Ranaweera has said in his evidence that he and another officer had visited the ACF office in the evening of the 6<sup>th</sup> of Aug. Therefore, the police were aware of the ACF killings by the 6<sup>th</sup> of Aug. At 3.40 p.m. on the 7<sup>th</sup> the ACF personnel had removed the dead bodies to Trincomalee.

The police had taken certain preliminary steps such as getting the crime scene videoed on the 7<sup>th</sup>, and SI Gunasekera had been at the scene of the crime on the 7<sup>th</sup> when Rombal Perera from ACF had come to remove the bodies. Why this matter was not discussed at the senior police officers conference is some what of a mystery.

The University Teachers for Human Rights, UTHR(J) Report No 30 which states that ASP Mulleriyawa was one of the perpetrators of the crime along with police constables Nilantha, Susantha and home guard Jehangir. However, it had been proved that ASP Mulleriyawa was attached to the Welfare Division of the Police Headquarters in Colombo (vide Annex IV Circular of IGP marked E 133) during the relevant time and that he had taken up duties at the Muttur police station only on 20<sup>th</sup> Aug. 2006.

Nilantha and Susantha's evidence has been corroborated by documentation. Susantha had been in charge of the generator which provided electricity to the Muttur police station when the main power supply gets cut off. From the 1<sup>st</sup> of August the power supply had been disrupted by the LTTE. In addition he was in charge of the T81 MBRL weapon which has to be kept stationed and positioned ready for use. During the attack on the Muttur police station he was operating the T81 weapon. Therefore, he had no opportunity of leaving the police station.

Nilantha had arrived in Muttur, having been away on home leave, only on the midnight on 4<sup>th</sup> of August with OIC Ranaweera. In fact, Nilantha on the night of the 3<sup>rd</sup> and the morning of the 4<sup>th</sup> was at Serunuwara unable to proceed to Muttur due to LTTE attacks. On the morning of the 4<sup>th</sup> Susantha had returned to Trincomalee and had been able to reach Muttur by boat at midnight on the 4<sup>th</sup> August.

The UTHR(J) has released a proliferation of reports with regard to the ACF case. However, none of these reports have elicited any substantive evidence. Moreover, as borne out by the testimony of witnesses before the Commission much of the reports are based on hearsay. Therefore, the veracity of the UTHR(J) reports is very much in doubt and it is concluded that they are biased reports.

The police had gone to the ACF office for the first time on the 6<sup>th</sup> of Aug. However, the police had not taken steps to guard the scene of the crime from the 6<sup>th</sup> to the 9<sup>th</sup> of August.

The scene of the crime had been videographed on the 6<sup>th</sup> Aug. by a police officer who had come from Trincomalee. The video clips had been stored at the SSP's Office. However, subsequently one of these video clips had gone missing. The Commission is of the view that IP Zavahir should have done a more thorough investigation and sought assistance from his superiors in conducting investigations into a serious crime of this nature.

The ACF employees at Muttur had three modes of contacting their ACF office in Trincomalee. Namely - 1) Their personal mobile phones 2) CDMA or a fixed land phone 3) Through high frequency radio equipment.

It is to be noted that the CDMA or fixed land line telephone had gone missing from the ACF office.

In the video photographs of the scene of the crime one of the victims, namely, Mutulingam Narmadan is wearing a towel round his waist and there is a cup fallen nearby. This is indicative that the killings had occurred in the morning as it is customary for Sri Lankans to wear a towel in the morning when attending to their washing up ablutions. The fallen cup indicates that he would have walked in holding his morning cup of tea.

According to the Consultant JMO of the Anuradhapura hospital he has estimated the time of death from the stage of putrefaction and stomach contents examined in one dead body being empty of food as having occurred in the morning, about 4 days prior to the postmortem examinations, which were held on the 8<sup>th</sup> of August. This means the killings would have taken place on the morning of 4<sup>th</sup> August.

Dr Waidyaratne in his evidence has stated that he had not examined the dead bodies of the female victims for rape, as due to putrefaction it was

not possible to obtain body fluids, and that the Trincomalee hospital did not have facilities for proper postmortem examinations.

Both SI Saratchchandra and SI Ratnasiri Perera have stated that Jehangir was stationed in the 7<sup>th</sup> bunker from 2<sup>nd</sup> August to 4<sup>th</sup> August. According to IP DM Abeywardena, Actg. OIC of Muttur Police Station during the first week of August 2006, Home Guard Jehangir appears to have left the police station on the 4<sup>th</sup> morning, which fact is denied by Jehangir and the Commandos.

Further, Capt. R.A.S.I.P. Ranasinghe of the First Commando Regiment stated that they do not take outsiders along to help them. He said that it would be a hindrance to have any outsiders because often commandos use body and sign language and their coordination would be disrupted by outsiders.

### **The Role of the Armed Forces During this Period**

It is necessary to determine when the government forces commenced their operations to drive away the LTTE terrorists from Muttur town and the surrounding area.

The Gemunu Watch soldiers had been deployed in two batches to Muttur on 2<sup>nd</sup> August. The first batch had reached Muttur at about 5.30 p.m. on the 2<sup>nd</sup> and had gone to defend the Kattaparichchan camp. The second batch of Gemunu Watch soldiers had reached the kattaparichchan camp on the 4<sup>th</sup>.

The Commandos of the First Commando Regiment had left in two groups for Muttur. The two groups were known as Alpha and Bravo. The Bravo Group had been under the leadership of Maj. Nalin Jayatilleke. The Bravo Group had reached the Muttur police station after 3.00 p.m. on 3<sup>rd</sup> August.

The Special Boat Squadron of the Navy had reached the Jetty and was in the process of recovering Bravo Point. By the 3<sup>rd</sup> of August the Commandos at the Jetty were working closely with the Special Boat Squadron at the Naval Jetty and were repulsing the LTTE at Bravo Point.

Capt. R.A.S.I.P. Ranasinghe has stated that Bravo Group of which he was a member had left the Muttur police station at about 4.00 to 4.30 a.m. on the 4<sup>th</sup> of August. Their assignment had been to give cover to the group opening a supply route between the New Jetty and the police station which is far away from the city centre. They had stood at different points on the 4<sup>th</sup> in the vicinity of the safe passage and it was after 11.00 a.m. that from across the marsh, from the direction of the city centre, that a gun fired by the LTTE had killed Lance Corporal Ubayasekera.

The Alpha Group of the First Commando Regiment under the leadership of Maj. Gamaarachchi had landed in Muttur between 4.15 and 6.00 a.m. on 4<sup>th</sup> August. Their duty had been to clear a passage from the New Jetty to the Muttur police station.

The movements of the home guards is subject to conjecture as there is evidence that Jehangir and Cader had been out of the Muttur police station between the 4<sup>th</sup> and 5<sup>th</sup> of August. The movements of the home guards have been very fluid during the LTTE attack on the town.

There is no evidence of any Army personnel being seen on the 4<sup>th</sup> in Muttur city centre. However, there is over whelming evidence, in addition to the Tamil Net declaration, that the LTTE were present in the town of Muttur on the 4<sup>th</sup>.

There is also evidence of the death Army Lance Corporal Ubayasekera succumbing to gun shot injuries caused from the direction of the the town area, whilst he was on duty in the marshland adjacent to the Muttur police station on the morning of 4<sup>th</sup> August. This fatal shot had been fired from the direction of the town by the LTTE. Therefore, there is strong evidence of LTTE presence in the city centre of Muttur on the morning of 4<sup>th</sup> August. However, there is no eye witness evidence of any army presence in the Muttur town on 4<sup>th</sup> August. Rev. Father Swarnaraj and Acting Divisional Secretary Maniwannan has also testified to the presence of the LTTE in Muttur town on 4<sup>th</sup> August.

On the Morning of the 5<sup>th</sup> the Commandos guarding the marsh area had been detailed for raod clearing from the police station to the Kattaparichcan Army Camp to ensure a safe access passage from the Jetty via the police station to the Kattaparichchan Army Camp. They had not taken the main road but had proceeded on a more circuitous route to the Kattaparichchan junction. Another group of Commandos on the morning of the the 5<sup>th</sup> had left the police station on a mission to secure a police family trapped in a house close to the Wanguwa point.

The Commandos who were engaged in road clearing on the 5<sup>th</sup> for safe passage, had run out of battery power and food provisions and had gone back to the Jetty for the night. On the 6<sup>th</sup> whilst the Commandos were continuing with their road clearing activities they had been instructed to find out whether there were any dead bodies in an INGO office situated in the town centre. The GA Trincomalee had conveyed this information to the Division Commander Major General Mendaka Samarasinghe.

The UTHR(J) report states:

"Eye witness testimony and other information uncovered by UTHR(J) reveal that the Sri Lanka aid workers were killed by a amember of the Muslim Home

Guards and two Police constables in the presence of the Sri Lankan Naval Special Forces around 4.30 p.m. Friday, 4<sup>th</sup> August 2006”.

The evidence however, does not disclose the presence of the Commandos any where near the ACF office during the relevant period, that is, on the morning, afternoon or evening of the 4<sup>th</sup>. There are no Naval Special Forces in the Navy.

The UTHR(J) report further states:

“The Naval Special Forces Commandos had both M16 as well as FN Minimi weapons, both of which fired the standard M193 5.56 x 45 mm as well as SS109 5.56 x 45 mm bullets, although M 193 is the standard bullet for M16 and SS 109 equivalent M855) the NATO standard for the FN Minimi. While both have identical cartridge dimensions the SS 109 has a bullet or a slug 23 mm long and heavier than than the M 193 slug which is 19.3 mm long”.

Furthermore, the ballistic expert has identified the weapons used for the death of the 17 workers as T56 weapons; weapons identified in the UTHR(J) report as the instrument of death does not include T56 weapons.

In any event the forensic evidence indicates that these cartridge casings were from one particular type of gun, namely T56. Notwithstanding the contents of the UTHR(J) Report as to the different caliber of weapons used, both the Security forces and the LTTE used the same kind of weapons and ammunition. Vide Dr Malcolm Dodd’s Letter. Subject to the conclusions given below, the Commission is unanimously of the opinion that it does not have sufficient evidence to come to any conclusion, with any degree of accuracy, as to who may have been the perpetrators of this crime. The post-mortem examinations reveal that the injuries had been caused by rifled weapons, which fact is compatible with T56 guns having being used. There is also sufficient evidence to show that the victims were killed individually in execution style and were not commensurate with injuries which may have been caused in a cross-fire situation.

It appears that home guard Jehangir had two of his brothers killed by the LTTE, and a sister is presumed to have been abducted by the LTTE. Furthermore, one of his brothers had been killed only a day or two prior to this incident, and thus had a strong motive to kill Tamil people. Jehangir naturally has distanced himself from this position by stating that he had not left the bunker in which he was hiding, for around four days. This is contradicted by certain police officers who aver that Jehangir did in fact leave the police station on a number of occasions. However, no record of Jehangir’s movements have been submitted in evidence by the police. Therefore, these averments must remain in the realm of conjecture.

## **Re Matters Raised in the Written Submissions**

It is necessary to consider some of the matters referred to in the written submissions filed on behalf of the so called civil society consisting of seven organizations namely, Centre for Policy Alternatives, Home for Human Rights, INFORM, Law & Society Trust, Mothers and Daughters of Lanka, Rights Now – Collective for Democracy and Sri Lanka National Commission of Jurists and the counsel of the next of kin who previously represented ACF which suddenly left the Commission without giving reasons. The purported civil societies before the Commission were non Governmental organizations known in the public domain to hold a common point of view of supporting causes that in the public perception are well known, on which the Commission does not desire to elaborate; but has considered their line of conduct and cross examination before the Commission requires comment.

The lawyers who represented the said organizations and the next of kin though purportedly watching matters of public interest as set out in the civil societies mandate placed in writing before the Commission, showed total disregard in matters affecting the interests of deceased persons' next of kin. This aspect should have been the prime fact of concern in terms of the mandate presented to show their interest and gain representation in the case but they appeared to be more anxious to safeguard the interest of the foreign based NGO, the ACF. It was sad that their contribution was negligible with regard to enhancing the compensation package due to the next of kin, which should have been a matter in which they should have interested themselves. Instead they left it to the others who assisted the Commission.

The Counsel who represented the next of kin and previously the ACF may have been in a conflict of interest situation. Their main function was an attempt to discredit every possible institution and authority of this country before the Commission and attempt to hold one party responsible for the gruesome crime. They did not consider any other group being possible offenders or show any interest in ascertaining on whom responsibility could be placed except their targeted group. They appeared not to ascertain the truth but to engage in a fault finding exercise of the security forces of Sri Lanka. We consider it as a suspiciously narrow outlook to adopt, not worthy of a role to be played by responsible civil society members, who should have looked at issues broadly to ascertain who the actual culprits are in this ghastly act.

We have prefaced our findings with these sentiments as the said civil society organizations have been critical of so many functionaries before the Commission in their several submissions when their own conduct required examination. It is for these reasons we dwell on this subject.

One of the submissions made by them:

1. The so called harassment of witnesses, as alleged is as follows.



- (a) It is alleged that Rev. Father Swarnaraj who was a witness in this Case was approached by two unknown individuals during the Commission's tea break and these two individuals "aggressively questioned him regarding his on going testimony".

When this matter was brought to the notice of the Commission, it caused an immediate inquiry and within few minutes. Counsel was informed at the hearing that an officer of the Investigation Unit, which Unit that had already recorded Father's statement, had asked the Rev. Father the name and address of a particular Reverend Brother who was referred to by the Father during the course of his evidence. This had taken place in the presence of Witness Protection Officers.

This was a sequel to the instructions given by the Commission to the Investigation unit at the time the Unit was formed. They were told to follow the proceedings and in the course of the evidence of any witness any new name transpires who would be of importance to arrive at the truth, to obtain particulars of that person from the witness and record the statement to ascertain whether his testimony would be of any assistance. However, the day this alleged incident took place the Commission warned the Unit not to speak to any witness during the course of his testimony before the Commission. All these matters were brought to the notice of both Counsel for the so called civil society and the deceased party.

Notwithstanding the above these two Counsel repeatedly took this matter up on two occasions later obviously to cater to some other interests.

It is false to say that two officers questioned the Father. It is also palpably false and dishonest to say that Father was "aggressively questioned regarding his ongoing testimony". It is surprising and shocking to hear for the first time that "under individual questioning the officers gave conflicting testimony". No such thing ever happened and these intentional and deliberate false positions taken by Counsel who withdrew from the Commission thereafter, which enables them to make irresponsible statements and then run away. Counsel assisting the Commission should act in a more responsible manner and not make wild accusations against officers of the Commission. The nature and the contents of the allegations reflect a deliberate design to discredit the Commission and its officers.

The Rev. Father's testimony and statements made to the police and the Investigating Unit of the Commission when taken together, are not favourable to the LTTE as he speaks of LTTE presence on the 4<sup>th</sup> morning and the other alleged parties were not seen in the town area at that time according to his evidence. If there were any threats to him, as alleged, it could originate from the LTTE against whom his evidence was unfavourable.

However, after his testimony before the Commission it has been brought to the notice of the Commission that the Father has sought asylum and is now in a foreign country. One wonders whether all these "theatrics" and uproar were to facilitate his seeking asylum.

- (b) 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.

In fact this matter was brought to the immediate notice of the Commission by Mr Gomin Dayasiri himself, to the impropriety of a Commissioner talking privately to a witness in the course of his giving evidence. The photograph was shown to the Commission to support the submission. In fairness to Dr Nesiah being a layman would have been unaware of the inquirer – witness relationship that should prevail during an inquiry and no intentional fault could be attributed to Dr Nesiah. There may have been an undoubted lapse on the part of Commissioner Nesiah and the Rev. Father through ignorance. In the circumstances we see no merit in this objection.

- (c) It is alleged that they received unconfirmed reports "of continuing visits to witnesses' homes by the Criminal Investigation Division, both prior to and after their testimony before the Commission." There is no Criminal Investigation Division in the Commission nor is the Commission aware of any such Division elsewhere. This type of false misleading allegation can seriously affect the credibility of the Commission. All witnesses are given protection before and after their testimony by the Victim and Witness Protection Unit headed by

a DIG (retired). They were well looked after and were assured protection and secrecy. Never a complaint was received from any witness about any kind of harassment. This is obvious fantasy on the part of the Counsel for the Civil society.

- (d) At one stage Counsel indicated to the Commission that some officers of the Investigation Unit by their body language were attempting to influence a witness before the Commission. The Commission found that this was totally false. It is the officers of the investigation Unit who record the statements of witnesses before they are called to give evidence.
2. Vide the written submissions, attempts have been made to pass the blame on the Commission for the resignation of Dr Devanesan Nesiiah. Objection was taken by Counsel for the Army/Navy and the STF that in view of the participation of the seven civil societies, one of which was the Centre for Policy Alternatives it has been stated Dr Nesiiah had connections with the said society as an employee and therefore there was a conflict of interest in the participation of Dr Nesiiah in the Commission. Dr Nesiiah denied that he was an employee of the Centre for Policy Alternatives. Counsel stressed the fact that this objection was only so long as CPA was a participant in the proceedings, that Dr Nesiiah acts as an employee of the CPA.

As stated in the Commission's Order dated 12<sup>th</sup> May 2008 the Commission is unable to decide whether a particular Commissioner has a conflict of interest or not. The Commission cannot go into the mind of Dr Nesiiah. It is a matter within the conscience of Dr Nesiiah. The Commission feels that the available alternatives were:

- For the CPA to withdraw from participation especially when one set of Counsel appeared for all seven societies and withdrawal would not in any way affect the representation of the other six societies.
- For Dr Nesiiah to resign from the Commission as justice should not only be done but seem to have been done, or
- For the appointing authority to decide, after consulting legal opinion, if so advised, to remove him.

It is wrong to fault the Commission for the resignations of Dr Nesiiah which he did on his own accord. Indeed he resigned from the Commission after HE the President called upon him to temporarily withdraw until it is determined whether he should remain in the Commission.

3. Reference has been made by the "Civil Societies" to what is termed as "evidence of profound irregularities". To substantiate this assertion they refer to the evidence of a particular Lieutenant who had made a

statement during the investigating stage of the Commission. It is alleged this particular witness has subsequently, about a month after, written a letter to the Commission to change the record of his testimony. It is further alleged that the Commission never intended to disclose this letter but that it had accidentally got included in the Commission's records.

This position is absolutely incorrect and is an attempt to discredit the Commission by the so called "Civil Society". At the initial stage of the investigating proceedings it was brought to the notice of the Commission that statements made by witnesses before the Commission cannot be made use of before a Court of Law in the event of any criminal prosecution. In view of this the Commission decided to get the witness sign his statement after his testimony before the Commission. The typing of witnesses' testimony before the Commission takes about a month as the stenographers have to check the audio tapes and type the proceedings. When this particular witness was called to sign the statement about a month later he was required to go through the statement and sign it as the correct reflection of his testimony. At that stage he had discovered that a particular answer had not been correctly recorded and wanted to correct it. It is at this stage that the officer responsible for keeping records has requested a letter, if he needs a correction to be made. This was purely a bona fide exercise and in fact was done quite transparently.

The assertion that this was a profound irregularity is absolutely misleading and incorrect, especially when this position was clearly indicated to the Counsel who apparently accepted it. The Commission finds that this was the only instance where a witness sought to correct the record.

It appears from the above that there had been a preconceived plan or a conspiracy to discredit the Commission by making false allegations and or exaggerating and twisting the truth to suit their purpose in order to achieve the long term objective of interested parties including their paymasters to discredit and disrupt the Commission for the consumption of some of the international organizations.

### **Witness Protection**

Much has been said about the inadequacy of witness protection. It must be said at the very outset that Witness and Victim Protection is a concept new to Sri Lanka. In fact most countries, like India, Pakistan, Indonesia amongst others do not have any kind of witness protection schemes. The Commission on its own initiative, even before the Bill that is now before parliament was introduced, decided to have its own Victims and Witness Protection scheme.

The Rules of Procedure of the Commission will reveal that the Commission has created a special Unit in the Commission for this purpose.

The Unit is headed by a Deputy Inspector General of Police, now retired, who is considered a person of high integrity. This Unit has been functioning from commencement of the Commission and has always given maximum protection to the witnesses who required assistance. There has been no complaint by any of the witnesses for want of protection. In fact one witness from Muttur, whom Counsel for the deceased relatives described as a "gold mine" was kept in Colombo with his family for a period of over three months at the expense of the Commission to protect him.

The Commission also was able to send two officers to Australia and another to Japan for training in witness protection. Also all officers of the unit were given training locally in witness protection with the assistance from experts both foreign and local.

#### Unceremonial Exit of IIGEP

H.E. the President had by a letter of invitation invited eleven Eminent Persons from eleven countries to act as Observers. However, it appears that towards the latter part of their participation they were acting in excess of their responsibilities and adopted a confrontational attitude towards the Commission though expected to closely work with the commission. The Commission feels that this is mainly due to their failure to regularly attend the Sessions and being totally dependent on their Assistants. Refer to Part I where this matter has been dealt with in more detail.

These Assistants acted completely in excess of their authority and went to the extent of interviewing possible witnesses and recording their statements in secrecy. These statements were kept with them and released to the Commission much later at their discretion.

These statements so recorded contain their own additions where, considering the type of witnesses, one could easily assume that a particular witness is not capable of making such revelations.

There had been instances where one of the IIGEP Members and one of their Assistants had stormed into the Magistrate's chambers and attempted to get information relating to an on going case. This Member who had stormed into the Magistrate's chambers along with the IIGEP Assistant is now a Minister of the French Government. This type of arrogance and insolence would never have been tolerated.

There is no doubt that their change of attitude is mainly due to the prejudice caused in them by interested parties in Sri Lanka. In fact a particular daily newspaper carried a photograph of a person representing a NGO talking to one of the IIGEP members outside the Hall. The IIGEP's agenda was clearly seen in releasing their Reports to coincide with Human Rights meetings that

were held in Geneva. This was in fact admitted by the IIGEP at one of the meetings held with members of the Commission at JAIC Hilton.

#### Withdrawal of Action Contre Le Faim (ACF)

When public sittings of the Commission started ACF, the international non-Governmental Organization, participated in the proceedings with much fanfare. They were represented by Counsel Mr Ratnavel, Attorney at Law. The Commission was promised all assistance to discover the truth.

However, when the relatives of the deceased aid workers who were called to give evidence in public, one by one they came out with the truth, in that they totally blamed the ACF Organization in Trincomalee for being responsible for the death of their relatives and their callous disregard for the safety of the workers, the ACF decided to pull out from participation of the proceedings. It was a sudden and secretive decision even their Counsel did not know the reason why they withdrew. Though the Counsel continued to appear for one of the deceased relatives. No reason whatsoever was given for their withdrawal.

Having done so the ACF in a covert operation issued a Report in June 2008 attempting to cover up their decision to keep the Aid Workers at the ACF office in Muttur.

The Report states that:

"A decision was taken in Colombo and then Paris, to request all staff members to remain in the ACF office until the fighting ceased. The whole area fell under intense fire, however regular radio contact was established and maintained with the base in Trincomalee and the decision taken seemed at that time, to be the safest option."

It is beyond one's belief that the decision was taken in Colombo and then Paris to keep the ACF staff in their office in Muttur when **"the whole area fell under intense fire"** as they claim. In fact the evidence of relatives of the deceased workers and the others show a completely different picture.

- Some of the deceased workers who were in constant touch with their relatives were pleading with them, and obviously with the ACF office in Trincomalee, to evacuate them somehow as their lives were in danger. They were crying and pleading.
- Prominent persons of the area like the Divisional Secretary and a Rev. Father pleaded with them to leave the office and come to the temporary refugee camps, like Al Hilal MV, the Churches and Mosques which were all close by.
- ACF workers were told that all the people in Muttur, including the Government Hospital staff with the patients, normally the safest place

during a war situation, have left to the camps and for them also to leave the office.

- On the 3<sup>rd</sup> of Aug. the whole of Muttur were leaving the town in vans, trucks and even in Ambulances to go to kantale for safety and the ACF staff which had three vehicles, 2 Pick up Cabs and a jeep with three drivers could have easily left the office for safety.
- The ACF cannot claim ignorance of these matters as they themselves in the Report state that they were in constant touch with the staff in Muttur "every 30 minutes".
- In the light of above hard fact, it is more a comedy than a tragedy to say that the decision was taken in Colombo and then Paris to keep the Aid Staff in office until the fighting ceased. The people in Colombo and Paris seemed to have been dreaming while the naked truth was glaring in their faces.

The Report further states that:

- "On August 2 the situation in Muttur deteriorated and evacuation of the aid workers was deemed impossible."

This is far from the truth. The attack by the LTTE commenced on the early hours of 2<sup>nd</sup> August and the fighting was intense on the 3<sup>rd</sup>. To say that evacuation of the aid workers were impossible is totally misleading and untrue. As stated above all the people in Muttur left their homes on the 2<sup>nd</sup> as well as on the 3<sup>rd</sup> of August to safety without any difficulty. It was after they went to the Camps that some shells fell inside a camp. In fact they all left Muttur and reached Kantale on the 4<sup>th</sup>. What was the difficulty for the aid workers to leave especially when they had vehicles and drivers with them?

- The Report also states "A fall back plan of moving the 17 staff members to an internally displaced persons camp was considered by ACF, however the stranded staff members told ACF that it would not be possible for them to leave the office due to the constant heavy shelling. Twenty minutes later the camp was hit and ten civilians were killed."

The first part of this statement is absolutely incorrect. The workers were pleading to save their lives and to go out of the office. They were advised by everyone to leave the office and go to the camps as it is not safe to stay in the office. But they were stubbornly told by the Trincomalee ACF office not to leave the office and stay together **as it would be difficult for the ACF to collect them if they leave and go to the camps. ACF was looking more at their comfort and convenience than that of the safety and security of their workers. They by their conduct before the Commission established this fact by abandoning the cause of their deceased employees by leaving the Commission without**

**notice, the families of the deceased in the lurch. In fact one family member of a deceased complained in writing to the Commission the plight he was faced with and having to seek the assistance of the Counsel for the Army/Navy to have the compensation package enhanced.**

It is no doubt a puerile attempt to cover their tracks when they say that twenty minutes later the camp was hit; an event that took place subsequent to their decision to keep them in the office. They kept them in the office premises knowing well the hospital across the street was hit by an artillery attack. They held them in "captivity" in the office being well aware of the dangers in the surroundings.

- The Report further says that, "During this period the ACF contacted the Army, Navy and Police forces to inform them of the presence of the aid workers in the town and provided them with the exact GPS location of the ACF base".

All the Army, Navy and police officers who gave evidence before the Commission were quite certain that no one from the ACF contacted them and the Senior officers of the army, Navy and Police in Trincomalee and Muttur were even unaware of an organization called ACF till they heard about their death on the 6<sup>th</sup> of August.

One could without any hesitation say that the conduct of the ACF was most deplorable and their attempt to cover their negligence in their failure to protect the ACF staff in Muttur is far worse. It can be assured that this does not in any way affect the bounden duty of the Commission to ascertain who the perpetrators of the dastardly crime are or to determine a compensation package on the available evidence. We are also mindful that the ACF came to give evidence and did not wait to complete the evidence and left stating they had to take a flight after tendering a statement in a single morning session. They assured that they will facilitate to send documentation and arrange Mr Kamo to give evidence but nothing has been heard thereafter. The conduct of the ACF reflects poorly on an international NGO dedicated to overcome suffering and hardship in their concern for the deceased and their next of kin.

## **Conclusion**

Taking into consideration that all communications with the ACF personnel in Muttur were lost after 6.40 a.m. on the 4<sup>th</sup> of August, and that LTTE was present in the morning of the 4<sup>th</sup>, especially the evidence of Mohamed Yusuf Imami who states that LTTE cadres came into the camp looking for armed



groups around 12.00 p.m. on the 4<sup>th</sup>. One possibility pointed out was that the LTTE was responsible for the crime.

The ACF workers who were in constant touch with their relatives and the ACF office in Trincomalee from the 1<sup>st</sup> onwards through mobile phones and land/CDMA phones suddenly stopped communicating after 6.40 a.m. on the 4<sup>th</sup>. The LTTE website Tamil Net had admitted the presence of LTTE in Muttur on the 4<sup>th</sup>. This could be interpreted to show that the murders took place after 6.40 a.m. in the morning.

It is also pointed out that the LTTE has a history of killing civilians including Tamils at all times and they either deny or pass the blame on to the forces. It is possible that they perpetrated this crime to blame the armed forces.

On the other hand there is also a greater possibility that Jehangir though he claimed not to have gone out of the police station taking into consideration that the testimony of IP Abeywardena, SI Sarathchandra and home guard Cader contradicts his denial, and also the fact that he lied and that he had reasons to harbour intense animosity against the LTTE for the deaths of his two brothers and the abduction of his sister by the LTTE is a possible motive for the committing of the crime along with Farook and Cader.

There is also a remote possibility that person or persons having access to the weapons missing from the town police post during the relevant period could have perpetrated this crime.

The Divisional Secretary's area in the Muttur Division encompassed Sampur. The closing of the anicut at Mavil Aru by the LTTE in mid July 2006 resulted in the formal abrogation of the Ceasefire Agreement as the army had to wrest control of the area from the LTTE to open the anicut and restore water to the farmers. Therefore, it was a war situation that prevailed in the Eastern province.

The Muttur massacre took place just 2 weeks following the Mavil Aru incident. Hence it was a volatile, dangerous, tension filled scenario that existed during this period.

From the time of the LTTE attack on the night of 1<sup>st</sup> August to 5<sup>th</sup> August the LTTE were moving about the Muttur town.

The actual situation can also be gauged from the fact that, though the site of the crime was within hearing distance from the church and the mosque; where possibly hundreds of people were taking shelter, none had heard the actual gun shots which killed these seventeen ACF workers, due to the noise of the incessant gun fire around the area. It is apparent that at the time of the incident, mortars, shells and other caliber guns were being used and thus caused a great noise.

## **Recommendations**

### **Reparation**

The compensation that has been paid to the victims next of kin have been totally inadequate. According to the relatives the INGO Action Contre Le Faim has paid Approximately Rs 400,000.00 for each of the deceased persons. As ACF did not attend the public inquiry, the Commission was unable to ascertain the exact amount of compensation paid to the next of kin of each of the deceased. The public inquiry before the Commission has revealed the gross negligence of the ACF Office in sending the employees on an assignment to Muttur, when the risk level of the security situation was assessed as that of level three. The fact that there were 3 vehicles and 3 drivers available at the ACF Office in Muttur but the Head Office failed to instruct the employees to utilize these vehicles to evacuate from Muttur, is evidence of a total disregard for the safety of their employees.

In the circumstances, the Commission recommends the payment of ten years salary by the ACF, computed from the date of the last salary received by the victims to be paid to their next of kin. Since the ACF has left the country compensation should sought from the ACF via the good offices of international forums such as the UN High Commissioner for Human Rights.

### **Training on Human Rights and Humanitarian Law**

It is necessary for armed service personnel to have a thorough knowledge of human rights and humanitarian law. In the future defending the security of a country will depend not only on conventional war strategy but more so on deflecting the psychological pressure that can be used by external forces to de-stabilize a country. Therefore, along with combat strategy it is equally important that a modern army is knowledgeable on the observance of international humanitarian law and human rights.

### **Further Investigation**

The Commission recommends further investigation of the case as certain persons whose names transpired in the course of the public inquiry, such as Zarook, Jehangir and Cader appear to be part of a conspiracy of silence. Their role and culpability with regard to this crime should be fully investigated.

## **APPRECIATION**

The Commission wishes to thank especially Mr. Gomin Dayasri, Attorney-at-Law, for having arranged the presence of high ranking Army and Navy officers, to give evidence, specially from combat areas during height of the war.

## **ACKNOWLEDGEMENTS**

The Commission wishes to convey its appreciation of the services rendered to the Commission by the Panels of Counsel from the Official and Unofficial Bar, the Head and staff of the Investigation Unit, the Head and staff of the Victim and Witness Assistance and Protection Unit, including the Advisors, the Secretary to the Commission and his staff, and the translators and interpreters.

The Commission also conveys its thanks to the Presidential Secretariat and the Director General and staff of the BMICH for providing the necessary facilities for the smooth performance of the work of the Commission.

The Commission wishes to thank the International Independent Group of Eminent Persons and their Assistants for the cooperation and assistance extended by them to the Commission and for their valuable contribution.

Considerable coverage and publicity was given to the proceedings of the Commission by the print and electronic media and the Commission wishes to convey its appreciation to all media personalities who were involved in this exercise.

The Commission wishes to express its appreciation to His Excellency the President, Mahinda Rajapakse for the confidence placed in the members of the Commission.