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ADDENDUM TO REPORT:

**SRI LANKA: THE INVESTIGATION AND
INQUEST INTO THE KILLING OF 17
AID WORKERS IN MUTTUR IN AUGUST 2006**

**Report by Michael Birnbaum QC,
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Foreword

In October 2006, the International Commission of Jurists (ICJ) appointed Mr Michael Birnbaum QC as its observer of the inquest into the deaths of 17 aid workers in Muttur, Sri Lanka in the first week of August 2006.

This is the first Addendum to the report of Michael Birnbaum QC, *Sri Lanka: The Investigation and inquest into the killing of 17 aid workers in Muttur in August 2006*, setting out his findings in relation to the report of Dr. Malcolm J. Dodd *Forensic Investigation of the Muttur Massacre Sri Lanka August 2006*, which has been made public since the ICJ published Michael Birnbaum's report. The findings and concerns raised in this Addendum are endorsed by the ICJ.

Michael Birnbaum QC has based this report on his analysis of the report of Dr. Malcolm J. Dodd *Forensic Investigation of the Muttur Massacre Sri Lanka August 2006* and his observation of inquest proceedings in Kantale, Anuradhapura on 22 November 2006 and 7 March 2007; analysis of court records, police reports and forensic reports; and meetings with both Magistrates who heard the inquest, the CID, the Secretary to the Ministry of Justice and Law Reforms, and the lawyer for the families of the victims, amongst others.

ADDENDUM TO REPORT:

SRI LANKA: THE INVESTIGATION AND INQUEST INTO THE KILLING OF 17 AID WORKERS IN MUTTUR IN AUGUST 2006

INTRODUCTION

1. Since I published my first report¹ on the investigation into the Muttur massacre a very important document has become available. It is the report, *Independent Forensic Investigation of the Muttur Massacre Sri Lanka August 2006* ("the Dodd report"), of the Australian pathologist Dr. Malcolm Dodd on the post mortems carried out on the exhumed bodies of 11 victims in late October 2006.²
2. The Dodd report is now available as a public document because on 25 April 2007 the Criminal Investigation Department (CID) handed a copy of it to Magistrate Jinadassa at the Kantale Magistrates Court.
3. In a nutshell it is my view that the Dodd report, coupled with matters to which I drew attention in my earlier report, give rise to a serious concern that a 5.56 bullet recovered from the body of one of the victims on 2 October 2006 has been removed from the exhibits and that another bullet of a different calibre has been substituted. It is known that 5.56 cartridges are used by the Special Task Force and by some Special Forces within the army and navy. It is also understood that those who had official access to the exhibits include: CID, the JMO and the Government Analyst Department.

THE DODD REPORT: GENERAL

4. Dr. Dodd is a distinguished pathologist of international reputation. He is consultant Forensic Pathologist at the Victorian Institute of Forensic Medicine, Southbank, Victoria, Australia. He is the author of *Terminal Ballistics: A Photographic Atlas of Gunshot Wounds* and (together with Beverley Knight) of *Justice for the Dead: Forensic Pathology in the Hot Zone*. The latter book is his account of mass exhumations in a number of countries including East Timor, Kosovo and the Solomon Islands. His report is extremely thorough and detailed. It runs to 71 pages. It opens with a seven-page summary of his two missions to Sri Lanka. It exhibits the radiological images taken at the October post mortems. There is then a detailed report on the findings relating to each of the exhumed bodies. This includes in each case a body diagram showing

¹ http://www.icj.org/news.php3?id_article=4151&lang=en

² *Independent Forensic Investigation of the Muttur Massacre Sri Lanka August 2006* by Dr. Malcolm J. Dodd

injuries, exhibits recovered and where they were found. Finally there is a series of recommendations.

5. Dr. Dodd begins by setting out his understanding of the post mortems conducted by Dr. Waidaratne and a junior colleague. He describes the conditions for those post mortems as “less than optimal” and points out that there were no radiological facilities. He states that, given the time constraints, duress from massing bereaved relatives and the lack of radiological faculties, there was limited scope for internal examination of the victims. Dr. Waidaratne had produced 17 reports whose conclusions were not in dispute. Dr. Dodd acknowledges the “excellent efforts” of Dr. Waidaratne and his assistant in performing the examinations under such difficult conditions.
6. The examinations appeared to disclose at least 29 individual gunshot entry points in the 17 victims.³
7. As a result of discussions between the Australian and Sri Lankan authorities a small team of Australian experts, consisting of Dr. Dodd, a forensic technician and a ballistics analyst visited Sri Lanka between 10 and 15 August 2006. They intended to review the post mortem reports and to re examine the exhumed bodies. For a number of logistical reasons it was not possible to arrange exhumations and examinations during that period. Moreover the team had to evacuate their hotel because of violence (two bombings and a shooting) in Colombo.
8. However Dr. Dodd states that the time spent in Sri Lanka was not wasted. The Australian team held a number of useful meetings with the Judicial Medical Officers (JMOs), police, Government analyst and representatives of the Government of Sri Lanka (GOSL).
9. Among the questions addressed were the choice of facility for further post mortem examinations and the capability of the Government Analyst Department in handling any retrieved projectiles or fragments. It was decided to use the dissection hall of the Anatomy School of Colombo University.
10. The return mission between 22 and 28 October had one specific purpose. Dr. Dodd was to act as an impartial international forensic expert present purely to assist and observe the re-examination process by Dr. Waidaratne. For this reason Dr. Dodd travelled alone. He states at p5:

It was decided that any ballistic evidence retrieved at the time of the re - examination would be either submitted to the Government Analyst Department or, pending instructions from the Sri Lankan Government or

³It therefore appears that I was wrong in suggesting that there may have been only 26. See my first report at para. 168.

indeed from the Government Analysts Department, ballistic evidence may be examined externally, perhaps in Australia.

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

11. The Anatomy School was not available for the further post mortems, so the mortuary of the JMO facility in Colombo was used instead. It had been planned that the bodies should be unfrozen prior to re-examination. However, the bodies were not unfrozen. Dr. Dodd's comments that this did not impede the radiological examinations. On 24 October all 11 bodies were examined using an x-ray machine and an image intensifier. The latter machine allowed examination of the image in real time on a television monitor and areas of interest, such as projectiles, to be printed out. The scanning of each body from head-to-toe took about 10 minutes. X-ray prints were taken of all fragments and intact projectiles and, where the body was deemed to be radiologically negative, of the areas demonstrating obvious gunshot injury at the time of the first post mortem. In the majority of cases these areas were the head, neck and chest.
12. Further examinations were carried out on 25 October. On that day radiological examination started at 09.30 and concluded at 15.00. The team consisted of Drs. Dodd and Waidaratne, two CID officers, two technicians, a photographer and a radiographer. Dr. Dodd states at p9:

As per international protocol, the bodies were given individual accession numbers (see autopsies), photographed, all radiological images given individual accession numbers and seized as evidence, bodies re-examined to confirm the point of bullet entry, exit and transit path, all ballistic evidence retrieved from the body, photographed with accession number and seized and individually labelled and sealed in containers for later analysis prior to the return of the bodies to the family.

13. The 11 bodies were examined externally, radiologically and the internally to confirm bullet point of entry, exit trajectory and to anatomically locate all metallic objects as seen on radiological examination.

DR. DODDS' FINDINGS AND CONCLUSIONS

14. Dr. Dodd sets these out at p68-9 of his report. All 17 of the bodies showed signs of single or multiple gunshot injury. Of the eleven bodies re-examined six contained "well preserved and minimally deformed projectiles". Excluding fragments, eight projectiles were retained. Seven were 7.62 calibre

projectiles of which two “appeared deformed”. He described the eighth as “a single 5.56 calibre projectile”.

15. He concluded that

The evidence shows that two (2) distinct calibres have been used in this event and therefore by inference two distinct types of weapons.

16. He went on to say that detailed ballistic analysis is required to determine from the rifling on the 7.62 calibre projectiles whether they had been fired from the same weapon.

17. He commented on the position of the bodies. The photographs showed 15 bodies, “the majority lying in a more or less prone or parallel position”. He was informed that two further bodies were found in a van parked nearby and that both had been shot.

18. The majority of the victims had been shot in the region of the head and neck with a smaller number dying from gunshot injury to the chest. The majority of the bullets had travelled in a superinferior direction, indicating that the majority of the victims were in a prone position when shot. Examination of the 11 exhumed bodies strongly indicated summary execution rather than being shot on the run.

THE 5.56 BULLET

19. I have prepared a chart setting out the descriptions of the recovered ballistic exhibits given by Dr. Waidaratne, Dr. Dodd and the Government Analyst. It is attached at Annex I.

20. One minor discrepancy is probably not significant. Dr. Dodd mentions a single amorphous fragment in the left knee of Y. Kootheswaran which is not mentioned in the other reports. The likely explanation is that it was not given a separate exhibit number.

21. The descriptions given by Drs. Waidaratne and Dodd of the 10 exhibited items are consistent. Dr. Dodd gives more detail and also describes the calibre of each of the bullets (“projectiles”). On the other hand, there is a striking difference in the general descriptions given by Dr. Dodd and the Government Analyst. Dodd describes only two of the eight bullets as deformed. He anticipated that they were all suitable for comparison.

22. But the Analyst describes each of the exhibits as “deformed”, even those which Dr. Dodd had described as intact. The Analyst appears to regard only five of the exhibits as being bullets – in the other five cases the term “case” “piece of metal” or “pivot” is used. This might be due to the vagaries of

translation or an abundance of caution. Again the difference of view as to whether in principle the exhibits are suitable for comparison, though very puzzling, may be explicable, for example if different experts have access to different types or qualities of analytic equipment.

23. Having said that, the quite extraordinary discrepancy relates to Ms S. Romila. Dr. Dodd states at p43 in his report on this victim that:

Examination of the cranium disclosed three (3) discreet metal objects comprising a deformed 7.62 calibre full metal jacket projectile, a 5.56 calibre projectile and an additional amorphous metallic fragment.

24. He goes on to describe the 5.56 calibre projectile as “minimally distorted” and “relatively intact”. The small metallic fragment could represent the tip of the 5.56 calibre projectile.
25. By contrast the Analyst describes this same exhibit as one which “by size and weight corresponded to the model of 7.62 x 39mm cartridge”. On the face of it, they must be describing two quite different objects.
26. My enquiries of a British ballistics expert have convinced me that the chances of an expert confusing these two forms of ammunition are virtually nil. The 5.56 x 45 mm rifle cartridge is the current NATO cartridge, being used with the American M16 and the British SA 80 assault rifles. The bullet is 5.7 mm wide and 19 mm long.
27. On the other hand, the 7.62 x 39 mm calibre rifle cartridge is known as the Kalashnikov / AK47 cartridge. The bullet is substantially larger, being 7.9 mm wide and 27 mm long. The photograph at Annex II shows the two together. The differences are absolutely obvious.

CONCERNS

28. In my earlier report I highlighted a number of concerns as to the integrity and continuity of the exhibits. These included two breaches of the orders made by Magistrate Jinadassa. The first was that the ballistic exhibits said to have been recovered at the post mortem were brought to the Kantale Court by the CID rather than the pathologist, as Magistrate Jinadassa had ordered. Secondly, the ballistics examination was not carried out in the presence of an Australian expert as observer. The CID have given the very lame explanation that this was done in order to "expedite" the examination.
29. The identification of a 5.56 mm bullet in the skull of one of the victims demonstrates that at least one person with access to such ammunition was involved in the killings of the 17 aid workers in Muttur in August 2006.

It is ammunition of a kind used in, amongst other weapons, M-16 rifles. I understand that the Special Task Force and some Special Forces within the army and navy use M-16s. I acknowledge, of course, the possibility that M-16s and 5.56 mm ammunition could have been purchased or stolen or otherwise acquired by persons unknown. There are reports that a naval special force was present in Muttur around the time of the killings. There should be an urgent and thorough investigation into who had access to M-16 weapons and 5.56 mm ammunition, including Government security forces present in Muttur at the relevant time, and whether anyone with such access was responsible for the killings.

30. The circumstances I have outlined also afford powerful grounds to suspect that someone removed from the exhibits a bullet that he thought might be incriminating and substituted another. It is my understanding that those who had official access to the exhibits include: the CID, the JMO, and the Government Analyst Department. There should be an urgent and thorough investigation into who had access to the exhibits and who tampered with them. Those responsible should be held accountable and the integrity of the evidence should be restored.
31. I note that the exhibits appear to have been photographed. In my view it is vital that the photographs be obtained. They may shed a flood of light on the problem. Again it is clearly vital in the interests of justice that the Presidential Commission of Inquiry, currently looking into this case along with 15 others, should now conduct a full enquiry into the recovery, transmission and examination of the ballistic exhibits.

Annex I

TABLE SHOWING DESCRIPTION OF BALLISTIC EXHIBITS

Name	Body Ref no	As described by Dodd	As described by Waidaratne	Ex no.	As described by Gov. Analyst
Y. Kootheswaran	TR1 - 2006	Intact 7.62 calibre full metal jacket projectile Left knee	1 projectile Lower part of left thigh	No.1	Distorted bullet. By weight size and shape corresponded to a bullet of 7.62 x 39mm *
		Deformed 7.62 projectile Left knee	Large metal fragment (deformed projectile) L knee area	No.2	A portion of a distorted bullet case
		Single amorphous metallic fragment Left knee	N/A	N/A	N/A
W. Kokilawathani	TR4 - 2006	Largest of metallic fragments 5 x 4 cm From right chest	Largest of 3 metal fragments Location not given	No.3	A distorted piece of metal.
M. Narmathan	TR5 - 2006	Intact 7.62 calibre full metal jacket projectile Well preserved From left lower chest	1 Projectile L lower chest	No.4	A distorted bullet. By weight size and shape corresponded to a bullet of 7.62 x 39mm *
S. Romila	TR6 - 2006	Deformed 7.62 calibre projectile From hair	1 deformed projectile Caught in the hair	No.5	A distorted piece of metal.
		Relatively intact 5.56 calibre projectile Minimally deformed From cranium	Relatively intact Projectile From the cranium	No.6	A distorted bullet case. By size and weight corresponded to the model of 7.62 x 39mm Cartridge
		Metallic fragment possibly tip of a 5.56 calibre projectile From cranium.	Metal fragment From the cranium	No.7	A distorted pivot of a bullet. Was of the standard model of a 7.62 x 39mm cartridge case
M. Rishikeshan	TR8 -	Intact 7.62 calibre	1 Projectile	No.8	A distorted bullet.

	2006	full metal jacket projectile From cranium	Cranial cavity		By weight size and shape corresponded to a bullet of 7.62 x 39mm *
G. Kavitha	TR12 - 2006	Well preserved 7.62 calibre full metal jacket projectile Intact In clothing	1 Projectile In clothing	No.9	A distorted bullet. By weight size and shape corresponded to a bullet of 7.62 x 39mm *
T. Pradeepan	TR 14 - 2006	Well preserved 7.62 calibre full metal jacket projectile Above left knee	1 Projectile L thigh/knee	No.10	A distorted bullet By weight size and shape corresponded to a bullet of 7.62 x 39mm *

* Each of these 5 distorted bullets was not in a suitable state for comparison

Annex II

IMAGE OF A 5.56MM AND A 7.62MM BULLET

See separately attached.