NORTHERN IRELAND HUMAN RIGHTS COMMISSION

The Inquiries Bill

A briefing from the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,[1] advising on legislative and other measures which ought to be taken to protect human rights,[2] advising on whether a Bill is compatible with human rights[3] and promoting understanding and awareness of the importance of human rights in Northern Ireland.[4] In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or "soft law" standards developed by the human rights bodies.

2. The Commission raised concerns about the need for demonstrable independence in the inquiries system in its submission to the pre-legislative consultation (*Effective Inquiries: Response of the Northern Ireland Human Rights Commission to the DCA Consultation*, August 2004). While the 1998 Act gives the Commission the duty to advise government, there is no corresponding duty on government to take any account of what it says. Many of the troubling aspects that the Commission identified in the legislative framework envisaged in the *Effective Inquiries* consultation have survived into the Bill as introduced. This is despite similar criticism from a range of human rights organisations, including the Committee on the Administration of Justice (CAJ), British Irish Rights Watch (BIRW), the Law Society of England and Wales, the Scottish Human Rights Centre and INQUEST.

[1] Northern Ireland Act 1998, s.69 (1).
[2] *Ibid*, s.69(3).
[3] *Ibid*, s.69(4).
[4] *Ibid*, s.69(6).

3. The concerns of the Commission about the effectiveness of the inquiry regime set forth in the Bill centre on the independence of the model put forward. There are especially serious and urgent concerns around its potential impact in three impending inquiries, and a fourth yet to be instituted, into specific murders in Northern Ireland. The Commission is also concerned about the near-elimination of the scope to hold inquiries other than under these provisions

Independence

4. The credibility of an inquiry process will be severely compromised by the high degree of ministerial control that the Bill facilitates, even if, in practice, ministers exercise restraint. Under the Bill, a Minister appoints the chairperson and members of the panel, with no requirement to consult anyone, and has the power to suspend or end the inquiry. The Minister will also be able to dictate the terms of reference, again with no duty to consult, and has the power to convert into Inquiries Act proceedings any ongoing public inquiries instituted under other legislation. The Minister may, even against the wishes of the chairperson, impose restrictions on attendance at an inquiry or any part of it. The Minister may also restrict indefinitely the disclosure or publication of any evidence or documents given, produced or provided to an inquiry, on consideration of a range of issues including "damage to national security" or "damage to the economic interests of the United Kingdom". Public interest immunity (PII) certificates may be used in inquiries as in any civil proceedings, and past experience is that ministers have not been slow to use PII to prevent the disclosure of politically harmful material, even at the expense of justice. Finally, when the report is delivered, the Minister has (by default) responsibility for publication, and may withhold any material "to such extent… as [he or she] considers necessary in the public interest", with reference to, among other things, "any risk of harm or damage that could be avoided or reduced by withholding any material", again including such grounds as "national security" and "economic interests".

5. It is immediately apparent that the Bill offers very considerable scope for ministerial intervention at practically every stage, and would demand an almost saintly degree of restraint on the part of a Minister who had any reason for anticipating that the full truth would cause any difficulty or embarrassment. Public inquiries very often deal with matters where the conduct of the state, or of particular public authorities, is at issue. It is not enough in such circumstances to say that the panel must be independent of those implicated in the events being investigated: rather, the tribunal must have, and be seen to have, full independence from government.

6. Several areas of the Bill as introduced ought to be relatively easy to improve. First, appointments of chairpersons and panel members should *always* be subject to consultation with a wide range of interested parties. Second, the terms of reference should also be subject to consultation, with appropriate weight given to the views of bereaved families in the case of inquiries bearing on Article 2 of the ECHR (the right to life, including the right to an effective investigation). The terms of reference should be drawn broadly at first and

The impending Northern Ireland inquiries

7. Perhaps the most dramatic instances of matters which may be subject to inquiry, and where the requirement of demonstrable independence is inescapable, relate to alleged collusion between on the one hand security and intelligence agencies in Northern Ireland, and on the other illegal armed groups, up to and including the planning and execution of murders. Three particularly controversial murders are already the subject of investigations announced, but not yet commenced, under existing legislation. It is especially important for public confidence in the rule of law that these inquiries proceed forthwith and with the utmost co-operation and transparency. They are not suitable for "conversion" into Inquiries Act processes and it is strongly recommended that the Government indicate now that these inquiries will not be converted. These are, of course, the Robert Hamill Inquiry,[5] the Billy Wright Inquiry[6] and the Rosemary Nelson Inquiry.[7]

8. An inquiry has yet to be instituted into the murder in 1989 of Belfast solicitor Patrick Finucane. Given the painful history of that particular case, it must already be apparent that a process with the characteristics identified in paragraph 5 above could not possibly command the confidence either of the

[5] The Robert Hamill inquiry, under s.44 of the Police (Northern Ireland) Act 1998, has as its terms of reference: 'To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations.'

[6] The Billy Wright inquiry under s.7 of the Prison Act (Northern Ireland) 1953 has as its terms of reference: 'To inquire into the death of Billy Wright with a view to determining whether any wrongful act or omission by or within the prison authorities or other state agencies facilitated his death, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; and to make recommendations.'

[7] The Rosemary Nelson inquiry, under s.44 of the Police (Northern Ireland) Act 1998, is 'To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary or Northern Ireland Office facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations.'

Finucane family or of any other reasonable person aware of the extent of evidence that has already emerged, through criminal trials and otherwise (including Sir John Stevens' reports), of collusion and of incitement. The Government should commence the Finucane Inquiry under existing legislation without further delay, and must not convert it.

Alternative inquiry processes

9. The present array of legislation containing inquiry powers may well be confusing and is certainly inconsistent in terms of the range of powers available to inquiries. The Commission does not object in principle to a tidying up of the provisions, but it is concerned that the pre-legislative consultation did not clearly establish that the proposed new regime would be more effective in every case than the present separate inquiry systems. The Commission's advice, therefore, remains that existing inquiry powers in, for example, s.7 of the Prison Act (NI) 1953 should be retained.

10. The Bill removes from Parliament the possibility of instituting inquiries by means of a resolution of both Houses. Such a procedure would only be instigated in the most grave of circumstances and it is by no means apparent from the Government's statements to date that there is a compelling reason for Parliament to surrender this option. To do so would be to undermine still further the power of Parliament in our democracy.

11. The model put forward in the Inquiries Bill does not, and should not seek to, provide the basis for any form of truth recovery process, such as a Truth and Reconciliation Commission, to address the legacy of conflict in Northern Ireland. That is a very complex issue, which in due time will require its own legislative framework. It is right that discussions on this issue should proceed, and this Commission is contributing its views to, for example, the Northern Ireland Affairs Committee of the House of Commons. The time is not yet right for consideration of the detailed legislative provisions that would be required to construct an effective truth recovery process, and we would welcome reassurance from the Government that the Inquiries Act will not be used to that end.

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