Public inquiries into conflict-related deaths

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The issue of public inquiries into conflict-related deaths in Northern Ireland has been in a public arena for a number of years. Calls for investigations by independent panels of some cases – such as the murder of solicitor Patrick Finucane – gained international attention and were subject to wide campaigns by families of victims, national and international organisations, and political representatives. Such inquiries were seen as particularly necessary in cases where there were long-standing allegations of collusion between state forces and paramilitary organisations and where any other process of investigation was seen as unsatisfactory. Particular importance has also been attached to the fact that any such investigation or inquiry should comply with standards stemming from standards set under Article 2 of the European Convention on Human Rights (right to life).

In 2004, three inquiries (out of four recommended by Judge Cory in his reports into allegations of collusion in a number of high-profile murders in Northern Ireland) were established under different pieces of legislation, in force at the time – section 44 of the Police (Northern Ireland) Act 1998 (the Rosemary Nelson Inquiry and the Robert Hamill Inquiry) and section 7 of the Prisons (Northern Ireland) Act 1953 (the Billy Wright Inquiry). Alongside this process, the Government consulted on and introduced new legislation, the Inquiries Act 2005 (IA 2005), to consolidate the bases for inquiries spread around different pieces of law and integrate inquiry powers into one piece of legislation. While this aim was largely achieved, doubts were raised and still remain whether the new system – which includes the possibility of a conversion of any existing inquiries into ones run under the new legislation – can deliver effective, independent inquiries into deaths, particularly those where there have been allegations of involvement of agencies of the State or where deaths occurred in the custody of the State.

In a numerous submissions regarding the introduction of the Inquiries Act, the Commission frequently expressed concern about the capacity of the inquiries regime designed in the Act to deliver effective inquiries into conflict-related deaths in a manner that fully satisfies the requirements of international human rights law. The Commission was particularly concerned that the inquiry process was potentially

compromised by the high degree of ministerial control. Under the Act, a Minister appoints the chairperson and members of the panel (albeit in consultation with the chairperson) and sets out and has powers to amend and change the terms of reference. The Minister has powers to suspend or end the inquiry and the power to impose restrictions on attendance at an inquiry or any part of it. The Minister may restrict indefinitely the disclosure or publication of any evidence or documents given, produced or provided to an inquiry and has the responsibility for publication of any final report, with powers to redact parts of it on his/her own decision. It was immediately apparent to the Commission that these powers offer considerable scope for ministerial intervention at practically every stage of the inquiry process and raise a number of questions around the structural independence of the process which will be used to look into cases where the disclosure of full truth about particular events can cause difficulty or embarrassment to government.

The difficulties are compounded by the fact that the IA 2005, which repealed the Tribunals of Inquiry (Evidence) Act 1921, does not include any provisions for direct involvement of Parliament in establishing inquiries and Ministerial responsibility in relation to Parliament is limited to the duty to inform it about the establishment, terms of reference or suspension of any inquiry, in person or in writing, with little provision for Parliamentary debate of any of these issues. The potential for ministerial interference, even when there is no suggestion that such powers will be used to the detriment of an effective truth recovery, led Judge Peter Cory and Lord Saville (the Chairman of the Bloody Sunday Inquiry) – among others – to publicly state their opposition to the Act.

Of particular concern to human rights organisations was the inability of the IA 2005 to deliver investigations that would fully comply with the standards relating to procedural requirements of Article 2 of the European Convention on Human Rights (ECHR), which was given effect in the UK through the introduction of the Human Rights Act 1998 (HRA). Article 2 (the right to life) has been interpreted by the European Court of Human Rights and domestic courts not only as imposing on the State an obligation to protect life, not to take life unlawfully, but also as one that requires deaths to be investigated in a particular manner. Article 2 requires that when the death occurs, any investigation should be independent, prompt, effective and transparent. In the light of concerns highlighted above, the element of independence from the Executive, actions and omissions of who are the subject to the ongoing inquiries, was of particular concern to the

critics of the legislation. While at no point would we like to suggest that the inquiries will not be run in an independent manner by the panels, it is our position that "independence" of the process should not rely exclusively on personal assurances of persons running the inquiries, but should be secured by structural and legal guarantees enshrined in the law. We welcome assurances given by the Government and chairpersons of the respective inquiries that they will be guided by standards of the human rights law, including the requirements of Article 2. The Commission's view remains, however, that firm legal obligation needs to be established and the inquiry system redesigned to follow this obligation without leaving any scope for a doubt.

One of the most worrying features of the IA 2005 is the power of the Minister to convert any existing inquiry into one run under the new Act. It is worth mentioning that with the introduction of the Act, all other bases for inquiries (including, among others, regulations of the Police Act and the Prisons Act mentioned above) have been repealed so any new inquiry will be firmly based on procedure of the IA 2005. At the time of the introduction of the IA 2005, the Commission made representations addressing the issue of conversions, looking for assurances on the part of the Government that none of the existing inquiries will be converted. We have also expressed our view that in particular in the case of Pat Finucane, the character of evidence that emerged through criminal trials and other investigations to date, pointing to collusion and incitement, means that the process under IA 2005 could not possibly command confidence of the Finucane family or a wider public. Unfortunately, the inquiry in the Finucane case was not instituted in time to be run under prior legislation and will now have to, when established, follow the procedure of the IA 2005 as, indeed, will any following inquiries into conflict-related deaths.

In the context of the above concerns, the Commission shared the disappointment of David Wright, the father of Billy Wright, the Committee on the Administration of Justice, the British-Irish Rights Watch and other human rights organisations with the announcement by the Chairman of the Billy Wright Inquiry, Lord McLean, that he requested the Secretary of State to convert the inquiry into a procedure conducted under IA 2005.

While this brief overview does not allow for a full rehearsal of all arguments for and against conversion (readers interested in the exchange of arguments will find the Chairman's statements on the Inquiry's website), it is worth mentioning that the main points raised

by Lord McLean related to the scope of the inquiry and the availability of evidence and decision-making process in relation to public interest immunity applications. Lord McLean argued that under the Prisons Act, the panel would not be able to look at matters related to Billy Wright's death but which do not directly relate to the prison and will not be able to investigate what information, if any, was available from State agencies other than the Prison Service. In his view, the IA 2005 provided a better basis for the Inquiry to fulfil its Terms of Reference and to be able to look into wider matters, not directly connected to the prison. He also argued that the IA 2005 will provide the Inquiry panel with clearer basis to obtain all documentation and see all relevant documents before they are subjected to Public Interest Immunity (PII) certificates, allowing for restrictions on disclosure.

There does not seem to be an agreement between this argumentation and the views of organisations such as the Commission and others, who raised a number of concerns following the announcement by the Chairman. In relation to the scope of the Inquiry, the Commission was of a view that the phrase in the Prisons Act stating that inquiry can look into matters "otherwise in relation to the prison" can and should, when seen through the lens of the Article 2 obligations, give the Inquiry sufficient scope to investigate all matters having a bearing on the death in prison of Mr Wright and look at all matters capable of elucidating the truth, including materials held by all state agencies. It is interesting to note in the context of this conflict of interpretation that in terms of the scope for the inquiry, section 44 of the Police Act (forming the basis of the other two inquiries) seems to be formulated is a way similar to the basis in Prisons Act, where it states that the Secretary of State can institute an inquiry into actions or inactions of "the police". The Rosemary Nelson Inquiry's Terms of Reference mean that the investigation will go beyond the actions of the police and will look into conduct of the Army and the Northern Ireland Office yet no need for conversion was expressed by the inquiry panel in this case.

The Commission's position is that many concerns raised by Lord McLean on the defects of the Prisons Act could have been satisfactorily addressed by the interpreting the Act in light of the procedural requirements of Article 2 of the ECHR. This would have included decisions on disclosure of documents, obtaining all relevant information and publication of the final report.

The Secretary of State announced on 23 November that he granted Lord McLean's request. While any new inquiries will have to follow the IA 2005 procedure, the decision on conversion of the Billy Wright

Inquiry will potentially have a bearing on the other inquiries already established and the Northern Ireland Human Rights Commission will follow with interest any developments in this respect.

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