

# THE INQUIRIES BILL: THE WRONG ANSWER

A Joint Statement by:

**Amnesty International**  
**British Irish RIGHTS WATCH**  
**The Committee on the Administration of Justice**  
**Human Rights First**  
**The Human Rights Institute of the International Bar Association**  
**INQUEST**  
**JUSTICE**  
**Lawyers' Rights Watch Canada**  
**The Law Society of England and Wales**  
**Pat Finucane Centre**  
**Scottish Human Rights Centre**

22nd March 2005

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The above-listed organisations jointly express our concern over some of the provisions of the Inquiries Bill introduced into Parliament on 24<sup>th</sup> November 2004. The Bill, being discussed this week by a Standing Committee of the House of Commons, would, if enacted, alter fundamentally the system for establishing and running inquiries into issues of great public importance in the UK, including allegations of serious human rights violations. Should it be passed into law, the effect of the Bill on individuals and cases that merit a public inquiry would be highly detrimental. In particular, in those cases where one or more person has died or been killed, the right of their surviving family members to know the truth about what happened and to an effective investigation could be violated by the operation of the Bill.

The fundamental problem contained in the Inquiries Bill is its shift in emphasis towards inquiries established and largely controlled by government Ministers. This shift is achieved by the repeal of the Tribunals of Inquiry (Evidence) Act 1921 and the terms of several of the Bill's clauses. These clauses grant broad powers to the Minister establishing an inquiry on issues such as the setting of the terms of reference, restrictions on funding for an inquiry, suspension or termination of an inquiry, restrictions on public access to inquiry proceedings and to evidence submitted to an inquiry, and restrictions on public access to the final report of an inquiry. The Bill does not grant the independence to inquiry chairs and panels that has made their role so crucial in examining issues, particularly where public confidence has been undermined.

Several of us have already laid out our concerns about the Bill in earlier statements and briefings and we are pleased to note that some amendments to the Bill have already been adopted in the House of Lords. However, we continue to have serious concerns about the Bill in its current form and we urge all members of Parliament to take these concerns into account in their ongoing

consideration of the Bill. We also wish to draw attention to the views expressed on this matter by the parliamentary Joint Committee on Human Rights, by the Public Administration Select Committee, and by two notable jurists, namely Lord Saville of Newdigate and former Canadian Supreme Court justice Judge Peter Cory.

The Joint Committee on Human Rights has concluded that several provisions of the Bill may not be compliant with Article 2 of the European Convention on Human Rights in that they would inhibit an effective investigation into cases involving deaths. For example, the Committee has expressed concern that “the threat of withdrawal of funding by the Minister could unduly constrain the independence of an inquiry, and fail to satisfy the Article 2 requirement of an independent inquiry.” The Committee has further stated that “the independence of a tribunal is secured both by the institutional and legal structure in which it operates, and by the restraint and impartiality exercised in practice by those involved. Even given the proper restraint by Ministers in the exercise of powers considered above, their availability in respect of an inquiry would risk affecting its independence, both actual and perceived.” With particular regard to the power of Ministers to issue restriction notices, the Committee concluded that “the independence of an inquiry is put at risk by ministerial power to issue these restrictions, and ... this lack of independence may fail to satisfy the Article 2 obligation to investigate...” It also was concerned that the ministerial power to withhold publication of all or part of an inquiry report is “wide enough to compromise the independence of an inquiry.”

The Public Administration Select Committee also criticised many facets of the Inquiries Bill, in its report following its inquiry into “Government by Inquiry”. In particular, the Committee expressed concern about Ministers conducting inquiries into their own or their department’s actions.

Published correspondence between Lord Saville, who chairs the Bloody Sunday Inquiry, and DCA Minister Baroness Ashton relating to the Bill is also of great importance, as it demonstrates the serious reservations of a senior judge and chair of a complex current inquiry. In particular, Lord Saville is concerned about the clause granting Ministers the power to issue notices restricting public access to inquiry proceedings and materials. In a letter of 26<sup>th</sup> January, Lord Saville states, “I take the view that this provision makes a very serious inroad into the independence of any inquiry and is likely to damage or destroy public confidence in the inquiry and its findings, especially in cases where the conduct of the authorities may be in question.” He further stated that neither he nor his fellow judges on the BSI would be prepared to be appointed as a member of an inquiry that was subject to a provision of that kind. Despite the addition in the House of Lords of a clause setting out a presumption of public access to inquiry proceedings, restriction notices issued by Ministers could still result in secret inquiries that would, as feared by Lord Saville, be “likely to damage or destroy public confidence in the inquiry and its findings, especially in cases where the conduct of the authorities may be in question.”

On 15<sup>th</sup> March, 2005, Judge Peter Cory, a retired Canadian Supreme Court justice who was appointed by the British and Irish governments in 2002 to investigate allegations of state collusion in six controversial murder cases, wrote a letter expressing his own fears about the potential effects of the Inquiries Bill. He described the Bill as “unfortunate to say the least” and with specific reference to the case of murdered Belfast solicitor Pat Finucane stated, “It seems to me that the proposed new Act would make a meaningful inquiry impossible.” Judge Cory noted that “the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the efforts of the inquiry at every step” and he concluded that he “cannot contemplate any self respecting Canadian judge accepting an appointment to an inquiry constituted under the new proposed act”.

We agree with all of these views and urge Parliament to take them very seriously. An inquiry held under the Bill as currently drafted would not be effective, independent, impartial or thorough, nor would the evidence presented to it be subject to sufficient public scrutiny. Such an inquiry would fall far short of the requirement of international human rights law that an effective remedy be provided to the victims of human rights violations. Moreover, the passage of the Inquiries Bill in its current form would do great harm to the tradition of public inquiries in the UK and would undermine the important principles of accountability and transparency. In order to command public confidence, it is absolutely necessary that an inquiries system permit close independent public scrutiny and provide for the active participation of the relevant victims. The Inquiries Bill does not do this.