



CAJ

**Committee on the
Administration of Justice**

CAJ's submission to the

**Joint Committee on Human Rights re the
Coroners and Justice Bill**

February 2009

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The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Winner of the Council of Europe Human Rights Prize

Submission to the Joint Committee on Human Rights

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Thank you for permitting CAJ to submit our views on the Coroners and Justice Bill.

CAJ has noted with apprehension the muddled manner in which the provisions of this Bill are presented; the unrelated and numerous provisions which are presented in the schedules of the Bill suggest that significant debate may not be afforded to such important issues.

This submission is dedicated to the provisions relating to inquests which raise concerns in relation to the obligations of the United Kingdom as regards Article 2 of the European Convention on Human Rights (ECHR), particularly as they may apply to Northern Ireland.

Certified Inquests

The European Court of Human Rights has ruled that when an individual dies in custody or at the hands of the state there is an obligation on the state under Article 2 (right to life) to thoroughly investigate the death. Any decision to exclude a jury from the inquest process warrants concern and the public confidence in the justice system may be undermined, a substantial issue in Northern Ireland.

The European Court has acknowledged that 'there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. *In all cases, however, the next-of-kin of the victim must be involved* in the procedure to the extent necessary to safeguard his or her legitimate interests'. That the Coroners and Justice Bill may allow for the family of the deceased to be prevented from participating in inquests which are certified by the Secretary of State or having access to important information relating to the death opens up the possibility of a breach of Article 2, an issue of particular significance in Northern Ireland where there are a number of inquests outstanding in cases relating to the past where this must not be allowed to happen.

Other Concerns

In addition to the human rights issues in the Coroners and Justice Bill noted by the Committee, CAJ would like to draw attention to several other concerns specifically relating to Northern Ireland, as it appears that the provisions in relation to non-jury inquests in Northern Ireland are different than those proposed in England and Wales and provide fewer safeguards.

As regards to England and Wales, clause 11 of the Coroners and Justice Bill states that the Secretary of State may issue a certificate for an inquest to be held without a jury and that the Lord Chief Justice will nominate a High Court Judge to conduct the inquest.

However, the provisions for non-jury inquests in Northern Ireland (SCHEDULE 9 Section 38 AMENDMENTS TO THE CORONERS ACT (NORTHERN IRELAND) 1959 section 18A) do not state *who* shall conduct inquests which have been certified by the Secretary of State. As such this suggests that in Northern Ireland if the Secretary of State issues such a certificate, a *coroner* (and not HC judge appointed by LCJ) will conduct the non-jury inquest.

Given that the High Court has supervisory jurisdiction over public law decisions, the decisions of a coroner and the Secretary of State are subject to judicial review. While clause 11 (in relation to England and Wales) alludes to this, neither implicit nor explicit reference to judicial review as regards Northern Ireland is made. More significantly, the proposed Bill (clause 11) offers a dedicated appeals system for cases in England and Wales. Why is Northern Ireland not granted this important safeguard, in addition to the normal process of judicial review?

Recommendations

In light of the above, CAJ encourages the Joint Committee to:

- 1 oppose any provisions which allow for non-jury inquests, particularly those that may permit the exclusion of the next of kin from the investigation process;
- 2 oppose the extension of these proposals to Northern Ireland; and
- 3 support the inclusion of an appeal process in any bill which permits an inquest to be certified and subsequently held without a jury.