Committee on the Administration of Justice

Inquests and Disputed Killings in Northern Ireland

CAJ Pamphlet No 18

JANUARY 1992

£3.50/IR£4.00

Committee on the Administration of Justice

The **Committee on the Administration of Justice** (CAJ) is an independent civil liberties organisation formed in 1981 to work for the highest standards in the administration of justice in Northern Ireland.

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CAJ
45/47 Donegall Street
Belfast BT1 2FG
Tel: (0232) 232394
Fax: (0232) 333522

Preface

This pamphlet has been many years in the making. The **Committee on the Administration of Justice** first began working on the issue of inquests in 1983. We are grateful to many people who have been involved in the process of disucssion and production which has led to this publication.

The Executive would like to thank Brice Dickson, Tom Hadden, June Tweedie, Halya Gowan, Fionnuala ni Aolain, Liz Martin, Martin O'Brien and Michael Ritchie. Particular thanks are due to Jane Winter, without whose final research and draft, this pamphlet would have taken even longer to appear.

January 1992

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1: Introduction

This pamphlet is concerned with the practice and procedures at coroners inquests which look into various categories of unexplained deaths. There has for some time been great concern about whether or not inquests are a useful way of bringing to light the facts surrounding sudden, unexpected or suspicious deaths. Such concern has not been limited to Northern Ireland. For example, in recent British disasters such as that which occurred at the Hillsborough football ground, the families of those who died have been far from satisfied that the inquests have uncovered all relevant facts. The problems become more acute when the information which families are looking for is held by closed institutions such as prisons, mental hospitals, the police or the Ministry of Defence. Despite the secrecy which often pervades following suspicious deaths, the families of those who have died are entitled to all the facts surrounding the incident.

The conflict in Northern Ireland has consistently given rise to deaths, caused by soldiers or personnel of the Royal Ulster Constabulary, that occur in disputed circumstances. Broadly speaking, these fall into two categories: shootings by the army, sometimes acting undercover; and shootings by the police, often accompanied by allegations that the victim was engaged in criminal activity at the time. Another category of disputed killings is those carried out by paramilitaries where there are allegations of active or passive collusion on the part of the security forces. By far the majority of these disputed killings are carried out by the army. Many of the victims in these incidents are said to have been armed and/or engaged in paramilitary activity at the time of their deaths, but there have also been many cases of unarmed civilians being shot. Several of these latter cases have involved young joyriders. In all of these cases, there have either been conflicting eyewitness accounts of the incident or conflicting interpretations put upon the behaviour of those involved or the evidence available. Details of all cases since November 1982 are contained in **Appendix A**.

This pamphlet focuses on concerns about the inquest system as they relate particularly to deaths caused by members of the security forces. Many of the problems highlighted, however, apply to all inquests.

Any killing outside of a state of war by state security forces, whether the police or the army, raises questions about the most fundamental of human rights, the right to life. Where it is alleged that the deceased was engaged in paramilitary or criminal activity at the time of death, it also raises issues concerning the right to a fair trial. Questions are bound to be asked about the necessity of employing lethal force and the reasons why it was not possible to bring the accused to trial. The relatives of the deceased and the public at large, on whose behalf the security forces are supposed to act, are entitled to a full and proper explanation of all the facts

surrounding the incident if they are to be satisfied that a less drastic course of action could not have been adopted.

International human rights standards[1] provide that the use of force by the state should be exercised with the utmost restraint and with the aim of preserving life. Every incident must be effectively reviewed and any unlawful use of force by the security forces must be punished. People affected by the use of such force, including relatives, should have access to an independent judicial process of review.

In stark contrast to these internationally-agreed principles, the reaction of the authorities in Northern Ireland to disputed killings seems to be to close ranks and create numerous obstacles to establishing the truth. The very system of justice, both at the level of design and at that of practice, fails to provide any adequate redress. There have been some 340 disputed killings since "the troubles" began but criminal prosecutions of those responsible have been brought in only 28 cases, only two of which have to date resulted in a conviction. Recently, charges have been brought against 6 more soldiers in relation to the killings of two "joy-riders" in 1990. The trial has not yet taken place. Since civil cases for compensation often only result in a financial payment which is settled out of court, the civil courts are as ineffective as the criminal courts in providing an appropriate remedy. Coroners' inquests are virtually the only remaining forum for acquiring information about disputed deaths or submitting them to official scrutiny.

This pamphlet examines the efficacy of inquests in satisfying legitimate public concern about disputed killings by providing a prompt and thorough inquiry into the circumstances surrounding such incidents. Part 2 briefly examines the development of inquests and their powers and compares the rules in Northern Ireland with those in other jurisdictions. Part 3 describes practice and procedures following disputed killings and Part 4 describes the rules governing inquests. Part 5 considers the problems arising from the present system of inquests and its conformity with international human rights standards. Part 6 reviews alternatives to the present system and Part 7 sets out our conclusions and recommendations.

1 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, United Nations - see Appendix B

2: The Decline of the Inquest in Northern Ireland

Just as the criminal justice system in Northern Ireland has been distorted by the conflict here, inquests have also felt the impact of "the troubles". Until 1926, inquests had the capacity to apportion blame for deaths and could, in that sense, adjudicate upon disputed killings. Since then, inquests have suffered a gradual erosion of their scope, most marked since 1981, to the point where today they are no longer viable courts of inquiry where disputed deaths are concerned. Many of the defects in the current system are thrown into relief by a comparison with inquests in England and Wales, which, although far from perfect, retain a number of powers which have been stripped from the Northern Ireland jurisdiction.

Despite this decline in the efficacy of inquests, coroners still command very wide discretionary powers. Indeed, many matters have ceased to be mandatory and have been concentrated in the coroner's discretion. Coroners in Northern Ireland have a difficult task to perform. However, this heavy emphasis on discretion is not conducive to the public perception that justice is seen to be done at inquests, especially in disputed cases. Too much discretion leads inevitably to variation and inconsistency in the application of the rules and is particularly undesirable when considered in conjunction with the failure of the security forces to testify at inquests. A coroner's refusal, for example, to release witness statements, made by soldiers responsible for a death who have no intention of attending the inquest, to the lawyers of relatives of the deceased in advance of the hearing is bound to be interpreted by some as being part of an overall process of cover-up. Coroners may have perfectly valid reasons for exercising their discretion in this way, but since they are not obliged to explain their reasons aggrieved relatives will have no way of knowing what they are.

Public expectations of inquests have not declined at the same rate as the ability of inquests to meet them. The general public and perhaps more importantly, the deceased's family and friends, still expect, when someone is killed by law enforcement agents in disputed circumstances, that an inquest will furnish a proper explanation of the incident and will be able to play a part in avoiding similar deaths in future. Below we examine the inroads that have been made into the system of inquests to the point where they are no longer capable of fulfilling those expectations in Northern Ireland.

Early history

The office of coroner is thought to have been in existence for at least eight hundred years in England and Wales. Originally, coroners were custodians of the monarch's financial interests, with responsibility for the seizure of criminals' possessions, wrecks and treasure trove. During medieval times, coroners accrued a medley of judicial functions including the voluntary exile of criminals, bringing felons to book, and matters of criminal and civil enforcement, as well as inquests into violent deaths. Gradually these other roles were taken

over by other functionaries until coroners were left with their present-day functions of enquiry into unexplained or controversial deaths and responsibility for treasure trove.

The inquest in the twentieth century

At the beginning of this century, inquests always preceded any criminal trial in relation to a death. Until 1926, coroners had the power to attribute blame for deaths and to commit suspects for trial. At that time, coroners always sat with a jury.

Since then, the system of inquests has been subject to two major reviews:

- the **Wright Committee** in 1936[2]; and
- the **Broderick Committee** in 1971[3].

As a result of these reviews, the remit of the inquest has been gradually narrowed to a consideration of the facts surrounding a death. Any apportionment of blame has been removed from inquests and assigned to the criminal courts, while questions of compensation have become private matters to be pursued through the civil courts.

Recent changes

In Northern Ireland today, inquests are governed by the **Coroners Act (Northern Ireland) 1959** and the **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**. These Rules were extensively amended by the **Coroners (Practice and Procedure) (Amendment) Rules (Northern Ireland)1980**, which came into operation on 1st February 1981. The **Amendment Rules** severely restricted the scope of inquests; the most significant of these changes are examined below.

Witnesses

Prior to 1981, a coroner was obliged to call as witnesses "all persons who tender their evidence respecting the facts" of a death. Nowadays the coroner has complete discretion about whom to call as a witness and can refuse to call someone who claims to have relevant evidence[4].

Evidence

Until February 1981, written evidence, with the exception of the *post mortem* report, would not be admissible in evidence unless the coroner was satisfied that there was good reason why its author should not attend the hearing in person. Now, the coroner has absolute discretion to dispense with the attendance of any witness[5], including the doctor who carried out the *post mortem*, the police, members of the armed forces, forensic experts and eye witnesses. This change has paved the way for the admissibility of so-called "witness

2 **Report of Departmental Committee on Coroners 1936**, HMSO, Cmnd 5070.
3 **Report of the Committee on Death Certification and Coroners 22.9.1971**, HMSO, Cmnd 4810.
4 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 8(1) as amended.
5 Ibid., rule 17 as amended.

statements" from policemen and soldiers responsible for disputed killings. It was never possible to compel such witnesses to attend an inquest[6], but this amendment rendered their unsworn statements admissible whereas previously they might not have been allowed.

Adjournments

Before 1981, coroners had no powers to adjourn an inquest *sine die* (without fixing a date for the resumption of the hearing). Now they are able to do so[7]. The exercise of this power has done much to compound delays in inquest hearings.

The amended rules also extended adjournments at the request of the police while they consider whether to bring charges in relation to a death from 14 days to 28 days[8].

Verdicts

Perhaps the single most damaging change in the Amendment Rules was the abolition of verdicts in inquests and their replacement by findings[9]. Previously the following verdicts could be recorded:

- died from natural causes;
- died as the result of accident/misadventure;
- died by his [sic] own act (while the balance of his mind was disturbed);
- execution or sentence of death;
- open verdict (to be used where none of the above forms of verdict was applicable).

Now, a coroner or jury can only record their findings as to the identity of the deceased and how, when and where s/he died[10].

However, the change was brought about through the Rules rather than an Act of Parliament. There may be scope for challenging whether the change is therefore *ultra vires* as the Act still speaks of "verdicts".

Furthermore, juries are no longer able to make recommendations designed to prevent the recurrence of deaths in similar circumstances[11]. Coroners can no longer add riders to verdicts in those circumstances, either, but may announce their intention of reporting the matter to the relevant authorities[12].

6 Ibid., rule 9(2) has been in place, unamended, since 1963.
7 Ibid., rule 11(1) as amended.
8 Ibid., rule 12(1) as amended.
9 Ibid., rule 23 and Third Schedule, Form 22 as amended.
10 Ibid., rule 22 as amended.
11 Ibid., proviso to rule 16 revoked.
12 Ibid., rule 23(2) as amended.

Inquests in England and Wales

The rules governing inquests in England and Wales are very similar to those in Northern Ireland, and suffer from many of the same defects. However, in certain important respects the English rules are less restrictive than in Northern Ireland.

Duty to hold an inquest

An English coroner must hold an inquest in cases of violent or unnatural death, sudden death where the cause is unknown, or deaths in prison or other such establishments[13]. If a body has been destroyed or is irrecoverable, an English coroner must ask the Secretary of State whether to hold an inquest[14]. In Northern Ireland, coroners have a much wider discretion as to whether to hold an inquest, whatever the circumstances[15].

Duty to sit with a jury

Coroners in both jurisdiction must sit with a jury where a death occurred in prison; was caused by an accident, poison, or a notifiable disease; or happened in circumstances which might jeopardise public health and/or safety were they to continue or be repeated[16]. However, in England and Wales a coroner is also obliged to summon a jury if the death occurred in police custody or as a result of police action[17]. There is no equivalent provision in the Northern Ireland rules. Given the greater discretion that the coroner has in Northern Ireland about whether to hold an inquest or not, the right to have a jury present is significantly weaker in the Northern Ireland jurisdiction.

Verdicts

As has been observed above, there are no verdicts at Northern Ireland inquests, only findings. English inquests still retain the power to bring in one of the following verdicts:

- unlawful killing;
- natural causes;
- industrial disease;
- want of attention at birth;
- addiction to drugs;
- as the result of an abortion;
- as the result of an accident;
- as the result of misadventure;

13 Coroners Act 1988, s. 8(1).
14 Coroners Act 1988, s. 15
15 Coroners Act (Northern Ireland) 1959, s. 13.
16 Coroners Act 1988, s. 8(3); Coroners Act (Northern Ireland) 1959, s.18(1).
17 Coroners Act 1988, s. 8(3)(b).

- suicide;
- still birth;
- open verdict.[18]

In England majority verdicts are accepted. A verdict is valid so long as not more than two jurors dissent[19]. In Northern Ireland, jury findings must be unanimous[20]. It is thus possible for a verdict in England and Wales to register a small element of doubt or dissatisfaction with the explanation of events rendered at the inquest.

Furthermore, the fact that juries can find that a killing was unlawful means that they can register a large doubt, while still making no judgement on criminal liability.

Adjournments

Coroners in England and Wales have no power to adjourn an inquest *sine die*, as they can in Northern Ireland (see above).

In both jurisdictions, inquests must be adjourned if criminal proceedings are commenced in relation to a death. However, in England and Wales this provision only applies where the charge is serious, e.g. one of murder, whereas in Northern Ireland adjournments can follow on all charges, even minor ones. In cases of lesser charges in England, an inquest will only be adjourned if the Director of Public Prosecutions so requests. Furthermore, any adjournment in England will only last until the end of the trial, whereas in Northern Ireland the adjournment lasts until the whole criminal process, including any appeal, is over[21].

Witnesses

In Northern Ireland, the coroner has absolute discretion about whom to call as a witness at an inquest[22]. In England and Wales the coroner must examine "all persons who tender evidence as to the facts of the death"[23]. Despite the more inclusive nature of the legislation in England and Wales, observers report that, in practice, it is up to the coroner to decide what is and is not relevant. The coroner does not necessarily accede to representations about particular witnesses.

People who are suspected of causing a death or who have been or are likely to be charged in connection with a death cannot be compelled to attend or testify at inquests in Northern Ireland[24]. There is no equivalent immunity in the England and Wales jurisdiction, though,

18 Ibid., s. 11(5) and **Coroners Rules 1984**, Schedule 4, Form 22.
19 **Coroners Act 1988**, s. 12(1).
20 **Coroners Act (Northern Ireland) 1959**, s. 31(2).
21 Compare **Coroners Act 1988**, s. 16 with **Coroners Act (Northern Ireland) 1959**, s. 13(1) and (6).
22 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 8 as amended.
23 **Coroners Act 1988**, s. 11(2).
24 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 9(2).

again in practice, the rules against self-incrimination at inquests prevent any thoroughgoing questioning of anyone suspected of causing the death.

The rules on protection from self-incrimination in Northern Ireland are also more restrictive than those in England and Wales. In England and Wales, the rules only protect individual witnesses[25], while in Northern Ireland the protection extends to the spouses of witnesses[26].

In England and Wales, certain people, including a parent, child, spouse, or personal representative of the deceased, are entitled to examine witnesses[27]. In Northern Ireland, the coroner has discretion to decide whether someone is a "properly interested person". Only such people or their lawyers are entitled to ask questions of witnesses[28].

Evidence

"Properly interested persons" in England and Wales are entitled to purchase copies of *post mortem* reports and other documentary evidence[29] even though, in practice, coroners do not as a matter of course make the information available before the inquest opens. In Northern Ireland, they can only do so with the permission of both the coroner and the Lord Chancellor[30].

Coroners in England and Wales can admit documentary evidence in lieu of personal testimony if it is unlikely to be disputed unless an objection is raised, although the objection need not be allowed if to do so would cause unreasonable delay. The same people can object as are entitled to examine witnesses, so relatives of the deceased have this right[31]. Coroners in Northern Ireland have much wider discretion and need not require personal testimony if they deem it unnecessary. A "properly interested person", as identified by the coroner, can "reasonably" ask for an adjournment in order to allow the witness to give oral evidence, but the coroner has discretion about whether to agree[32].

If a jury in England and Wales is not satisfied that the medical evidence presented to them explains the cause of death, they can require the coroner, on pain of imprisonment, to call further medical witnesses[33]. There is no equivalent power in Northern Ireland.

Post mortem Examinations

In Northern Ireland, *post mortem* examinations are carried out only by government-approved doctors[34]. In England and Wales, any qualified medical practitioner can be asked by the coroner to carry out a *post mortem*[35].

25 Coroners Rules 1984, rule 22(1).
26 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 9(1) as amended.
27 Coroners Rules 1984, rule 20.
28 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 7(1).
29 Coroners Rules 1984, rule 57.
30 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 38 as amended.
31 Coroners Rules 1984, rule 37.
32 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 17 as amended.
33 Coroners Act 1988, s. 21(4).
34 Coroners Act (Northern Ireland) 1959, ss. 26 and 27.
35 Coroners Act 1988, s. 19(1) and Coroners Rules 1984, rule 6.

In only one respect are the Northern Ireland rules more permissive than those in England and Wales. In Northern Ireland, the coroner has discretion to allow someone to address the inquest about the facts of the case[36]. At the inquest into the death of Francis Bradley, shot by a British soldier in 1986, the coroner allowed the family's legal representative to sum up the facts for the jury at the end of the inquest. In England and Wales, on the other hand, no-one is allowed to address the jury in this way.

Scotland

There is no coroner and no system of inquests in Scotland. However, there is a statutory procedure for examining fatal accidents and sudden, suspicious or unexplained deaths, which is considered in Part 6 below.

36 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 20.

3: Practice and Procedures following disputed killings in Northern Ireland

The role of the police and the Director of Public Prosecutions

When a disputed killing occurs, the RUC must give the coroner a written report on the incident immediately[37]. The coroner then instructs the RUC to take possession of the body[38], which may not be buried or cremated[39], and make any investigations necessary to enable the coroner to decide whether an inquest should be held[40].

In practice, the police will probably already have examined the scene of the incident for forensic evidence and have begun to take statements from witnesses before they send their report to the coroner. As far as the CAJ can discover, the role of the coroner at this stage is remarkably minor. The reins are handed to the RUC and DPP and the coroner only seems to have a role when the *post mortem* report has been completed and when a date for the inquest is being fixed, after the question of criminal proceedings has been settled.

Where the circumstances of the death suggest that a crime may have been committed, the legislation orders that the coroner provide the Director of Public Prosecutions (DPP) with a written report[41]. The DPP must consider the report[42] and decide whether or not to prosecute anyone[43]. (In actual fact, this seems not to happen. As already stated, this function by the coroner seems to have been taken over by the police.) If the DPP does decide to prosecute, or is thinking of prosecuting, the inquest can be delayed (see **Delays and Adjournments** below). In practice, however, prosecutions are very rarely brought; there have been only 28 prosecutions arising out of disputed killings since "the troubles" began.

37 Coroners Act (Northern Ireland) 1959, s. 8.
38 Ibid., s. 11(1).
39 Ibid., s. 9.
40 Ibid., s. 11(1).
41 Prosecution of Offences (Northern Ireland) Order 1972, art. 6(2).
42 Ibid., art. 5(1)(b).
43 Ibid., art. 5(1)(a).

If the DPP does not decide to prosecute, it is open to the relatives of the deceased to consider bringing a private prosecution, for which legal advice would be essential. However, the DPP has the power to take over and stop any private prosecution[44], which may account for the fact that the CAJ is not aware of any private prosecution ever having been brought in the case of a disputed killing.

What happens to the body and the deceased's possessions

If the coroner decides that an inquest or a *post mortem* examination is necessary, the body is taken to a mortuary chosen by the coroner[45], where it will be kept until after the *post mortem*. It is not possible to prevent a *post mortem* if the coroner decides to order one. It is also not possible to insist that the body be released for burial or cremation before the inquest, since any member of the jury who asks to do so has the right to view the body[46]. However, in practice the coroner usually releases the body for burial immediately after the *post mortem*. If the coroner decides not to hold an inquest or not to sit with a jury, the body is always released after the *post mortem*.

When the body is taken to the mortuary, a relative of the deceased is entitled to be present while an inventory is made of the dead person's clothes and possessions, if any[47]. However, the items will remain in the possession of the RUC or the coroner until such time as they are no longer required for the purposes of the police investigation or the inquest[48]. If the coroner has custody of them, a relative must apply for their return once the inquest is over[49].

The *post mortem*

A coroner has discretion over whether to order a *post mortem* in any case where the explanation of a death is unsatisfactory[50]. In practice, a *post mortem* is always carried out when there is a disputed killing.

Post mortem examinations are carried out by doctors who are employed or contracted by the Secretary of State for Northern Ireland and whose names are on a list kept for these purposes by the Lord Chancellor[51].

Post mortem examinations are to be carried out "as soon after the death of the deceased as is reasonably practicable"[52]. They seem, in practice to be performed very quickly.

44 Ibid., art. 5(3). The DPP's exercise of this power was recently challenged in England over a case arising out of the sinking of the Marchioness after a collision with the Bowbelle on the River Thames in August 1989.
45 Coroners Act (Northern Ireland) 1959, s. 12.
46 Ibid., s. 22(c).
47 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 24(3).
48 Ibid.
49 Ibid., rule 35.
50 Coroners Act (Northern Ireland) 1959, s. 27.
51 Ibid., ss. 26 and 27.
52 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 25.

Certain people are entitled to be notified of when and where a *post mortem* is to be carried out. These include, among others:

- any relatives who have notified the coroner that they want to be represented at the *post mortem*;
- the deceased's usual doctor;
- any government department that has told the coroner that it wants to be present or represented;
- the RUC, if they have told the coroner that they want to attend or be represented.[53]

However, if it is impracticable to inform any of them, or to do so would cause undue delay, they need not be informed[54].

A relative is entitled to attend in person if s/he is a doctor. Otherwise s/he may only be represented by a doctor and not, for example, by a lawyer or a forensic expert who is not a registered medical practitioner[55].

The coroner has the discretion to allow anyone to attend a *post mortem*, including a relative, but cannot be forced to agree[56].

People attending a *post mortem* are not allowed to interfere with it in any way, and can be made to leave if they attempt to do so[57].

The coroner has discretion to decide how long any material preserved in the course of a *post mortem* should be kept[58].

The *post mortem* report

The doctor carrying out the *post mortem* is supposed to send a report to the coroner *immediately* in writing[59]. It is CAJ's experience, however, that this can take up to six-months. There have been some suggestions that such delays are the result of under-resourcing of the department. If this is indeed a cause of the delay in production of *post mortem* reports, this situation should be remedied.

No-one else is entitled to see the report unless the coroner agrees[60]. It appears, however, that the police have sight of autopsy reports even before the coroners who actually commission them. Equally, no-one except the doctor who carried out the *post mortem* is allowed without

53 Ibid., rule 27.
54 Ibid.
55 Ibid., rule 27(3).
56 Ibid., rule 27(4).
57 Ibid., rule 28, as amended.
58 Ibid., rules 29 and 31.
59 Coroners Act (Northern Ireland) 1959, s. 29(1).
60 Ibid.

the coroner's permission to see the results of any analyses carried out[61]. However, a court can order a coroner to produce a certified copy of the report for the purposes of legal proceedings[62], so it might be possible to obtain a copy if, say, a civil action for compensation was in train.

The deceased's doctor is entitled to an "abstract or summary" of the *post mortem* report free of charge and upon request[63], but it will not be sent to the GP automatically.

The coroner has discretion to allow anyone who is, in the coroner's opinion, a "properly interested person" to inspect a *post mortem* report free of charge. The Lord Chancellor can allow such a person to purchase a copy of the report, if the coroner agrees[64].

It is unclear whether this can only happen after the inquest is completed. In a recent case, the family of Fergal Caraher killed by British soldiers, were refused copies of the autopsy results. This was despite the fact that the coroner for that area had been informed that the Belfast coroner had released copies of *post mortem* reports in disputed killings. Since that refusal, there have been reports that a general policy has been taken up that all coroners will refuse copies of the *post mortem* report until the inquest. What is clear, therefore, is that there is no right to see the report at all.

It is not essential for the doctor who carried out the *post mortem* to attend the inquest (see Part 4, **Witnesses**), so it may not be possible to put any questions about the *post mortem* to the doctor.

There is nothing to stop a second *post mortem* being carried out by the deceased's family[65] although they have to pay for it themselves. This happened recently in the case of the death of Kevin McGovern, killed in September 1991 in Cookstown by undercover RUC personnel. As far as the CAJ is aware, no other second autopsy had been carried out since that in the case of Aidan McAnespie in 1988. In that case, it was the state pathologist in the Irish Republic who carried out the second autopsy after exhumation. This was an official matter as McAnespie lived in the Republic.

The decision to hold an inquest

The coroner has discretion over whether an inquest is to be held or not[66].

An inquest can be held in the following circumstances:

- the discovery of a dead body;
- an unexpected or unexplained death;

61 Ibid., rule 33, as amended.
62 Coroners Act (Northern Ireland) 1959, s. 29(2).
63 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 37.
64 Ibid., rule 38 as amended.
65 R v South London Coroner, ex parte Ridley [1985] 1 WLR 1347.
66 Coroners Act (Northern Ireland) 1959, s. 13: a coroner may hold an inquest.

- a death in suspicious circumstances;
- a death as a result of violence, misadventure, or unfair means;
- a death resulting from negligence, misconduct, or malpractice;
- a death from any cause other than natural causes for which the deceased was being treated by a doctor in the 28 days before death;
- a death in circumstances requiring investigation[67].

A killing in disputed circumstances would certainly come under a number of these headings. If a coroner refuses to make a decision about whether to hold an inquest, or delays unreasonably in making the decision, or decides not to hold an inquest at all, it may be possible to challenge the coroner by bringing an action for judicial review, for which legal advice would be essential.

There is one limit on the coroner's discretion, which is that the Attorney-General can tell the coroner to hold an inquest if the Attorney-General considers it advisable to do so[68]. This power includes the ability to order a second or further inquest. Another way to challenge a coroner's refusal to hold an inquest would be to ask the Attorney-General to order one. If the Attorney-General also refuses, judicial review may be available as above.

A coroner is not obliged to hold an inquest just because there has been a *post mortem*[69].

The absence of a body is no bar to holding an inquest. If the body cannot be found or has been destroyed, the coroner can still hold an inquest so long as the death occurred in that coroner's district[70].

Decisions not to hold inquests have been taken on occasions when there has been a prosecution. The coroner in those circumstances presumably decides that no further clarity would be shed on the incident by holding an inquest. This happened in the case of Sean Downes who was killed by a plastic bullet fired by an RUC officer in August 1984.

Delays and Adjournments

Coroners must decide whether or not to hold an inquest "without delay", and if an inquest is to be held it must take place "as soon as practicable" after the coroner has been notified of a death[71]. In practice, the holding of inquests in cases of disputed killings is usually delayed for around a year, and in some cases for a number of years.

67 Ibid, ss. 13 and 7.
68 Ibid., s. 14.
69 Ibid., s. 28.
70 Ibid., s. 16.
71 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 3.

Once an inquest has been opened, the coroner has the power to adjourn it indefinitely, in that the coroner is not required to give a date on which the inquest will be resumed, or indeed to resume it at all[72].

One of the most common reasons for adjourning an inquest is a police request to do so. The RUC can have an inquest adjourned on the grounds that someone may be charged with murder, manslaughter, child destruction, infanticide, causing a death by reckless driving, or assisting in a suicide[73]. The inquest will be adjourned for 28 days or such longer period as the coroner sees fit, which may mean indefinitely[74]. If the police ask for further adjournments on the same grounds, the coroner has the discretion to grant them or not[75], but usually does so. The capacity for an independent person (ie the coroner) to have any controlling influence in disputed killings has therefore been allowed to lapse.

If anyone actually is charged with one of these offences, the coroner must adjourn the inquest "in the absence of reason to the contrary" until after the conclusion of the criminal proceedings including any appeal[76]. The coroner does not have to resume the inquest then, but has discretion to do so if, in the coroner's opinion, "there is sufficient cause to do so"[77].

In a number of areas concerned with the question of delay and adjournment, much depends on the coroner's discretion. There may therefore be room for seeking judicial review on the following points among others:

- the length of time it takes to open an inquest;
- that the inquest, once opened has been adjourned;
- that the coroner accedes to RUC requests for further delays; or
- that the coroner decides to hold no inquest because there has been a prosecution.

If relatives are unhappy about decisions on whether or when to hold an inquest, they should seek legal advice as to the possibility for judicial review of the decisions involved.

Death certificates

A death certificate cannot be issued until after any inquest is held[78].

The coroner must send a certificate to the Registrar of Deaths within five days of the end of the inquest[79]. This certificate, which is not the same thing as the death certificate ultimately issued by the Registrar, must include the following information:

72 Ibid., rule 11, as amended.
73 Ibid., rule 12(1), as amended.
74 Ibid., rules 11 and 12, as amended.
75 Ibid., rule 12(2).
76 Ibid., rule 13(1) as amended and 13(6).
77 Ibid., rule 13(2).
78 **Coroners Act (Northern Ireland) 1959**, s. 23, by implication.
79 Ibid., s. 23.

- the details necessary to register the death;
- the findings of the inquest;
- the cause of death; and
- the date and place of the inquest.[80]

Ironically, sometimes this certificate contains more information than the findings of the inquest (see Part 4 **Verdicts**).

80 Ibid.

4: Inquests

Coroners

Coroners are appointed by the Lord Chancellor[81] during his "pleasure"[82], which means for as long as he wants them to continue in office. They must be solicitors or barristers of at least five years' standing[83], and they can only be removed from office by the Lord Chancellor after consultation with the Lord Chief Justice[84]. In practice, coroners tend to remain in office until they retire -usually by the age of seventy - resign, or die.

There are currently seven coroners and eight deputies in Northern Ireland - only one of whom is a woman. Coroners conduct c. 3,500 investigations per year and order an inquest in about one in five cases[85].

Inquests

Inquests are public, but the coroner can exclude members of the public from a hearing or part of a hearing "in the interests of national security"[86]. It has been known for the police to reduce the public seating capacity by reserving seats for a large number of potential witnesses[87]. These are usually members of the security forces.

Inquests must be opened, adjourned, and closed "in a formal manner"[88].

If there is a jury, the proceedings commence with the swearing-in of the jury. Each witness is then called in turn and is examined on oath first by the coroner. Then the witness can be examined by anyone else that the coroner has agreed to allow to ask questions, and lastly by anyone representing the witness[89].

81 **Coroners Act (Northern Ireland) 1959**, s. 2.
82 **Interpretation Act (Northern Ireland) 1954**, s. 18(2).
83 **Coroners Act (Northern Ireland) 1959**, s. 2(3).
84 Ibid., s. 2(2).
85 see B. Dickson, **Legal System of Northern Ireland**
86 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 5.
87 **In re Devine and Breslin's Application**
88 Ibid., rule 4.
89 Ibid., rule 8, as amended.

No-one is allowed to address the inquest about the facts of the case without the coroner's permission[90]. In practice, only the coroner addresses the jury, if there is one, when the coroner sums up the evidence and directs them as to the law[91].

A person whose conduct is likely, in the opinion of the coroner, to be called into question at the inquest is entitled to be notified of the hearing[92], but does not have the right to give evidence unless the coroner agrees (see **Witnesses** below).

At the end of the hearing, the coroner or the jury deliver their findings, verbally and in writing, which is confined to "a statement of who the deceased was, and how, when and where he [sic] died"[93].

Juries

If an inquest is to be held, a coroner must sit with a jury in the following circumstances:

- if the death occurred in prison;
- if the death was caused by an accident, poison, or a notifiable disease; or
- if the death occurred in circumstances which, were they to continue or recur, would jeopardise the health or safety of the public.[94]

In any other case, the coroner may decide to sit with a jury[95]. A jury can be summoned part-way through an inquest if the coroner thinks it necessary[96]. If a coroner refuses to summon a jury, the only avenue of challenge would be judicial review, for which legal advice would be needed. A jury has between seven and eleven members[97].

Witnesses

The coroner has the power to summon witnesses to attend the inquest and give evidence[98], although a witness who has not been summoned can still give evidence[99]. However, it is entirely a matter for the coroner's discretion whether to call a particular witness or not[100]. A person cannot insist on giving evidence, although it may be possible to judicially review the

90 Ibid., rule 20.
91 Ibid., rule 21.
92 Ibid., rule 10.
93 Ibid., rule 22 (1).
94 Coroners Act (Northern Ireland) 1959, s. 18(1).
95 Ibid., s. 13.
96 Ibid., s. 18(2).
97 Ibid., s. 21.
98 Ibid., s. 17(1).
99 Ibid., s. 17(2).
100 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 8, as amended.

coroner for an unreasonable refusal to hear a witness - legal advice would be required before taking such a step.

Witnesses cannot be compelled to incriminate themselves or their spouses[101].

Witnesses seem to be able to sit through the whole of the proceedings, thereby hearing the testimony of other witnesses.

Some witnesses cannot be compelled to attend or give evidence. These are people who are suspected of causing a death or who have been charged with, or are likely to be charged with, an offence relating to a death[102]. If such people offer to give evidence, they must be informed by the coroner that there is no obligation to do so and be warned that any evidence may be subject to "cross-examination"[103]. In practice, members of the RUC or armed forces suspected of causing disputed deaths tend not to attend inquests any more, sending instead written statements. Attempts to challenge this practice in the courts, and to obtain sight of such statements prior to the inquest have so far failed (see Part 5 **Witness statements**).

Examination of witnesses

There are no formal rules about the giving of evidence by witnesses at inquests, and the courts have held that they are not bound by the strict rules of evidence[104] and that hearsay evidence is admissable[105].

Anyone whom the coroner considers to be a "properly interested person" can ask questions of witnesses, either directly or through a barrister or solicitor[106]. However, the coroner can disallow any question that is, in the coroner's opinion, irrelevant or improper[107]. Cross-examination of witnesses is not permitted[108]. This is because the inquest is supposed to avoid imputing of criminal liability. A coroner may stop any questioning of witnesses which s/he holds to be adversarial or aggressive.

If, as is usually the case, the person(s) suspected of perpetrating a disputed killing declines to attend the inquest, and sends a written statement instead, there is no means of testing or challenging this statement except by means of direct testimony from other witnesses.

In theory, it is not necessary for the doctor who carried out the *post mortem*, or the author of any forensic or other report, to give evidence in person if the coroner considers it unnecess-

101 Ibid., rule 9(1) as amended.
102 Ibid., rule 9(2).
103 Ibid., rule 9(3). Although the rule uses the term cross-examination, there is no cross-examination at an inquest. See **Examination of witnesses**.
104 **R v Divine, ex parte Walton** [1930] 2 KB 29, 36.
105 **R v Greater Manchester Coroner, ex parte Tal** [1985] QB 67, 84-5.
106 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 7(1).
107 Ibid.
108 **In re Devine and Breslin's Application** (1990) CA.

ary[109]. However, if a "properly interested person" "reasonably" asks for the witness to be called, the inquest will be adjourned to allow the witness to attend[110]. The coroner decides whether such a request is reasonable. The only way to challenge a refusal would be by way of judicial review, in which case legal advice should be sought.

Evidence

Forensic evidence presented at an inquest is obtained by the police. Though he has the power to order an analysis of "any matter or thing of or concerning any dead body"[111], in practice, a coroner in Northern Ireland tends to leave everything in the hands of the RUC until any possible criminal investigation has been completed. It is a matter for the coroner's discretion whether any other forensic evidence will be considered, but one assumes that any relevant report, such as a second *post mortem*, would be accepted in evidence by the coroner.

The coroner has discretion to allow anyone who is "a properly interested person" to inspect any document put in evidence at an inquest. The Lord Chancellor can allow such a person to purchase a copy of the document, if the coroner agrees[112]. It is unclear from the wording of the legislation when these copies can be obtained or when and where documents can be examined. It seems likely that the authorities would only allow copies to be purchased after the completion of the inquest. As regards inspection of documents, at the Devine and Breslin inquest, the solicitor acting for the families was not allowed to take photographs presented by the police in evidence outside of the courtroom. The implication of this is that, if an expert was asked to examine similar or other evidence, s/he would have to come to the courtroom during a recess of the inquest, as the families would not know in advance what the nature of the evidence would be. Relatives and their lawyers are not entitled to see such reports until they are produced at the inquest hearing. The same rule is applied to witness statements from members of the RUC or armed forces suspected of disputed killings, so relatives have no notice of their version of events[113].

If the Secretary of State for Northern Ireland considers that a part of the evidence puts national security at risk, he can issue a Public Interest Immunity Certificate (PIIC). Such a certificate can either prevent the disclosure of certain information, such as military operational details, altogether or censor, for example, witness statements, to exclude anything the Secretary of State considers sensitive. PIICs have been used twice at inquests. One of these occasions was the September 1988 inquest held in Gibraltar into the deaths of Sean Savage, Mairead Farrell and Daniel McCann. This PIIC was issued by the Ministry of Defence. The second use of PIICs occurred during the November 1988 inquest into the deaths of Gervaise McKerr, Eugene Toman, and Sean Burns, who were killed in 1982.

109 Ibid., rule 17 as amended.
110 Ibid., rule 17(2).
111 Coroners Act (Northern Ireland) 1959, s. 30.
112 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 38 as amended.
113 In re Mailey [1980] NI 102.

Verdicts and findings

Juries may only reach conclusions regarding the identity of the dead person and how, when and where s/he came to die[114]. They are not allowed to consider any other matter[115]. In fact, they are not allowed to record a verdict as such. The official form used to set out their decision only records their *findings*[116]. The coroner uses the same form and is subject to the same restrictions.

The findings are usually very short but some have been known to extend to nearly two pages. At the inquest into the death of Seamus Duffy who was killed by a plastic bullet in August 1989, the coroner invited the jury to consider a lengthy summary of the incident.

Neither the coroner nor the jury is allowed to "express any opinion on questions of criminal or civil liability", nor on anything else other than the questions of who, when, where and how[117]. Thus the jury is expressly prevented from suggesting who may have been responsible for a disputed killing, or from returning a verdict such as "unlawful killing".

Juries may not make recommendations for avoiding future deaths in similar circumstances[118]. If coroners believe that action should be taken to prevent recurrences, they may announce at the inquest that they are reporting the matter to the relevant authorities, but they may not add riders to the verdict[119]. Thus, some coroners have made comments at the end of inquests where the death was caused by glue sniffing or faulty lifts in buildings. Also, it is known that the Belfast coroner has written to the authorities concerning plastic bullets. It is hard to see why such a practice could not be extended to deaths caused by policemen or soldiers, recommending for example, that the law relating to the use of lethal force should be tightened up. Were action such as this to be taken by a coroner, some experts believe it may be possible to seek an order of *mandamus* (i.e. an order of the court compelling the authorities to follow certain measures). Legal advice should be sought before pursuing this option.

Jury findings must be unanimous[120]. If all members of the jury cannot agree on a verdict, the coroner may discharge the jury, summon a new one, and hold another inquest[121]. However, the coroner is not obliged to hold another inquest or sit with a jury unless it is the sort of case where a jury is obligatory (see **Juries** above).

114 **Coroners Act (Northern Ireland) 1959**, s. 31(1).
115 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 15.
116 Ibid., Third Schedule, Form 22 as amended.
117 Ibid., rule 16.
118 Ibid., proviso to rule 16 revoked.
119 Ibid., rule 23(2) as amended.
120 **Coroners Act (Northern Ireland) 1959**, s. 31, by implication.
121 Ibid., s. 31(2).

Legal Aid

Legal aid for inquests is provided for in the relevant legislation. This particular piece of the act was not commenced however. The position is, therefore as follows:

- Green Form legal aid is available to anyone who fits the stringent financial eligibility criteria and who wants legal advice before the inquest or help in preparing for the inquest[122];
- Legal aid is not available for the inquest itself[123]. This means that anyone who wants legal representation at the inquest will either have to pay for it him or herself or will have to find a lawyer prepared to undertake the work without pay. Nonetheless, the CAJ is aware of legal aid being paid out, in England, to keep a watching brief on an inquest, pursuant to a civil case for compensation. This may be an option which should be explored until the relevant legislation is brought into force.

Some uncertainty remains regarding other aspects. For example, it is unclear whether legal aid would be paid for independent autopsies and forensic examinations. As far as the CAJ can discover, no applications have yet been lodged for expenses such as these. It may be that applications for legal aid should be lodged by solicitors seeking to represent clients at inquests in order to test the attitude of the Legal Aid department.

Further legal action

There is no right of appeal against the decision of an inquest. The only way that an inquest can be challenged is by bringing an action for judicial review on specific aspects of law or procedure (see Part 5 **The lack of any right of appeal**).

122 Legal Aid Advice and Assistance (Northern Ireland) Order 1981, art.3.
123 Ibid, Schedule 1, Part I, paragraph 5 never brought into force.

5: Problems with the Present System of Inquests

Introduction

As has been remarked in Part 2, the role and powers of inquests have been eroded in recent times. The system that remains is manifestly inadequate for dealing with disputed killings arising in the context of the conflict in Northern Ireland. Even were it not for the special circumstance of the conflict, experience in the England and Wales jurisdiction has revealed inherent weaknesses in the system of inquests when it comes to dealing with contentious deaths, notably deaths in police custody[124].

The gradual restriction of the remit of inquests to answering the questions who, how, when and where is largely responsible for their ineffectiveness as mechanisms of enquiry into disputed killings. The relatives of victims of such incidents are entitled to answers to at least two other questions, which are:

- what happened? and
- why?

The public are also entitled to know that something will be done to prevent a recurrence of such killings.

An inquest, of course, is not a trial. As the English Lord Chief Justice, Lord Lane, has observed:

> *".....an inquest is a fact-finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish the facts."*[125]

This description, doubtless unintentionally, highlights some of the reasons why inquests are poor mechanisms for satisfying public concern about disputed killings. Even though a verdict of "unlawful killing" in England and Wales apportions blame in a general sense, it is not currently the function of an inquest to determine culpability. However, in contentious cases the attributes of the adversarial system outlined by Lord Lane are nonetheless better suited

124 See, for example, **Deadly Silence: Black Deaths in Police Custody**, Institute of Race Relations 1991, ISBN 0 85001 038 1, £4.00

125 **R v South London Coroner, ex parte Thompson** (1982), The Times, 9.7.1982.

to the inquest's inquisitorial aim of establishing the facts than are the usual procedures adopted at inquests.

The reason for this is that the adversarial system is founded on rights: the right to be heard, the right to know what is alleged, the right to a defence, the right to cross-examine witnesses, and so on - in short, all the rights that add up to the right to a fair trial. The extent to which these elements are missing in the inquest is sharply defined by the judgement of McDermott J[126] that the rules of natural justice do not apply in inquests because nobody is on trial. The lack of these factors may not give rise to concern in the majority of inquests, but in those concerning contentious deaths it is fundamental to the sense of frustration and injustice experienced by victims' families.

A further failing of inquests in disputed killings is the one-sided nature of such safeguards as do exist. The reputation of the deceased, and by implication of his or her family, seems to be of no account, while those responsible for the death do not even have to attend the hearing, although their version of events is assured an airing by the practice of allowing them to send unsworn, unchallengeable statements instead.

Such shortcomings might be less problematic if the system of criminal justice served families better. As it is, the failure of the DPP to press charges in case after case creates a sense of cover-up even before the inquest begins (if it ever does - see **Delays** below). Only 28 prosecutions have been brought in relation to 345 disputed killings since "the troubles" began, only two of which have so far resulted in convictions[127]. This failure to bring such matters to trial breaches internationally-recognised human rights standards (see **Inquests and international law** below).

Last but by no means least, the gradual process whereby the role of the jury - the only element of the inquest system which imports any sort of public scrutiny or accountability - has been undermined, while the discretionary powers of coroners have increased[128], has made serious inroads into the utility of inquests where there are disputed deaths.

These problems and others are examined in detail below.

126 **In re Mailey and Others** [1980] NI 102.

127 In the first of these, the defendant was released on licence from a life sentence having served only 2 years and 3 months after murdering Thomas Reilly (**R v Thain** (1985) 11 NIJB 31, 76 (CA)). In the second case, concerning the death of Theresa Donaghy, the defendant was convicted of manslaughter and received a suspended sentence (**R v Davidson** (1985)).

128 Although in two important respects, that of the verdict and the ability to add riders, even the coroner's powers have been curtailed.

The remit of inquests

Both coroners and juries are limited in their inquisitorial role to determining the identity of the deceased and how, when and where s/he came to die. These are facts that are already known to the deceased's relatives in the majority of disputed killings; indeed, they are usually common knowledge.

Of far more import, both for relatives and for the public at large, on whose behalf the perpetrators of such deaths are usually said to be acting, is what actually happened, why it happened, and how a repetition can be avoided.

Regrettably, such questions cannot be answered by inquests as currently constituted, nor will the courts permit any widening of their remit[129].

The Broderick Committee[130] identified a number of public interest objectives that inquests ought to serve:

- determining the medical cause of death;
- allaying rumours or suspicion;
- drawing attention to the existence of circumstances which, if unremedied, might lead to further deaths;
- advancing medical knowledge; and
- preserving the legal interests of the deceased person's family, heirs and other interested persons.

It is cause for concern that the second and fifth of these are today wholly disregarded and that the third has actually been excised from the rules[131].

The Broderick Committee did not, perhaps, have the special circumstances of the conflict in Northern Ireland at the forefront of their deliberations. Had they done so, they might have added to their list:

- clearing the deceased of any undeserved suspicion.

It is particularly painful to relatives of people killed in disputed circumstances to have to live with repeated and often officially-instigated or -inspired but totally unfounded allegations that the deceased was an active paramilitary or, in that vague but ominous phrase, "had paramilitary connections". The dead cannot speak for themselves or vindicate their reputation. As inquests are currently organised, neither can the living defend their dead. (See also **The rights of the deceased and their relatives** below.)

129 See, for example, the judgement of Griffiths J (as he then was) in **R v H M Coroner, ex parte Peach** [1980] QB 211 at page 219.

130 See Part 2.

131 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 16 revoked, and rule 23 as amended.

Equally, inquests in Northern Ireland cannot express any opinion whatsoever on the legality or otherwise of a killing (see **Verdicts** below).

Legal aid

Although "Green Form" legal aid is available for advice about or preparation for an inquest (which may include the obtaining of forensic evidence or an independent *post mortem*) full civil legal aid is not yet available for the hearing itself[132].

The RUC and the army are represented by counsel at inquests, paid for out of public funds. Even the coroner can be legally assisted by a barrister acting as "Counsel to the Tribunal" (see below), again at public expense. It is only the families of the deceased, arguably those most closely interested in the outcome of the inquest, who receive no public financial aid in order to put their case or protect their interests. They are denied legal aid despite the very complex issues that can arise during inquests on disputed killings, some of which have led to judicial review proceedings which have only been determined finally in the House of Lords.

Such inequality of arms is fundamentally unacceptable and may be contrary to European law (see **Inquests and international law.**)

It is fortunate that in many cases lawyers have been prepared to act for relatives without making any charge for their services. Such generosity is greatly to the credit of the lawyers concerned. However, it is a matter of public concern that legal aid has not been made available for inquests, despite the enabling power enshrined in the legislation[133] and the recommendation made by the House of Commons Select Committee on Home Affairs in 1980 that legal aid should be extended to inquests. Even when lawyers donate their time and expertise free of charge, money still has to be found for independent medical and/or other forensic evidence. Clients who are unable to pay their lawyers are often inhibited in the scope of the instructions that they feel able to issue and are wholly dependent on the good will of their advisers in fitting their needs around those of paying clients. Legal aid ought to be available as of right in cases of disputed killings.

Just how important access to independent expert evidence can be in disputed cases is illustrated by the case of Gary English[134], where the official forensic report was almost wholly disproved by the report of an independent expert from Denmark. Gary English's father had to pay for that report himself.

132 Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Schedule 1, Part I, paragraph 5, never brought into force.

133 Ibid.

134 Reported in **Shoot to Kill**, an inquiry chaired by Kader Asmal, Mercier Press, 1985.

Delay

Despite the fact that coroners are supposed to decide whether to hold an inquest "without delay" and that inquests must be held "as soon as practicable"[135], the delay endemic in cases of disputed killings is an abiding scandal. For example, the inquest into the deaths of Gervaise McKerr, Eugene Toman, and Sean Burns, who were killed in November 1982 in disputed circumstances, did not commence until November 1988, six years later, and has not yet been completed. The inquest on William Price did not take place until nearly two years after his death in 1984, and then his family and their representatives were not informed of the hearing. Patrick Finucane was murdered by paramilitaries in February 1989 amid allegations that elements within the security forces had colluded in his death but the inquest did not open until September 1990. These are not isolated examples; to the best of our knowledge, no inquest involving killings by members of the security forces has taken place since that into the death of Seamus Duffy by an RUC plastic bullet. That took place in June 1990[136].

Of even more concern is the failure in many cases even to open an inquest. For instance, Fergal Caraher was killed by the army in disputed circumstances on 30th December 1990; twelve months later no inquest had been opened. In June 1991 the Caraher family, frustrated in their quest for answers and justice, held their own independent public inquiry into the incident, in which Fergal's brother, Michael, was seriously injured. There are many other examples which could be cited.

The situation in Northern Ireland, where the coroner has absolute discretion about whether to hold an inquest, compares badly with that in England and Wales, where a coroner must hold an inquest in cases of violent or unnatural death, sudden death from unknown causes, and deaths in prison or in such place or circumstances as is required by law[137].

Once an inquest is opened, it can be subject to lengthy delays owing to adjournments. The power of the RUC to require a 28-day adjournment while they are considering whether to charge anyone does not extend to subsequent adjournments, which are a matter for the coroner's discretion[138]. However, in practice coroners seem to be prepared to grant the police indefinite extensions of time. There is no reason why this should happen automatically, since the police have normally interviewed all relevant witnesses and examined the scene of the incident within a few days of its taking place. Long delays merely serve to dim recollections. Furthermore, they give police and army witnesses who do not intend to attend the inquest ample time to consider and prepare their account of the incident. In the case of Brian Robinson, killed by undercover British soldiers in September 1989, a key statement (which appeared at an associated trial) was only taken some six months after the event. Also, in the Duffy case, the police officers changed their statements when interviewed a second time, some two months after the first interview, by other policemen investigating the killing.

135 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 3.

136 Two other inquests have since occurred involving security force personnel killed by colleagues (See **Appendix A**). Surprisingly, this type of incident has not tended to generate the same degree of anger as many others.

137 **Coroners Act 1988**, s. 8(1).

138 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 12.

Relatives and their lawyers, deprived of access to the statements until the inquest is finally held (see **Access to evidence** below), benefit not at all from the elapse of time. On the contrary, their anger and frustration are only likely to increase as the delay lengthens.

There are, of course, other causes of delay. If a criminal prosecution is brought, the inquest is adjourned until after the outcome of those proceedings, including any appeal[139]. In some cases, inquests have been adjourned pending lengthy judicial review proceedings extending as far as the House of Lords. Coroners have chosen to postpone similar inquests until these cases are completed as the decisions may have a bearing on how future inquests are conducted. But in any case, these hearings could have been expedited by the authorities and heard much sooner if the issues were regarded as sufficiently urgent. According to CAJ's inquiries, there are some 45 inquests into disputed killings currently pending (see **Appendix A**).

Such lengthy delays contribute in no small measure to perceptions of a cover-up mentality on the part of the authorities. They also contravene internationally-accepted standards (see **Inquests and international law** below).

Witnesses

Decisions about whom to call as a witness and whether to call someone at all are matters entirely for the discretion of the coroner. In England and Wales, a coroner must examine anyone offering evidence about the case[140], but in Northern Ireland the equivalent provision[141] was amended in 1981 to leave it wholly up to the coroner. People who believe themselves to be a material witness can volunteer their services, but there is no guarantee that their testimony will be heard.

The relatives of the deceased have no say in the calling of witnesses. They are not *parties* to the inquest, but merely interested persons, and are thus not entitled to call witnesses themselves. They can, of course, suggest potential witnesses to the coroner, but the coroner is not obliged to call them.

Nor can relatives or their lawyers, if any, cross-examine witnesses who do give evidence at the inquest. They may, at the coroner's discretion, question witnesses, but only on matters relevant to the inquest's extremely narrow remit. If they go beyond questions of who, how, when and where, the coroner has the power to disallow the question and need not order the witness to answer[142]. Thus matters such as whether or not the security forces were acting on a tip-off, or lying in ambush for a suspect - allegations which have featured in a number of disputed killings - cannot be explored. The rules in the England and Wales jurisdiction give relatives more rights than they have in Northern Ireland. There, certain 'properly interested'

139 Ibid., rule 13. In England, adjournments for criminal proceedings only extend to the end of the trial at first instance, and then only if the DPP so requests - Coroners Act 1988, s. 16.

140 Coroners Act 1988, s. 11(2).

141 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 8(1).

142 Ibid., rule 7(1). See also In re Devine and Breslin's Application (1990) CA.

people, including a parent, child, spouse, and personal representative of the deceased, are entitled to question witnesses[143]. This right is however subject to the proviso that the coroner can still disallow many important lines of questioning.

No witness is allowed to address the inquest about the facts of the case without the coroner's permission[144]. This rule was used by the Belfast coroner in September 1990 to prevent Geraldine Finucane, widow of the solicitor Patrick Finucane who was murdered by the Ulster Freedom Fighters, from reading out a statement alleging collusion between the security forces and his killers. Mrs Finucane read her statement to the media after the hearing.

Compellability of witnesses

Central to dissatisfaction with inquests on disputed killings is the non-compellability of those suspected of causing a death or who are or may be charged with an offence relating to a death[145]. On the face of it, even people charged with minor offences, or facing the mere possibility of such charges, are exempt.

The highest domestic court - the House of Lords - has been ready to uphold the rights of such people not to attend the inquest. A challenge to the *vires* (legal validity) of the rule on this matter failed[146]. Although the Court of Appeal, headed by the Lord Chief Justice of Northern Ireland, Sir Brian Hutton, was ready to put the general principle of the compellability of competent witnesses above the coroners' rules, the House of Lords was not prepared to do so, holding that the rule in question validly regulated practice and procedure at inquests.

The rationale behind this rule lies, in legal terms at least, in the notion that an inquest is not a trial. This concept may be perfectly sound in relation to most inquests, but in relation to disputed killings it reveals deep inadequacies in inquest procedures (see **Lack of adequate procedures** below). An inquest may not be a trial, but in such cases it can usefully borrow the higher standards pertaining at criminal trials, albeit harnessed to the elucidation of the facts in the case rather than to a finding of guilt. It does not follow that because an inquest is not a trial it is unnecessary to compel the attendance of key witnesses. An inquest on a disputed death without the presence of policemen or soldiers who, in most cases undisputedly and as a matter of public knowledge, fired the fatal shots is like a production of Hamlet without the prince. Worse, it is a court of inquiry fettered to an unacceptable degree from carrying out its central task of inquisition.

Inquests in England and Wales manage without the Northern Ireland rule on compellability. Presumably, in that jurisdiction the common provisions removing the compulsion to reply to questions on the grounds of potential self-incrimination are seen as a genuine and adequate safeguard, rather than an embarrassment that witnesses should be spared, as has been held in relation to Northern Ireland[147].

143 Coroners Rules 1984, rule 20.
144 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 20.
145 Ibid., rule 9(2).
146 McKerr v Armagh Coroner [1990] 1 All ER 865.
147 Ibid., Lord Goff of Chieveley, at end of his judgement.

It is difficult to avoid the conclusion that the origin of the rule lies not merely in legal niceties as to what does or does not constitute a trial, but more in a willingness to abandon the protection of civil liberties in the face of the conflict in Northern Ireland. It is readily understandable that soldiers and policemen responsible for civilian deaths are concerned for their personal safety, especially where the circumstances are in dispute. However, it is shortsighted to conclude, as both the government and the courts appear to have concluded, that the best way of dealing with this problem is to enable those responsible to evade any requirement that they should account for their actions in person.

Other ways can be found of protecting their identity and protecting them from being recognised, such as have already been introduced in criminal trials for scheduled offences under the **Northern Ireland (Emergency Provisions) Act 1991** and its predecessors. In the Diplock courts, police and army witnesses' names are withheld (as they are at inquests) and they are allowed to give their evidence screened from public view. Such measures can be criticised, but they are far less damaging to the interests of justice than a failure to testify altogether. It is completely unacceptable that members of the police and security forces should appear in person when civilians are on trial but should decline to do so when their own actions are in question at a tribunal that falls far short of being a trial and provides all necessary protection against self-incrimination.

It is this refusal by key witnesses to appear at inquests that, above all other measures discussed here, fuels perceptions of cover-ups and brings the reputation of inquests as fair courts of inquiry into disrepute. At an inquest held in June 1990 into the death of Kevin McCracken, who was shot in the back by a soldier while carrying an unloaded rifle, his father refused to take the witness stand in protest at the absence of the soldier who killed his son. The jury at this inquest specifically referred to the absence of the crucial witness (i.e. the soldier) saying that it made their task very difficult.

Public Interest Immunity Certificates (PIICs)

PIICs have twice been issued in relation to inquest proceedings.

- Certificates were issued by the Ministry of Defence in relation to the inquest in Gibraltar into the killings of Sean Savage, Mairead Farrell and Daniel McCann.
- The Secretary of State for Northern Ireland issued PIICs in connection with the inquest on Gervaise McKerr, Eugene Toman and Sean Burns.

In issuing such a certificate, a common law power is being exercised to prevent the disclosure of information in the possession of the authorities "in the public interest". More specifically, such certificates cite the interests of national security as the reason for withholding the evidence.

In the case of the Gibraltar killings, the PIIC imposed a blanket ban on the disclosure of all information relating to the planning of the operation or the intelligence upon which it was based. It is worth remembering that at the Gibraltar inquest the soldiers did testify voluntarily and, although they refused to answer questions which they were advised might incriminate themselves, their testimony did shed much light on the circumstances of the killings. The certificate issued in the other case protected the identity of RUC members, whether giving evidence or not, all operational and intelligence details, and details of the surveillance operation which preceded the killings of the three men.

Where the police and security forces are involved in disputed killings it would be possible in theory to issue a PIIC in every case on the grounds that matters of national security were involved.

As regards the validity of PIICs, it is unclear whether they can be tested in any way. Is there someone, independent of the government, who can view the complete and the censored version of the evidence and judge whether the government's use of a PIIC is genuine? At the Gibraltar inquest, the coroner said he had discretion whether or not to allow the PIIC and was willing to listen to legal arguments. In the event these were never presented. This may be an avenue which could be pursued in Northern Ireland by way of judicial review.

The scope of this power, unchallenged, is very wide and is potentially open to abuse. In both cases where a certificate was issued the result was to leave a number of crucial questions surrounding the deaths unanswered. In both cases the authorities alleged that the victims were active "terrorists". In both cases it appeared that the security forces had planned an ambush and had given those who died no chance to surrender. All six victims were deprived by the actions of the security forces of the most basic human rights: the right to life and the right to a fair trial. Given that the United Kingdom abolished the death penalty many years ago, and given the fact that the actions of the security forces in these cases have laid them open to the charge of carrying out summary executions, these are matters of very great public concern. The interests of national security ought, in such cases, to be balanced against the right of the public to know that security forces supposedly acting on their behalf have behaved properly and why less drastic courses of action were not followed. As it is, the issuing of these certificates has shaken public confidence in the accountability of the security forces, left relatives and the public in ignorance as to how and why the victims died, and contributed to the pattern of cover-up which disputed killings so strongly suggest.

Witness statements

Policemen and soldiers who claim immunity from attendance at inquests because they are suspected of causing disputed deaths have developed the practice of sending the coroner unsworn witness statements instead.

The objections to the admission of such statements in evidence are obvious. The authors of these statements are more than mere witnesses. They are, in the common usage of the phrase, interested parties. Their failure to attend in person means that their statements cannot be tested or challenged. On the other hand, the statements give the authors the opportunity to make their own case and to make allegations about the behaviour and character of the deceased without fear of examination. An unsworn statement from such a source in such circumstances can surely have little or no evidential value.

It is for these reasons that lawyers acting for relatives in such cases have sought to have this type of witness statement held to be inadmissible[148]. The Northern Ireland Court of Appeal held that the statements were admissible. The case was appealed to the House of Lords and was heard in November 1991. Judgement has been reserved at the time of publication. Independent observers expect, however, that the Lords will find that the statements in question are admissible.

148 **In re Devine and Breslin's Application** (1991) HoL.

The problems attendant upon the use of witness statements are exacerbated by the fact that relatives and/or their lawyers do not have access to them prior to the inquest (see **Access to evidence** below).

The use of witness statements in this way is contrary to international human rights standards (see **Inquests and international law** below).

Access to evidence

It is the coroner who directs and is responsible for police and forensic investigations into violent deaths[149]. The coroner has all the necessary powers to direct that a statement should be taken from a particular witness, that a *post mortem* should be carried out, and to order further forensic tests. It is also for the coroner to decide which witnesses should be called at the inquest and what evidence should be admitted. To complete the coroner's control over these matters, it is up to him or her whether to allow "interested persons" to see any of this evidence before the inquest.

Post mortem reports

It is a constant complaint of relatives of people killed in disputed circumstances that they are not allowed sight of any of the evidence prior to the hearing, including the *post mortem* report.

The rules on the disclosure of *post mortem* reports are vague. If the deceased's GP requests a copy, s/he is entitled to receive a summary or abstract, but not the whole report, and "interested persons" can purchase a copy if both the Lord Chancellor and the coroner agree[150]. There is thus no right to see the report and individual coroners appear to vary in whether they allow relatives to see copies or not. Recent experience has indicated that relatives in the Belfast area are given copies of the *post mortem* report after around 6 months. Coroners for other areas have not shown the same willingness to give out copies of the *post mortem* report. In the Caraher case, the coroner for South Down refused to give the family a copy.

However, difficult though they are to obtain, *post mortem* reports are the only evidence that families or their representatives ever see before the hearing begins.

It is for these reasons that families should ask their GPs to attend the *post mortem* immediately after the death. It may be that the family would gain valuable information much sooner if this right was more often exercised.

Witness statements

A particular bone of contention is the non-availability of witness statements before the hearing. The police, the coroner, "Counsel to the Tribunal" (see below) and, if the army is involved, counsel for the Ministry of Defence, all see witness statements well before the hearing, but relatives and their lawyers, if they have any, are only allowed to see the

149 Coroners Act (Northern Ireland) 1959, s. 11(1).
150 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rules 37 and 38.

statements at the hearing itself. This practice was challenged as long ago as 1980[151], when it was held that such statements were only proofs of evidence - in other words, they merely indicated what someone might say at the inquest and as such they were not covered by the coroners' rules on disclosure of evidence. This case was not appealed, and it may be possible to distinguish more recent cases where key witnesses have exercised their right not to attend the inquest and sent a statement instead. Such statements cannot by definition be proofs of evidence, since there is no intention to offer evidence; they are in fact depositions and it can be argued that families should have access to them for the reasons given below.

However, there is a further obstacle to the prior disclosure of witness statements, and indeed other evidence, which lies in the wording of the rules. The coroner has the power to let "interested persons" see any document *put in evidence* at an inquest[152]. The difficulty with this wording is that it may imply that inspection of such documents can only take place after the item has been admitted in evidence at the hearing. So far as the CAJ is aware, this point has not yet been tested in court, but the chances of a more liberal interpretation being placed upon the phrase seem slim in the light of the cases on disclosure already decided.

Other evidence

It is by no means only witness statements that are withheld from relatives and their representatives. At the inquests into the deaths of Michael and David Devine and Charles Breslin in 1987, solicitors for Charles Breslin's father sought permission to keep photographs overnight that were put in evidence by the police and only disclosed to them at the start of the inquest. Each night, the police took back the albums of photographs, and one solicitor was charged with assaulting police officers when he tried to retain one of the albums. The court held[153] that the question of whether to allow the solicitors to study the photographs overnight was entirely a matter for the coroner's discretion.

The family of Fergal Caraher, killed at an army checkpoint in December 1990, were refused permission to have an independent forensic examination carried out on the car in which he died and his brother Michael was seriously injured. A BBC **Panorama** programme broadcast on 22nd July 1991, quoted RUC sources to allege that forensic evidence tended to suggest that the car had struck a soldier, which Michael Caraher and other eye witnesses denied. An independent examination would have allowed the family to assess this evidence. It may be that a future decision to refuse an independent forensic examination would be open to judicial review.

Another example of this problem was a video used at the inquest into the death by plastic bullet of Seamus Duffy. The camera was a fixed army monitor on the Antrim Road that filmed a riot on Internment Night in August 1989. The RUC case was that the victim could be seen participating in the riot. The film did not show Seamus Duffy being killed though it did show the bullets being fired, one of which caused the fatal injury. The identification of Seamus Duffy was disputed by his family, who felt that the film was used simply to raise extenuating circumstances for the RUC who had killed him. Neither the family nor their legal

151 **In re Mailey and Others** [1980] NI 102.

152 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 38, as amended. Emphasis added.

153 **In re Breslin's Application** (1987) 2 BNIL 8.

representation had seen the film until the start of the inquest and were unable to review it in any depth.

The arguments for prior disclosure of witness statements and other evidence are self-evident. First and foremost, it is a matter of equality of arms. It is simply unfair that every other party to the inquest except the family and their lawyers should have previous knowledge of the evidence and it is probably contrary to European law (see **Inquests and international law** below). Secondly, it would assist in the inquisitorial role of the hearing, limited though that is, if relatives' lawyers could have prior access to evidence. They would be able to prepare adequately and to examine properly such witnesses as chose to appear. As it is, they can do neither and are not able to compare verbal evidence, when there is any, with witness statements, with the result that they are not enabled to identify any contradictions between the two and test them out in examination. They are also not able to seek appropriate independent experts to testify on disputed forensic evidence. Thirdly, it would make for the smoother administration of the inquest in that it would lead to fewer requests for adjournments. Lastly, it might save public money in that it might lead to fewer actions for judicial review.

It is also important that relatives and their lawyers should be allowed to see all statements and evidence before the inquest, regardless of whether they are actually put in evidence. Without this, they cannot be sure that all relevant witnesses have been called and have no opportunity to consider forensic evidence which might cast doubt on other evidence or might support their version of events.

There is at the heart of the existing rules on evidence a failure to recognise that some cases are disputed, and that where there is a dispute it is not acceptable to expect one party to operate with their hands tied behind their back. Such an approach does not lead to justice and it therefore does not enable justice to appear to be done.

Standards of evidence

Lower standards of evidence are acceptable in inquests than in other tribunals, despite the fact that evidence is given on oath[154].

It has long been accepted that inquests are not bound by the strict rules of evidence[155]. Hearsay evidence is admissible[156]. These are perhaps acceptable derogations from the rigorous standards set in criminal courts of proof beyond reasonable doubt, given that the deceased is unable to testify by definition and that an inquest is not a trial. It is important, however, to make a distinction between allowing hearsay evidence in general and allowing it when it relates to specifics such as what the deceased may have said.

There is the danger that different coroners will apply different standards in similar cases. There is also a strong case for applying higher standards in cases of disputed killings, where more is at stake than in the ordinary run of inquests.

154 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 8(1).
155 R v Divine, ex parte Walton [1930] 2 KB 29, 36.
156 R v Greater Manchester Coroner, ex parte Tal [1985] QB 67, 84-5.

It is disturbing, therefore, to observe the trend towards ever lower standards of evidence in inquests involving disputed deaths. The inability to compel key witnesses has led directly to the acceptance of witness statements which are of dubious evidential value and are self--serving at least. Lack of opportunity to examine such witnesses and to test their evidence is probably contrary to internationally-accepted standards of justice (see **Inquests and international law** below).

Lack of adequate procedures

The very wide discretionary powers given to coroners means that the conduct of an inquest is very much a matter for the individual coroner. There is evidence that different coroners adopt different practices in relation to similar questions, for example in releasing copies of *post mortem* reports. This is particularly worrying in view of McDermott J's ruling[157] that the rules of natural justice do not apply to inquests.

In cases of disputed killings no useful purpose is served by rules that, by their discretionary nature, create uncertainty about which witnesses will be called and what evidence will be led. Nor is the cause of justice, in its broader sense, furthered by a system which fails to compel key witnesses and does not allow cross examination of such witnesses as do appear. Equally, no benefit is derived from denying relatives and/or their lawyers prior access to forensic reports and witness statements and even *post mortem* reports.

All of these aspects of procedure at inquests are deeply unsatisfactory. It is difficult to see that they enhance the inquisitorial role of inquests. Indeed, they are more likely to impede it and to contribute to perceptions of cover-up and injustice.

Juries

The provisions for inquest by jury in Northern Ireland are weaker than they are in England and Wales. There are common rules that juries must be summoned in cases of deaths in prison, by poison, accident, or notifiable disease, or in circumstances prejudicial to public health/safety. However, in England and Wales there is an additional requirement to summon a jury where a death has occurred in police custody or by the action of the police in pursuit of their duty[158]. This would be a welcome addition to the Northern Ireland rules, although it would be necessary to add the words "or members of the armed forces" in order to make a jury mandatory in all disputed killings.

Given the extremely limited remit of inquests in Northern Ireland, the jury has very few powers. Nonetheless, juries have made powerful points in at least two recent inquests. The statement at the McCracken inquest has already been referred to[159]. At the Duffy inquest, despite an impression that the RUC wished to have the victim declared to be rioting at the

157 See p 24 above.
158 Coroners Act 1988, s. 8(3).
159 see p 30 above.

moment that he was shot by a plastic bullet, the jury deliberately refused to take this option. This was despite the fact that they accepted he had been rioting earlier.

Once again, the position in England is better. There, if the majority of a jury considers that the medical evidence does not satisfactorily explain the cause of death, they can require the coroner to call further medical witnesses, on pain of imprisonment if the coroner fails to comply[160].

However, it is in the matter of verdicts that juries in Northern Ireland appear at their weakest (see **Verdicts** below).

Juries are summoned by the police from the Jurors List[161]. Although juries are therefore selected at random as are juries in other courts, because there are no parties to inquests there is no right of challenge, peremptory or otherwise. Coroners have a common law power to refuse to swear a juror[162], and presumably an "interested person" could attempt to object to a particular juror, but there is nothing in the appropriate legislation which obliges a coroner to act upon such an objection.

Verdicts and findings

Just how limited juries' findings have become in Northern Ireland is demonstrated by the findings in the inquest into the death of Charles Breslin:

> *"We the jury unanimously agree that Mr Charles Brendan Breslin met his death on the 23rd February 1985, in a field at the rear of 36 Fountain Street, as a result of gun shot wounds to the head and trunk. The incident took place at approximately 4.55 am"*

The straight-jacket of "who, how, when and where" could not be more clearly revealed. In fact, Charles Breslin and the brothers David and Michael Devine died in disputed circumstances. The army say that they were armed members of the IRA who walked into a patrol and pointed their guns at the soldiers. Their families do not deny that they were IRA members and were armed, but say that they were the victims of an ambush, that they fired no shots, and that they could have been arrested. The pathologist who gave evidence at the inquest said that Charles Breslin had been shot at least 13 times, Michael Devine at least 28 times, and David Devine 5 times, that many of these injuries had been sustained while they were lying on the ground, and that all three had single bullet wounds in the head. The findings in relation to the other the other two men were in very similar terms to that issued on Charles Breslin. These findings epitomise the complete inadequacy of the inquest system as it is currently organised even to describe the circumstances surrounding disputed deaths, let alone come close to satisfying public concern as to the whys and wherefores.

160 **Coroners Act 1988**, s. 21(4).
161 **Coroners Act (Northern Ireland) 1959**, s. 18(1).
162 **Jervis on the Office and Duties of Coroners** 10th Edition 1986, 14.6.

In England and Wales a jury can bring in a verdict of "unlawful killing", and, indeed, must do so in certain circumstances[163]. The power to bring in a verdict was removed from juries, and coroners, in Northern Ireland in 1981[164], despite the fact that inquests may not pronounce on civil or criminal liability, may not compel material witnesses who may be suspected or charged in connection with a death, and may not express any opinion outside the inquest's extremely limited terms of reference. It is not difficult to see whom the exclusion of a verdict is designed to protect. The only other purpose it serves is to fuel perceptions of a cover-up mentality on the part of the authorities.

It is possible for juries in England and Wales to return verdicts such as: "X died from injuries sustained in Y police station and was unlawfully killed". However, in practice, juries are not often directed that they can use their own form of words and so do not do so. It is unclear whether juries in Northern Ireland could reject a draft finding of the coroner and draw up their own version. There does not seem to be anything in the Act or the Rules to prevent this.

Juries in England and Wales also have the option of recording an "open verdict" in cases of doubt. This is often used as a means of expressing dissatisfaction with the information which has been laid before them, and has the virtue of leaving the question officially undecided. Although an open verdict usually falls short of the expectations of relatives in disputed cases, it can be viewed as preferable to a verdict that rules out unlawful killing, and does at least acknowledge that the death gives rise to some doubt in the jury's mind. This possible formulation was removed in Northern Ireland in 1981.

A further erosion of the efficacy of inquests in Northern Ireland has been the abolition of the rider, whether by jury or coroner. Thus one of the key areas of public interest that the Broderick Committee identified[165] - "to draw attention to the existence of circumstances which, if unremedied, might lead to further deaths" - is no longer served by an inquest. Instead, the coroner alone retains a vestigial power to announce an intention of drawing the matter to the attention of the relevant authorities. This seems to happen more often in non-controversial deaths, although in one case involving a death caused by a plastic bullet, the Belfast coroner did write to the authorities drawing their attention to an apparent defect in the design of the gun which fires such bullets.

One of the most disturbing features of any disputed killing is the certainty that it is only a matter of time before a further disputed death occurs, so established has the pattern of such deaths become over the years (see **Appendix A**). It is conceivable that juries and/or coroners might have had much to contribute to the prevention of such incidents, or at least to a reduction in their numbers, although the extent of their influence in this regard remains speculative if not dubious, in view of the restrictions on their remit and their inability to compel material witnesses.

Juries have not always respected the strictures on expressing their views. At the inquest on William Fleming and Daniel Doherty held in December 1986, the jury commented that in their opinion the two men, who were shot while riding a motorcycle, could have been arrested. Juries in England suffer from the same restrictions, but they too are not always cowed. At

163 **Coroners Rules 1984**, Schedule 4, Form 22.
164 See Part 2.
165 Ibid.

the inquest into the deaths of 53 people in a fire at Bradford football stadium in 1985, the jury attached a list of 24 recommendations to their verdict.

Counsel to the Tribunal

The role of the barrister who acts as Counsel to the Tribunal is a shadowy one. Surprisingly, in view of their responsibilities, coroners do not have the services of a clerk. This may explain why coroners have developed the practice of appointing someone to act as Counsel to the Tribunal. Whatever the reason, there is no basis in the statutory rules for such a practice. Nor is such a functionary identified or even mentioned in the two authoritative textbooks on coroners and their powers[166]. An attempt has been made to challenge the presence of such counsel but the court's reaction was dismissive[167].

On the one hand, since coroners in Northern Ireland must be legally qualified and of at least five years' standing[168], it is not at all obvious why coroners feel the need for such assistance. On the other hand, however, the fact that coroners feel the need of legally trained help in this way indicates that inquests into disputed killings raise such complex legal issues that the usual coroner's court is inadequate to deal with them.

The function performed by Counsel to the Tribunal is also unclear. To one CAJ observer at an inquest into a death caused by a policeman, counsel to the coroner seemed to be acting on behalf of the RUC!

The lack of any right of appeal

A coroner has extremely wide discretionary powers. The following matters are all questions almost entirely for the coroner's discretion:

- whether to order a *post mortem*;
- whether to hold an inquest;
- whether to sit with a jury (in most cases);
- which witnesses to call;
- who may examine witnesses;
- who may have access to documentary evidence.

Coroners have a host of other, more minor, powers besides.

Since there is no right of appeal against a coroner's failure to exercise any of these powers properly or at all, nor against the findings of an inquest, the only avenue of challenge available is by way of judicial review. Not only are there practical obstacles to be overcome in mounting such an action, such as obtaining leave to proceed and legal aid, but the legal hurdles are

166 Jervis on Coroners (10th ed, 1986) and Thurston's Coronership.
167 In re Devine and Breslin's Application (1989) HC.
168 Coroners Act (Northern Ireland) 1959, s. 2(3).

formidable. Most actions have to be founded on arguments as to the reasonableness or otherwise of the coroner's exercise of discretion, which means persuading a judge that the decision challenged was so unreasonable as to be irrational. It is perhaps unsurprising, coroners not being known for their irrationality, that none of the significant cases brought so far has been ultimately successful.

Although the courts have the power to quash inquest decisions and have done so[169], the High Court in Northern Ireland has only once ordered a second inquest in recent years[170]. The Attorney-General also has the power to do that, and his decision is also discretionary[171]. In England and Wales on the other hand, the courts can and do order second inquests.

The lack of any right of appeal in cases of disputed killings is almost certainly contrary to international human rights standards (see **Inquests and international law** below).

The rights of the deceased and their families

An impartial observer might well conclude that inquests have nothing whatsoever to do with the rights of the deceased or their relatives. However, the deceased, who cannot speak for themselves, are liable to have their reputations vilified at inquests and in the protracted run-up to inquests.

People with no paramilitary connections are described as "terrorists". For example, Francis Bradley, shot dead by undercover troops in Toomebridge in 1985, was said by the authorities to be a republican paramilitary. Both the IRA and INLA denied that he was a member as did his family. The case of Seamus Duffy, whom the RUC wished people to believe was rioting when killed, has been referred to already.

People going about their ordinary lives are accused of criminal, often murderous, intent. For example, Fergal Caraher, killed by the army in December 1990, was on his way to the pub with his brother Michael. He was said by the army to have driven through a checkpoint and deliberately and recklessly aimed his car at two soldiers, hitting one of them and carrying him for some distance. No motive has been suggested for such an action, although much has been made of his membership of Sinn Fein.

People who are indeed active members of paramilitary groups are described as having been about to commit "terrorist" outrages. For example, Mairead Farrell, Daniel McCann, and Sean Savage, killed by the SAS in Gibraltar, were said to have planted a bomb there. No bomb was found on Gibraltar, although explosives found later in Spain were linked to the three. Michael Ryan, Lawrence McNally and Anthony Doris, killed by the army in their car in Coagh in 1991, were said to be on their way to gun down Protestant workmen waiting for a bus. The army may have been acting on accurate intelligence, but the public is never likely

169 See, for example, **In re Rapier deceased** [1988] QB 26, and **R v Greater Manchester Coroner, ex parte Tal** [1985] QB 67.

170 The first inquest into the death of William Price was declared invalid because the family had not been informed that it was due to take place. See **Amnesty International**, 1988 Report

171 **Coroners Act (Northern Ireland) 1959**, s. 14.

to know the truth since those responsible will almost certainly decline to testify, and even if they did they would be unlikely to specify their sources. The dead, of course, did not live to tell their tale.

The recent appeal of the Maguire Seven[172] against their conviction for "terrorist" bombings broke new ground when the court agreed to allow the interests of Guiseppe Conlon, who died while serving his sentence, to be legally represented. If the police, the army, the relatives, and even the coroner can be represented at hearings, there seems no good reason why the deceased should not be afforded the same rights. Indeed, the English rules anticipate the presence of a "personal representative of the deceased" and includes that representative amongst those who are entitled to examine witnesses[173], whereas the Northern Ireland rules only recognise "interested persons" as defined by the coroner[174]. Were the deceased to be accorded legal representation at inquests, the notion that the rules of natural justice do not apply to inquest proceedings[175] might be open to challenge, since the requirements of those principles must be more stringent when the person whose interests they are designed to protect cannot appear in person.

The myopic remit of inquests means that the deceased's right to life, and, if s/he is alleged to have been involved in criminal activity at the time of death, to a fair trial, are rarely considered or examined (see **Inquests and international law** below).

Families also receive a raw deal at inquests. As has been seen, inquests are not designed to get to the bottom of why their relatives died, nor even in what circumstances.

Families' reputations can also suffer in the course of an inquest. Where it is alleged that the deceased was a paramilitary or a criminal, similar imputations are often transferred to the rest of the family. Unlike members of the police or security forces, whose names are withheld at inquests, families have no way of shielding their identity.

The lack of legal aid (see above) puts families at a disadvantage when it comes to obtaining independent *post mortem* or forensic reports and to being represented at the inquest.

Families in Northern Ireland are only allowed to examine witnesses if the coroner accepts them to be "properly interested persons", whereas in England and Wales they may examine witnesses as of right[176].

Relatives of those killed in disputed circumstances may have had their right to family life violated, and spouses may have been deprived of their right to have children (see **Inquests and international law** below).

172 **R v Maguire and others** (1990) CA The Times 28.6.1991.
173 **Coroners Rules 1984**, rule 20(2)(a).
174 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 7(1).
175 **In re Mailey and Others** [1980] NI 102.
176 **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963**, rule 7(1) and Coroners Rules 1984, rule 20(2)(a).

Inquests and international law

European Law

People who die at the hands of the police or army in disputed circumstances may have suffered violations of a number of human and civil rights to which they were entitled under the **European Convention on Human Rights**. Under this international mechanism, individuals can appeal above UK courts to the European Commission of Human Rights, providing that domestic remedies have first been exhausted. From the Commission, the case may be referred to the European Court of Human Rights. A finding by the Court is binding on the UK unless the latter chooses to derogate from the particular point at issue. This happened, for example, over the 7 day detention power under the **Prevention of Terrorism Act**.

Foremost of the rights at issue for this pamphlet is:

- the right to life[177].

If it is alleged that the deceased was engaged in paramilitary or criminal activity at the time of death, s/he may also have been deprived of:

- the right to a fair trial[178].

Other human rights which, it might be alleged, have been violated by the victim's death include, depending on the circumstances:

- freedom from torture, inhuman or degrading treatment or punishment[179];
- the right to liberty and security of person[180];
- the right to family life[181];
- freedom of thought, conscience and religion[182];
- freedom of expression[183]; and
- freedom of peaceful assembly and association with others[184].

If s/he has suffered violation of any of these rights, s/he is entitled to have invoked on her/his behalf Article 13 of the Convention, which says:

> *"Everyone whose rights and freedoms set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

177 **European Convention on Human Rights**, Art. 2.
178 Ibid., Art. 6.
179 Ibid., Art. 3.
180 Ibid., Art. 4.
181 Ibid., Art. 8.
182 Ibid., Art. 9.
183 Ibid., Art. 10.
184 Ibid., Art. 11.

An "effective remedy" for the deprivation of life is beyond human imagination, but the dead are at least entitled to justice. Inquests cannot be described by any stretch of the imagination as an effective remedy from the point of view of the deceased. It might be argued that inquests are not intended to perform this function, and that those concerned with justice for the deceased should look to a criminal prosecution of those responsible or a civil action for compensation instead. However, as we have seen, criminal prosecutions are rarely brought in these disputed cases. As far as the CAJ is aware, a private prosecution has never been taken arising out of a disputed killing. Civil actions for damages rarely result in an admission of liability on the part of the authorities, who tend to seek settlement out of court. Thus for many of the dead an inquest is the only due process of law ever put in train.

The relatives of those who die in disputed circumstances can also claim some protection under the Convention. They can argue that their right to family life has been violated, and spouses -usually wives - can argue that they have been deprived of their right to have (more) children[185]. In support of such arguments, they could also invoke Article 13 and allege that the combined failures of inquests and the civil and criminal systems of justice amount to a failure to provide an effective remedy for the violations they have suffered. It is conceivable that their right to life may be under threat due to the process of guilt by association with the deceased.

Lawyers taking cases on behalf of the deceased or their relatives alleging breach of Article 13 may be able to cite as examples of the ineffectiveness of inquests three major aspects in which there is "inequality of arms" between the relatives and those responsible for the killing. These are the lack of legal aid and hence of legal representation, the denial of prior access to evidence, and the inability to examine witnesses. The concept of "equality of arms" has been applied by the European Court of Human Rights mainly when considering the right to a fair trial[186]. This right is governed by Article 6, which says:

> *1. In the determination of his [sic] civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.....*

Since inquests do not *determine* civil rights and obligations or criminal charges, it is difficult to argue that inquests as currently organised infringe Article 6. However, a case involving a violation of Article 13 could probably import some of the basic principles enshrined in Article 6, which include a prompt hearing, proper facilities for preparing a case, legal aid, and the right to examine witnesses. If an inquest is the only hearing available and fails on all these points, it cannot be said to represent "an effective remedy before a national authority".

United Nations Law

The United Kingdom is clearly in breach of United Nations principles that apply to disputed killings. The UN has called on all member states to be guided by and ensure the implementation of their **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** (which are reproduced in **Appendix B**). These lay down guidelines to control the

185 Ibid., Art. 12 - in the words of the Article, "found a family".

186 See, for example, **Barberà, Massagué and Jabero v Spain**, Comm Report 16.10.1986, Eur Court HR, Series A no 146 p 45.

use of force and guns by the police and security forces, many of which appear to have been infringed in a number of disputed killings in Northern Ireland.

Unlike the European mechanism, these Principles have only been recommended to governments. There is no court to which the UK could be brought and whose findings the UK would be bound to accept. Nonetheless, the UN documents have a moral force and are a means of challenging the authorities' actions against an agreed international standard. They can be used in reports to the various UN Committees and Commissions.

In brief, the Principles advocate the avoidance of force wherever possible and the exercise of restraint where it is unavoidable with a view to minimising injury and preserving life. They provide that any abuse of the power to use force should be punishable under the criminal law, and say:

> *8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.*

These Principles are particularly relevant to inquests. Principle 23 states:

> *Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependents accordingly.*

Inquests are manifestly not a judicial process. The right to compel competent material witnesses and cross-examine them, the availability of legal aid, the facility to prepare a case adequately including prior access to relevant evidence, the right to appear as a party on equal terms, the right to call witnesses, the right to a prompt hearing, and the right of appeal are all established features of a judicial process, both within United Kingdom law and international law. Inquests fail on all these counts. If one could therefore argue that Principle 23 may be applied to inquest proceedings, inasmuch as there is seldom any other judicial forum, it would be possible to show that the United Kingdom is in breach of its duties.

The UN has also recommended that member states respect and incorporate into their domestic law and procedures its **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** (which are reproduced in **Appendix C**). A Special Rapporteur on such killings was appointed in 1982 and has defined summary or arbitrary executions as the deprivation of life:

> *as a result of a sentence imposed by a procedure in which the due process of law has not been respected; as a result of killings carried out by order of a government or with its complicity, tolerance or acquiescence, without any judicial or legal process; as a result of abuse or excessive use of force by law enforcement officials; or as a result of killings of civilians by members of the armed or security forces in violation of law governing the state of war or armed conflict.*[187]

187 UN Fact Sheet No. 11: Summary or Arbitrary Executions.

Many of the disputed deaths listed in **Appendix A** betray features that might bring them within one or more of these definitions. The Special Rapporteur has said:

> *One of the ways in which Governments can show that they want this abhorrent phenomenon of arbitrary or summary executions eliminated is by investigating, holding inquests, prosecuting and punishing those found guilty.*

He went on to add:

> *Any Government's practice that fails to reach the standards set out by the Principles may be regarded as an indication of the Government's responsibility, even if no government officials are found to be directly involved in the acts.*[188]

The first eight paragraphs of the Principles are devoted to the prevention of such killings, and the first principle states:

> *Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.*

The next nine paragraphs deal with the investigation of all suspected cases of such killings. Such investigations must be "thorough, prompt and impartial", and their purpose is to determine the cause, manner and time of death and the person responsible, as well as ensuring an adequate autopsy and the collection of all relevant evidence from all material witnesses[189]. The investigating authorities must have the power to oblige officials allegedly involved in such killings to appear and testify[190]. They must be independent and not be governed by the interests of any agency whose actions are the subject of the scrutiny[191]. Similarly, such agencies must not have control over complainants or witnesses, whether directly or indirectly[192]. Families of the deceased and their legal representatives must have access to all the evidence and be able to present their own evidence[193]. The report of the investigation must be published and must include recommendations, and the government must reply to it[194].

Once again, inquests fail to meet all these criteria. They are not prompt, and are even withheld altogether. They do not adequately investigate disputed killings, nor identify the person responsible for the death. They are not free from influence by the security forces, whose members cannot be obliged to testify and whose account of the events can be protected by a Public Interest Immunity Certificate. Families and their lawyers are not allowed to present their own evidence or to have unrestricted access to such evidence as is presented. Inquests are not allowed to make recommendations and governments do not have to answer for

188 **Report of the Special Rapporteur on Summary and Arbitrary Executions**, United Nations, E/CN.4/1986/21.
189 **Principles on the Effective Prevention and Investigation of Extra- Legal, Arbitrary and Summary Executions**, Principle 9
190 Ibid., Principle 10.
191 Ibid., Principle 11.
192 Ibid., Principle 15.
193 Ibid., Principle 16.
194 Ibid., Principle 17.

disputed killings. By these criteria, inquests represent not only justice delayed but justice ultimately denied.

6: Changing the Law on Inquests in Northern Ireland

Criteria for Change

As Part 5 has demonstrated, inquests in Northern Ireland as currently constituted and operated are grossly inadequate mechanisms for investigating disputed killings. A number of options for change which are worthy of consideration, are examined below, but first it is necessary to identify criteria for assessing any proposals.

A mechanism for investigating deaths in disputed circumstances would require the following minimum attributes if it were to meet the ends of justice and conform with internationally-agreed standards:

- ❒ it should provide a prompt public inquiry into all the relevant circumstances surrounding the death;
- ❒ it should operate under adequate powers and procedures to ensure that all relevant evidence and witnesses come within its scope;
- ❒ it should be independent of any other authority or agency;
- ❒ it should be free to draw any conclusion proper to its remit and to make any recommendations it considers appropriate in order to save lives in the future;
- ❒ it should provide equal access to the court and to evidence to be considered; and
- ❒ it should give equal consideration to the interests of all parties appearing before it.

One further element is vital to such a process. Legal aid must be made available to enable the interests of the deceased and their relatives to be properly represented at such inquiries.

On these criteria, the case for changing the present system of inquests is overwhelming.

- Inquests are not prompt.
- They are not able to compel material witnesses.
- They can be halted or delayed for long periods by police intervention. This is particularly worrying when policemen have caused the death being investigated. But even when it is a soldier, it is worth bearing in mind that the army operates in Northern Ireland in aid of the civil power. Thus their interests are more or less at one. This is not calculated to gain maximum public support.
- They are so restricted in their remit that they are incapable of making adequate findings.
- They are debarred from making sensible recommendations.
- There is unequal access to the court because of the lack of legal aid, and to vital information because of the rules.

- The interests of national security and of the security forces are put above those of the public, the deceased and their families.

In other words, they fail to meet a single one of the criteria identified above.

There are a number of options for change which would meet, or would at least go some way towards meeting, the criteria. These include:

- changing the present system of inquests;
- bringing inquests in Northern Ireland into line with those in England and Wales;
- adopting the Scottish system of statutory inquiries;
- substituting some form of public judicial inquiry for the inquest.

These options are considered below.

Changing the present system of inquests

This pamphlet has been concerned with the inadequacy of inquests in dealing with disputed killings. However, many of the criticisms of the present system that have been identified here apply equally to cases where the facts are not necessarily in dispute but which are nonetheless contentious. For example, dissatisfaction is frequently expressed with the outcome of inquests where the death is the result of crime, or a major disaster, or negligence. These difficulties doubtless reflect the uneasy relationship between the desire for a proper explanation of all the circumstances and the need to avoid issues of culpability at inquests. Be that as it may, it may be that a revised form of inquest would be beneficial in dealing with contentious deaths as well as those that are disputed.

So far as disputed killings are concerned, however, the major flaw in the present system is that it does not recognise, acknowledge or accommodate the fact that at the heart of the matter lies a dispute. In these cases, there is by definition more than one version of events and more than one interpretation that could be put on the evidence. For this reason, certain aspects of the adversarial courts could usefully be imported into inquests to make them more suitable to the task of providing a prompt public inquiry into all the relevant circumstances surrounding a disputed death.

First and foremost, there should always be an inquest into any disputed death, and inquests should be held promptly. Only one adjournment of 28 days should be allowed where the police want time to consider whether to recommend charges. Prosecution is, in any case, the function of the Director of Public Prosecutions. When charges are brought, inquests should only adjourn if the charges are serious and where the DPP satisfies the coroner that it is in the interests of justice to adjourn the hearing. *Post mortem* examinations should be carried out by any suitably-qualified pathologist, and not just those on a government-approved list.

Secondly, the coroner should always sit with a jury and parties to the inquest (see below) should have the same rights of challenge and stand-by that they have in other courts.

Thirdly, legal aid should be available and the deceased and any parent, child, spouse or cohabitee of the deceased should be entitled to be legally represented at the hearing. These people, and the security forces, should be recognised as parties to the hearing and should be

entitled to examine witnesses and to have access to all documentary evidence prior to the hearing. The coroner should also have discretion to recognise as a party any other person who can satisfy the coroner that s/he has a legitimate interest in the outcome of the hearing.

Fourthly, anyone who has evidence concerning the circumstances surrounding the death should be entitled to give that evidence, although it will, of course, be up to the coroner to direct the jury as to what weight to put upon it. Hearsay evidence should not be admissible. CAJ is opposed to the issuing of PIICs on principle. If, however, the Secretary of State for Northern Ireland issues a Public Interest Immunity Certificate, the coroner should have the power to rule on whether it is justified in respect of any piece or part of the documentary evidence. Properly exercised, such a power might, for example, allow the disclosure of the fact that the deceased was under surveillance while protecting the operational details of the surveillance exercise.

Fifthly, the coroner should have the power to compel any material witness to attend, but witnesses should retain the right not to incriminate themselves.

Lastly, juries should be entitled to issue a full range of verdicts, including unlawful killing and an open verdict. They should also be able to apportion responsibility for a death in general terms, adding, for instance phrases such as "by the army/police" to their verdict. They should not, however, be able to affix blame to named individuals, nor recommend prosecution, nor should their verdict carry weight in any other court or proceedings. Both juries and coroners should be free to make recommendations designed to save lives in future and to add riders expressing their view on, for example, such matters as whether the degree of force used was reasonable in the circumstances or whether the deceased could have been arrested rather than killed. Here again, these comments would have no weight in other courts.

None of these potential changes is particularly radical in terms of the legal systems that already exist in the United Kingdom. We believe that they would greatly enhance the independence of inquests in that they would remove them from the pre-eminence of supposed security concerns which have done so much violence to justice, not just in the system of inquests but in the system of criminal justice, since the conflict began.

We recognise that some of the powers that would be given to coroners under any such scheme would increase their responsibilities. For this reason it might be necessary to augment the requirements for the appointment of coroners. This could be done in a variety of ways:

- the requirement of five years' standing in private practice could be increased, say, to ten years for coroners and their deputies;
- coroners only could be required to have ten years' standing (either in private practice or partly as a deputy coroner) and all disputed cases could be heard by them but not by deputies;
- the rules on standing could remain as they are but a post of senior coroner could be introduced with the requirement that senior coroners should have a minimum of five years' experience of sitting as a coroner; disputed cases would then be referred to them. There should be at least three senior coroner posts. Senior coroners would sit as ordinary coroners when not hearing disputed cases;
- finally, along with all these other possibilities, there should be a training requirement for coroners to fulfill. The complex nature of the law and the sensitivity of the issues involved

in Northern Ireland make training, both before appointment and in-service, already necessary.

The legislation which provides for legal aid for inquests should be formally commenced. We make no apology for arguing that legal aid should be available for inquests in cases of disputed killings. There is, of course, a cost attached to this proposal, but it is a small price to pay for removing the climate of dissatisfaction and injustice that hangs over inquests in such cases as things stand today. Part of the cost might be saved by less need to resort to judicial review in the course of inquest hearings.

Many of the changes we propose would do little more than restore the pre-1981 position (see Part 2) or bring Northern Ireland into line with England and Wales, an option which we examine next.

Parity with England and Wales

The differences between the rules in the England and Wales jurisdiction and those in Northern Ireland are described in Part 2.

The remit of inquests in England and Wales is certainly less restrictive than in Northern Ireland, although much dissatisfaction has been expressed with inquests in England, especially in relation to contentious cases such as national disasters.

Even so, if the English rules were to be adopted here, inquests in Northern Ireland would be much improved. Coroners would be obliged to hold inquests in disputed cases. Juries would be able to return proper verdicts. In cases where criminal charges had been instigated, the inquest would only be adjourned until the end of the trial, rather than until the appeal process had been exhausted. Adjournments would only happen automatically where such charges were serious; otherwise hearings would only be adjourned if the DPP so requested. Anyone tendering evidence as to the facts of the case would have a right to be heard and material witnesses could be compelled even if they were suspected of causing a death. Near relatives of the deceased would be entitled to examine witnesses and to copies of documentary evidence. *Post mortem* examinations could be carried out by any pathologist and not just those on a government-approved list.

There cannot be any forceful objection to applying the same rules in Northern Ireland as pertain in England and Wales. England is not affected to the same extent as Northern Ireland by "the troubles", but it is not immune from them and has its share of disputed deaths in any case, mainly occurring in prisons or police custody or at the hands of police marksmen. Inquests in England more often have to contend with issues of race than of religion, but these can be just as contentious. If their rules can work there, they can also work here.

However, we would suggest that certain modifications to the English rules would be required here in Northern Ireland. Firstly, the rule that makes an inquest mandatory when a death occurs in police custody or as a result of police action[195] would need to be expanded by the

195 Coroners Act 1988, s. 8(3).

phrase "or military" in order to cover all disputed deaths in Northern Ireland. Secondly, people should be given the right to address the inquest on the facts of the case. Failing that, the coroner should at least retain the discretion to allow people to address the inquest[196], which is a power that has no counterpart in England and Wales. Thirdly, the Northern Ireland coroner should retain the right to decide to hold an inquest where a body has been destroyed or is irrecoverable, rather than having to refer the matter to the Secretary of State, as happens in England[197].

Even with these modifications, adoption of the English rules would not meet all the criteria set out above for an effective court of inquiry into disputed deaths. Legal aid would still not be available to pay for experts or representation. Documentary evidence would still not be available to all concerned in advance of the hearing[198]. Inquests would still not be able to make recommendations in order to save lives in the future, and cohabitees would still have fewer rights than spouses.

Nevertheless, parity with England and Wales would represent a substantial improvement on the system currently in place in Northern Ireland.

The Scottish system

In Scotland, there is no coroner and no inquest. However, there are statutory provisions under the **Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976** for public inquiry into fatal accidents, sudden or suspicious deaths, and deaths in prison.

Such cases are investigated initially by the Procurator Fiscal, who then applies to the Sheriff to hold a public inquiry. An inquiry must be held in cases of fatal industrial accidents or deaths in legal custody. The Procurator Fiscal decides which witnesses are to be called and the Sheriff conducts the inquiry, sitting without a jury, although assessors can be asked to assist the Sheriff. At the end of the Inquiry the Sheriff makes a determination setting out the following matters:

- where and when the death took place;
- the cause(s) of death;
- any reasonable precautions whereby it might have been avoided;
- any defects in the system of working contributing to the death; and
- any other relevant facts.

This determination is not admissible in any other civil or criminal proceedings, but inquiry witnesses are not immune from prosecution either.

196 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 20.
197 Coroners Act (Northern Ireland) 1959, s.16 and Coroners Act 1988, s. 15.
198 Coroners Rules 1984, rule 57.

This system also displays improvements on the Northern Ireland system, particularly in relation to the Sheriff's determination, which goes much wider than the limited findings permitted in the Northern Ireland inquest, or even the verdicts allowed in England and Wales.

However, it also suffers from some of the same defects, notably the lack of entitlement to participate for relatives of the deceased, the lack of legal aid, and the inability of material witnesses to insist on being heard. It also has some flaws which do not exist in Northern Ireland, such as the total absence of a jury.

Judicial inquiries

Public judicial inquiries are sometimes held in addition to inquests in respect of major disasters. In England such inquiries have been held on disasters such as the Zeebrugge ferry sinking and the Kings Cross fire. In Northern Ireland there have been only two such inquiries, both held some time ago. The first of these was the Scarman Tribunal on the deaths and disturbances in July and August 1969[199]. The second was the Widgery Tribunal on the deaths that occurred on Bloody Sunday in 1972[200].

Such tribunals are usually set up by Parliament and operate under the **Tribunals of Inquiry (Evidence) Act 1921**. They have all the powers of the High Court, including the compellability of witnesses and of documentary evidence. However, there are no standard rules of procedure and the scope of the inquiry and the content of the final report will depend on the terms of reference set for the inquiry by Parliament. In some, although by no means all, cases immunity from prosecution is granted to witnesses, as happened at the Scarman Tribunal.

The weakness of this system is that both the decision to hold an inquiry and its terms of reference are matters for the government of the day, and are therefore susceptible to political considerations, national security among them. Nevertheless, governments are themselves susceptible to public pressure and it may be appropriate to call for a judicial inquiry in certain cases. Amnesty International, for example, along with many others, has repeatedly called for such inquiries since the killings which took place in 1982. The **UN Principles on the Effective Prevention and Investigation of Arbitrary and Summary Executions** call on governments to set up independent commissions of inquiry "in cases where the established investigative procedures are inadequate"[201].

The system of judicial inquiries would be much strengthened if criteria could be identified on which the holding of an inquiry would be mandatory rather than discretionary.

199 Violence and Civil Disturbances in Northern Ireland in 1969, HMSO, Cmnd 566.
200 Report of the tribunal appointed to inquire into events on Sunday, 30th January 1972 which led to loss of life in connection with the procession In Londonderry on that day, HMSO, HC 220 1972.
201 Principle 11.

Making better use of the present rules

As has been remarked earlier, coroners have extremely wide discretion under the present system of inquests in Northern Ireland. Some tangible improvements could result if coroners were to make better use of those powers.

For example, coroners can and should always hold inquests when there is a disputed killing and always sit with a jury in such cases. There is nothing to stop coroners allowing people who have relevant evidence to testify. Coroners should not withhold *post mortem* reports from relatives nor refuse to allow them to examine witnesses. Coroners probably could make evidence available in advance. Coroners need not, according to the legislation, accede to requests for adjournments beyond a 28-day period while the RUC considers whether to bring charges in relation to a disputed death. It is worth noting, however, that the coroner in the 1982 cases felt he could only resign in protest at the delays which the RUC were causing to the inquests.

Coroners could go further. They could insist on opening all inquests at an early date, even if they have no option but to adjourn while a criminal prosecution takes place. They could decide that there is "reason to the contrary"[202] for adjourning, even where there is a criminal case in train, and hold the inquest anyway. They could summon witnesses even though they cannot compel them to attend because they are suspected of causing the death in question. They could refuse to admit in evidence unsworn witness statements. They could abandon inquests where material witnesses fail to appear or where the issue of a Public Interest Immunity Certificate obscures the facts.

We do not, of course, advocate the unreasoning or unreasonable use of these powers. We merely point out that some of the criticisms that are made of inquests in disputed killings might be avoided if coroners took some of the steps suggested above.

However, no matter how bold and sensitive coroners are in the exercise of their powers, nothing they could lawfully do would overcome some of the most serious defects in the present system, such as the lack of legal aid and the inability to compel material witnesses.

202 Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 13(1) as amended.

7: Conclusions and Recommendations

As this pamphlet has shown, inquests are too limited in their remit and too circumscribed in their powers to satisfy legitimate public concern about disputed killings. Nor are they adequate mechanisms for delivering justice to the deceased or their survivors.

At the heart of the defects in the system of inquests is the failure to recognise that disputed deaths involve conflicting accounts and evidence and need procedures which are closer to the adversarial than the inquisitorial model if they are to be handled adequately. The inability of coroners to compel those responsible for disputed killings to appear at inquests is not in the public interest, since it makes it impossible to examine properly the events surrounding the death in question. Also of fundamental concern are the failure to hold inquests at all, delay, and the lack of legal aid to pay for legal representation and independent expert witnesses. The unequal provisions on access to evidence for the families of the deceased are both unjust and unjustifiable. Last but not least, the restrictions on the conclusions inquests can deliver and the bar on their making recommendations to preserve life round off a process which is flawed from start to finish. These problems undermine inquests to the point where they can no longer be considered viable courts of inquiry into disputed killings.

In Part 6 of this pamphlet we identified the basic criteria for a more viable system and detailed the reforms needed in order to enable inquests to conform with those criteria. Our recommendations can be summarised as follows.

- **An inquest should always be held into a disputed death.**
- **Coroners should always sit with a jury in disputed cases.**
- **Inquests should be held promptly and adjournments kept to a minimum.**
- **Legal aid should be made available for inquests.**
- **The notion of parties to an inquest should be introduced and parties should have the right to examine witnesses and challenge jurors.**
- **Material witnesses should be entitled to testify.**
- **Coroners should have the power to compel material witnesses to attend and testify, subject to their being protected from self-incrimination.**
- **Hearsay evidence should not be admissible.**
- **Coroners should have the power to decide whether to accept a Public Interest Immunity Certificate.**
- **Juries should be entitled to bring in an appropriate verdict and to apportion responsibility for disputed deaths in general terms.**
- **Coroners and juries should be allowed to make appropriate recommendations for the avoidance of further deaths.**
- **Coroners and juries should be entitled to add riders to their verdicts.**

The reputation of the ability of inquests to enquire into disputed killings is at a low ebb. There is a widespread public perception that the automatic reaction of the authorities when someone is killed by the security forces is to cover up the truth and obstruct the course of justice. Urgent action is required if that image of inquests is to be refuted.

We call upon the government to set up a committee to review the functioning of inquests in Northern Ireland. Such a committee should include coroners, lawyers with experience of inquests, representatives of the Northern Ireland Office and the Lord Chancellor's Department, the Standing Advisory Commission on Human Rights, and relevant civil liberties and human rights organisations. It should not include any representatives of the police or security forces. Its terms of reference should include:

- Drawing up criteria for a fair and effective system of inquests into disputed deaths which conforms with internationally-accepted standards.
- Re-defining the remit of inquests to encompass those criteria.
- Recommending amendments to the legislation governing inquests in order to give effect to those criteria.

The Committee on the Administration of Justice believes that only radical reform will restore public confidence in inquests in relation to disputed killings, where it is vital that justice should both be done and be seen to be done.

Appendix A

Deaths caused by members of the security forces while on duty, from November 1982 to January 1992

CAJ wrote in 1991 to all coroners in Northern Ireland with an earlier version of the following list. We asked for an indication of any inquests which we had missed. Replies were received from two of the seven coroners and details supplied have been added to the list. The result is as comprehensive a list as we can discover.

The list records all deaths since November 1982 caused by RUC personnel and soldiers while on duty. Some deaths, such as that of Adrian Carroll in 1983, are not included as the soldiers convicted were not under operational control at the time of the killing.

The list is complete and does not attempt to differentiate between levels of controversy surrounding deaths. Killings of uninvolved civilians attract a different sort of controversy from killings of paramilitary personnel. This latter category of killing can nonetheless raise important questions concerning a policy of summary or arbitrary execution.

Finally, mention has been made during this publication of controversial killings where collusion between members of the security forces and loyalist paramilitaries is alleged. These killings are not included.

Date	Description of Incident	Inquest
November 11, 1982:	Three men, **Gervaise McKerr** (31), **Eugene Toman** (21), and **Sean Burns** (21) were shot dead at a road check outside Lurgan; no guns were found in the car. (3 deaths)	Not yet completed
November 24, 1982:	Two young men were shot in a field near Oxford Island, Lurgan. **Michael Tighe** (17) was killed and his companion was seriously injured. Three old rifles but no ammunition were found at the scene. (1 death)	
December 12, 1982:	Two men, **Seamus Grew** (31) and **Roderick Carroll** (22) were shot dead after a high speed car chase in Armagh. No weapons were found either in the car or at the scene. (2 deaths)	
December 27, 1982:	**Patrick Elliot** (19) was shot dead by the British Army at close range after a robbery at a chip shop. No paramilitary connection has been shown. Eye-witness accounts conflicted with the official version. (1 death)	September 1983

Date	Description of Incident	Inquest
January 9, 1983:	**Francis McColgan** (31) was shot dead during a car chase at Black's Road, Belfast following a robbery at a filling station on the Lisburn Road; a replica pistol was found at the scene. (1 death)	December 12, 1984
February 3, 1983:	2 INLA members, **Eugene McMonagle** and Liam Duffy were shot in suspicious circumstances in Derry. McMonagle was killed and Duffy wounded. No shots were fired at the soldier. No weapons were found at the scene though the soldier claimed McMonagle was armed. (1 death)	April 1984
March 16, 1983:	**William Millar** (26) was shot dead when police opened fire on a stolen car in the University area in Belfast. A home-made sub-machine gun and a hand-gun were found in the car. (1 death)	September 1985
July 26, 1983:	**John O'Hare** was shot dead by an RUC uniformed patrol after a robbery at a Lurgan Post Office/shop. Conflicting claims suggested that there had been a stake out. The victim was armed with sawn off shotgun. (1 death)	
July 30, 1983:	**Martin Malone**, a Catholic teenager was shot dead by a UDR patrol during a scuffle. A UDR man was acquitted of manslaughter. (1 death)	
August 9, 1983:	**Thomas 'Kidso' Reilly** was shot dead by Private Ian Thain while running from an altercation. Thain was convicted of murder and sentenced to life imprisonment in November 1984. He served 2 years and 3 months of his sentence.(1 death)	Prosecution - no inquest
August 13, 1983:	**Gerald Mallon** and **Brendan Convery**, two INLA operatives, were shot dead by the RUC after carrying out an armed attack on an RUC constable. (2 deaths)	
November 28, 1983:	During an armed raid on a Post Office in Pomeroy Co. Tyrone, **Brigid Foster**, a civilian pensioner, was fatally injured by an RUC bullet. Allegations of a stake out were made. (1 death)	September 1984
December 4, 1983:	Two IRA operatives **Colm McGirr** and **Brian Campbell** were shot dead by SAS while approaching arms dump. Official statements claimed the men were armed and refused to halt. Republican sources deny they were armed. Another man escaped. (2 deaths)	March 1985
January 30, 1984:	A British Army foot patrol shot dead **Mark Marron** while he was driving a stolen car in West Belfast. The Army alleged he failed to halt. Other statements alleged the car was stationary when the shooting happened. (1 death)	December 18, 1984

Date	Description of Incident	Inquest
February 21, 1984:	The incident took place near Ballymena, Co. Antrim, between Provisional IRA operatives and a British undercover unit. **Declan Martin** and **Henry Hogan** were killed amid allegations of *coups de grace* after they were injured while running away. (2 deaths)	May 1986
May 14, 1984:	**Seamus Fitzimmons** was killed and 2 colleagues wounded by the RUC in a Post Office robbery in Co. Antrim. A replica handgun was found at the scene. Allegations were made that members of the gang could have been arrested.(1 death)	
June 15, 1984:	**Paul McCann** (INLA operative) and **Michael Todd** (RUC) were shot dead in an exchange of gunfire in West Belfast.(1 death)	May 6, 1987
July 13, 1984:	An alleged SAS ambush resulted in the death of **William Price** and the wounding of 2 men near Ardboe, Co. Tyrone. There was no official claim that the Provisional IRA unit fired. An inquest was held without Price's family or their legal representatives having been informed. Lord Justice Kelly ruled in December 1986 that a new inquest should be held. (1 death)	June 1987
August 12, 1984:	At an internment rally in Andersonstown, West Belfast, **Sean Downes** was killed by a plastic bullet fired at point blank range. The RUC man who fired the bullet was subsequently cleared of manslaughter. Downes widow received £25,000 compensation in October 1989. (1 death)	Prosecution - no inquest
October 19, 1984:	In an undercover operation, **Frederick Jackson**, an uninvolved civilian, was shot by BA personnel off the M1 near Dungannon, Co. Tyrone. The official account of Jackson being caught in crossfire conflicted with forensic evidence that he was shot once in the back with a handgun.(1 death)	May 1986
December 2, 1984:	**Tony McBride** (IRA) and Corporal **Alister Slater** (British Army undercover) were killed in an exchange of gunfire neaer Kesh in Co. Fermanagh. Republican sources alleged that their unit had been ambushed. Another member of the IRA, **Kieran Fleming**, drowned while attempting to escape.(1 death)	March 1986
December 6, 1984:	In an undercover ambush in the grounds of Gransha hospital in Derry, **William Fleming** and **Daniel Doherty**, 2 IRA operatives died after being shot. Allegations were made that no attempt was made to arrest them. The inquest jury found that the Army unit should have tried to arrest the men. 59 shots were fired. Mrs Doherty accepted an out of court settlement in November 1991.(2 deaths)	December 1986

Date	Description of Incident	Inquest
December 17, 1984:	**Sean McIlvenna** (IRA) was killed in a gun battle with RUC personnel after seven UDR men were wounded in a controlled explosion. At the time he was killed, he was running across a field with another man. Weapons were found but had not been fired. (1 death)	
January 15, 1985:	**Paul Kelly**, was shot dead in West Belfast, when the UDR opened fire on a vehicle in a joyriding incident. Witnesses alleged as many as 60 shots were fired. Four other occupants of the car were wounded. (1 death)	February 1986
February 7, 1985:	A joint RUC/British Army patrol shot at a car and killed **Gerard Logue** in a joyriding incident in West Belfast. The inquest began without the family being informed. Contradictory statements were made by RUC and eye-witnesses. (1 death)	November 1985
February 23, 1985:	British soldiers shot dead **Charles Breslin, David Devine** and **Michael Devine** outside Strabane. The three were members of the IRA and allegations of a shoot-to-kill policy emerged. IRA alleged an informer gave information tipping off the army and no attempt to arrest the 3 was made. (3 deaths)	February - April 1987
February 18, 1986:	**Francis Bradley** was shot by a British army undercover unit near Toomebridge, Co. Antrim. Bradley had no connection with paramilitaries. Local people reported that Bradley had been harassed by security forces before his death. A public enquiry held by the Community for Justice concluded Bradley's death was pre-meditated. (1 death)	February - March 1987
February 23, 1986:	**Tony Gough** (IRA operative) was shot dead by a British army patrol following a shooting attack on an army base in Derry. Weapons were recovered from the scene. (1 death)	
March 31, 1986:	At a banned anti-Anglo-Irish Agreement parade in Portadown, **Keith White** was injured by an RUC plastic bullet. White died on April 14. No charges were brought in connection with the incident. (1 death)	September 1987
April 26, 1986:	An IRA unit was ambushed in Rosslea, Co. Fermanagh, while preparing an 800lb landmine. **Seamus McElwaine** was shot dead. Allegations were made that McElwaine, a Maze escaper, had been summarily executed. (1 death)	
September 14, 1986:	A British Army patrol intercepted **James McKernan** who was on an IRA mission. Conflicting statements from government and IRA sources followed the shooting. Eye-witnesses said McKernan had his hands in the air when shot and could have been arrested. The inquest jury accepted the army's version of events. (1 death)	July - August 1987

Date	Description of Incident	Inquest
May 8, 1987:	Allegations of ambush and summary execution followed the killing of 8 IRA operatives as they attacked the RUC barracks at Loughgall, Co. Tyrone. The eight IRA operatives were **James Lynagh, Patrick Kelly, Patrick McKearney, Declan Arthur, Sean Donnelly, Anthony Gormley, Eugene Kelly, Gerald O'Callaghan.** A civilian, **Anthony Hughes** was also killed in the ambush. Hughes' widow received an out of court settlement in 1991. (9 deaths)	
February 21, 1988:	**Aidan McAnespie** was killed by a British Army bullet while crossing the border into N Ireland at Aughnacloy, Co. Tyrone. McAnespie had been repeatedly threatened. Private Holden was charged with manslaughter. These charges were dropped and he was subsequently fined for negligence. An out of court was reached in December 1991. In this particular instance the MoD accepted liability all along. (1 death)	
March 14, 1988:	**Kevin McCracken** was shot dead by a British soldier on the evening before the funeral of the Gibraltar 3. At the inquest it was disclosed that he had been shot in the back and was carrying an unloaded rifle. McCracken's father refused to take the witness stand in protest against the absence of the soldier who shot his son. The inquest jury commented that it was unfortunate the soldier involved refused to attend.(1 death)	June 1990
July 1, 1988:	An uninvolved taxi driver was killed by army bullets when an alleged SAS ambush of an IRA unit went wrong. **Kenneth Stronge** was hit while driving past N Queen Street barracks in Belfast. The soldiers opened fire, missing the IRA operatives, but hitting Stronge. (1 death)	
August 30, 1988:	**Gerard Harte, Brian Mullin** and **Martin Harte** were shot in an SAS-style ambush at Drumnakilly near Omagh, Co Tyrone. The three men were claimed by the IRA. (3 deaths)	
June 15, 1989:	A British Marine, **Adam Gilbert**, was killed by a colleague in North Belfast. It was claimed that the killing was accidental and the colleague was not prosecuted. (1 death)	August 3, 1990
August 9, 1989:	**Seamus Duffy** was killed by a plastic bullet in North Belfast. The RUC claimed he was involved in rioting. This was contradicted by the Duffy family. After an internal investigation supervised by the Independent Commission for Police Complaints, the DPP decided no prosecutions would be brought against any RUC members. (1 death)	June 1990

Date	Description of Incident	Inquest
September 9, 1989:	An UVF unit were escaping after committing a sectarian murder in N Belfast. A British army undercover unit rammed their motorcycle and shot the two men killing **Brian Robinson** and injuring David McCullough. Circumstances indicated that Robinson was finished off on the ground and that the undercover unit was in a position to catch the UVF unit prior to the sectarian murder. A **Panorama** programme in July 1990 produced new evidence which caused the DPP to re-open the case. In November 1991, the DPP informed Mrs Robinson that the decision not to prosecute any soldier in relation to the incident had been confirmed.(1 death)	
November 9, 1989:	RUC man **Ian Johnstone** was killed by a fellow undercover operative in the New Lodge area of Belfast. Johnstone was a member of the RUC's SAS-trained E4A undercover squad. (1 death)	February 1991
January 13, 1990:	**John McNeill, Eddie Hale** and **Peter Thompson**, who were robbing a betting shop, were shot dead by British army undercover operatives in West Belfast. McNeill was shot while waiting in the getaway car. Replica weapons were found connected to the other 2. Eye-witnesses heard no warnings and saw Hale and Thompson being finished off on the ground after they ran out of the betting shop. The DPP directed in December 1990 that there should be no prosecutions. In July 1991 however, a **BBC Panorama** programme produced new evidence. Because of this, the DPP has informed McNeill's widow that the RUC have been requested to carry out further investigations into the incident. As of January 1992, the RUC had still not completed the investigation. (3 deaths)	
April 10, 1990:	**Martin Corrigan**, an INLA operative, was killed in Armagh during an attack on an RUC man's house. The circumstances appear consistent with an ambush by security forces. Official reports claimed that there was an exchange of gunfire.(1 death)	
September 30, 1990:	Two teenage joy-riders, **Karen Reilly** and **Martin Peake**, were killed by a British Army patrol in west Belfast. A third teenager, Markiewicz Gorman was injured. NIO allegations that their car had crashed a road-block were contradicted by eye-witnesses, including Markiewicz Gorman, who claimed a hail of shots was fired at the car as it was slowing down, and that there was no road-block. 6 paratroopers were charged in August 1991 in connection with the incident, one for murder, three for manslaughter, and all 6 for conspiring to pervert the course of justice. The soldiers are now on remand in military custody, awaiting trial. (2 deaths)	

Date	Description of Incident	Inquest
October 9, 1990:	**Desmond Grew** and **Martin McCaughey** were shot dead by British undercover soldiers. Official reports claimed that the men were armed, when they were shot. Grew and McCaughey were members of the IRA acknowledged as being on active service. Later reports raised questions as to whether the men were carrying the weapons or whether weapons were found some distance from the mens bodies. In June 1991 three people reported to have been arrested at the scene and charged with possession of weapons had all charges against them dropped. (2 deaths)	
November 12, 1990:	**Alexander Patterson**, an INLA operative was killed by British undercover soldiers near Strabane Co. Tyrone. The killing took place outside the home of a UDR soldier. Official accounts claimed there was an exchange of gunfire. This incident was investigated by the **Panorama** programme in July 1991. The programme alleged that Patterson was a police informer, who, after the initial burst of shooting stopped the car and sat waiting for the security forces to arrive. At this point a soldier came up to the car and shot him dead, the programme alleged. It was reported in the **Guardian** in mid-September 1991, that the DPP had also re-opened this case. (1 death)	
December 30, 1990:	British marines opened fire on a car in disputed circumstances in Cullyhanna, Co Armagh. The army claimed that the car broke through a checkpoint. Eye-witnesses claimed the soldiers opened fire without provocation. **Fergal Caraher** was killed and his brother Michael was seriously injured. An independent inquiry was organised by the local community in June 1991. It was reported in the British **Independent** in January 1992 that a prosecution seemed likely. (1 death)	
April 10, 1991:	**Colum Marks**, acknowledged by the IRA to have been on active service, was killed by the RUC in Downpatrick. The official version claimed that he had been killed as he was about to launch a rocket attack on the barracks in Downpatrick. Other reports claimed that the rocket was actually found some yards away and that he was unarmed at the time he was shot. Other claims said that Marks had been dragged from the spot where he was shot and held for 25 minutes before being taken to hospital for emergency surgery. (1 death)	
June 3, 1991:	**Lawrence McNally, Michael Ryan** and **Tony Doris** were killed by uniformed undercover soldiers who fired a large number of shots at their car as it drove through Coagh, Co. Tyrone. The three men were acknowledged by the IRA to have been on active service. Two rifles were found in the car. The car burst into flames and the bodies of the men were burned beyond recognition. The families of the men claimed that the incident was evidence of a shoot-to-kill policy. (3 deaths)	

Date	Description of Incident	Inquest
September 29, 1991:	**Kevin McGovern**, a 19 year old student, was shot dead by the RUC in Cookstown Co. Tyrone. First official reports claimed that the shooting had taken place after McGovern had "appeared to throw something at the police". The RUC themselves retracted that statement later the next day saying that the shooting had been a mistake and acknowledging that McGovern had been an uninvolved and innocent victim. CAJ asked the Chief Constable to appoint an officer from an outside police force to investigate the killing, a call later echoed by others. This request was refused and the investigation is proceeding, supervised by the Independent Commission for Police Complaints. The family, meanwhile carried out an independent autopsy which showed that Kevin McGovern had been shot in the back. (1 death)	
November 3, 1991:	**Gerard Maginn**, a teenager from West Belfast was killed in a joy-riding incident. He was a passenger in a stolen car being chased by police between Lisburn and West Belfast. The driver and another passenger later claimed that the car had been stationary and they had been trying to give themselves up when the shooting took place. Conflicting reports also circulated that both uniformed and plain clothes RUC units were involved. (1 death)	

Total deaths from November 1982	**75**
Total number of deaths where inquests are pending	**45**

Appendix B

Basic Principles On The Use Of Force By Law Enforcement Officials

(These Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, on September 7, 1990. The United Nations General Assembly subsequently welcomed the Principles in its Resolution 45/121 of December 14, 1990 and invited all governments to be guided by them in the formulation of appropriate legislation and practice and to make efforts to ensure their implementation.)

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the use of force and firearms is unavoidable, law enforcement officials shall:
   (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
   (b) Minimize damage and injury, and respect and preserve human life;
   (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
   (d) Ensure that relatives or close friends of the injured or affected person are notified

at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special Provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life..

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorised to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcemen. agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms but only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Government and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11(f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependents accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting or have resorted, to the unlawful use of force and firearms, and they did not take all measures to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Appendix C

Principles On The Effective Prevention And Investigation Of Extra-legal, Arbitrary And Summary Execution

Annex to the United Nations Economic and Social Council resolution 1989/65 of 24th May 1989.

Prevention

Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.

Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

Governments shall made every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are dis-

covered, they should be carefully exhumed and studied according the systematic anthropological techniques.

The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time of enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions.

Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

List Of CAJ Publications

No. 1 **The Administration of Justice in Northern Ireland:** the proceedings of a conference held in Belfast on June 13th, 1981 (no longer in print).
No. 2 **Emergency Laws in Northern Ireland:** a conference report, 1982 (no longer in print)
No. 3 **Complaints Against the Police in Northern Ireland,** 1982. (price £0.50).
No. 4 **Procedures for handling complaints against the Police,**1983 (updated by pamphlet no. 16)
No. 5 **Emergency Laws: suggestions for reform in Northern Ireland,** 1983 (photocopy available).
No. 6 **Consultation between the police and the public,** 1985.
No. 7 **Ways of protecting minority rights in Northern Ireland,** 1985 (price £1.00).
No. 8 **Plastic Bullets and the Law,** 1985 (updated by pamphlet no.15).
No. 9 **The Blessings of Liberty":** An American Perspective on a Bill of Rights for Northern Ireland, 1986 (price £1.50).
No. 10 **The Stalker Affair:** More questions than answers, 1988 (price £1.50).
No. 11 **Police Accountability in Northern Ireland,** 1988 (price £2.00).
No. 12 **Life Sentence and SOSP Prisoners in Northern Ireland,** 1989 (price £1.50).
No. 13 **Debt - An Emergency Situation?** A history of the Payments for Debt Act in Northern Ireland and its effects on public employees and people on state benefits. 1989 (price £2.00).
No. 14 **Lay Visitors to Police Stations in Northern Ireland,** 1990 (price £2.00).
No. 15 **Plastic Bullets and the Law,** 1990 (price £2.00).
No. 16 **Cause for Complaint.** The system for dealing with complaints against the police in Northern Ireland 1990 (price £2.00).
No. 17 **Making Rights Count.** Includes a proposed Bill of Rights for Northern Ireland, 1990 (price £3.00).
No. 18 **Inquests and Disputed Killings in Northern Ireland,** 1992 (price £3.50/IR£4.00)
Civil liberties in Northern Ireland: The C.A.J. Handbook, 1990 (price £4.95).
A Briefing Paper on the Northern Ireland (Emergency Provisions) Bill, 1991 (Photocopy available, price £3.00).
Human Rights in Northern Ireland: A submission to the United Nations Human Rights Committee, 1991 (price £1.50).
Submission to the United Nations Committee Against Torture, November 1991 (price £1.50).
Submission to the Royal Commission on Criminal Justice, November 1991 (price £1.50)