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## **INQUEST's briefing and proposed amendments for the committee stage of the Corporate Manslaughter and Homicide Bill 2006**

1. INQUEST is the only NGO in England and Wales that works directly with the families and friends of those who die in custody. This includes deaths at the hands of state agents and in all forms of custody; police, prison, young offender institutions, secure training centres and immigration detention centres. We provide a free, confidential advice service to all families who go through an inquest process including those families whose relatives have died at work or following major disasters. In 2005 we worked on 282 cases advising over 1000 family members.
2. Through our casework over the last 25 years, INQUEST has a unique overview of how the inquest system operates from the perspective of bereaved families and their advisers. We extract policy issues arising from contentious deaths and their investigation and campaigned with and on behalf of bereaved families and their legal representatives for changes in practice to prevent deaths. Our casework service informs our research, parliamentary and policy work and we are widely consulted by; Government Ministers and Departments, MPs, lawyers, academics, policy makers, the media and the general public.
3. We work closely with the Centre for Corporate Accountability and are represented on their board of trustees. We therefore support their detailed comments on the broader

provisions in the Bill but the focus of this briefing paper is on our specific concerns regarding deaths in custody and Crown immunity.

4. INQUEST has long supported reform in this area and therefore welcomed the decision by the Government to introduce a Corporate Manslaughter and Homicide Bill. We believe that corporate bodies must be held accountable for their actions and where they have caused a person's death, corporations and the individuals that run them, should be prosecuted.
5. It is quite clear that this is not reflected in the current legislation. The Bill falls well short of what the Government initially indicated any corporate manslaughter legislation would cover. It fails the families of those who have died in custody and other contentious circumstances. It also fails to uphold the public interest and runs counter to the spirit of democratic accountability.

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6. **INQUEST recommends the following amendments to the Bill:**

1. **Clause 4, Stand Part** – with the effect of removing the exemption for public policy decisions and for performance, by public or private bodies, of exclusively public functions.
2. **Clause 4, delete sub-clause (2) and Clause 4, delete lines 33 to 37** – with the effect of removing the exclusively public function exemption
3. **Clause 6, Stand Part and Clause 7, Stand Part** – with the effect of removing the exemptions for policing, law enforcement and emergency services.

## **Exemptions for public bodies and deaths in state custody**

7. INQUEST is seriously aggrieved by the explicit exemptions in the Bill regarding deaths in custody. The Government's decision to exclude public bodies from the remit of the legislation has no logical, legal or moral case where grossly negligent practices have caused fatalities.
8. Our casework with families over the last 25 years has revealed serious shortcomings in the mechanisms of legal and democratic accountability. Families have clear expectations of what they want from an investigation; an explanation of how and why the deceased died, for lessons to be learned to prevent other deaths and for those responsible at both an individual and senior management level to be held to account.
9. Between 1995 – 2005 INQUEST's casework and monitoring service has highlighted over 2000 deaths in police and prison custody. Many of these deaths have raised issues of negligence, systemic failures to care for the vulnerable, institutional violence, racism, inhumane treatment and abuse of human rights.
10. The number of custodial deaths is a public scandal. Many of our cases reveal a disturbing catalogue of failings in the treatment and care of vulnerable people in custody. Many of these deaths raise questions about the ability of the state to fulfil its duty under Article 2 of the Human Rights Act 1998 to protect the right to life of those in its care and prevent inhuman and degrading treatment.
11. INQUEST's monitoring has shown how the state uses the inquest and not criminal prosecution for the public examination of deaths in custody. It is extremely rare for there to be a prosecution after a death in custody even where there has been an inquest verdict of unlawful killing. Despite a pattern of cases where inquest juries have found overwhelming evidence of unlawful and excessive use of force or gross neglect, no police or prison officer has been held responsible, either at an individual level or at a senior

management level, for institutional and systemic failures to improve training and other policies.

12. Since 1990 'unlawful killing' verdicts have been returned by inquest juries in 10 cases. None of them has led to a successful prosecution.
13. In light of this, we had hoped the Government would use this opportunity to reform the law. Instead it appears that every attempt has been made to ensure that issues related to deaths in custody are excluded from any future corporate manslaughter prosecution.
10. We strongly object to the explicit exemptions in the Bill that allow specified public bodies to escape prosecution when their activities cause the death of members of the public. We do not believe it is justified that police, prisons, emergency services and child custody services should be immune from prosecution in relation to these deaths.
11. We also strongly object to the exemption of intrinsically public functions performed by the private sector on behalf of the State. This has the effect of making private contractors who provide prison or detention services and secure training centres to be outside the scope of the bill, except in their capacity as an employer.
12. We note that both the Independent Police Complaints Commission (IPCC) and the joint report from the Home Affairs and Work and Pensions Committees have stated that having the option of a corporate manslaughter prosecution is important to maintain public confidence. We believe this exclusion sends entirely the wrong message to public bodies and the way in which they make decisions involving the safety of the public. The message it sends out is that state agents are above the law.
12. We note that in the Government's Reply to the First Joint Report (March 2006), they reiterated their confidence in the strong framework for investigating and securing accountability for deaths in custody, emphasising the independence of IPCC and Prison

and Probation Ombudsman (PPO) investigations. The Government's response noted that all deaths in police custody are subject to a Coroner's inquest and that individual prosecutions can be brought under criminal law where appropriate.

13. This contradicts the reality. There has been widespread parliamentary and public concern about the current inquest and investigation system. Existing mechanisms of accountability are failing. This is exemplified by the lack of any monitoring of inquest verdicts and the lack of a duty for the State to act on inquest findings. The government is expected to publish a Bill proposing to reform the inquest system in the next parliamentary session to deal with its failings.
14. Furthermore the PPO, IPPC and inquests proceedings are not about determining *liability* and it is disingenuous to present them as doing so.

## ARTICLE 2

14. It is important to note that on some occasions Article 2 *requires* a criminal remedy regardless of the other remedies available, and regardless of whether the Government considers it "appropriate". In several recent high-profile cases the domestic courts have held that the other principal remedy, the inquest regime, is not a sufficient means of the state discharging its Article 2 liabilities.
15. Article 2 imposes on the State:
  - (i) a negative duty not to deprive a person of his/her life save in the limited circumstances outlined in Article 2(2);
  - (ii) a positive duty to take reasonable steps to safeguard the lives of individuals, especially in circumstances where there is a known real and immediate risk to their lives; and
  - (iii) a procedural duty to investigate a death where it is arguable that either the negative or the positive duty to protect life has been breached.

16. In the case of *Oneryildiz v Turkey*, App. No. 48939/99 the Strasbourg Court concluded that the failure to ensure that those responsible for a death are criminally prosecuted, (irrespective of the other remedies that may be available) may amount to a violation of Article 2:
  
18. The issue was considered again in *Ramsahai v Netherlands*, App. No. 52391/99 (Decision, 3 March 2005). The applicants were the relatives of an 18 year-old shot by the police in the course of his arrest. The applicants raised a number of complaints under Article 2 of the Convention. The European Court found that the Government's objection that the applicants had failed to exhaust domestic remedies failed. It found that the applicants had been entitled to seek a remedy in criminal law, which was "appropriate to their grievances as subsequently presented to the court".
  
19. For these reasons we urge the government to remove the exemptions in the Bill to allow public bodies (and private bodies performing state functions) to be equally covered in the proposed legislation. This is necessary to fulfil compliance with the Human Rights Act and ensure that public accountability and public confidence in the state is upheld.

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INQUEST's submission to the Joint Committee on Human Rights on deaths in custody is available from [www.inquest.org.uk](http://www.inquest.org.uk)