

**LIBERTY**

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

**Liberty's briefing on the Report of the  
Chilcot Iraq Inquiry**

**July 2016**

## About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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## Background

1. The Iraq Inquiry was published on 6 July 2016. Seven years in the making, the report was commissioned by Prime Minister Gordon Brown in 2009 to consider the period from summer 2001, before military operations began in Iraq in March 2003, and the UK's subsequent involvement in Iraq right up to the end of July 2009. Comprising twelve volumes and some 2.6 million words, introducing his Report Sir John noted that by the end of 2009, the invasion of Iraq and subsequent instability in the region had caused at least 150,000 Iraqi deaths, the displacement of over one million people, and more than 200 British citizens had also died.<sup>1</sup>
2. The Report forensically and comprehensively catalogues a seemingly relentless succession of failures at all levels of Government at all points in the ill-conceived and poorly-executed build up to war, the invasion of Iraq, and its aftermath. The then Prime Minister, his cabinet colleagues, our intelligence agencies, the civil service and the armed forces were all implicated in these errors. In the case of senior Cabinet ministers and their advisers, basic adherence to the rule of law, evidence-based policy making, and the protection of human rights came second to egos, ideology and political grandstanding.
3. The mistakes identified in the report are striking because they led to the deaths of hundreds of thousands of people and resulted in grave human rights violations on a massive scale that continue to the present day. But while some involved complex matters, a great number of them were breathtakingly simple and in Liberty's view reflect common mistakes still made day in day out by those who govern us.
4. The vision for Iraq and its people – issued by the US, the UK, Spain and Portugal, at the Azores Summit on 16 March 2003 – included a vow that Iraq would be left with a government that would uphold human rights and the rule of law as cornerstones of democracy. But in the preparation, invasion, and aftermath of war the UK failed to adhere to these basic principles and instead perpetrated human rights violations against its own service people and those under their control. For the UK to have credibility in any future endeavours to promote these values, it is essential that respect for human rights embodies the work of our Government both at home and abroad.

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<sup>1</sup> Statement by Sir John Chilcot, 6 July 2016, available at : <http://www.iraqinquiry.org.uk/the-inquiry/sir-john-chilcots-public-statement/> .

5. When the Chilcot Review was established, Prime Minister Brown stated:

*“The Inquiry is essential because it will ensure that, by learning lessons, we strengthen the health of our democracy, our diplomacy and our military.”<sup>2</sup>*

We hope that the Report and the debates it generates in Parliament will form the start of a process of genuine learning by Government, and will mark an end to UK government ministers’ systematic and cynical demotion of human rights. Sir John’s recommendations must be implemented and respect for due process, evidence and human rights values must be restored across all areas of public policy making.

### **Failure to respect the Rule of Law<sup>3</sup>**

#### *Legal advice on war*

6. While the Report stated that the Inquiry was not equipped to express a view on the legality of war in Iraq – a question that only a properly constituted international court could determine – it was clear that the process by which the Government decided there was a legal basis for war was *“far from satisfactory”*.
7. It describes a wholly irregular and informal process by which the Attorney General was given instructions and was told not to share his advice with other Cabinet colleagues whose responsibilities were directly engaged by the issue such as the Secretaries of State for Foreign Affairs or Defence. It also describes how the Attorney General’s initial advice that a further UN Security Council Resolution (UNSCR) in addition to UNSCR 1441 would be necessary in order for military action to be lawful morphed over the course of time into advice that there was a *“reasonable case”* which then became *“the better view”* that an additional UNSCR was not needed if there were strong factual grounds for concluding that Iraq had failed to take the final opportunity offered by 1441. When the Attorney General asked the Prime Minister to confirm that Iraq had committed the *“further material breaches”* required under UNSCR 1441, the Prime Minister did so the following day in terms described in the Report as *“perfunctory”* and providing no evidence of a material breach. No formal record was made of that decision and the precise grounds on which it was reached *“remain unclear”*. On the basis of this decision, the advice presented to Cabinet was that the Government’s legal position was that military action was lawful. There was no Cabinet level sight or debate of earlier advice, no awareness of conflicting

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<sup>2</sup> House of Commons, Official Report, 15 June 2009, columns 23-24.

<sup>3</sup> See Volume 5, Section 5.

arguments, nor seemingly any appetite to question the advice ultimately presented to them.

#### *Side-lining of constitutional conventions*

8. In the UK's uncodified constitution, Cabinet is the main mechanism by which senior members of Government take responsibility for its most important decisions. Under the Ministerial Code, the business of Cabinet consists of (a) questions which significantly engage the collective responsibility of Government because they raise major issues of policy or of critical importance to the public or (b) questions on which there is an unresolved argument between departments. The decision to go to war clearly comes within this definition.<sup>4</sup>
9. However the report details the manner in which Cabinet members were side-lined from discussions about Iraq, with most decisions taken between Prime Minister Tony Blair and individual Secretaries of State. While some of these meetings were minuted, others were not. Iraq was discussed substantively at Cabinet on only five occasions in the year leading up to the invasion of Iraq.

#### *Failure to support international institutions*

10. The Report notes that the Charter of the UN vests responsibility for the maintenance of peace and security with the Security Council. While the UK initially sought UN support for further military action, it discarded this course of action when it became clear that it would not achieve the outcome it desired as international partners continued to seek a peaceful solution, and pushed on ahead with unilateral military action. The Report condemned the hypocrisy of this approach: "*The UK was claiming to act on behalf of the international community to uphold the authority of the Security Council knowing that it did not have a majority in the Security Council in support of its actions. In those circumstances, the UK's actions undermined the authority of the Security Council.*"<sup>5</sup>

#### *Analysis*

11. For any democracy to function, it is imperative that public servants and institutions of state act lawfully. However, the Report reveals disregard at the highest level of Government for respect for the rule of law and the proper processes of governance.

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<sup>4</sup> The Ministerial Code paragraph 2.2, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468255/Final\\_draft\\_ministerial\\_code\\_No\\_AMENDS\\_14\\_Oct.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468255/Final_draft_ministerial_code_No_AMENDS_14_Oct.pdf)

<sup>5</sup> Executive Summary, para 439.

It is clear from the evidence taken by the Panel that the Prime Minister did not at any stage feel genuinely encumbered by the rules of international law. He encouraged those around him to view legal advice not as outlining the essential parameters within which the Government must operate but as a malleable concept and a challenge that could be met by geo-political manoeuvring and reverse engineering. His Cabinet colleagues were not sufficiently involved in the decision-making process but nor were they sufficiently interested in the legality or otherwise of the grave actions they were being asked to sanction to undertake basic questioning of the legal advice put forward. This episode also raises important questions about the conflicts and pressures inherent in the role of the Attorney General, who is both legal adviser to Government and a member of Cabinet appointed directly by the Prime Minister. When these conflicts and pressures become too great there are serious implications for Government policy making and human rights. In the years subsequent to the period covered in the Report, former Attorney General, Dominic Grieve QC, was sacked by Prime Minister David Cameron, as a result of his legal advice on UK withdrawal from the ECHR.<sup>6</sup> From a constitutional perspective this situation is deeply unsatisfactory. ***While international law enforcement mechanisms remain weak, Government's unfettered ability to influence or cherry pick its legal advice allows it to act with impunity.***

12. Working in accordance with international partners to uphold our international treaty obligations was treated as desirable but not necessary. In the years subsequent to those covered by the Inquiry Report the UK has continued to have an ambiguous relationship with the international rule of law as evidenced by the non-implementation of the European Court of Human Rights judgment in *Hirst v UK*. ***The UK Government should lead by example and adhere to its international obligations, be it abiding by the processes set out by the UNSC, implementing judgments of international courts, or, as recommended by Chilcot, ensuring that Cabinet members are appraised of the full – and not always favourable nature – of the Government's legal advice so they can ensure that they act in accordance with law.***

### **Rejection of evidence-based policy making<sup>7</sup>**

13. Consistent Joint Intelligence Committee assessments were that Iraq retained some chemical and biological weapons, but that co-operation between Saddam Hussein's

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<sup>6</sup> *Tory Minister, Dominic Grieve, was sacked after taking a stand on ECHR*, The Times, 21 July 2014 available at - <http://www.thetimes.co.uk/tto/news/politics/article4153112.ece>.

<sup>7</sup> See Volume 4

regime and terrorists groups including Al Qaeda was unlikely, and that if sanctions were removed or became ineffective it would take Iraq at least five years to produce nuclear weapons. It also found that Korea, Libya and Iran were of greater concern than Iraq.

14. The UK Government chose to present to the public a view that Iraq posed a great and imminent threat to the UK. In the infamous September 2002 dossier, the foreword written by Tony Blair stated that *“he believed”* that the *“assessed intelligence”* had *“established beyond doubt”* that Saddam Hussein continued to produce weapons. The Joint Intelligence Committee, which had ownership of the report, failed to correct or clarify that in fact there was considerable doubt as to the existence of weapons. In Parliament, the Prime Minister emphasised the possibility of terrorists obtaining and using weapons of mass destruction from Iraq.
  
15. Following the invasion and occupation of Iraq, no weapons were ever found. Chilcot found that there was an ingrained belief in the security and policy community that Iraq did retain weapons and at no stage was the proposition that Iraq might no longer have weapons or programmes ever considered. The Report criticised the manner in which *“Intelligence and assessments were used to prepare material to be used to support Government statements in a way which conveyed certainty without acknowledging the limitations of the intelligence.”*

#### *Analysis*

16. The Report shows that the decision to go to war was not premised on a robust and honest assessment of the available evidence but rather on inaccurate political beliefs and limited and flawed intelligence reports. The failure of politicians and the intelligence community to be led by the evidence and be straightforward with the public came at a huge price, and is a mistake that was replicated time and time again in decisions about Iraq. As further examples, the Report found that repeated civilian and military assessments that safety in South Basra could only be secured with more rather than fewer troops were ignored and decisions to reduce troop levels in Iraq were based on desire to send more troops to Afghanistan rather than an analysis of the situation in Iraq.<sup>8</sup> Chilcot also noted that *“Despite explicit warnings, the consequences of the invasion were underestimated.”*

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<sup>8</sup> See Volumes 8, 9 and 10.

17. The Report highlighted the need to identify and accurately describe to the public the evidence base, and the need to be scrupulous in discriminating between facts and knowledge on one hand and opinion on the other. While these recommendations are made in the context of similar future decisions about the use of intelligence to justify military action, Liberty frequently sees important domestic public policy decisions driven by rhetoric, assumptions, and prejudices, with the mischaracterisation of problems and their causes leading to inappropriate and counter-productive responses from Government. Often, claims made by the Executive go untested by Parliament and the Executive dominates parliamentary timetabling to its advantage. ***Government must now ensure that the Report's recommendations for evidence-based and frank policy is applied across all aspects of public policy-making.***

18. The report also raises important questions about the leadership, culture, activities, and reliance placed on information provided by the intelligence and security services. The report makes clear the fragmented and inevitably incomplete picture that can be created by intelligence and juxtaposes it with both the blunt manner in which it is used to persuade the public and the central role it plays in shaping policy, with intelligence chiefs more involved in decision-making in the lead up to war than elected representatives such as members of the Cabinet. **The intelligence agencies themselves must take steps to ensure that they are honest organisations who are frank with the public about their inherent limitations rather than presenting themselves and the information they provide as beyond doubt and without capacity for mistake or abuse. The Executive and Parliament must ensure that the agencies are held to account, that their information is treated as piece of the puzzle rather than providing the whole picture, and their powers strictly necessary. As the Investigatory Powers Bill passes through the final stages of its parliamentary process, the democratic function of Parliament in determining the powers of the intelligence and security agencies is as crucial as ever.**

### **Prioritisation of a geo-political relationship over the rule of law, process and planning**

19. The Report states that the UK's relationship with the US was a "*determining*"<sup>9</sup> factor in the UK Government's decisions over Iraq. On the timetable for military action and

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<sup>9</sup> See Executive Summary, para 359.



planning for the post-conflict period the UK Government decided it was “*right or necessary*” to defer to the US, on the grounds that vital areas of co-operation could be damaged by a failure to provide full support and the believed that the best was to influence US policy was to seek to persuade from the inside, on the basis of having given its “*full and unqualified support*”.

20. However the Report concluded that “*Had the UK stood by its differing position on Iraq – which was not an opposed position, but one in which the UK had identified conditions seen as vital by the UK Government – the Inquiry does not consider this would have led to fundamental or last change in the UK’s relationship with the US.*”<sup>10</sup> More broadly, while Prime Minister Tony Blair was successful in getting President Bush to initially seek UNSC support for an invasion, the report found that “*the UK took false comfort that it was involved in US decision-making from the strength of that relationship.*”<sup>11</sup> The report describes how the UK sought to establish governance principles but failed to get the US to sign to a MOU, despite the fact that the two countries were named as Joint Occupying Powers, and listed a huge number of critical decisions and events that passed without the UK having any influence or sometimes even any prior knowledge, including the disastrous decision to dissolve a number of military and security entities in Iraq (known as the De-Ba’athification process).

### *Analysis*

21. While relationships with other leaders of other countries are of course important, vital strategic decisions about the future of our country must not be fettered to those leaders, nor to the unchecked, Executive power of a Prime Minister. Similarly, positive Executive relationships cannot replace basic principles of good administration and governance. **By-passing the expertise of Cabinet, Parliament and the civil service undermines democratic legitimacy and is a waste of skill, knowledge and experience. Doing so not only risk arbitrary decision-making, but as evidenced by the Report means that proper planning and processes are not put in place, with devastating consequences.**

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<sup>10</sup> See Executive Summary para 379.

<sup>11</sup> See Executive Summary para 707.

## Failure to equip troops and adhere to basic protections<sup>12</sup>

22. The Report identified that the Ministry of Defence was slow in responding to the developing threat in Iraq from Improvised Explosive Devices (IEDs). It found that while work had begun before 2002 to source protected patrol vehicles, they were only ordered in July 2006 and following Ministerial intervention. In addition, the Report found that “Harmony Guidelines”, which are designed to protect service personnel from suffering PTSD by achieving a balance between competing aspects of Service personnel's lives (such as operations, time recuperating after operations, personal and professional development, unit formation and time with families) were not adhered to.

### *Analysis*

23. The Human Rights Act is currently being used by family members of service men and women who were killed in Iraq when the vehicles they were in exploded. Their families are seeking to establish that the Ministry of Defence breached the right to life of their loved ones, not because those individuals were sent to war but because the equipment they were sent with was wholly inadequate to the task of protecting them. So far, the Supreme Court has allowed for the claims to proceed to a full hearing. It has not reached a conclusion as to whether the Ministry of Defence owed a duty of care under the Convention to the deceased individuals and that it breached that duty.<sup>13</sup>

24. The Ministry of Defence has sought to claim that the Human Rights Act does not apply to soldiers stationed outside the UK, and the Government has claimed that it intends to repeal the HRA in order to prevent claims such as these proceeding. ***It is to be hoped that one outcome of this damning Report will be to ensure that the Government retreats from its wrong-headed and misjudged attempts to strip serving members of the armed forces of their human rights and to falsely claim that the UK's human rights obligations do not apply to its actions abroad.***

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<sup>12</sup> See Volume 11, Sections 14.1 and 14.2.

<sup>13</sup> *Smith and others v The Ministry of Defence* [2013] UKSC 41.

## Counter-productive counter-terrorism strategy

25. In November 2001, the JIC assessed that Iraq had played no role in the 9/11 attacks on the US and that practical co-operation between Iraq and al Qaida was 'unlikely'. It found there was no credible evidence of covert transfers of WMD-related technology and expertise from Iraq to terrorist groups.
26. Over course of 2002 and 2003 Mr Blair was repeatedly advised that an invasion of Iraq was expected to increase the threat to the UK and UK interests from Al Qaida and its affiliates. For example, a JIC assessment in Feb 2003 said that Al Qaeda would remain the greatest threat to UK and activity would increase at the onset of any military action against Iraq. It also warned that Iraqi regime collapse could see chemical and biological material transferred to terrorists. JIC concluded that *"the broader threat from Islamist terrorists will also increase in the event of war, reflecting intensified anti-US/anti-Western sentiment in the Muslim world, including among Muslim communities in the West."*<sup>14</sup> JIC repeated this warning in March 2003.
27. Baroness Manningham-Buller, former Director General of MI5, told the Inquiry that action in Iraq "radicalised" a number of individuals, and that hard evidence could be produced to show that the invasion of Iraq increased the terrorist threat to the UK.

## Analysis

28. The finding that the Iraq invasion significantly increased terrorist activity towards the UK is a gravely serious one. Government has an ethical and - by way of the Human Rights Act - legal obligation to protect life. Blair's administration claimed that its first duty was to protect citizens. That his Government contributed to an increased risk to British lives is a damning indictment of his 'War on Terror' strategy.
29. From secret courts to statelessness via mass surveillance, 42-day pre-charge detention, and control orders, in the years since 9/11, the "War On Terror" has produced a great number of aggressive, divisive and deeply counter-productive attempts to reduce the threat of terrorism. ***With the Government's flagship Investigatory Powers Bill currently passing through Parliament, the Prevent programme widely discredited and a Counter-Extremism Bill on the way,***

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<sup>14</sup> See Executive Summary para 344.

***Government should take this opportunity to commission an impartial review of effectiveness of post 9/11 policy in protecting the UK from terrorism.***

### **Unanswered questions**

30. One matter the Chilcot Inquiry did not investigate was the complicity of the UK in the extraordinary rendition and torture. When the Coalition Government came to power in 2010, Prime Minister David Cameron promised that an independent, judge-led inquiry would be established to “get to the bottom” of allegations about rendition and torture. He was clear that *“I do not think for a moment that we should believe that the ISC should be doing this piece of work”* and warned that *“The longer these questions remain unanswered, the bigger will grow the stain on our reputation as a country that believes in freedom, fairness and human rights.”*<sup>15</sup>
31. The Prime Minister initially appointed Sir Peter Gibson to conduct the inquiry, but it became clear that the process was Cabinet Office led which failed to satisfy nor gain the co-operation of those subjected to rendition and torture. It was also far cry from the independent and substantive investigation required by human rights law. The Government then decided that even this limited inquiry could not continue while the CPS decided whether to prosecute any individuals for their involvement, and announced that at some point in the future the ISC would report on these allegations.
32. The decision of the Crown Prosecution Service earlier this month not to bring charges on the basis of “insufficient evidence” was as disappointing as it was inexplicable. Evidence showing UK involvement in the 2004 kidnap and rendition of a pregnant woman and four young children to Libya is already in the public domain, and the Metropolitan Police announced that they had handed over 28,000 pages of evidence to the CPS.
33. No more time should be lost in establishing an independent, judicial inquiry into torture, as promised in July 2010.

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<sup>15</sup> House of Commons Hansard, 6 July 2010, Prime Minister David Cameron, Column 513.