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The Unnatural Death of Dr. David Kelly: Template for "Legalised Cover-up" of Political Assassinations

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At the time of writing it is September 2013. What would happen if Dr Kelly's body were to be found today? Or, what if the campaign to re-open his inquest were successful? Could citizens feel confident that an inquest would be opened, chaired by an appropriately skilled (medically qualified) Coroner who can call a jury, subpoena witnesses, place witnesses under oath and deliver an independent, evidence-based verdict? Most would agree that all these criteria would need to be met as minimal conditions for justice to be done and seen to be done after years of obfuscation by the executive. What the citizenry want for Dr Kelly is due process in a proper courtroom.

Dream on. Since the death of Dr Kelly and the atrocity of the Iraq War, the British government have been stealthily chipping away the fundamental tenets of the Coronial and Inquiries systems to ensure absolute political control and all necessary secrecy with respect to the death of any individual. The 2005 Inquiries Act and the 2009 Coroners and Justice Act can, if deemed politically necessary, be used in conjunction to ensure that any investigation into a death can be held in secret and citizens (including family members) can be refused access to parts of proceedings, evidence and even the final report.

This article sets out the story.

UK Inquiries- the replacement of judicial control of Inquiries with ministerial control

Since 2000 and up until recently it has been possible to halt a Coroner's Inquest and commence a public inquiry using an amendment to the Coroners Act 1988 (section 17A) (1). There was no automatic requirement in law to hold such an inquiry under statutory conditions. This arrangement raised concerns, not least those expressed by Norman Baker MP (Lib-Dem, Lewes) senior medical experts, academics and numerous other citizens in relation to the hastily convened ad hoc inquiry into the death of Dr Kelly.

Prior to the implementation of the Inquiries Act 2005, a joint public statement was issued by Amnesty International, British Irish Rights Watch, The Committee on the Administration of Justice, Human Rights First, The Human Rights Institute of the International Bar Association, INQUEST, JUSTICE, Lawyers' Rights Watch Canada, The Law Society of England and Wales, Pat Finucane Centre and the Scottish Human Rights Centre (2). The statement raised a number of concerns:

> "The Bill, being discussed this week by a Standing Committee of the House of

> Commons, would, if enacted, alter fundamentally the system for establishing and running inquiries into issues of great public importance in the UK, including allegations of serious human rights violations. Should it be passed into law, the effect of the Bill on individuals and cases that merit a public inquiry would be highly detrimental. In particular, in those cases where one or more person has died or been killed, the right of their surviving family members to know the truth about what happened and to an effective investigation could be violated by the operation of the Bill."

Despite authoritative protest and with its serious implications reported only in fragments by the media, the Inquiries Act 2005 (3) was implemented .The government repealed the Tribunals of Inquiry (Evidence) Act 1921 which had served UK citizens for almost a century and replaced judicial control of Inquiries with ministerial control. What this means is that the executive now:

· set the terms of reference for an inquiry

· can change these at any stage in proceedings; no independent parliamentary scrutiny of these terms is allowed

· appoint the chair who need not be legally qualified

· have discretion to dismiss any member of the inquiry

· can place restrictions on funding an inquiry;

· can suspend an inquiry;

· can terminate an inquiry at any stage;

· can restrict public access to inquiry proceedings;

· can restrict public access to any evidence submitted to an inquiry; and

· can place restrictions on public access to the final report of an inquiry "in the public interest"

Whereas previously a public inquiry would have reported to Parliament, under the 2005 Act the Chair reports to a Minister who may place restrictions on the report or parts of the report as they see fit. For example, Justice Leveson submitted his final report to the Home Secretary, The Rt Hon Theresa May MP, and the Secretary of State for Culture, Olympics, Media and Sport, The Rt Hon Jeremy Hunt MP who had control of the inquiry (4). Sir John Chilcot who, along with the rest of his panel is NOT legally qualified (5), will provide his long awaited report on Iraq to the Cabinet Office as the "coordinating body" of the Inquiry, rather than Parliament.

The 2005 Act does not grant the independence to inquiry chairs and panels that has made their role so critical in the investigation of issues of national importance, particularly where public confidence has been damaged. Indeed many (if not most) UK public inquiries have been held for exactly this reason. The thorough investigation of even singular events can expose systemic problems; from inefficiency and incompetence to fraud and corruption. On numerous occasions it has been government ministers themselves whose decisions and activities have been subject of public inquiry as in the case of the Iraq War. Currently there

is nothing in law to prevent a government Minister being in control of an inquiry into events which have occurred in their own office.

How does this situation impact on inquests?

Section 1(1), of the Inquiries Act 2005 sets the scene for its use:

A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that-

(a) particular events have caused, or are capable of causing, public concern, or

(b) there is public concern that particular events may have occurred.(6)

As the reader will observe, the language is exceptionally vague and as such provides for cover up of any event or train of events via a shroud of secrecy if politically convenient. Amnesty International has asked members of the British judiciary not to serve on any inquiry held under the Act, as they contend that "any inquiry would be controlled by the executive which is empowered to block public scrutiny of state actions." Sadly, Amnesty International's advice has been severally ignored.

The Coroners and Justice Bill 2009

The 2005 Act and the 2009 Act can be used to block public inquests. In July this year, Part 1 of the 2009 Coroners and Justice Act was implemented after only a few weeks consultation period with professionals in the legal and medical fields. It sets out, on the surface, to achieve a laudable agenda:

· to put the needs of bereaved people at the heart of the coroner system

· for coroner services to continue to be locally delivered but within a new national framework, with national leadership, and

· to enable a more efficient system of investigations and inquests.

These seemingly benign objectives collapse when we discover that Paragraph 3 of Schedule 1 sets out the circumstances in which a senior coroner's investigation must be suspended where there is an inquiry under the Inquiries Act 2005. It is based on section 17A of the 1988 Act (7). This provision enables the government to suspend an independent inquest into any death in favour of an inquiry, which, under the Inquiries Act 2005 can be held wholly or partly in secret. How come?

Jack Straw has campaigned for years for the right of the executive to hold secret inquests if they so desire. He originally proposed such inquests in a Counter-Terrorism Bill in 2008 and then later the concept appeared in February 2009 in the Coroners and Justice Bill (8). The threat of a healthy Labour back-bench rebellion saw the plan fail at this stage.

Pushing determinedly onwards, Justice Secretary Jack Straw then told the BBC that 'where it was not possible to proceed with an inquest under existing arrangements, the government would "consider" establishing an inquiry under the Inquiries Act 2005 instead'(9).

Should a re-opened investigation into the death of Dr Kelly be somehow won by the

citizenry, two options are possible:

First, Dr Kelly's death would most likely fit the criteria into S1 (1) of the Inquiries Act 2005 (see above). Subsequently his death would quite likely be re- investigated under the absolute control of a government Minister and any lies and secrets easily kept locked away.

Second, If there was public insistence on a coroner's inquest, and if implemented retrospectively, the Coroners and Justice Act 2009 forbids the Coroner and/or jury to disagree with the findings of any previous inquiry and is articulated thus in the explanatory notes:

> "Paragraph 9(11) prevents the resumed senior coroner's investigation from reaching a conclusion which is inconsistent with the outcome of the inquiry which triggered the suspension or any criminal proceedings that had to be concluded before it could be resumed. For example, if the outcome of an inquiry was a finding that a particular individual had committed suicide, a senior coroner's investigation cannot conclude that the particular individual was unlawfully killed" (10).

One could be forgiven for thinking that paragraph 9(11) was written with Dr Kelly and Hutton's conclusion in mind. This is a bizarre inclusion to say the least; if new evidence is presented or witnesses offer different evidence whilst under oath

Which leads the jury or coroner to a different conclusion, how can the inquest credibly deliver the same verdict?

The British government can play a game both ways. A recent example of political interference is the decision to refuse the Coroner's request for the establishment of an inquiry into the murder of Alexander Litvinenko. The government acknowledged that political and diplomatic considerations contributed to its decision (11).

A Restriction Order is already in place in the context of the Azelle Rodney Inquiry limiting publication of "evidence or documents given, produced or provided to this Inquiry" (12, 13). In the non-statutory inquiry into the suspected Iraq genocide, a mass killing including UK servicemen and women who died, the power of the Attorney General has been utilised once again to block publication of communications occurring between Blair and Bush prior to the Iraq war.

Conclusion

The Joint Committee on Human Rights have stated that "the independence of an inquiry is put at risk by ministerial power to issue these restrictions, and …this lack of independence may fail to satisfy the Article 2 obligation to investigate…" It also was concerned that the ministerial power to withhold publication of all or part of an inquiry report is "wide enough to compromise the independence of an inquiry." (14).

The current legislative 'tapestry' has effectively tightened up control by the executive and slackened off due process expectations exposed by the campaign around Dr Kelly's case. Suppression of evidence or reports on grounds of "public concern", "public interest" and "national security" (i.e. maintenance of the status quo) will ensure secrecy and important truths will never be brought into the light. In the words of Rights Watch UK:

> "When a human rights violation is engaged, either individual or systemic, then a statutory inquiry is required in order to discharge the procedural obligation attaching to duties under Article 2 of the Convention…" (15)

In sum, the Inquiries Act 2005 and the Coroners and Justice Act 2009 each constitute a catastrophic paradigm shift in the law. Amongst other issues, the Acts can be used in tandem as an establishment mechanism to ensure the cover up of political assassinations. The unnatural and/or suspicious deaths of whistleblowers, activists, dissidents, politicians and so-forth have never been so susceptible to whitewash. These "Dangerous Acts" must be urgently reviewed and/or repealed in the public interest.

NOTES

1. http://www.legislation.gov.uk/ukpga/1988/13/section/17A

2. http://www.amnesty.org/en/library/info/EUR45/008/2005

3. http://en.wikipedia.org/wiki/Inquiries_Act_2005

4. http://www.levesoninquiry.org.uk/faqs/

5. http://www.telegraph.co.uk/news/politics/6637328/Iraq-inquiry-civil-servant-Sir-John-Chilcot-incapable-of-addressing-legal-issues.html

6. http://www.legislation.gov.uk/ukpga/2005/12/section/1

7. http://www.legislation.gov.uk/ukpga/2009/25/pdfs/ukpgaen_20090025_en.pdf Para 105

8. http://www.theguardian.com/politics/2009/may/15/jack-straw-drops-secret-inquests

9. http://news.bbc.co.uk/2/hi/8051953.stm

10. http://www.legislation.gov.uk/ukpga/2009/25/pdfs/ukpgaen_20090025_en.pdf

11. http://www.parliament.uk/documents/lords-committees/Inquiries%20Act%202005/cINQUIRIES170713ev03.pdf

12. http://en.wikipedia.org/wiki/Death_of_Azelle_Rodney

13. http://azellerodneyinquiry.independent.gov.uk/key-documents.htm

14. http://www.amnesty.org/en/library/info/EUR45/008/2005

15. http://www.rwuk.org/new/wp-content/uploads/2013/08/HoL-Evidence-31-07-13.pdf

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