

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2005/11/21/terror-suspects-should-be-prosecuted-not-tortured>

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In their eagerness to prevent future terrorist attacks, both the US and Britain have focused on intelligence gathering in lieu of prosecution. But that focus poses its own security threat by ignoring the problem of what to do with terrorist suspects once they are captured.

America's use of coercion to extract testimony from suspects renders those suspects virtually unprosecutable, as prosecutors face the nearly impossible task of proving that evidence was not derived from mistreatment. For the past year, beginning with the Senate testimony of Alberto Gonzales, US attorney general, in January, the Bush administration has claimed the power to subject detainees to cruel, inhuman and degrading treatment, as long as the victim is a non-American held outside the US. To provide a locale for such mistreatment, it has established secret detention centres in Eastern Europe and elsewhere.

Many governments torture clandestinely, but the Bush administration today is the only government known to claim the power to abuse detainees as a matter of official policy. This month, the US Senate approved legislation sponsored by Senator John McCain that would prohibit inhumane treatment of detainees by US personnel anywhere, but George W. Bush has threatened to veto it. Meanwhile, America faces the growing problem of what to do with detainees it does not want to release but, because of its policy of mistreatment, cannot prosecute.

One option, now also proposed by Tony Blair, UK prime minister, is to send non-citizen terrorist suspects home, even if their government has a history of torturing such people. Following in Washington's footsteps, Mr Blair is proposing to send terrorist suspects to places such as Libya, Jordan, Algeria, Morocco, and Tunisia - all with notorious records of torturing radical Islamists. But the United Nations Convention against Torture, which both Britain and the US have ratified, unconditionally prohibits sending anyone to another country where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Like the Americans, the British government offers a fig leaf to cover this complicity with torture. First, it proposes to sign agreements in which other governments promise not to mistreat suspects handed over to them. It has reached such agreements with Libya and Jordan and accords are in the works for other North African countries. Second, the agreements permit monitors to check periodically on how these detainees are being treated.

But these agreements, known as diplomatic assurances, are not worth the paper they are written on. All the governments in question have ratified the torture convention - a major multilateral treaty - yet routinely flout it. Why would they pay greater heed to a bilateral agreement which, because of the embarrassment of non-compliance, neither the sending nor receiving government has any incentive to enforce?

Monitoring will not help either. A round-the-clock watch might deny torturers an opportunity to ply their trade, but Britain, like the US, contemplates only periodic monitoring. That can work to get a sense of how detainees across an entire institution are treated, as the International Committee of the Red Cross does, because detainees can benefit from safety in numbers to report abuses anonymously.

Periodic visits, however, cannot protect an isolated detainee. Indeed, they are cruel. Imagine the dilemma of such a torture victim receiving a monitor. Does the victim pretend he was never mistreated, denying the shattering experience of torture? Or does he report his mistreatment, knowing the account will be traced back to him and, in retaliation, he might be returned to the torture chamber? No detainee should have to face that dreadful choice.

This plan's incompatibility with international law has led to efforts to undermine the law. This month at the UN General Assembly in New York, the British and American delegations watered down a resolution that would have affirmed that diplomatic assurances do not relieve governments of the duty never to send suspects to countries that are likely to torture them. At the European Court for Human Rights in Strasbourg, the British government is arguing that this duty should be balanced against security needs - that an absolute prohibition should be made conditional.

Better that the British government adopt legal reforms facilitating the prosecution of suspects. Most notably, Britain is one of only two western democracies (the other is Ireland) without legislation allowing evidence from wiretaps and other electronic surveillance to be introduced at trial under any circumstances. This ban is incomprehensible. Of course it is difficult to prosecute a secretive criminal conspiracy if the government lacks the power to let the jury listen in on conversations. The obstacle to using evidence from electronic surveillance is not civil libertarians; the government can still protect legitimate privacy rights by requiring a judge to authorise placement of listening devices only upon a showing of probable criminality.

Rather, resistance to using such evidence comes from the British intelligence services. They fear their sources and methods will be compromised if this evidence is introduced in trials. But that makes no sense. As the US has found, law enforcement officials can avoid exposing the intelligence services listening devices by, after appropriate judicial authorisation, simply installing their own. Rather than toying with torture, the UK and US governments should seriously pursue the option of prosecution. For the US, that means accepting the McCain legislation and stopping the mistreatment of detainees. For Britain, it means casting off outmoded squeamishness about evidence from electronic surveillance.

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