

Human Rights Watch

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

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As global leaders discuss trade, nuclear proliferation, and global warming at the G8 summit in St Petersburg this weekend, one might hope that respect for basic human rights could be taken for granted. Sadly, that is far from the case. Lawlessness is increasingly in fashion.

President Vladimir Putin, the summit host, made the case this month for ignoring international rules. At a pre-summit meeting with Human Rights Watch and other NGOs, he argued that the war on terror is like a football match: if one side breaks the rules by picking up the ball, the other side is tempted to do the same. The fruit of this logic can be seen from Human Rights Watch's most recent research in Chechnya, where widespread torture and forced disappearances fuel a cycle of violence that leaves everyone less safe.

The American lawyer Alan Dershowitz, writing in this paper last week, argued for "significant changes" in the counter-terror rules - thus giving succour, for example, to the Bush administration's efforts to redefine torture virtually out of existence. Under the theory of the notorious "torture memos," torture is nothing short of the pain associated with the loss of a major bodily organ. Merely pulling out fingernails or cutting off ears doesn't qualify. Only by such a theory could the administration claim that its use of mock-execution-by-drowning, known as "water-boarding," is not torture but "a professional interrogation technique."

A similar administration view holds that the obligation to avoid cruel, inhuman, or degrading treatment does not extend to non-Americans held outside the United States, thus providing a rationale for the secret detention facilities.

Tony Blair agrees that "the rules of the game are changing." He wants to send suspects to governments with a long history of torture, protected only by a flimsy promise of proper treatment. Never explained is why a government that regularly flouts major international treaties against torture would respect a mere bilateral agreement, the breach of which both Britain and the receiving state would find highly embarrassing to reveal. Periodic visits to monitor the detainee won't help because he knows that revelation of his mistreatment is easily traced back to him, putting him at risk of more torture in retaliation.

If, as they should, British courts reject the empty promises of torturers, Blair proposes further bending the rules: his government has asked the European Court of Human Rights to abandon its absolute ban on returns to torture by allowing security considerations for the first time to trump the risk of torture.

Efforts to criticize this revival of torture are invariably plagued by the beguiling metaphor of the ticking bomb. Torture is justified, the metaphor suggests, when the interrogator knows that a suspect can locate a bomb that is about to kill innocent people.

But the metaphor provides no basis for revised rules on torture. After all, how does the interrogator "know" what is inside a suspect's head? He tends to rely on such circumstantial evidence as the suspect being of the "wrong" ethnicity, religion, gender, and age - categories that, even when taken together, embrace a lot of people. Moreover, why stop at torturing to protect only today's would-be terrorist victims? Why not tomorrow's or next week's or next month's? And why should only those with direct knowledge of a bomb face torture? Why not those who know someone who knows someone who might lead police to a bomb? The "rare" exception proves all too expansive, as Israel discovered when in 1987 it began permitting "moderate physical pressure" in ticking-bomb situations. Soon, 80 to 90 percent of Palestinian security suspects were being tortured.

Dershowitz and others propose limiting torture by regulating it. They would drive torture from the shadows by requiring its practitioners to seek a warrant from a judge or even permission from a nation's chief executive.

But regulation transforms a prohibition into an option. "Never" becomes "sometimes." Once torture has its place in the toolbox, police forces would need to train torture squads, who, in turn, would clamour to use their skills. Would judges restrain them? There is little ground for confidence because, of necessity during an investigation, judges would proceed secretly and hear only from the government. Operating under such rules, America's court for investigative wiretaps has heard some 15,000 applications since its founding in 1979. It

has rejected only four. Would a nation's chief executive do a better supervisory job? George Bush's authorization of the secret detention facilities used for water-boarding is not encouraging.

Torture violates our most basic values, but these days conversations about it frequently come down to one question: does it work? The answer depends on what we mean. Almost everybody ultimately talks under torture, and sometimes the victim blurts out something truthful. Yet the test of utility isn't the looseness of a suspect's tongue but the consequences for our safety.

Are we really safer when, by equating counterterrorism with a technique that many abhor, our governments discourage the public cooperation - the volunteered tips about suspicious activity - that experts say is far more important for cracking secretive conspiracies than anything wrung from a suspect? Are we really safer when our governments' investigative technique becomes a boon for terrorist recruiters, arguably generating more terrorists than it stops? Are we really safer when our governments' extraction of involuntary confessions renders even some prime suspects unprosecutable, subject to continued detention only under strained legal theories? Are we really safer when the loss of the moral high ground leaves our governments less able to dissuade dictators from closing the avenues for peaceful political change that might discourage resort to violence?

Only a narrow understanding of counter-terrorism leads to affirmative answers. Before blindly proceeding down the path to torture, the G8 leaders would do well to consider whether those profiting most from torture are their citizens or the terrorists.

Kenneth Roth is co-editor of "Torture: A Human Rights Perspective" (The New Press).

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