

Human Rights Watch

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

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Gordon Brown must beware Tony Blair's mistakes if he wants to beat the bombers

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In his response to the attempted terrorist bombings in London and the attack in Glasgow, Gordon Brown may have revealed a change of approach to counterterrorism. There was no overreaction, despite the seriousness of the threat, and no rush to introduce new security measures that flout human rights.

But will this lead to a reversal of government policies that, in the name of national security, are undermining two key pillars of liberty: the absolute prohibition of torture and the fundamental rule against prolonged detention of suspects without charge?

After 9/11, Tony Blair sought to justify sending terrorism suspects to governments that routinely torture by securing unenforceable promises that, at least for those individuals, the government would suddenly behave. As a back-up plan, he pressed the European Court of Human Rights to allow governments to invoke security to override the law against sending suspects to places where they risk mistreatment.

Similarly Blair, and even Brown, pushed for the power to detain suspects without charge not just for 28 days - already the longest period in the West - but for 90.

According to Blair, criminal prosecution is too difficult, so lengthy detention without trial and deportation to torture are needed.

The irony is that Blair refused to press for the one law-enforcement tool that could make a difference: the introduction at trial of intercepts of suspects' criminal communications. So long as a judicial warrant for the intercept was obtained after a showing of reasonable suspicion that criminal activity would be discussed, admitting intercept evidence at trial is entirely consistent with international human rights law. Indeed, such evidence is admissible in every other Western democracy, where most prosecutors would find it inconceivable to try to crack criminal conspiracies without it.

But rather than challenge the intelligence services' opposition to the use of such evidence in court, Blair chose to undermine basic rights instead. The burden should be on the government to show why intercept evidence isn't enough to convict and imprison suspects instead of sending them off to a foreign torturer, or why it isn't at least enough to demonstrate the 'realistic prospect of conviction' needed to file criminal charges and hold a suspect lawfully pending any additional investigation that might be needed for trial. With the announcement of a privy counsellor review of the subject, Brown seems to realise that it is time for a new approach.

What is behind intelligence services' objections? Partly fear that secret methods will be compromised, but it is no surprise to the average terrorist that his communications might be monitored. The security services also fear that defence lawyers might request the release of material that would jeopardise ongoing investigations unrelated to the prosecution at hand. But countries with similar legal systems have found ways to limit the disclosure of such material without undermining the right to a fair trial.

Blair's willingness to dispense with basic rights was not just wrong and unnecessary; it was counterproductive, because fighting terrorism requires not only neutralising the terrorist suspects we know about but also discovering those suspects we don't know about and deterring others from joining them. The government acknowledged as much when it made preventing 'radicalisation and recruitment' central to its counterterrorism strategy. But that requires maintaining the moral high ground.

Although George W Bush claims that 'tough' interrogation techniques are the key to cracking terrorist conspiracies, a far more important source of information is tips from the general public. For example, a member of the Muslim community led the police to discover the plot to bomb transatlantic aircraft. Relatives reportedly gave information that led to the arrest of those accused of the 21 July attempted bombings. The Karachi safe house of Khaled Sheikh Mohammed, the alleged 11 September mastermind, was found because a journalist who had interviewed him passed on critical information on his whereabouts.

But the public is less likely to cooperate with law-enforcement authorities if they see themselves becoming complicit in dirty-war techniques. Indeed, those most likely to identify with a mistreated suspect are members of his own community - precisely the group of neighbours and friends whose cooperation is most critical for alerting law-enforcement authorities to suspicious activity.

Maintaining the moral high ground and winning what Brown calls 'the struggle of ideas and ideals' are also essential in the high-stakes struggle with terrorist recruiters. Most people are law-abiding and would never resort to terrorism. Others are firmly committed to terrorism and need no provocation. But the fight against terrorism will be won or lost in the 'swing vote' - the angry young men who have deeply felt grievances and are trying to figure out how to address them.

As jihadist websites demonstrate, terrorist recruiters have long understood that abuses in the name of counterterrorism are among the best recruiting devices they have. By delegitimising the counterterrorism effort, they facilitate the terrorists' essential task of replenishing their ranks. Even if these abuses drive only a small percentage of angry young men to violence, that can add up to a lot of people, meaning that abusive law-enforcement efforts may well be generating more terrorists than they are stopping.

Brown has already shown himself open to thoughtful reconsideration of the Blair approach. His emphasis on the need to win the hearts and minds of ordinary Muslims offers the hope that with his unemotional, businesslike approach to counterterrorism, Brown means it when he promises 'change'.

So rather than risk losing the moral high ground by considering the lawless ways advocated by Blair, Brown should press for the authorised use of intercept evidence in court. Doing otherwise would not only be wrong; it would be exactly what the terrorists want.

International Alternatives to Detaining Immigrants

Possession of Extremist Material in Kyrgyzstan

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