Human rights abuses, transparency, impunity and the web

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Abstract

This paper reviews how human rights advocates during the "war-on-terror" have found new ways to use the World Wide Web (Web) to combat human rights abuses. These include posting of human rights reports; creating large, open-access and updated archives of government documents and other data, tracking CIA rendition flights and maintaining blogs, e-zines, list-serves and news services that rapidly distribute information between journalists, scholars and human rights advocates. The Web is a powerful communication tool for human rights advocates. It is international, instantaneous, and accessible for uploading, archiving, locating and downloading information. For its human rights potential to be fully realized, international law must be strengthened to promote the declassification of government documents, as is done by various freedom of information acts. It is too early to assess the final impact of the Web on human rights abuses in the "war on-terror." Wide dissemination of government documents and human rights advocates' reports has put the United States government on the defensive and some of its policies have changed in response to public pressure. Even so, the essential elements of secret prisons, detention without charges or trials, and illegal rendition remain intact.

Key words: human rights, war, war crimes, internet, torture

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War crimes, impunity and the Web

The World Wide Web's (Web) profound effect on all forms of communication extends to human rights advocacy. The web is transparent in ways that are well suited to human rights work. It is transparent with regard to the information itself: it can transmit text, pictures, video clips, sound or facsimiles of government documents showing marginal notes and signatures of government officials. The photographs of smiling guards abusing men at Abu Ghraib or of President Bush's signature on a directive suspending the Geneva Conventions for Taliban and al-Qaeda prisoners are powerful images. This transparency is magnified by the Web's ability to carry limitless amounts of such documents in large archives that can be indexed, linked and sorted for specialized use. Second, the Web is transparent in the way that it crosses international borders and equally reaches diverse political constituencies. Access to information is available through internet cafes, libraries and personal computers. Third, the Web is transparent in its speed; it instantaneously distributes information to human rights advocates and media outlets. This changes the time scale of human rights work. The speed of the virtual information networks means that information about human rights violations can be compiled, researched, analysed and disseminated in

"news-cycle" or "political" time rather than in the slower cycles of professional historians. Transparency is the first antidote to impunity for war crimes. The Web is a powerful advance in the fight against impunity for crimes against humanity.

The Web and the "War on Terror"

The "war-on-terror" offers many examples of how the Web changes human rights advocacy. This article focuses on activities with regard to the United States operations in Iraq and Afghanistan, Guantanamo Bay and in countries to which persons have been taken by the illegal process of extraordinary rendition.

The most common and conventional Web activity is the posting of human rights reports and analyses and commentaries. Such postings are done by many non-governmental human rights groups including Amnesty International[1], Center for Constitutional Rights[2], Human Rights First[3], Human Rights Watch[4], Physicians for Human Rights[5] and The World Organization for Human Rights.[6] It is also done by international organizations such as the Office of the United Nations' High Commissioner for Human Rights,[7] its Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[8] the European Parliament or the Council of Europe (both of which have addressed renditions).[9,10] In this use, the Web offers an inexpensive fast way to distribute to an audience of human rights advocates and media outlets that extends far beyond membership lists and media distributions.

A more innovative human rights use of the Web is the creation of open-access and updated data archives. The Center for Public Integrity posted all of the appendices to General Taguba's investigation of the abuses at Abu Ghraib prison in Iraq.[11] The American Civil Liberties Union's (ACLU) website posts more than 100,000 pages of government documents that it obtained by a law suit using the United States' Freedom of Information Act.[12] Unfortunately, the utility of this immense archive is limited by poor indexing and organization which the ACLU is gradually improving. In addition, many of the documents are in a facsimile form which does not permit text searching – reading is a formidable challenge.

Nevertheless, there are a number of specialized websites. Minnesota's Human Rights Library section, entitled United States Military Medicine in War on Terror Prisons, contains 60,000 pages of government policies, investigations and death records pertaining to medical operations in the US war on terror prisons. Its indexes are cross linked to the government and index items can be found by general web search engines even though the documents can not be internally searched because they are in a facsimile form.[13] This site is used by 500 visitors per month. Iraq Body Count culls media and Defense Department sources to maintain an updated list of civilian casualties in Iraq.[14] Cage Prisoners posts information and advocacy appeals for prisoners at Guantanamo.[15] Each of these archives is maintained by a few, mostly unpaid, volunteers.

The Web has also been used to identify the flight plans and aircraft used for the Central Intelligence Agency's illegal program of rendition. Stephen Grey used databases compiled by hobbyist plane spotters and computer archives of flight plans to identify and track individual renditions, the fleet of CIA planes, countries that supplied transit airports and the final destinations for these flights.[16]

Blogs, e-zines, list-serves and RSS feeds rapidly distribute information amongst journalists, academic sources and human rights

advocates. Daily Kos is one general news service which has extensive human rights information.[17] Psyche, Science and Society is a moderated blog that focuses on organizing to change the policies and leadership of the American Psychological Association which supports psychologists' involvement with coercive interrogations at Guantanamo Bay and elsewhere.[18]

Discussion

The Web can play a key role in fighting impunity for human rights abuses. To understand its emerging role, it is useful to distinguish between several senses of what ending impunity can entail:

- *Moral delegitimization:* This is exemplified by the arrest warrant for General Augusto Pinochet for murders committed by his Chilean regime. Although General Pinochet was never tried, the warrant precipitated a historical reevaluation of his regime that lead to prolonged legal proceedings, constitutional changes, prosecution of his collaborators and confiscation of family assets. Similarly, legal summons and accusations relating to crimes committed by Operation Condor in South America have made it difficult for former United States Secretary of State Henry Kissinger to freely travel. Delegitimizing is the most common way to attack impunity and it begins with disseminating authoritative reports from human rights organizations. The experience in the war on terror shows the Web's ability to promoting transparency in a way that leads to moral delegitimization. Unfortunately, moral opprobrium is a weak punishment and deterrent.
- *Redress for victims:* This is exemplified by Filartiga v Peña Iralaa.[19,20] In this 1979 United States civil case, a federal court found a Paraguayan police official liable for civil damages for the torture and murder of Joelito Filartigo which violated various international laws to which the United States is a party. Redress for victims is available only to a few persons who can overcome poverty and stigmatization to obtain expensive legal assistance and a sympathetic court. Nevertheless, attorneys are using Web archives of government documents to prepare cases for persons who are detained without charges or evidence.
- *Civil sanctions:* It is possible to deny work permits or visas to persons who have committed crimes against humanity. Human rights abusers increasingly risk deportation from countries to which they have immigrated. It is likely that the Web archives can play a role in promoting civil sanctions if human rights advocates can use such information to mobilize governments to apply the sanctions.
- *Criminal punishment:* The trials of Saddam Hussein of Iraq, Serbia's Slobodon Milosevic, and Charles Taylor of Liberia all exemplify varying kinds of formal prosecutions for crimes against humanity. In 2006, Thomas Lubanga, former leader of a Congolese militia, became the first person to be arrested under a warrant issued by the new International Criminal Court.[21] Criminal punishment is the rarest form of ending impunity. It is costly and generally reserved for leaders. It is politically charged and highly selective: Cambodia's Pol Pot was never tried, Radovan Karadžić and Josef Mengele were sheltered from protection. The International Criminal Court should post evidence on the Web as soon as it has been vetted. Courtroom proceedings must be fair, but a crime against humanity is a crime against every member of

the human community; we all deserve to see the evidence.

The Web is an incomplete remedy to the lack of transparency that shields human rights abusers from accountability. It only works to the degree that information can be obtained and that people are willing to accept the risk of posting information. The "war on terror" experience shows that some information is available about abuses in Iraq and at Guantanamo but much less is available from Afghanistan and almost nothing is available from the secret prisons where the CIA has taken persons via the process of illegal extraordinary rendition. The human rights community is insufficiently organized or funded to fully exploit this resource. There is no central listing of the human rights web archives and very limited cross linking from one archive to the other.

It is too early to assess the final impact of the Web on the human rights abuses in the "war on terror." Even so, scholarship of the prisons and the policies is at an advanced stage and defensive United States officials have tempered some policies in response to public pressure. Unfortunately, however, the essential elements of secret prisons, detention with charges or trials, and illegal rendition remains intact.

International law is insufficient to allow the Web to fully develop its capacity to advance human rights. Article 19 of The Universal Declaration of Human Rights correctly notes the relationship between access to information and freedom of speech: "Everyone has the right to freedom of opinion and expression; this right includes freedom ... to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 19 of the United Nations International Covenant on Civil and Political Rights does not go

further.[22] The goal of open access to information is restated in the United Nation's 1996 Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information:[23]

Principle 11: Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.
Principle 12: A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.
Principle 13: In all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.
Principle 14: The state is obliged to adopt appropriate measures to give effect to the right to obtain information. These measures shall require the authorities, if they deny a request for information, to specify their reasons for doing so in writing and as soon as reasonably possible; and shall provide for a right of review of the merits and the validity of the denial by an independent authority, including some form of judicial review of the legality of the denial. The reviewing authority must have the right to examine the information withheld.
Principle 15: No person may be punished on national security grounds for disclosure of information if: 1) the disclosure does not actually harm and is not likely to harm a

legitimate national security interest, or 2) the public interest in knowing the information outweighs the harm from disclosure.

The private sector has not been supportive of the human rights need for access to information. The Electronic Frontier Foundation (EFF) and the OpenNet Initiative (ONI) promote freedom of speech on the internet, but neither promotes access to government information as articulated in the Johannesburg principles.[24,25] Large corporations that make Web servers and search engines, including Google, Yahoo, Cisco and Microsoft, have actively diminished the human rights' utility of the internet by developing filters to enable governments China, Cuba or Turkey to block access to politically charged information. In addition, they have disclosed the names of persons or computer identifying numbers of persons who post human rights information to governments that brutally suppress dissent.[26,27] Human rights activists have been imprisoned because of such acts.

More work should be done to make the concept of freedom of access to government information an integral part of the right to free speech and a free press. Without such information, free speech can be little more than opinions. Amnesty International aggressively promotes the right of access to government information and protection for persons who use the internet for human rights work.[27,28] Human rights advocates might seek allies in the business community; an honest and efficient global economy requires transparent government institutions.

The Web has the elements of a powerful communication tool for human rights advocacy. It is international, instantaneous, and accessible for uploading, archiving, locating and downloading information. It enables human rights advocates to communicate in "political time" rather than in the delayed

time of traditional academic or historical research, a delay that allows abuses to go unchallenged as researchers commute to central libraries or use easily interdicted mail or telephone connections. The Web democratizes information and takes down barriers of time and space. Such transparency is a key step to ending impunity.

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