



Research and Policy Series- Media Development Center- Birzeit University

Justice & Right of Access to Information on the Internet

A Case Study from Palestine.

Saleh Masharqa 2018

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A Case Study from Palestine

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Introduction;

This paper discusses digital rights in accessing the internet and information for individuals and groups in what may be called in geopolitics a non-state community. This applies to Palestine which is a unique case of a state under occupation. The paper examines the restrictions imposed by Israel on access to information via the internet by individuals and groups. The paper aims to inspect what may be called Scolonial policies that restrict access to information and thus clarify the approaches and methods of these policies.

The paper examines digital rights under the Palestinian Authority (PA) - a state under occupation, which plays the role of a subsequent regulator of the internet and information. The PA is floundering in adopting new laws that restrict digital rights to access information on the grounds of building the prospective state institutions drawing on regional laws that restrict digital rights.

1. Internet and information under occupation – A non-state community

Israel had controlled telephone communications since 1967 following its occupation of the second half of Palestine until 1995 when Oslo peace agreement was signed between Palestinians and Israelis providing Israel with the authority to grant frequencies. In 1997 Israel gave the Palestinian side the authority to manage telecommunications which was privatized through a company that monopolized this service according to a contract with the PA. In 1999 Israel provided the Palestinian company with the frequencies to launch the first Palestinian cellular network 'Jawwal'. The second cellular operator in Palestine 'Wataniah Mobile' was launched in 2007 and got the frequencies from Israel two years after, i.e. in 2009. In 2015 Israel signed an agreement with Palestine to introduce third generation internet services (3G) which was delayed by 14 years to Palestinians compared to Israelis who enjoyed these services since 2004, when Israel actually provided the Palestinians with 3G frequencies in 2018. (*Nur Arafeh, Sam Bahour, Wassim F. Abdullah 2015*)

The delay in natural development in internet and information network in Palestine is attributed to the Oslo agreement. The agreement provided Israel with the monopolization over the frequency spectrum as its right in a region under its sovereignty although this is considered a natural resource for the indigenous population in the occupied region. In accordance with the agreement, the PA had become restricted in granting these services by the conditions imposed by Israel. *(al-Atrash 2017)*

The important point here is the access to information on the internet by a Palestinian individual. It seems that this has been obtained after a series of delays caused by Israel, tariffs and restrictions that were enforced by the Palestinian side and companies. Therefore, the chance to access information and utilize it in various aspects of life such as education, employment, investment on the part of a Palestinian individual was much less than that of his Israeli counterpart or in any other country that got into the world of the internet.

2. Conflict in the literature defining digital rights on the internet

Multiple definitions of digital rights reflect a conflict between various parties where each party aims to mobilize the concept for its interest. The Economic World Forum defines digital rights as human rights in the internet era and deals with the protection of privacy and freedom of expression. It is an extension of the equal and inalienable rights stipulated in the Universal Declaration of Human Rights. According to this, disconnecting people from the internet or putting it off violates universal humanitarian law. This definition which is issued by the Economic World Forum reflects the intentions of major industrial countries. Hence, British Prime Minister David Cameron declared recently that access to the internet "shouldn't be a luxury, it should be a right". *(Hutt 2015)*

Unlike the previous definition, technology encyclopedia (Techopedia) provides a different definition of the relationship between digital intellectual property (IP) owners and internet users. Furthermore, Techopedia finds that this definition has to do with digital rights management (DRM) in the digital era. Global and local non-governmental organizations operate and abide by this definition to protect the rights of internet users, freedom to access open applications and open rights groups (ORG). This work goes

under a set of criteria such as cyber security, internet censorship, individuals' privacy, electronic voting and access to information. (www.techopedia.com)

In both definitions, it appears that the parties of the relationship in the concept of digital rights are confined to 'established states, communities that belong to states, non-political corporation market'. But, this paper will bring about a small addition that may be included with digital rights parties. This addition is relevant to the Palestinian case where users are a community of individuals in a non-state and the state that controls digital rights is under construction and in an experimental status of issuing laws concerning the internet. Moreover, the market of telecommunication companies in this case is totally politicized, since the party in control is the Israeli occupation with all what it entails in terms of security and colonial aspects.

Away from these two functional definitions, global trends emerged calling for internet as a human right. In July 2016, the United Nations Human Rights Council put forward a non-binding resolution for members of the Council and the UN pointing out that the internet is a human right where blocking or disrupting people access to it is prohibited. The resolution was considered important for the achievement of the sustainable development plan for 2030. The resolution also highlighted the importance of civil society involvement all over the world to obtain this right as being an actual human right. *(www.article19.org 2016)*

In September 2010, the BBC published the results of a survey that was conducted in 26 countries covering about 28 thousand individuals. The survey illustrated that four out of five persons who use or do not use the internet support the idea of making access to information on the internet a human right. (*http://www.bbc.co.uk 2010*)

We referred to the above literature as a legal coverage for what will follow with regard to the analysis of a difficult phase relevant to the Israeli prohibition of Palestinians from obtaining 3G telecommunication. This contributed to blocking Palestinians and denying them access to information via the internet for 14 years, i.e. since 2004 when Israel introduced this service until 2018 when Israel granted two Palestinian companies 3G frequencies. We will list the losses incurred as a result of this decision on Palestinian in the framework of the discussion regarding the global concept on the right to internet access.

In a parallel context, we will also discuss the status of the Palestinian Authority as a state under construction attempting to regulate the right to internet access, based on some global and Arab philosophy and experience which restrict the freedom of opinion and expression and are inconsistent with many standards regarding freedom of expression on the internet.

3. Israeli firewall (barrier) on the Internet

Israel had built virtual barriers on the internet as Mariam Sleiman calls it in order to restrict Palestinian digital rights *(Sleiman, 2018)*. Many researchers who comment on the Arab-Israeli conflict tend to coin terms that express invisible covert colonial policies that Israel employ to control Palestinians. Among such concepts are military checkpoints where the overt aim is to do security examination, while the covert target in the Israeli mind seeks to delay Palestinian in time. This is practiced by disrupting Palestinian passage, not only on the ground between one city and the other but also in time, hence slowing down Palestinian operations and production and disrupting it by disabling the time factor and eventually affecting all other factors. According to Sleiman description, the delay of internet access imposed on Palestinians was not meant for security reasons only but for other targets in the Israeli dominant mind. This is actually related to the prevention of Palestinian from entering the worldwide web and consequently disrupting their access to information and services that can be updated and developed via the internet such as education, health, economy and commerce.

Israel annually records serious violations against freedom of opinion and expression on the internet. According to a report published by the Arab Center for the Advancement of Social Media (7amleh), Israel had arrested more than 300 Palestinian activists on the ground of their activity on social media through monitoring the content of Facebook and Twitter. Israel set up digital security units and forecasting police to analyze what Palestinians write on the internet and identify suspects who may be seen as potential perpetrators of attacks against Israel. *(7amleh, 2018)*

The delay of the 3G is also considered a greater violation than content control. It totally blocks Palestinians from digital rights system and prevents them from utilizing the electronic space that has been available in all states over the world for more than 14 years ahead of them. At the time when Israel introduced 3G to its population in 2004, it blocked it from 4,559,576 Palestinians in the West Bank and the Gaza Strip. *(Population census according to the Palestinian Central Bureau of Statistics PCBS, 2017)*

In its official discourse, Israel often boasts to be the oasis of democracy in the Middle East and attacks its opponents in the Arab region, Iran and Turkey when some of their government cut off the internet services for days or weeks in face of popular revolts by their people such as those that occurred in the Arab spring. Israel pretends to have forgotten that it has been blocking a whole generation of Palestinians from accessing the internet for over a decade.

Not only has Israel monitored the electronic content posted on the internet by Palestinian activists, but has also signed an agreement with Facebook providing for the omission of any provocative content against Israel by Palestinian activists (*Bethan McKernan and agencies 2016*). This is a weird contract of its kind in the world, where a state intervenes with a widespread company to control, regulate and prevent electronic content under the pretext of 'combatting incitement and hate discourse' at the time when this state occupies another state and dominates its population of five million, dispersing them in three separate blocs.

Available data about when 3G was introduced in a number of surrounding countries in the Middle East show that Israel had introduced 3G and 4G services as early as other rich countries in the region. In contrast, Israel had delayed Palestinians access to the internet for 14 years in blatant injustice that kept about five million and a half Palestinians out of the right to access internet and information. Even when Israel finally granted Palestinians this right in 2018, this was for the West bank only leaving about two million Palestinians in the Gaza Strip deprived from this service.

The following is a table showing the years of entry to the services of Universal Mobile Telecommunications System (UMTS) in Middle East countries. *(wikipedia):*

Launch Launch Launch 2100 MHz 900 MHz date date date Operator Country Notes Band 1 Band 8 UMTS HSPA+ **DC-HSPA** \leq 7.2 Mbit/s \leq 21.6 Mbit/s \leq 42.2 Mbit/s Frequency Country Operator Band Launch date Notes (MHz) Dec 2007 / Apr 2010 / Jun Batelco 2100 DC-HSDPA [540][541][542] 1 Bahrain 2012 VIVA Mar 2010 / May 2011 DC-HSDPA [543][544] Bahrain 2100 1 Dec 2003 [545] Zain Bahrain 2100 1 • Israel Cellcom 850 / 2100 5/1 Aug 2004 [546] • Israel Golan Telecom 2100 1 May 2012 [547] • Israel Hot Mobile 2100 May 2012 [547] 1 • Israel Orange 900 / 2100 8/1 Dec 2004 / Dec 2012 HSPA+ [548][549] • Israel Feb 2009 Pelephone 850 / 2100 5/1 HSPA [550] Orange Jordan 2100 1 Mar 2010 HSPA+ [551][552] Umniah Jordan 2100 1 Jun 2012 DC-HSDPA [553] Zain Jordan 2100 1 Mar 2011 HSPA+ [554] Jan 2009 / Dec 2010 / Jul DC-HSDPA[555][556][557] Viva Kuwait 2100 1 2011 Wataniya Feb 2006 [558] Kuwait 2100 1 Telecom Lebanon Alfa 2100 1 Oct 2011 HSPA+ [559] touch 2100 1 Nov 2011 HSPA+ [560] Lebanon 8 / 1 Dec 2007 / May 2014 [561][562] Nawras Oman 900 / 2100 Oman Mobile Oman 2100 1 Jan 2009 [563]

Middle East

Operator	Country	Frequency (MHz)	Band	Launch date	Notes
Ooredoo	Qatar	2100	1	Jul 2006 / Aug 2010	HSPA+ [564] Formerly named Qtel. [565][566]
Vodafone	Qatar	2100	1	Mar 2009	[567]
Mobily	Saudi Arabia	2100	1	Jun 2006 / Jan 2010	HSPA+ [568][569]
STC	Saudi Arabia	2100	1	Jun 2006 / Jan 2011	DC-HSDPA [570][571]
Türk Telekom	C• Turkey	900 / 2100	8 / 1	Jul 2009	DC-HSDPA ^[572]
Vodafone Turkey	C• Turkey	2100	1	Jul 2009	DC- HSDPA
Turkcell	C. Turkey	2100	1	Jul 2009 / Dec 2010 / Jan 2015	DC-HSDPA / 3C-HSDPA [572][573] [574]
du	United Arab Emirates	2100	1	Feb 2007 / Sep 2010	DC-HSDPA [575][576]
Etisalat	United Arab Emirates	2100	1	Jan 2004 / Jan 2010	DC-HSDPA [577][578][57

The denial of 3G services to Palestinians left them restricted to fixed computers internet speeds, while Israelis obtained unprecedented speeds on the cellular phone over the past 14 years.

Investment losses

Project and service management experts at Palestine Cellular Communications Company Jawwal say that their company's losses due to this delay are enormous (al-Sayed, 2018). These losses comprise of buying the equipment for 3G that was left for years in Israeli ports.It was not possible to return the equipment to their manufacturing companies or bring them to Jawwal work stations. Furthermore, Jawwal has been paying demurrage fees for the equipment imported and stored at Israeli ports for many years besides spending on human, administrative and logitical preparations for 3G. The persistent ban imposed by Israel led to losses of all those preparations.

The delay in providing this service to Palestinians is not the only loss, but also Palestinian telecommunication copmanies are also undergoing losses. After being provided with the frequencies, Palestinian companies are still facing unfair competion from five Israeli companies (Golan Telecom, Hot Mobile, Cellcom, Orange and Pelephone). The Israeli

companies have been exploiting this delay to get themselves prepared for sharing the profits of sales alongside the two Palestinian companies, Jawwal and Wataniah Mobile. As soon as this service was launched in January 2018, Israeli companies launched very competitive offers for its customers living in the Palestinian Authority territories, although these companies had been relentlessly operating in this market over the past 14 years making profits for themselves and the Israeli economy. This is what Palestinians call economic crimes and illegal entry to Palestinian markets. Israeli companies exercise such operations that are described as piracy in spite of possessing a total of twice as more frequencies than those granted to the two Palestinian companies. *(al-Saleh, Head of Training and Development Department at Jawwal, 2018)*

One of the difficulties faced by Palestinian companies is that the frequencies provided to them are the weakest. This requires additional infrastructure such as the construction of many transmission and reinforcement towers, while the frequencies granted to the Israeli army or companies only need the minimum infrastructure as few towers for reception and transmission.

The World Bank published a report in 2016which examined the losses incurred by the Palestinian telecommunication sector in the last three years. The report revealed that Israeli policies of banning 3G services led to losses in the sector of cellular phone, estimated by over \$1 billion. The PA also lost \$183 million that could have been charged as taxes for potential use of cellular phone communication. *(www.worldbank.org 2016)*

The report entitled "The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development talked about Israeli telecommunication operators that worked in the Palestinian market without license and captured up to 20% of the telecom market in the occupied territories administered by the PA.

What are the services that Palestinians lost due to the delay in 3G

In a quick review for 3G potentials, it is noted that it is impossible for Palestinian companies to construct a global positioning system (GPS) for transportation without the 3G. The Department of Transportation will be deprived of making available to the public those applications that access transportation vehicles as in booking taxis via the internet. This will also result in delayed arrival of ambulances and Palestinian civil defense or police vehicles to emergency sites where the time needed to reach a site will be doubled in comparison to their Israeli counterparts due to the absence of quick inference techniques for accident sites. In the field of press, media outlets are deprived from direct and rapid transmission without depending on broadcast vehicle. The same applies to social activists who may need to directly transmit developments from the field on demonstration or events without the need to go back to their fixed computers or home internet servers.

In the field of education, Israeli internet user enjoyed internet access for education, research and cognitive learning round the clock and from anywhere, whether at school, or university, at the park or any other place, while a Palestinian student, teacher or researcher remains confined to fixed internet communication. No doubt the processes of knowledge production are incomparably easier with 3G where any lecturer can broadcast a lecture for his students or an audience from a distance while he is travelling. He may be also available for direct interviews to answer questions, explain or clarify, monitor, evaluate and train online. *(al-Saleh, Head of Training and Development Department at Jawwal, 2018)*

Due to the delay in obtaining 3G, Palestinians also lost in terms of electronic commerce and home delivery as well as many forms of distance learning and online learning. Students were not able to benefit from access to information via the internet at any time and from any place. Palestinians were not able to launch GPS or carry out electronic dialogue between the public and municipalities or government agencies that offer daily services. Companies and individuals could not make electronic payment in stores, tourist sites, public facilities and infrastructure in addition to losing the chance for modern marketing through data mining and also of the possibility of creating a public electronic profile for each individual that may be accessed at any time and from any place. *(al-Saleh, Head of Training and Development Department at Jawwal, 2018)*

It is worth mentioning that there is a lack of literature on the prohibition of access to 3G services when reviewing Palestinian reports on losses incurred from the Israeli occupation. This is due to the fact that the legal and research environment had often been sensitive about probing into this matter because of its connection to a large profitable market and capitalist goods and services that belong to corporations in the private sector. This is often subject to public criticism on the basis of the cost and quality of its services. Moreover, the Palestinian research environment is most often Marxist, humane and liberal, thus avoiding to delve into capitalist trends of the private sector. This is also attributed to the weakness of research culture with regard to the fact that the frequency spectrum is a natural resource and wealth same as land, water, energy and the rest of research of militant nature and are content with what might ensure them investment opportunities and profitability.

Israeli security was the first to benefit

Israel took advantage of these colonial policies and divided frequencies as follows:

- 1. The highest frequencies were granted to the Israeli army which has developed the most geographical powerful infrastructure
- 2. The less important frequencies were given to the five Israeli telecom companies since their inception for many years and for a long-term benefit and profit
- 3. The weakest frequencies were given to the two Palestinian companies after the world has already entered 4G and 5G services making 3G something of the past.

In carrying out its colonial policies, Israel always has uncompromising and heightened security concerns. Thus, security is the most frequently used pretext in Israel when questioned about issues related to Palestinian. Apparently, this pretext is used as consumption speech without people understanding what lies behind it. From a military view, who owns powerful communication technology has the stronger determination capabilities. Therefore, telecommunication sector emerges as a military arm for Israel. So granting Palestinians any kind of benefit in this regard will not be tolerated by Israel.

Restrictions imposed by Israel on Palestinian telecommunications

According to a report published by Palestinian Ministry of Telecommunications and Information Technology, the restrictions imposed by Israel on telecommunication sector prevented it from contributing more than 2% to Palestinian national income. These restrictions deprived thousands of Palestinian labor force from locating job opportunities that may have been provided through communications. With regard to technology which is necessary to bring about favorable developmental and investment environment, the gap increased between Palestinians and other Arabs and the world at large. Those restrictions have also prevented Palestinians from enjoying internet services at a low cost compared to older telecommunication systems, depriving the Palestinian Authority -a state under establishment - from making economic profit from the revenues of telecommunications sector. It also deprived the PA from suing Israeli companies that had worked in the territories under the control of the PA without paying any taxes to Palestinians and was earning about \$150 million a year in revenues for itself and the Israeli economy. The Israeli restrictions prevented Palestinians from accessing digital solutions in the sectors of education, health care and investment environment, banning the internet from the socioeconomic and educational infrastructure and limiting the access of Palestinians to electronic governance. It also prevented the communication between five million Palestinians who remained in the occupied territories and five million refugees in the Diaspora. (Palestine 2012)

4. Legal regulation of the internet in a state under establishment

The Oslo agreement in 1994 prepared Palestinians to step down from the revolution journey and start the journey of state building. But winds did not blow as the vessels wish and Arafat had to launch the second Intifada in 1999 after Israel denied the agreement to establish a Palestinian state. The Intifada ended in 2005 with Arafat's martyrdom. Mahmoud Abbas succeeded him and launched a new cycle of the Palestinian political life that some artfully described as 'building the institutions of the state' according to global standards that were put forward by the World Bank, international organizations and governments of the world, in an attempt to earn a global testimony that Palestinians deserve a state.

At this period, many laws were enacted to regulate various sectors of a state 'under establishment'. Since 2007 to date, the Palestinian government and civil society had been working diligently to enact laws including a law on the right to access information drafted since 2005 by Palestinian civil society but failed so far to persuade the government to ratify the drafted law, in spite of the overwhelming desire of civil society, journalists and academia to have the law endorsed.

On the other hand, the Palestinian government approved the Electronic Crimes Law on the 24th of June, 2017 committing major violations against the freedom of opinion and expression regarding the use of the internet by the people. This has aroused the public prompting civil society organizations and Palestinian Journalists Syndicate (PJS) to protest against it. Consequently, the President was obliged to withdraw and suspend the law after it was issued in the official national gazette. Later it was re-issued under Decree Law No. 10 for 2018 on electronic crimes on the 3rd of May 2018 following a lot of criticism from civil society, journalists and social activists.

Palestinian legislator added to the law a cluster of articles that are meant to protect the community from cybercrimes that may affect children, women, family and institutions. Those crimes include blocking access to the internet or causing disruption via software or

otherwise, eavesdropping or hacking online accounts, forging certificates, inciting religious or racial hate discourse, encouraging genocide and crimes against humanity, interfering in private life of the individual or family or correspondence, stealing money, threatening and blackmailing others, human and organ trafficking, trading in drugs or gambling, financing terrorism through the internet, infringement on intellectual, literary and industrial property.

Parallel to these articles devoted to the society, some other provisions were put to limit the freedom of expression and some provisions that might violate privacy and topple international standards were kept.

During the period from July 2017 to May 2018, a number of journalists were arrested for posting their opinions on social media. On the basis of the first draft of the law, many setbacks occurred in terms of freedom of opinion and expression including the arrest of nine journalists in the West Bank and the Gaza Strip on the background of issues related to opinion and expression. The annual report of the Palestinian Center for Development and Media Freedoms (MADA) monitored a number of violations against journalists and activists in the West Bank that amounted to 29 case of blocking of websites, 28 cases of summoning for investigation and 24 cases of arrests. The report recorded 35 cases of journalists arrests in the Gaza Strip on the background of freedom of opinion and expression. (MADA, 2017)

Party	Israeli Occupation	Palestinian Parties	Palestinian Parties	Total
		The West Bank	The Gaza Strip	
Number	376	119	35	350

(Violations against media freedoms according to the party that committed them, 2017)

Even with the latest draft of the law that was officially adopted, MADA criticized some provisions that allow infringement of privacy. It also warned from an article that allows the Attorney General or his aides to solely collect electronic traffic data and content data for cases under investigation calling for authorizing the competent court alongside the Attorney General in this regard.

Al-Haq, a Palestinian human rights organization published its criticism of the law and objected to the monopolization of the PA in adopting the latest version. It stated that the committee that was formulated by the government and civil society to reconstruct the provisions of the law comprised of a larger number of government representatives, thus voting came in favor of the government. *(Al-Haq, www.alhaq.org 2018)*

Al-Haq also criticized a provision of the law that allows the Attorney General or his aides to solely collect data on electronic traffic and content for cases under investigation and called for including the competent court alongside the Attorney general in this jurisdiction.

Furthermore, al-Haq criticized another provision of the law that allows the Attorney general to block websites within 24 hours of receiving reports from security apparatus and within another 24 hours to request a rule from the competent court to block the website or its links. Al-Haq also criticized assigning the authority for the inspection of individuals, places and means of information technology, the checking and retention of data and tools to the public prosecution alone. It is rather required to include the competent court in this jurisdiction and to dissolve the legal personality (may be a media institution or company) that committed a crime for five years although this means depriving the staff working in the institution of their economic rights. *(www.alhaq.org 2018)*

Conclusion

The case study from Palestine indicates that there is a missing factor in the international definition of digital rights. This relates to the existence of colonialism and colonial policies that does not only disrupt access to information as in what is known a violation of digital rights, but totally ban the entry of new generations of internet services that provide modern phases of accessing information. This necessitates a broader definition of the concept of digital rights to include the right to access new generations of internet services, so that a state (colonial or non-colonial) would not control this entry.

In addition to the economic and developmental losses that any objective and impartial international report may calculate, there are other losses that extend to the emergence of electronic racial discrimination as a result of the colonial policies in the management of telecommunications, information and the internet. The Palestinian case indicates that the volume of access to the internet and information obtained by Israeli individual is multiples of what a Palestinian individual gets.

Although the idea in the previous paragraph seems difficult to quantify, the researcher has felt, during the preparation of this paper and by talking to communication engineers, that there is a possibility to develop a numerical basis for a mathematical equation to calculate per capita share of internet access. This will allow holding comparisons to investigate to what extent justice and equality are observed with regard to the right of access to the internet and to disclose any racial flaws or unfair policies.

This electronic racial discrimination that extends to companies, investment, education, health and all aspects of life poses a new form of discrimination that can be named racial discrimination in accessing and benefitting from information. This prompts us to double research and study efforts in universities and international conferences to diagnose this new form of racism and seek solutions to confront it legally and intellectually.

Prevent Palestinian from access to internet and information through 3G doing the Israeli people "Online Nation, Technically empowered, Time- ness people, Modern- Invest-

developmental society, at other hands doing the Palestinian "Off line people, Technically Marginalized, Time – less or stopped people, Out of the market, Primitive".

Furthermore, the phase of establishing a state in Palestine, with merit to its operations, poses a state of uncertainty and vulnerability to be influenced by the worst regional laws that may restrict the freedom of opinion and expression and dwindle respect for privacy. This defect in the Palestinian Authority cannot be measured subjectively only, because it results from the influence of regional and international surrounding hegemonies on the weak PA. Consequently, the PA is hampered in issuing laws that accomplish access to information, grant people the freedom of opinion and expression and protect their privacy from any intrusions.

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