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The Cyber Occupation of Palestine; Suppressing Digital Activism and Shrinking the Virtual Sphere



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The Cyber Occupation of Palestine; Suppressing Digital Activism and Shrinking the Virtual Sphere

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EXECUTIVE SUMMARY

Since the October 2015 uprising, the Israeli regime has intensified its prosecution of Palestinian digital users. Hundreds of Palestinians were arrested under the pretext of ‘incitement’ over social media platforms, particularly journalists, human rights defenders (HRDs), activists, artists and students.¹ As alternative ‘public spheres’ for digital protests, social media platforms have had a significant impact on promoting human rights and exposing violations. The Israeli repressive policy against Palestinian digital rights has narrowed the online sphere censoring the right to express and speech; thus, shifting the role of these digital platforms from a tool to strengthen freedom of expression and rights to open arenas for prosecution and suppression.

This policy brief argues that social media companies are complicit in facilitating the Israeli occupation violations of Palestinian digital rights through restricting their rights to freedom of expression, thought and privacy. It shows that Facebook has been censoring Palestinian content based on Israeli regulations since 2015.² The policy brief outlines the major challenges pertaining to the protection of Palestinian digital rights in the context of the current repressive policies undertaken by the Israeli occupation and highlights the key repercussions and impact of neglecting abuses of Palestinian digital rights. It underlines the importance of digitalisation for the proper protection and promotion of human rights. Furthermore, it proposes a set of recommendations aimed at adopting a human rights-based approach to digitalisation and guaranteeing protection to safeguard Palestinians’ rights to freedom of expression and public participation in the virtual sphere. The policy paper suggests that social media companies must commit to their transnational human rights obligations and refrain from being complicit with violating Palestinian digital rights through ceasing their collaboration with the Israeli regime. On the contrary, they have a responsibility to ensure a safe and protected digital environment for Palestinian HRDs and activists over social media platforms.

1 Middle East Monitor, ‘Israel arrests hundreds of Palestinians over Facebook posts’ (*Middle East Monitor*, 30 May 2017) <<https://www.middleeastmonitor.com/20170530-israel-arrests-hundreds-of-palestinians-over-facebook-posts/>>.

2 Ibid.

INTRODUCTION

In this era of digitalisation, where human behaviours have been re-shaped, human rights have been prone to these changes. The internet has been placing itself as both a public and private sphere. Its different manifestations have affected how we understand and how we approach human rights in general. Not only has digitalisation changed our communication system in regard to time and space, but it has also enhanced citizens' ability to take a stand and voice their needs. Social media platforms are considered now an open space to express, receive and impart information, which leads to more engagement from citizens in societal and political matters.

These new spaces have forced a re-reading of international human rights conventions; rights like the right to privacy, freedom of expression and the right to security needed a more 'modern' interpretation, an approach that has been adopted by international jurisprudence. Nevertheless, it has also revealed new human rights abuses, in which it is fair to say that 'digital technology has transformed the means through which human rights are both exercised and violated around the globe.'³

In relation to this; new questions have been raised in regard to how digital technology can help human rights whether in realisation, advocacy or its exercise especially in areas like Palestine, where citizens face high level of control. Therefore, an acute need to address abuses of digital rights is needed where barriers of movement, freedom of expression, censorship and controlling are witnessed.

The protest movements that were unleashed in the beginning of 2011 in various Arab countries were marked with unique features related to digital activism. The long years of the regime's systematic suppression geared at controlling and limiting the public protest space has led protestors and activists to gradually resort to the digital space as an alternative environment to practice social and political activism which

offers further flexibility in terms of communication, interaction and engagement. Social media platforms have played a significant role for activists to monitor, document and advocate against human rights violations.

Despite that, the rights movement have faced numerous challenges that restrict its digital mobility and activism. Yet, the use of digital means in raising awareness, documenting, monitoring and advocating against human rights violations has been substantial in creating a massive and solid local and international awareness and solidarity.

RESTRICTIONS OF PALESTINIAN DIGITAL ACTIVISM AND MOBILITY

The flourishing of power tools within the new world order and the era of securitisation has its different manifestations, mostly importantly an attempt to shrink physical and virtual spaces, erase any virtualisation of the oppressed and impose social control on them.

The everyday lives of Palestinians living under Israeli military occupation are censored within new technologies; military watchtowers, checkpoints, face recognitions and DNA exams. Nevertheless; the online/digital sphere is no exception, it falls under the targets of these policies of mass surveillance; hence the Israeli occupation regime is able to control, detect and censor any act of expression or resistance, jeopardising Palestinian rights to expression and thoughts, causing a 'chilling effect' to Palestinian people.

Social media platforms' role is questionable in these contexts and can amount to being complicit in violating Palestinian digital rights, where hundreds of Palestinians' content and accounts were being blocked without any notice, or any court decision, and based on vague regulations.

In Palestine, the Israeli regime's policy in targeting Palestinian HRDs and activists remains prevalent particularly through arrest, issuing of travel ban orders and restrictions on their right to movement. In addition, the territorial barrier

3 Eileen Donahoe, 'Human Rights in the Digital Age' (*Human Rights Watch*, 23 December 2014) <<https://www.hrw.org/news/2014/12/23/human-rights-digital-age>>.

ers imposed by the Israeli occupation have restricted the rights to assembly and association and right to freedom of movement. Thus, one of the major repercussions of the de-facto territorial barriers in Palestine is the fragmentation of structures of activism. Herein, the importance of the digital sphere, in the Palestinian context, lies in its ability to overcome physical territorial barriers. The digital tools have offered practical and significant alternatives to Palestinian HRDs and activists to impart information, engage and advocate against human rights abuses. Yet, it lacked effective mechanisms of protection and left them at risk of prosecution and arrest. According to Al-Mezan, since 2015 the prosecution of Palestinian digital activists has become systematic in violating their digital rights and freedoms.⁴ As a result, these Israeli-led attacks against Palestinian digital rights have restricted their digital activism and online mobility.

A study issued by the Palestinian Central Bureau of Statistics in 2018 showed that about more than half of the Palestinian households have internet access at home,⁵ 60% in the West Bank and 38.0% in Gaza strip. 37% of Palestinians use different social media platforms⁶ (Facebook, Instagram and Twitter) and 1.5 million Palestinians use Facebook in the West Bank and Gaza, 60% of them access Facebook via their smart phones.⁷ According to this study, 73% of

the users use social media platforms for news updates,⁸ 24% of users consider 'Israeli monitoring and control' when they post opinions and 20% of the users consider Palestinian authorities and monitoring control.⁹

PROBLEM DESCRIPTION

Legalising digital oppression

Ever since the signing of the Oslo Accords between the Palestinian Liberation Organisation and Israel in 1993, the Israeli authorities have controlled the digital infrastructure by limiting access to frequencies and technologies, building infrastructures and restricting any import of any necessary equipment.¹⁰

However, not only are the Israelis restricting any development of the technological sector in Palestine, but according to a report by 7amleh,¹¹ the Israelis are able to 'easily access personal information of Palestinians, monitor users, block, delete or remove content'.¹²

The general Israeli policies towards restricting Palestinians' rights through legal tools have been emphasised since 2015 by the establishment of a cyber unit to halt 'incitement'.¹³ The Israeli cyber unit is operating 'without any domestic legal authority'¹⁴ to censor social media content. This cyber unit which coordinates with social media net-

4 Al-Mezan Centre for Human Rights, 'Press news: Al-Mezan publishes a report on the reality of freedom of expression and opinion over social media platforms in face of restrictions and violations' (*Al-Mezan Centre for Human Rights*, 6 February 2020) <www.mezan.org/post/29916> accessed 12 April 2020.

5 Palestinian Central Bureau of Statistics, 'On the occasion of the International Population Day 11/7/2018' (*Palestinian Central Bureau of Statistics*, 11 July 2018) 2 <www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_IntPopDay2018E.pdf> accessed 14 April 2020.

6 Concepts Technologies, 'Digital and Social Media Report in Palestine' (Concepts Technologies 2017) 11 <<https://socialstudio.me/wp-content/uploads/2018/04/SMRP2017EnglishFinal.pdf>> accessed 15 April 2020.

7 Ibid 13.

8 Ibid 17.

9 Ibid 18.

10 Anan AbuShanab, 'Connection Interrupted: Israel's Control of the Palestinian ICT Infrastructure and Its Impact on Digital Rights' (7amleh – The Arab Centre for the Advancement of Social Media December 2018) 21 <https://7amleh.org/wp-content/uploads/2019/01/Report_7amleh_English_final.pdf>.

11 7amleh- The Arab Centre for Social Media Advancement.

12 AbuShanab (n 10) 27.

13 Anan AbuShanab, 'Hashtag Palestine 2018: An Overview of Digital Rights Abuses of Palestinians' (7amleh – The Arab Centre for the Advancement of Social Media March 2019) 5 <https://7amleh.org/wp-content/uploads/2019/03/Hashtag_Palestine_English_digital_pages.pdf>.

14 Adalah, 'Israel's "Cyber Unit" operating illegally to censor social media content' (*Adalah*, 14 September 2017) <<https://www.adalah.org/en/content/view/9228>>.

works, like Facebook and Twitter, has the authority to remove any content, or block users of access to these platforms. The vast majority of the cases closed by this cyber unit have been Palestinians,¹⁵ meaning that Palestinians are the main target and their content on social media platforms can entail a politically driven aim.

In 2017, the Israeli Parliament (Knesset) introduced what was called the 'Facebook bill'; while it has not been passed, it showed the general approach towards restricting Palestinians' digital rights. The bill allows courts to issue orders to remove online content that constitutes offences that could harm 'human safety, public, economic, state or vital infrastructure safety' and the accused person would not have been able to respond to the courts.

Besides the vague terms of the proposed bill, the aim of this law was – according to the Public Security Minister Gilad Erden – because of the extensive use the Palestinian organisation Hamas has made of Facebook and Twitter during attacks on the Gaza strip by the Israeli forces.¹⁶

In 2018, a bill was introduced and approved by the first reading in the Knesset called 'the Prohibition against photographing and documenting Israeli soldiers' which imposes a five-year imprisonment for those who film or photograph Israeli soldiers.¹⁷

These laws contradict with the state obligation to protect the right to freedom of expression; in addition, because it enables unjustified prosecutions based on vague and imprecise provisions and severe punishment, it contradicts with the three-part test.

According to the General Comment No 34 issued by a United Nations (UN) monitoring body

on the application of the International Covenant on Civil and Political Rights (ICCPR),¹⁸ a 'three-part test' is available to measure if the restriction on the freedom of expression is justified. The first part is to see if these restrictions are 'provided by law'. However, the law should be clear, precise and unambiguous as vagueness could impose a 'chilling effect' on citizens and can hinder the expression of their opinions.

The second part is that it has to pursue a legitimate aim, and according to statistics shown in the policy, the majority and the content of the laws are politically driven to target Palestinians' resistance and freedom of thought and expression towards Israeli continuous violations. There are many examples that clearly revoke the justifications provided by the aforementioned UN monitoring body measurement procedures. For instance, the arrest of the Palestinian poet Daren Tatour who was sentenced for five months in prison after being convicted for incitement over posting a poem titled 'resist, my people resist' on her Facebook account.¹⁹

The third part is that the law should be necessary in a democratic society, and according to the UN General Comment, for a law to be necessary it should have a legitimate aim and be proportionate to the intended aim. Most of the Israeli laws impose severe imprisonment punishments that are not proportionate to the 'offence' committed, instead of using the least restrictive measures. In the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinions and expression it is stated that imprisoning individuals for seeking, receiving and imparting information and ideas can be rarely justified as a proportionate measure.²⁰

15 Adalah, 'Adalah fears Facebook's online incitement deal with Israel will selectively target Palestinian citizens' (*Adalah*, 9 November 2016) <<https://www.adalah.org/en/content/view/8948>>.

16 Sue Surkes, 'Public security minister orders progress on "Facebook incitement bill"' (*Times of Israel*, 4 December 2018) <<https://www.timesofisrael.com/public-security-minister-orders-progress-on-facebook-incitement-bill/>>.

17 Al Jazeera, 'Israeli bill to ban filming soldiers on duty condemned' (*Al Jazeera*, 28 May 2018) <<https://www.aljazeera.com/news/2018/05/israeli-bill-ban-filming-soldiers-duty-condemned-180528150533045.html>>.

18 OHCHR, General Comment No 34 (102nd session 12 September 2011) UN Doc CCPR/C/GC/34 <<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.

19 Al Jazeera, 'Dareen Tatour sentenced to five months in prison over poem' (*Al Jazeera*, 31 July 2018) <<https://www.aljazeera.com/news/2018/07/dareen-tatour-sentenced-months-prison-poem-180731084215893.html>>.

20 OHCHR, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression', addendum, communication to and from governments (16 May 2011) UN Doc A/HRC/17/27 <https://www2.ohchr.org/english/bodies/hrc/docs/addendum_communication_to_and_from_governments_16_may_2011.pdf>.

Failing to meet the three-part test indicates that Israeli authorities restrict their obligations towards respecting and protecting the right to freedom of expression of Palestinians. According to data by Addameer Prisoner Support and Human Rights Association, there were around 300 cases of Palestinians who were arrested over Facebook posts by Israel in 2017 only,²¹ and around 350 Palestinians were arrested in 2018.²² According to the international advocacy officer at Defense for Children International – Palestine, children are prosecuted in military courts based on Facebook content labelled as ‘incitement’, for just simply sharing a photo of a political leader or figure.²³

Liability of social media towards restricting Palestinians’ freedom of expression

Online spheres have articulated new approaches to how we understand rights, most importantly rights to freedom of expression and thought, and the right to privacy. Yet, social media platforms – deciding in their regulations what or what should not be posted – are not dealt with as concrete non-vital grounds; they are entities and can be held liable for their actions.

It is no secret that governments ask social media platforms to dismiss or remove content believed to be threatening to social order. In

2017 alone, Facebook approved 85% of the Israeli’s requests to remove content.²⁴ However, social media platforms like Facebook have questionable relations with the Israeli government.²⁵

While the UN Human Rights Committee asked states to ‘take all necessary steps to foster the independence of the new media’,²⁶ neither the United States (US) (applying US law) nor Israel (applying Israeli law) have actually fostered this independence.

The Israeli government and Facebook have reportedly agreed to work jointly to tackle incitement to violence on social media.²⁷ Nevertheless, the provisions of the agreement between the two parties were never released, meaning that no one knows how ‘incitement’ was defined and its limits and boundaries.

Facebook says it removes content that is considered illegal under local law, or that breaches its own ‘community standards’, including hate speech towards a particular group,²⁸ however most of the content reported were photos of famous Palestinian political figures or places.²⁹

In 2016, a Palestinian social media campaign³⁰ against the Facebook censoring policy of Palestinians was launched due to the suspension of two editors of daily newspaper accounts without any prior notice. Both accounts are followed by more than 5 million followers.³¹ Palestinians decided to stop any posting on Facebook for two hours as a way to protest against Face-

ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf>.

21 Ylenia Gostoli, ‘Palestinians fight Facebook, YouTube censorship’ (*Al Jazeera*, 20 January 2018) <<https://www.aljazeera.com/news/2018/01/palestinians-fight-facebook-youtube-censorship-180119095053943.html>>.

22 Tessa Fox, ‘Palestinians take on Israel over digital crackdown’ (*Deutsche Welle*, 17 January 2019) <<https://www.dw.com/en/palestinians-take-on-israel-over-digital-crackdown/a-47118212>>.

23 The International Advocacy Officer at Defense for Children- Palestine (DCIP), (2020, April 12). Personal Interview.

24 Palestinian Centre for Development and Media Freedom (MADA), ‘Study on Challenges of Digital Rights in Palestine’ 43 <<https://www.madacenter.org/files/image/2019/digitalrightsstudy.pdf>>.

25 Ylenia Gostoli, ‘Is Facebook neutral on Palestine-Israel conflict?’ (*Al Jazeera*, 26 September 2016) <<https://www.aljazeera.com/news/2016/09/facebook-neutral-palestine-israel-conflict-160921115752070.html>>.

26 OHCHR, ‘Freedom of expression and new media’ (*OHCHR*, 1 September 2011) <<https://www.ohchr.org/EN/NewsEvents/Pages/FreedomExpressionandnewmedia.aspx>>.

27 Associated Press in Jerusalem, ‘Facebook and Israel to work to monitor posts that incite violence’ (*The Guardian*, 12 September 2016) <<https://www.theguardian.com/technology/2016/sep/12/facebook-israel-monitor-posts-incite-violence-social-media>> accessed 23 April 2020.

28 MADA (n 24) 44.

29 Ibid 19.

30 The hashtag link of the campaign is #FBCensorsPalestine.

31 Middle East Monitor, ‘Facebook takes down page of Palestine news site’ (*Middle East Monitor*, 11 October 2019) <<https://www.middleeastmonitor.com/20191011-facebook-takes-down-page-of-palestine-news-site/>>.

book's internal agreements with the Israeli authorities which had led to the suspension of their rights to freedom. In the end, Facebook apologised and said it was by 'mistake', however, no further explanation or adjusting of the policies have ever been made.

Furthermore, Facebook's algorithm deletes any posts that contains specific words without even checking the context: including Hamas, Jihad, Saraya and Jabha Sha'bya which all are names of Palestinian political groups, in addition to the word 'Shahed' which is Arabic for martyr. On the contrary, 'Zionist' is listed as a 'globally protected group' where any content which opposes Zionism should be removed.³²

According to Sada Social³³ – a campaign that documents violations on Palestinian rights – there has been 1,000 violations against Palestinian digital content in 2019, 794 of them were recorded on Facebook. Only during May 2020, Sada Social stated that “%88 out of 185 violations documented only during May 2020 have targeted Facebook accounts belonging to journalists and activists.”³⁴

WhatsApp, a chat platform owned by Facebook, performs in the same way. In 2019, it blocked around 100 accounts belonging to Palestinian journalists and activists, banning them from sharing information and updates during Israel's military attacks on Gaza.³⁵

According to Nadim Nashif and Marwa Fatafta,³⁶ Facebook's relationship with the Israeli government could be explained in three ways: firstly Israel has a well-developed information technology industry and provides a profitable market for Facebook, secondly Facebook's office in Tel Aviv brings the company closer to the influence of Israeli decision makers, and third-

ly Facebook may have a fear of being sued. A leaked document indicated Facebook's fear of legal action regarding content that denies the holocaust.³⁷

POLICY OPTIONS AND RECOMMENDATIONS

Freedom of expression is a vital right, it is what constitutes a person's choice to shape his/her identity, understand the world and express political and social opinions. Severe repercussions can result from the restriction of such a right.

Yet, these consequences become more critical when it is in the context of occupied Palestine suffering from the Israeli occupation. Restrictions to share and disseminate information can not only be a restriction to one's freedom, but can entail a way to block the exposing of systematic human rights violations.

According to the UN General Comment No 34, internet intermediaries play a fundamental role in facilitating dissemination of content and responsibility for the flow of information. While social media platforms cannot be held liable for others' content, they can be held liable if “the intermediary has specifically intervened in the content.”³⁸ Intervention can be either blocking, dismissing or removing content.

According to the 2011 joint declaration on freedom of expression and the internet, the special rapporteur recommended that social media intermediaries should only be required to take down content following a court order contrary to the practice of notice and takedown.³⁹ In the Palestinian censored context, Facebook has removed thousands of pieces of content and ac-

32 Nadim Nashif and Marwa Fatafta, 'Surveillance of Palestinians and the Fight for Digital Rights' (*Al-Shabaka*, 23 October 2017) <<https://al-shabaka.org/briefs/surveillance-palestinians-fight-digital-rights/>>.

33 'Sada Social Center' www.sada.social/.

34 Sada Social, '%88 of the violations have targeted Facebook personal accounts belonging to journalists and activists' (Sada Social, 2 June 2020) <<http://sada.social/ديرهش-ريراقت-violations-against-the-palestinian-content-during-may-2020/>>

35 Marwa Fatafta, "'Incitement' and 'Indecency': How Palestinians Dissent Is Repressed Online' (+972 Magazine, 4 December 2019) <<https://www.972mag.com/censorship-online-palestinians/>>.

36 Activists for Palestinian digital rights.

37 Nashif and Fatafta (n 32).

38 ARTICLE 19, *Internet intermediaries: Dilemma of Liability* (ARTICLE 19 2013) 10 <https://www.article19.org/wp-content/uploads/2018/02/Intermediaries_ENGLISH.pdf>.

39 Ibid 11.

counts of Palestinians without even notifying them, based on a request from an illegal cyber unit,⁴⁰ which is not considered a court decision.

Lack of transparency in what constitutes a ‘violation’ or an ‘incitement’ leads to discriminatory practices and breaches people’s rights to have an opinion or expose human rights violations. There are many consequences when private entities start to decide what is ‘legal’ and what is ‘not’.

RECOMMENDATIONS: TOWARDS PROTECTING PALESTINIAN DIGITAL FREEDOMS

Instead of contributing by silencing and suppressing Palestinians’ voices in exposing human rights violations and facilitating their prosecution based on an invalid legal basis, the social media companies should strengthen their protection as part of protecting freedom of expression of all Palestinian users particularly those of HRDs, journalists, activists and students. For this purpose, the policy brief suggests some recommendations as follows:

1. The Israeli government should be held accountable for its control, limiting and disruption over Palestinian technological sector. Third states should also contribute to helping the Palestinian technological and communication sector become independent.
2. Ensure transparency; any internal agreements between the Israeli government and Facebook shall be released.
3. Facebook shall make its terms of service more transparent, abide to the human rights standards and stop blocking Palestinian content and violate their right to expression and opinions.
4. Facebook shall establish direct communication with the Palestinian Authority, Palestinian human rights organisations and civil society to develop instruments to allow Palestinians to exercise the right to freedom of expression without discrimination.
5. Social media companies shall review their

policies and standards to comply with international law and reject the legalisation of discriminatory policies, especially in occupied Palestine. These companies have an obligation to protect individuals and groups against abuses of human rights in general and the right to freedom of opinion and expression in particular.

6. International human rights organisations shall organise and institutionalise their efforts to end the cyber occupation of Palestine through policies and strategies in cooperation with relevant duty-bearers, human rights organisations and activists.
7. International human rights organisations shall establish coherent monitoring mechanisms that aim to put an end to the complicity of social media companies in violations of Palestinian digital rights.

40 Adalah (n 15).

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