

Connection Interrupted:

Israel's Control of the Palestinian
ICT Infrastructure and Its Impact
on Digital Rights

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7amleh – The Arab Center for the Advancement
of Social Media

**Connection Interrupted: Israel’s Control of the Palestinian
ICT Infrastructure and Its Impact on Digital Rights**

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Summary

The development of information and communications technology (ICT) have allowed for an extensive flow of information in our lives surpassing territorial constraints. However, in the occupied Palestinian territory (oPt) Israel has been controlling the ICT infrastructure since its began its military occupation in 1967. Although per the Oslo Accords, an Interim Agreement signed between Israel and Palestinian representatives in 1995, Israel transferred some of this control to the Palestinian Authority (PA) in the West Bank, excluding East Jerusalem and the Gaza Strip. Otherwise, Israel has retained control over critical aspects of the ICT sector making it impossible for Palestinians to develop an independent network and thereby enjoy a greater safety and flow of information.

Israel's control of the Palestinian ICT infrastructure has not only hindered its development but has also allowed Israel to conduct mass surveillance of Palestinians and restrict their access to digital rights, specifically rights to internet security, privacy and freedom of opinion and expression. ICT has changed the way we lead our lives from social networking to ecommerce, leading to significant societal changes and transformations. As the interactions between our daily lives and components of ICT continue to grow, opportunities but also risks to how we exercise our human rights emerge, and specifically to rights of

privacy and freedom of expression. The components of ICT include all the infrastructure and technologies that allow for interactions in the digital world, inter alia, network equipment, telecommunications services, devices and electronics, and security software.

In this report, Zamleh - The Arab Center for the Advancement of Social Media provides information on the interaction between the ICT sector and digital rights in Palestine, by identifying Israeli restrictions imposed on the Palestinian ICT infrastructure and their implications for the enjoyment of digital rights by Palestinians. The paper focuses on how such control has allowed Israel to conduct mass surveillance of Palestinians and monitor content online, thus violating an array of human rights, both in the online and offline world.

Zamleh believes that Israel's continued control of the Palestinian ICT sector greatly affects digital rights in particular, and human rights in general in the oPt, and as such calls on Israel to cease its unjustified control of the ICT sector and its illegal digital surveillance practices of the Palestinian population. Social media and ICT companies involved in dealings with Israel must also ensure that their operations in the oPt do not violate Palestinians' human rights. Further, third party states, must also ensure that their policies do not recognize or support unlawful Israeli actions that violate the rights of Palestinians and ensure that Israel to meet its international legal obligations as an occupying power in the oPt.

Introduction

In today's digital lifestyle, everyone is increasingly conducting their personal and professional lives online acquiring knowledge but also sharing personal data and content, and social networking, while storing data online. Today, people rely on information and communications technology (ICT) infrastructure to connect them to the world. This increased interconnectedness creates opportunities to share information but also creates new risks and ethical dilemmas that affect human rights, particularly in regards to what is shared and with whom and how personal data is stored and accessed. Human rights online, or digital rights, are considered an extension of human rights in the digital context and the United Nations Human Rights Council (UNHRC) on multiple occasions emphasized that "the same rights that people have offline must be also protected online".¹

Since its occupation of the Palestinian territories (oPt) in 1967, Israel has controlled the Palestinian ICT infrastructure, hindering its development and Palestinians' digital rights including recent mass surveillance and monitoring of Palestinian content online. Israel's control of the Palestinian ICT infrastructure is part and parcel of its policies and practices as an occupying power controlling the oPt and as a result Palestinians are unable to develop

¹ UN Human Rights Council, "The promotion, protection and enjoyment of human rights on the Internet," A/HRC/32/L.20, (27 June 2016), available at: <https://goo.gl/QueKDX>

an independent ICT sector and forced to depend on Israeli operators to provide services and encounter the repeated destruction of networks and equipment by Israel, enduring significant economic losses.

According to the Palestinian Information Technology Association (PITA), the ICT market in the West Bank and Gaza encompasses 400,000 fixed-line subscribers, 100 radio and local television stations, as well as 17 companies operating in the field of telecommunication and Internet.² In 2017, there were about 3,018,770 registered internet users (amounting to 60.5 percent of the population) in the oPt, excluding East Jerusalem,³ with 1,600,000 users being active social media users connected to various social media platforms.⁴ In the same year, there were 4,400,000 sim cards in the West Bank and the Gaza Strip, 90 percent of which were operated by Palestinian telecom operators and the remaining 10 percent were operated by Israeli ones. For about 1,400,000 internet users, mobile phones are their means of accessing the internet.

The advancement of the ICT sector and digital technology have had many positive effects on the exercise of human rights in the digital context, in particular for the right to freedom of opinion

2 Palestinian Investment Promotion Agency, "ICT," available at: <https://goo.gl/LTq8Z8>

3 Unclear how many Palestinian users in East Jerusalem, given that the ICT sector in East Jerusalem is fully integrated into Israel's ICT infrastructure.

4 Ipoke. "Social Palestine: Social Media in Palestine in 2017," (23 January 2017), available at: <https://goo.gl/FYoDFj>



and expression, which include the right to acquire and disseminate information, and the right to communicate. Today, various technology products allow for easier access to information and the ability to filter or even block content.⁵ This has increased unlawful conduct by governments or service providers along the ICT service chain that can infringe on people's digital rights and make people more vulnerable. Potential abuses resulting from the government's illegitimate use of ICT infrastructure include, inter alia, disrupting or completely shutting down systems, the misuse of information for surveillance, censoring speech, deleting or blocking data, or the forced distribution of politically motivated messages via operators' networks.⁶ During various Israeli military operations on the Gaza Strip in 2014, which resulted in appalling human losses and damages to Palestinian infrastructure, the Israeli army bombed 14 stations of the PalTel group, resulting in an estimated loss of US\$32.6 million in revenue and damaged networks.⁷ Israel has also targeted many Palestinians through their social media profiles. Monitoring of Palestinian profiles, which is used largely to connect with fellow

5 Hope, Dunstan. "Protecting human Rights in the Digital Age: Understanding Evolving Freedom of Expression and Privacy Risks in the Information and Communications Technology Industry," BSR, (February 2011), available at: https://www.bsr.org/reports/BSR_Protecting_Human_Rights_in_the_Digital_Age.pdf

6 Ibid.

7 Alphamena Corporate Services, "PalTel Telecoms/ Palestine," (6 June 2018), available at: <https://goo.gl/sQWHjF>

Palestinians across fragmented geographical areas, has resulted in hundreds of Palestinian profiles being deleted and hundreds of Palestinians being arrested and charged with the far reaching charge of ‘incitement’.⁸

1. How Israel Controls the Palestinian ICT Infrastructure

Following its occupation in 1967, the Israeli military took control of the ICT sector in the oPt, which was first administered by the Israeli Ministry of Telecommunication and later by Bezeq, the state-owned telecom company. In 1995, Israel transferred partial control of ICT infrastructure in the West Bank, excluding East Jerusalem, and the Gaza Strip to the Palestinian Authority (PA) as per the Oslo Accords. The agreement divided the geographical integrity of the West Bank into three different areas; Areas A, B, and C, each is under different jurisdictions. Under the Accords, Area A, consisting of 18 percent was under the control of the Palestinian Authority, Area B consisting of 22 percent fell under Palestinian civil control but joint Palestinian-Israeli security control, and Area C consisting of 60 percent of the West Bank was under full Israeli control.

In East Jerusalem, the ICT infrastructure is under full

⁸ See 7amleh's report “#Palestine 2017: Palestinian Digital Activism Report” available at:<http://7amleh.org/wp-content/uploads/2018/04/Palestine-2017-English-final.pdf>

Israeli control, and no Palestinian telecommunications operator is allowed to operate or provide services there. Although Israel illegally annexed East Jerusalem following its occupation and applied its civil law to East Jerusalem, under international law East Jerusalem remains an occupied territory.

The legal framework governing the ICT sector in the oPt includes international humanitarian law, international human rights law, international treaties on the telecommunication sector, as well as the Oslo Accords. In addition, Palestinian telecommunication laws and regulations are applicable to the work of Palestinian companies operating in the West Bank and Gaza. Although Israel applies its civil law concerning the ICT sector in East Jerusalem, international law of belligerent occupation prohibits Israel from extending its civil law to an occupied territory.

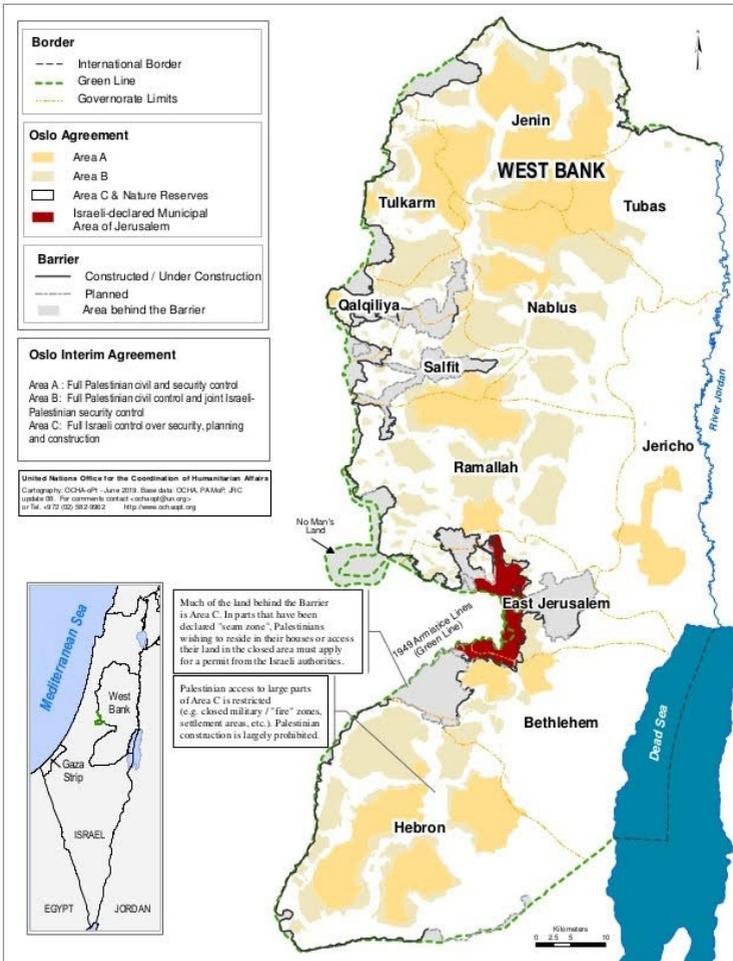


Figure :1 A map showing the geographical division of the West Bank into three different areas under the Oslo Accords © UN OCHA2011

1.1 Control under the Oslo Accords

The Oslo Accords refer to the formal agreements that resulted from direct talks between Israel and the Palestinian Liberation Organization (PLO). They were formalized starting in 1993, first the Declaration of Principles on Interim Self-Government Arrangements and then elaborated in the Interim Agreement on the West Bank and Gaza Strip in 1995. The Accords set into motion an interim period of five years to reach a final status agreement, which were supposed to end in 1999. Although Israel recognized that “the Palestinian side has the right to build and operate separate and independent communication systems and infrastructures including telecommunication networks, a television network and a radio network,” under the Accords, it continues to control the telecommunication infrastructure and the deployment of services in most parts of the oPt.⁹ The agreement established a joint committee of technical experts, the Joint Technical Committee to represent both sides and address any issues arising in the ICT sector, including “the growing future of the Palestinian side.” However, the Committee has proven inadequate and shown ineffective performance since it has been used by Israel to “veto” the development of the Palestinian

⁹ Declaration of Principles on Interim Self-Government Arrangements (“Oslo Agreement”), 13 September 1993, Annex III, Article 36(B)(1), available at: <http://www.refworld.org/docid/3de5e96e4.html>

ICT sector.¹⁰ Instead of gradually transferring the control of the ICT sector as per the Oslo Accords, Israel has tightened its control of the Palestinian ICT infrastructure, restricted Palestinians' access to various telecommunications services and continues to destroy or obstruct its development.

Under the law of occupation, part of international humanitarian law, agreements concluded between the authorities of the occupied territories and the occupying power cannot deprive the local population of the protections afforded under the law, nor change the status of the occupied territory.¹¹ Article 36 of Annex III of the Oslo Accords sets out the provisions regulating the telecommunications sphere in the oPt. Under the provisions of the agreement, Israel restricts Palestinian access to the electromagnetic sphere, restricts infrastructure in various areas in the oPt, and tightly controls the import of ICT equipment, while facilitating the work of Israeli telecom companies within the West Bank.¹² This not only results in losses for the Palestinian economy, but also violates the digital rights of the Palestinian population.

10 The World Bank. 'The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development', (1 February 2016), available at: <https://goo.gl/8Ecpe6>

11 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, Article 47.

12 Oslo Agreement, Annex III, Article 36(A)(1).

a. Limiting Access to Frequencies & Technologies

The first Palestinian mobile operator in the West Bank and Gaza, Jawwal, was licensed to operate in 1998, with the exclusive 2.4 megahertz (MHz) and shared 2.4 MHz in the 900 MHz band to serve 120,000 subscribers, which grew to 2.9 million subscribers by the end of 2017.¹³ In 2000, the Palestinian Ministry of Telecommunications and Information Technologies (MTIT) requested Israel to release frequencies to allow the second Palestinian mobile operator to enter the Palestinian market, Wataniya. However, Israel continued to delay the release of frequencies to Wataniya. In 2007, the MTIT licensed Wataniya without available frequencies for its use and issued it 2G and 3G mobile licenses. Israel also partially released frequencies, 3.6 MHz in the 900 MHz band and 2.8 MHz in the 1800 MHz band, which were not even for Wataniya's exclusive use but could also be used by Israeli operators. As a result, Wataniya started operating in the West Bank in November 2009 and following a second release, was able to operate in the Gaza Strip in 2017.

Israel also continues to deny Palestinians' requests for the deployment of new ICT technologies. More than a decade after the Palestinians made the initial request for the release of Third Generation (3G) frequencies, the service became available for Palestinian customers

¹³ Alphamena Corporate Services (n 7).

in the West Bank in early 2018. In addition, Israel denied the deployment of WiMax (Worldwide Interoperability for Microwave Access) systems which provide access to wireless broadband networks and allow for the high-speed transmission of data across networks and applications, a technology intended by mobile operators and internet providers to “enable people to communicate anywhere, at any time, from any device.”¹⁴ LTE and 4G systems now replaced WiMax systems worldwide, basically providing the same technology but allowing for a better and faster flow of information. To this day, Palestinians do not have access to 4G, which is available in Israel, and the Palestinian MTIT has been waiting for its request to be fulfilled by Israel for the past six years.¹⁵

Indeed, Israel’s refusal and delay to release technologies required for the growth and operation of Palestinian telecommunication operators have limited Palestinian economic growth and made it impossible to compete with Israeli operators who have many clients in the West Bank and East Jerusalem.

¹⁴ Ericsson, “ICT and Human Rights: An ecosystem approach,” (2013) available at: <https://goo.gl/fyjLXN>

¹⁵ 7amleh interview with the Palestinian MTIT, Ramallah, 10 October 2018.

b. Limiting Access to Global Technologies

Israel also controls the development of the infrastructure for ICT in both the West Bank and the Gaza Strip. In the West Bank, Israel requires Palestinian operators to apply for permits to build infrastructure in the majority of the West Bank, which has been deemed 'Area C' by the Oslo Accords. According to the MTIT, since 2000 Israel only approved the necessary infrastructure for 3G systems.¹⁶

As a result, Palestinian networks are fragmented which encourages customers to use Israeli operators that enable them to be connected while traveling between cities or when living in isolated areas. Israel also prevents Palestinians from building switches, a core equipment of telecommunications networks, in areas under the full control of the PA.¹⁷ As a result, Jawwal located its switches in England and Jordan, and Wataniya in East Jerusalem. This has resulted in greater operations costs for both operators and a longer routing of calls.

In Gaza, the ICT infrastructure is completely dependent on Israel, and the only fiber optic connection between Gaza and the rest of the world is in Israel. Israel's control of the Gaza ICT infrastructure and technologies are best described as "technologies of enclosure and

¹⁶ Ibid.

¹⁷ Cisco, "What is Switch vs. a Router," available at: <https://goo.gl/4nSAnp> (accessed on October 30, 2018).

occupation,” through which Israel’s control can disrupt the use of technologies in Gazan’s daily lives, as well as during various military offences.¹⁸ During Israel’s military offences, the Israeli military sent text messages and recorded messages to Gazan’s cell phones and landlines, sometimes to warn them of military attacks. During the 2008/2009 Israeli military offence on Gaza, the Israeli army kept telephone and radio broadcast communications open and regularly interrupted radio broadcast to warn Palestinians to evacuate areas and sent over 10,000 automated phone calls and text messages to Palestinians, and despite sending these warning messages, Israeli military often did not give families enough time to evacuate buildings before carrying out the attacks or take enough precautions to minimize the risk of harm to civilians.¹⁹ In addition to the appalling loss of lives during the various operations, Israel also targets ICT infrastructure directly, resulting in communications shutdowns and financial losses endured by Palestinian operators.

18 Tawil-Souri, Helga. “Digital Occupation: Gaza’s High-Tech Enclosure,” *Journal of Palestine Studies*, Vol. 41, No. 2 (Winter 2012), pp. 27-43, available at: <https://goo.gl/d9kyiC>

19 “The Israeli Arsenal Deployed Against Gaza During Operation Cast Lead,” *Journal of Palestine Studies* Vol. XXXVIII, No. 3 (Spring 2009), pp. 175-191, available at: <https://goo.gl/8CKf8v>

c. Restricting the Import of Necessary Equipment

The economic value of the Palestinian ICT equipment and hardware is worth about US\$100 million, according to the Palestinian Information Technology Association of Companies (PITA).²⁰ However, the importing of telecoms equipment remains severely restricted for Palestinian mobile, fixed telecommunications and internet providers among others with no clear, fixed rules. Under the Oslo Accords, Palestinians' import of telecom equipment is specified in paragraph D(2) of Article 36 of Annex III and the economic protocols annexed to them:

[...] The Palestinian side shall be permitted to import and use any and all kinds of telephones, fax machines, answering machines, modems and data terminals, without having to comply with the above-mentioned standards (accordingly, lists A1 and A2 of Annex V (Protocol on Economic Relations) will be updated). Israel recognizes and understands that for the purpose of building a separate network, the Palestinian side has the right to adopt its own standards and to import equipment which meets these standards (accordingly, lists A1 and A2 of Annex V (Protocol on Economic Relations) will be updated). The equipment will be used only when the independent Palestinian network is operational. [emphasis added]

²⁰ Palestinian Information Technology Associate of Companies, "Palestinian ICT Sector," available at: <https://goo.gl/gEKw1u>

Israel has also imposed onerous conditions on Palestinian importers. In the case of the ICT sector, Palestinian importers must submit their requests to import ICT materials to the Coordination of Government Activities in the Territories (COGAT), a division in the Israeli Ministry which implements Israeli policies in the West Bank and Gaza. COGAT then transfers the requests to the Israeli Ministry of Telecommunications for approval. Each request must provide justification of need, the full details of the quantities of equipment in compliance with set Israeli standards, and the compliance of the equipment with the “dual-use” policy applicable only to Palestinian importers.²¹ The “dual-use” policy, introduced in 2007, means that the products can be used for military purposes, in addition to civilian ones. Israel imposes even more restrictions on equipment accessible to Gaza, which apply not only for ICT necessary equipment, but also to material used by ICT companies such as cement or wood.²²

21 Arafah, Nur et al. “ICT: The Shackled Engine of Palestine’s Development,” al-Shabaka, (9 November 2015), available at: <https://al-shabaka.org/briefs/ict-the-shackled-engine-of-palestines-development/>

22 7amleh interview with the Palestinian MTIT, Ramallah, 10 October 2018.

1.2. Israeli Operators Benefiting from Imposed Restrictions in the West Bank

In addition to the restrictions imposed on the Palestinian ICT sector, Israeli telecommunications service providers operate in Israeli settlements in the West Bank contrary to international law. There are currently five Israeli telecommunication companies operating in Israeli settlements, including Cellcom, Partner, Pelephone, Hot Mobile and Golan Telecom.²³ Israeli operators in Israeli settlements rely on Israel's control and restrictions imposed on the Palestinian ICT sector to reap profits, while increasing costs and decreasing revenues for their Palestinian competitors in the West Bank. It is estimated that 20 to 40 percent of the Palestinian telecommunication market is seized by Israeli operators.²⁴ Israeli operators also provide services to Israeli settlements and maintain equipment and infrastructure on privately owned Palestinian land in Area C of the West Bank. Unlike the Palestinian operators, Israeli operators do not face the same restrictions on access to frequencies and building infrastructure and can maintain equipment and property in settlements or Area C of the West Bank.²⁵ For example, Israeli

²³ WhoProfits, "Signal Strength: Occupied the Telecommunications Sector and the Israeli Occupation", (July 2018), available at: <https://goo.gl/psSzf>.

²⁴ Arafah, Nur et al. (n 21).

²⁵ Who Profits, "The Cellular Companies and the Occupation", (August 2009), available

operators have been offering 3G services long before their Palestinian competitors were allowed to and at lower prices. Israeli operators also offer 4G services. Further, Israeli companies operate without obtaining licenses from the PA, which means that they are not paying taxes for their commercial activity in the Palestinian market to the PA.²⁶ The World Bank estimated that unauthorized Israeli companies cost the PA an estimated US\$60 million in tax revenues.²⁷ International humanitarian law prohibits Israel from establishing and maintaining settlements in the oPt and benefiting from its occupation of Palestinian land.²⁸ The transfer of Israeli settlers into the oPt constitutes a war crime under international law.²⁹ Furthermore, all private transactions and business dealings in or related to settlements constitute violations of international law, as they would indirectly contribute to the maintenance of illegal Israeli settlements, and to perpetuating a situation deemed illegal under international law.³⁰ However, in 2017, 10 percent of the 4.4 million sim cards used by Palestinians in the West Bank and Gaza Strip were

at: <http://www.whoprofits.org/content/cellular-companies-and-occupation>

26 Oslo Agreement, Annex III, Article 36.

27 The World Bank, "West Bank and Gaza Telecommunications Sector Note: Introducing Competition in the Palestinian Telecommunications Sector", (January 2008), available at: <https://goo.gl/d2ClqC>

28 International Committee of the Red Cross, "Occupation and international humanitarian law: questions and answers," (4 August 2004), available at: <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm>

29 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, Article 47.

30 Azarova, Valentina. "The UN Database on Business in Israeli Settlements: Pitfalls and Opportunities," al-Shabaka, (29 May 2018), available at: <https://goo.gl/Jya3P7>

operated by Israeli operators.³¹ Israeli operators target Palestinian clients and actively sell services to them in the West Bank, without providing them with the same value-added services they provide to their Israeli customers (Israeli settlers and soldiers).³² Additionally, in areas of limited connectivity for Palestinian operators, Palestinian operators must rely on Israeli companies for roaming on their networks, resulting in paying a large fee to Israeli operators.³³ International telecommunications providers may also be violating their human rights responsibilities for their dealings and services in Israeli settlements. For two decades, since 1997 when Israel authorized France's leading telecommunications company Orange to make a partnership with Partner to use Orange's brand for advertising and other purposes, Orange was operating in Israeli settlements and providing services through its nearly two hundred telecommunications towers to Israeli settlers and the Israeli army.³⁴ However, increased pressure on Orange over its operations in Israeli settlements, as they contribute to human rights abuses against Palestinians, led Orange to cease operating in settlements in 2016.

31 Social Studio, 'Report of Social and Digital Media in Palestine for 2017', (26 February 2018), available at: <http://socialstudio.ps/smrp2017/#firstPage>

32 FIDH, 'Dangerous liaisons in Israeli settlements: Orange and its shareholder the French State', (6 May 2015), available at: <https://goo.gl/ykc5iw>

33 The World Bank, "West Bank and Gaza: Area C and the Future of the Palestinian Economy", (October 2013), available at: <http://siteresources.worldbank.org/INTMENA/Resources/AreaCReport.pdf>

34 FIDH, (n 32).

2. Losses Endured by the Palestinian ICT Sector

According to the Palestinian Investment Promotion Agency, the ICT sector is the fastest growing sector in the oPt. The sector generates approximately US\$6 million profit annually and is recognized for its contribution to the Palestinian national economy. In both 2014 and 2015, the ICT sector accounted for 5.9 percent of the Palestinian gross domestic product (GDP).³⁵ Despite its growth, Israel's prolonged occupation and imposed restrictions on the Palestinian ICT sector have severely limited its development. According to the World Bank, the direct impact of Israeli restrictions on the Palestinian ICT sector resulted in a loss between 1.2 percent to 3 percent of Palestinian GDP between 2013 and 2015.³⁶ While many telecommunications systems in the world are moving to 5G services and many have already shut down their 2G networks, it took nearly 10 years for Palestinians to get access to 3G and this access is still limited to the West Bank.³⁷ Palestinians in the Gaza Strip are only allowed to use 2G services, and it

35 State of Palestine Central Bureau of Statistics, "The Palestinian Central Bureau of Statistics (PCBS) and the Ministry of Telecommunications and Information Technology issue a joint press release on the International Day for Information Society 17th of May," (17 May 2016), available at: <https://goo.gl/nwWqwG>

36 The World Bank. 'The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development', (1 February 2016), available at: <https://goo.gl/i8bjKT>

37 Lecht, Heimar. "2G and 3G networks are shutting down globally?!", 10T, (27 March 2018), available at: <https://10t.mobi/blog/2g-and-3g-networks-are-shutting-down-globally>

remains unclear when or whether 3G or 4G services will be available for their use. The World Bank estimated that during 2013-2015, the total revenue loss for Palestinian operators directly attributable to the absence of 3G alone was between US\$339 and US\$742 million.³⁸

Israel's delays in providing ICT technologies to Palestinians not only result in monetary losses, but also affect the development of the ICT sector in Palestine. As a result of slow connections and lack of access, technology companies in Palestine are struggling to keep-up with the rapidly changing environment. In 2017, the ICT Development Index published by the United Nations International Telecommunications Union, an index that ranks countries based on their ICT development, ranked Palestine very low at 123 out of 167 while Israel ranked 23rd.³⁹

Through these policies and practices, Israel is effectively creating a “digital gap” for Palestinians, where Palestinians are not allowed access to newly developed ICT technologies or equipment and are forced to remain technologically dependent on Israel.⁴⁰ Many Palestinian operators are also forced to pay a higher cost to find technological solutions to ensure best services to their Palestinian customers, which means extra costs for end users, who already suffer from other economic pressures created by the

38 The World Bank, (n 36).

39 ICT Development Index 2017. 'IDI 2017 Rank', available at: www.itu.int/net4/ITU-D/idi/2017/index.html

40 7amleh interview with the Palestinian MTIT, Ramallah, 10 October 2018.

Israeli occupation.

The International Telecommunications Union's Constitution, to which Israel is a signatory,⁴¹ recognizes the right of the public to access international telecommunication services "without any priority or preference", except in specific conditions, i.e. endangering the security of the state or to public order or decency.⁴² Given Israel's control of the Palestinians ICT sector, such limitations appear to be beyond justifiable security reasons and rather designed to create an economic and digital gap for Palestinians, and to ensure that the Palestinian ICT market remains a captive market by Israel. As the occupying power, Israel must ensure the "well-being and development" of the protected population in the occupied territory.⁴³ Furthermore, given the prolonged nature of Israel's occupation, it must take lawful measures to ensure the well-being and protection of the population in the occupied territory including the development of the ICT infrastructure.⁴⁴

41 International Telecommunication Union, "List of Agreements for Israel," available at: <https://goo.gl/iXTcxx>

42 International Telecommunication Union, "Collection of the basic texts of the International Union adopted by the Plenipotentiary Conference," (2003), available at: <https://goo.gl/oCDNCH>

43 Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice (ICJ), (9 July 2004), available at: <https://goo.gl/ChAbGC>

44 International Committee of the Red Cross Report. "Occupation and Other Forms of Administration of Foreign Territory." ICRC, March 2012.

3. Abuses of Palestinian Digital Rights

In addition to limiting connections and access to ICT technologies, governments can control the flow of information from users through network equipment, cell phone companies and software providers enabling them to to access personal information, surveille users and block, delete or remove content.⁴⁵ Israel's control of the ICT infrastructure and flow of information has allowed it to limit and violate Palestinians' digital rights, specifically the rights to access the internet, privacy and freedom of expression.

3.1 Rights to Communication and to Access the Internet

The lack of access to networks, or network coverage, resulting from Israel's restriction on building of ICT infrastructure in the West Bank and Gaza often forces Palestinians to use networks provided by Israeli telecommunication companies, particularly in Area C in the West Bank. According to the World Bank, Wataniya and Jawwal will need to erect a total of 330 towers in Area C, to ensure optimal coverage throughout the West Bank.⁴⁶ The Israeli restrictions on Palestinian building in Area C has resulted in hefty

⁴⁵ Hope, Dunstan (n 5).

⁴⁶ The World Bank (n 33).

losses and resulted in higher consumer prices. In addition, limiting the frequencies available for use by Palestinian companies results in higher maintenance and running costs to ensure connectivity.⁴⁷ Similarly as a result of Israel's restrictions to building or developing infrastructure, PalTel was only able to provide landline and ADSL services to 8,000 out of 16,300 households in Area C in 2014, forcing the majority of houses to rely on Israeli companies.⁴⁸ Israeli restrictions on the ICT sector have also limited the capacity for connectivity and integration between the West Bank and the Gaza Strip. In the Gaza Strip, the borders are controlled by Israel and Egypt, with strict Israeli restrictions on the movement of people and the import and export of goods, including humanitarian items. Israel's 11-year long unlawful closure of Gaza has also resulted in a severe humanitarian crisis. As a result of Israel's unlawful restrictions to enter equipment and release requested frequencies for its use, Wataniya mobile was unable to operate in Gaza, representing 40 to 50 percent of the Palestinian market, until eight years after it launched its services in the West Bank.⁴⁹ Wataniya reported US\$50 million revenues in the first half of 2018, a 21 percent growth in revenues for the same period in 2017, primarily as a result of

47 Tamleh Interview with Wataniya Mobile, Ramallah, 18 October 2018.

48 The World Bank (n 33).

49 Wataniya Mobile, "Annual Report 2017," available at: <https://goo.gl/mMYtmb>

its operations in the Gaza Strip and launching 3G services in the West Bank.⁵⁰

Access to the internet is being widely recognized as a human right, and disconnecting people from the internet violates the right to freedom of expression and the right to access and use information.⁵¹ In 2016, the UNHRC adopted a resolution on “The promotion, protection and enjoyment of human rights on the internet,” providing that “measures aiming to or that intentionally prevent or disrupt access to or dissemination of information online” violate international human rights law.⁵² The resolution recognized the “global and open nature” of the internet as a “driving force in accelerating progress towards development in its various forms” and called on all states “to promote and facilitate international cooperation aimed at the development of media and information and communication facilities and technologies in all countries.”⁵³

3.2 Right to Privacy

Israeli surveillance practices of Palestinians are nothing new.⁵⁴ Since the 1950s, Unit 8200, the largest unit of the Israeli army that engages in intelligence activity, has

50 Wataniya Mobile, “Wataniya Mobile Revenue increased by 21% to reach USD 50 Million in H1 2018,” (29 July 2018), available at: <https://goo.gl/2pOG4K>

51 UN Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue,” A/HRC/17/27, (16 May 2011), available at: <https://goo.gl/wzb5eY>

52 UN Human Rights Council (n 1).

53 Ibid.

54 Zureik, Elia, “Strategies of Surveillance: The Israeli Gaze,” Institute for Palestine Studies Issue. 66, (2016) available at: <http://www.palestine-studies.org/jq/fulltext/202338>

been tasked with collecting signal intelligence data and intercepting communication signals.⁵⁵ In September 2014, 43 reserve Israeli soldiers who served in Unit 8200, signed a letter refusing to serve in operations involving the oPt citing the “widespread surveillance of innocent civilians” that the Israeli army used for “political persecution” and to recruit informants.⁵⁶ The letter also added that the “Palestinian population under military rule is completely exposed to espionage and surveillance by Israeli intelligence. While there are severe limitations on the surveillance of Israeli citizens, the Palestinians are not afforded this protection.”⁵⁷ Furthermore, Israel’s ability to send automated phone calls and text messages through Palestinian networks, for example to Palestinians in Gaza during its military offenses, is an example of how Israel can collect and intercept Palestinian communications violating their right to privacy and operating without any transparency or accountability.⁵⁸

Similarly, Israel has also conducted ongoing digital surveillance of Palestinians and has removed and

55 “Unit 8200: How NSA of Israel Has One Of The Most Powerful Cyber Armies In The World,” Fossbytes, (23 November 2016), available at: <https://fossbytes.com/unit-8200-israel-cyber-army/>

56 Cohen, Gili, “Reservists From Elite IDF Intel Unit Refuse to Serve Over Palestinian ‘Persecution,’” Haaretz, (12 September 2018), available at: <https://www.haaretz.com/43-ex-unit-8200-soldiers-to-refuse-reserve-duty-1.5264418>

57 Full text of the letter available at: <https://goo.gl/Dxd789>

58 “The Israeli Arsenal Deployed Against Gaza During Operation Cast Lead,” Journal of Palestine Studies Vol. XXXVIII, No. 3 (Spring 2009), pp. 175–191, available at: <https://goo.gl/8CKf8v>

censored Palestinian content online. In 2015 the Israeli state attorney's office started operating the "Cyber Unit," a unit responsible for "dealing with cyberspace enforcement challenges" via the censorship of social media posts.⁵⁹ The unit has developed a "predictive policing system" to monitor Palestinians' social media posts.⁶⁰ This system can result in content removal and arrests of innocent people, such as young Palestinians, journalists, activists, human rights defenders and children. For example, in October 2017, Israeli forces arrested a Palestinian worker for posting "good morning" in Arabic on his Facebook account, which the automatic translations of Facebook mistakenly translated to "attack them" in Hebrew and "hurt them" in English. In another incident, on January 1, 2018, an Israeli military court charged Manal Tamimi with "incitement" for live streaming a video of her daughter, Ahed Tamimi, pushing and slapping two Israeli soldiers who had entered the yard of their home, on Facebook. After reaching a plea deal with the Israeli military prosecution, Manal severed eight months in Israeli prison, and paid a 5,000 New Israeli Shekels fine (US\$ 1339).

Zamleh documented how in addition to establishing the Cyber Unit, Israel relies on its cooperation with

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

60 Nashif, N. et al. 'The Israeli algorithm criminalizing Palestinians for online dissent', Open Democracy, (4 October 2017) available at: <https://goo.gl/WsSq1N>

high-tech giants such as Facebook,⁶¹ Twitter, and YouTube to censor, block, and delete Palestinian content online. In 2017, The head of the Israeli Cyber Unit said that 85 percent of Israeli government requests to “remove content deemed harmful or dangerous” from social media services such as Facebook, Google, and Twitter were accepted.⁶² In 2016, Israel requested the removal of 2250 posts or social media pages on various platforms. According to Facebook Transparency reports, Israeli requests to restrict content have been increasing since 2014. Facebook granted 343 requests in 2014, 468 requests in 2015, 710 requests in 2016 and 837 requests in 2017 from Israel.⁶³ Facebook has stated that it responds to government requests for data “in accordance with applicable [domestic] law” and Facebook terms of service.⁶⁴ It’s unclear which domestic laws Facebook relies on to remove content online, but as mentioned above Israeli military law is applicable in the West Bank and Gaza, and Israeli civil law in East Jerusalem. This has resulted in increasingly aggressive practices, and in May 2018, Facebook closed the official page of Palestinian Safa News Agency and 14 personal

61 For more information on how Facebook’s policies for Palestinian content moderation see: Zamleh, “Facebook and Palestinians: Biased or Neutral: Content Moderation Policies?”, (October 2018), available at: <http://7amleh.org/wp-content/uploads/2018/10/booklet-final2-1.pdf>

62 Ilan, S. “Israeli Official Reports Increased Cooperation on Removing Content from Social Media,” Calcalist, (29 December 2017) available at: <https://www.calcalistech.com/ctech/articles/0,7340,1-3728439,00.html>

63 Facebook, ‘Transparency Report: Israel’, available at: <https://goo.gl/d2HTyX>

64 Facebook, “Terms of Service,” available at: <https://www.facebook.com/terms.php>.

accounts belonging to managers and editors working in the news agency without any prior notification or follow up with the agency about the reasons for closing the page and accounts.⁶⁵

The right to privacy is protected under Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which stipulates that: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation,” and provides that such protection must be guaranteed under the law. Israel signed and ratified the ICCPR, and although it maintains that its human rights obligation do not extend to the oPt, the UN Human Rights Committee, the body charged with interpreting and enforcing the ICCPR, has affirmed repeatedly that “the provisions of the Covenant apply to the benefit of the occupied territories.”⁶⁶

In December 2013, the UN General Assembly first adopted a resolution on “The right to privacy in the digital age,” expressing concern for the implications of unlawful or arbitrary surveillance and interception of communications on the exercise and enjoyment of human rights, and affirming that the right to privacy must also be protected online.⁶⁷ The

65 Mada-Palestinian Center for Development and Media Freedoms, “Semi-Annual report on Media Freedoms Violations in Palestine 2018,” (2018), available at: <https://goo.gl/Ziy06h>

66 Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of Israel,” CCPR/C/ISR/Co/4, November 21, 2014, para.5.

67 UN General Assembly, “Resolution 68/167 (On the Right to Privacy in the Digital Age),

resolution called on states to respect and protect the right to privacy in the context of digital communication and to take measures to prevent and end violations of the rights by reviewing practices and legislations regarding surveillance of communications and creating effective oversight mechanisms to ensure transparency and accountability for state surveillance of communications and interception. In November 2018, the United Nations General Assembly also noted that the “surveillance of digital communications must be consistent with international human rights obligations”, and in accordance with a “publicly accessible, clear, precise, comprehensive and non-discriminatory” legal framework, without any arbitrary or unlawful interference with the right to privacy. The resolution also calls on states and business enterprises to respect and protect the right to privacy in the digital age in accordance with their international responsibilities.⁶⁸

3.3 Right to Freedom of Expression

Palestinians have been using social media for human rights advocacy, to protest political decisions and largely connect across fragmented geographical areas.⁶⁹ However, Israel’s control of the Palestinian ICT infrastructure and communication has allowed it to subject Palestinians

A/RES/68/167, (21 January 2014), available at: <http://undocs.org/A/RES/68/167>

68 UN General Assembly, “Resolution (On the Right to Privacy in the Digital Age), A/C.3/73/L49/Rev.1, (18 November 2018), available at: <http://undocs.org/A/C.3/73/L49/Rev1>

69 See 7amleh’s report “#Palestine 2017: Palestinian Digital Activism Report” available at: <http://7amleh.org/wp-content/uploads/2018/04/Palestine-2017-English-final.pdf>

to mass surveillance, and more recently, to increase its monitoring and censorship of Palestinian content online, as discussed above.

According to the Palestinian Prisoners Studies Center, between October 2015 and October 2018, Israel arrested more than 500 Palestinians, including children, on charges of incitement over social media sites, and specifically Facebook.⁷⁰ Israel often cites “security” to repress Palestinians’ right to freedom of expression in the digital sphere and Israeli forces arrest Palestinians for posting content online and charge them with “incitement” in both military and civil courts. In July and August 2018, Israel arrested 10 Palestinian journalists and charged some of them with “incitement” for simply sharing news updates or articles on their Facebook pages.⁷¹

In the West Bank and the Gaza Strip, Israel enforces military laws and orders on the Palestinian population. In relation to social media arrests and content moderation, Israeli military often relies on military laws and orders concerning incitement to limit and remove Palestinian content online and to arrest Palestinians. Palestinians from the West Bank and Gaza arrested for social media posts are charged and

70 Maan, “500 Arrests because of Facebook,” (in Arabic), (7 October 2018), available at: <https://goo.gl/fsNpjo>

71 Mada-Palestinian Center for Development and Media Freedoms, “Mada: 46 violations against media freedoms in Palestine during August, 35 of them were committed by the occupation forces,” (in Arabic), (4 September 2018), available at: <https://goo.gl/dmjN2Y> and “Mada: 68 violations against media freedoms in Palestine during August, 60 of them were committed by the occupation forces,” (in Arabic), (7 August 2018), available at: <https://goo.gl/7uvNuZ>

tried in Israeli military courts. Israeli military courts charge Palestinians with “incitement” under sections 251(b) and 199(c) of the Military Order 1651, an offence that can lead to up to 10 years of imprisonment. In relation to East Jerusalem, Israel applies its civil law. In July 2017, the Israeli Knesset passed the “Law on Authorities for the Prevention of Committing Crimes Through Use of an Internet Site,” which authorizes district courts, upon the request of the Israeli State Prosecutors Office, to fully or partially block access to internet websites. To charge Palestinians from East Jerusalem for social media posts, Israeli civil courts rely on Article 144 of the 1977 Penal Code on “incitement to violence and terrorism” to prosecute individuals with a sentence of up to five years in prison. Adalah - The Legal Center for Arab Minority Rights in Israel has expressed deep concern that Israeli law is being applied in a discriminatory manner against Palestinians, where the vast majority of arrests for alleged incitement on social media have been of Palestinian citizens in 2015 and 2016.⁷²

The right to freedom of expression is safeguarded under Article 19 of ICCPR, which encompasses the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [or her] choice.” While the right of freedom of expression is not absolute, meaning that states can limit the right to freedom of expression, the permissible limitations on the right to freedom of expression must be protected by law.

72 Adalah. “Adalah fears Facebook’s online incitement deal with Israel will selectively target Palestinian citizens”, (9 November 2016), available at: <https://www.adalah.org/en/content/view/8948>

Conclusion and Recommendations

There is a worldwide concern about the emerging challenges of the impact of the ICT sector on digital rights particularly in areas of data protection and privacy and the freedoms of expression and assembly. Within the oPt, these challenges are further heightened as a result of Israel's over 50 years long occupation, where Israeli restrictions imposed on the Palestinian ICT sector and infrastructure are part of the overall punitive nature of the Israeli occupation, which Israel must put an end to and ensure that the rights of Palestinians are upheld.

Israeli restrictions have resulted in the dependency of Palestinian ICT companies on Israeli operators for coverage and advancement and have allowed Israel to control how Palestinian ICT companies connect to Palestinian customers within the oPt. Israel's control of ICT infrastructure in the oPt, excluding East Jerusalem, have limited its growth and allowed Israel to restrict access to information and develop means to monitor and censor Palestinians' content online. Israel utilized its control of the ICT infrastructure as another tool to oppress and control Palestinians.

Israeli restrictions have violated Palestinians' digital rights to access the internet, to privacy, and to freedom of opinion and expression. More than 25 years after the signing of the Oslo Accords, these Accords no longer provide a framework that is facilitating a final solution to the situation on the

ground nor protecting human rights. Indeed, such policies and practices are best described to amount to a “digital occupation” of the Palestinian digital space.⁷³

7amleh - The Arab Center for the Advancement of Social Media joins other organizations and institutions that have repeatedly called for the independence of the Palestinian ICT sector from Israeli control, including an independent ICT infrastructure and free access to the frequency spectrum. 7amleh recognizes that the Palestinian MTIT and ICT companies relentlessly continue to try to provide services for Palestinian customers, despite imposed Israeli restrictions. For example, in December 2016, Jawwal joined the “Humanitarian Connectivity Charter,” a charter that “consists of shared principles to support improved access to communication and information for those affected by crisis in order to reduce the loss of life and positively contribute to humanitarian response,” launched by the GSM Association, a trade body that represents the interests of mobile operators worldwide⁷⁴. Jawwal has developed strategies to respond to crises particularly in the Gaza Strip. 7amleh also calls on Israel to uphold its responsibility as an occupying power towards the protected population of the oPt, to stop its illegal measures and practices targeting Palestinians through the ICT sector, and to respect and enable the exercise of Palestinians human rights, including in the digital context. Israel must ensure that Palestinians enjoy the opportunities afforded by the ICT sector while ensuring the protection of their human rights both in the online and offline worlds.

⁷³ Tawil-Souri, Helga (n 18).

⁷⁴ GSMA, “Palestinian Mobile Network operator Jawwal signs the GSMA Humanitarian Connectivity Charter,” (19 December 2016) available at: <https://goo.gl/3S6MUU>

Zamleh calls on:

Israel to:

- Allow Palestinians to develop an independent ICT infrastructure.
- Allow Palestinians to use various ICT globally standardized services that ensures the free exchange of information.
- End the closure of Gaza and allow for humanitarian assistance and ICT infrastructure to be used in Gaza.
- Cease discriminatory policies targeting the Palestinian ICT sector, including by favoring settlers and the settlement enterprise, through planning and the permits regime, and dismantle all civilian Israeli settlements in the West Bank.
- Stop the illegal mass surveillance of Palestinians, including online, and stop the misuse of ICT infrastructure for surveillance of Palestinians.
- Respect Palestinians' human rights in the online and offline world.
- Ensure the transparency of social media companies when requesting them to block or restrict content online and disclose such data to the public.
- Uphold their obligations under international agreements and uphold their responsibilities as an occupying power as per international humanitarian law.

Social Media Companies (including Facebook, YouTube) to:

- Respect and act in accordance with Palestinians rights to privacy and freedom of expression.
- Publish transparency reports about how they handle Israel's requests to delete, block or restrict content and profiles of Palestinian users, by publishing data on the number of requests by Israel to restrict content, the number of requests approved, the reasons for approval or rejection of requests.
- Ensure that users are notified when there is an intent to restrict or delete content and accounts with a clear explanation of the reasons of taking such measures.
- Uphold their terms of service in a non-discriminatory manner and ensure that their activities do not contribute to the human rights abuses of the Palestinian population.
- Uphold their responsibilities as businesses operating in a situation of occupation as per the United Nations Guiding Principles on Businesses and Human Rights by ensuring that their activities do not contribute to the violations of the human rights of Palestinians.

The Palestinian Authority and Palestinian Ministry of Telecommunications and Information Technologies (MTIT) to:

- Continue demanding Israel to allow Palestinians to develop their independent ICT infrastructure, including

revising the Oslo Accords to demand that Israeli companies cease operating in parts under the control of PA in the oPt.

- Regulate and monitor competition in the Palestinian ICT sector and strengthen regulatory capacity of the MTIT.
- Extend open invitations to various United Nations human rights bodies, and specially the United Nations special rapporteur on the promotion of the right to freedom of opinion and expression and the special rapporteur on the right to privacy, to document and study relevant issues relating to the violation of Palestinian digital rights.

Palestinian Civil Society to:

- Continue documenting, investigating and publishing reports on Israeli violations against Palestinian human rights, with a focus on digital rights, and submit research and reports to various United Nations human rights mechanisms, including to the United Nations special rapporteur on the promotion of the right to freedom of opinion and expression and the special rapporteur on the right to privacy.

The United Nations International Telecommunication Union to:

- Urge Israel to allow Palestinians the full access to their frequency spectrum under international standards and to build their independent international gateway.

The United Nations Human Rights Committees and Bodies to:

- Monitor and document Israeli discriminatory policies and practices targeting Palestinians digital rights, both in the oPt and in the digital space.
- Publish reports on Israeli violations of the human rights of Palestinians, including digital rights to inform the public and call on Israel to cease such violations.

The Telecommunications Sector to:

- Review their involvement in providing services in Israeli settlements in the West Bank, and ensure that their operations do not contribute to the Palestinian population human rights abuses.
- Identify and implement strategies to prevent any corporate involvement in such abuses.

Third Party States to:

- Ensure that Israel meets its international legal obligations as an occupying power, including allowing Palestinians to develop an independent ICT infrastructure.
- Ensure that their actions do not recognize or support Israeli policies that violate their international legal obligations in the oPt.

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