

## Executive Summary

Digital rights are regarded as human rights according to international law,<sup>1</sup> in its resolution “The Promotion, Protection, and Enjoyment of Human Rights on the Internet”, the United Nations Human Rights Council (HRC) recognized that, “The same rights that people have offline must also be protected online.”<sup>2</sup> Article 19 states, that all people have the right to freedom of expression,<sup>3</sup> including digital platforms.<sup>4</sup> Furthermore, the HRC resolution 2/23 on the role of freedom of opinion and expression in women’s empowerment calls on States to “promote, respect and ensure women’s exercise of freedom of expression and opinion and, on the Internet and beyond, including as activists and members of non-governmental organizations.”<sup>5</sup>

As the state of human rights is reportedly in decline globally<sup>6</sup>, the Middle East and North Africa (MENA) represents a particularly unfavorable portrayal of the state of fundamental rights, with growing constraints on civic space and repressive laws and tactics in use across the region. Human rights defenders in MENA are suffering a wave of arrests and convictions in an escalating attack on their right to freedom of expression. These courageous advocates are particularly at risk due to overly broad and vague laws that are tailored in the government’s favor and facilitate the silencing of dissent and imprisonment of activists.<sup>7</sup>

## Objectives and Motivation for this Mapping

A foundational understanding of this mapping is that there is a highly developed digital infrastructure and a much lesser developed regulatory structure that is leading to a negative correlation between the increased use of digital technology and the protection of citizens’ digital rights and human rights. As a result, citizens are finding themselves afraid to utilize technology, especially when it comes to expressing their opinions online.

This mapping is designed to analyze available researches on digital rights policies and practices in Lebanon, Jordan, Morocco and Tunisia. Particular focus is

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<sup>1</sup> United Nations Human Rights Council. (2018). 38th session of the UN Human Rights Council, Item 3 - Joint Oral Statement. (38th UN Human Rights Council). Retrieved from:

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Pages/38RegularSession.aspx>

<sup>2</sup> Article 19. (2016). UNHRC: Significant resolution reaffirming human rights online adopted. Retrieved from:

<https://www.article19.org/resources/unhrc-significant-resolution-reaffirming-human-rights-online-adopted/>

<sup>3</sup> UN. (1948). Universal Declaration of Human Rights. Retrieved from:

<http://www.un.org/en/universaldeclaration-human-rights/index.html>

<sup>4</sup> Choudhury, Amrita;& AL-Araj, Nadira. (2018, July 6). Views & Perspectives on Gender Rights Online, For The Global South “Redefining Rights for a Gender Inclusive Networked future. Association for Progressive Communication (APC). Retrieved from:

<https://www.apc.org/en/pubs/views-and-perspectives-gender-rights-online-global-south-redefining-rights-gender-inclusive>

<sup>5</sup> Finnegan, Shawna. (2014). United Nations resolutions recognising human rights online. Association for Progressive Communications (APC). Retrieved from: <https://www.apc.org/en/blog/united-nations-resolutions-recognising-human-rights-online>

<sup>6</sup> CIVICUS Monitor. (2018). People Power Under Attack: A global analysis of threats to fundamental freedoms. Retrieved from:

<http://www.civicus.org/documents/PeoplePowerUnderAttack.Report.27November.pdf>

<sup>7</sup> Sayadi, Emna. (2018, June 7). Free expression in MENA: death by a thousand cuts. .Access Now. Retrieved from:

<https://www.accessnow.org/free-expression-in-mena-death-by-a-thousand-cuts/>

given to identifying the opportunities for development of policies and practices that have a high potential to improve the environment for protecting digital rights and human rights. Furthermore, the mapping also analyzes the gaps in research needed that will help inform a future study at a regional level.

This mapping was implemented with Tamleh–The Arab Center for the Advancement of Social Media- and Innovation for Change MENA in a joint project proposed to build the capacity of regional partners in the Middle East and North Africa region (MENA). The MENA Hub has developed its vision to create a free and secured civic space and a mission to build a collaborative, innovative network of activists and Civil Society Organizations (CSOs) to facilitate the exchange and development of expertise and resources to face the shrinking of civic space through:

- Establishing a collaboration model between CSOs, social entrepreneurs and tech experts in the region;
- Initiating and testing several innovative services and tools related to digital advocacy and activism;
- Ensuring the collaboration and independence and sustainability of MENA hub members by leveraging member resources.

The program is designed to serve as a base for joint advocacy to international technology companies and governments to uphold digital rights, in particular, the right to freedom of expression online. It aims to map and assess digital rights status in the MENA region, engage in advocacy work on the closing of civic space on the Internet, and raise awareness on the civic space restrictions happening on the Internet.

## **Methodology**

The research team was commissioned by Tamleh – The Arab Center for the Advancement of Social Media to conduct this assignment to conduct a comprehensive literature review of available/previous local or regional studies/research on digital rights in Lebanon, Jordan, Morocco and Tunisia; conduct interviews with different stakeholders in each target country, including experts in technology and human rights from civil society, governmental entities, private sector and donors to map and document statistics and data, related to digital rights; identify policy recommendations that can improve citizens access to a safer environment for exercising their digital rights and their human rights and; identify gaps in the available research and data and provide recommendations for a future comprehensive study on digital rights in the MENA region; solicit feedback on the draft mapping along the drafting and data collection process from different partners and ensure a participatory approach and engagement of all stakeholders.

At the outset of the research, the research team identified a potential list of key stakeholders to interview within the framework of the desk review process. There were four focus group discussions held, each with fifteen, preselected participants, selected based on their experience, engagement, knowledge and capacity to provide insight into each country's digital rights context. In each focus group, participants were asked to share their attitudes and experiences as it related to digital rights, as well as engage fully in the group discussion in order to provide the researcher's insight into not only the areas of agreement that exist among participants, but also help to identify differences in opinion and experience. The responses were recorded, transcribed and analyzed to help provide a deeper understanding and analysis of the cultural context that surrounded the various aspects of digital rights across the targeted countries.

There were also ten core questions posed to legal professionals, human rights defenders, Internet providers, journalists and civil society organizations working in each of the targeted countries through an interview and focus group process. They focused on the areas of policy and reform, challenges, opportunities, archiving, context, infrastructure, self-monitoring, democratization, child rights and combating fake news. Political, economic, social and cultural aspects were taken into account through an analysis led by the facilitator. This included looking at recent policies and practices of the government and technology companies, as well as the infrastructure for accessing the Internet, the availability of country-specific information, and the impact of social media on policy making in each country. An additional main secondary source of information is questionnaires sent to legal and civil society organizations working in the targeted country in the focus groups. Local researchers have been asked to apply a check list of ten quality criteria and considerations.

The findings from this research serve as the foundation for potential joint, regional advocacy efforts in the future and are designed to help activists and other

actors to more effectively strategize and advocate for the protection of digital rights in each studies country, as well as across the MENA region.

## **Limitations**

While this mapping is designed to examine the issue of digital rights in Lebanon, Jordan, Morocco and Tunisia holistically, there is a limit regarding the time and depth of knowledge and information that was available and that could be analyzed and reported on. Within this research, the team focused on categories of digital rights, which were developed from the issuance of domestic and international laws on a set of digital rights that must be provided and guaranteed by states as natural rights for their citizens, as well as treated as an integral part of the fundamental rights. The available resources focused on the most essential of the digital rights, especially where it seemed that policies and practices to protect these digital rights were lacking. In addition there was not enough relevant studies that were up to date and there was significant information that was not published or made available. To counter this limitation, the desk review was complimented by qualitative research which included interviews with experts in the area of digital rights and a short survey. It is also worth mentioning that this research faced many difficulties in mapping many rights, and encountered serious obstacles in getting access to detailed official information which resembles the disgraceful reality on the status of the right to access information and the right to make digital archives available.

## **Conclusions**

The definition of digital rights served the digital rights mapping by providing categories in which to analyse digital rights across Lebanon, Jordan, Morocco and Tunisia and takes into account different political, economic, social and cultural factors that impact digital rights. The benefit of this approach is that it provides a holistic perspective of the conditions and challenges that face people in the MENA region, and can support the development of future programs to address the main obstacles to protecting people's digital rights. Focus is given to governmental and corporate policies and practices that are creating unequal, non-inclusive, threatening environments for the use of digital technologies. With much of the focus of governments and companies being on how to utilize digital technologies to accumulate further resources and power, much of the media and academic institutions still failing to cover and study digital rights issues, dangers to people's digital rights in the MENA region continue to grow.

The legal framework in place to protect digital rights in Lebanon, Jordan, Morocco and Tunisia is not sufficient. While Tunisia has made significant strides in protecting the privacy of Tunisians by enshrining the right to privacy in the new constitution, none of the other countries in this mapping have addressed the right to privacy in a way that sufficiently protects citizens. Instead, many vague and

inconsistent laws have been passed which fail to adequately define and protect digital rights. This is of particular concern as there is a push by both governments and companies for citizens to utilize digital technologies to access basic services, like health and education. This situation has been made even more dire by the recent coronavirus pandemic, which has created a further necessity for citizens to be online and incentives for institutions, companies and organizations to digitize their work. There is a great risk that the push for digitalization will continue to outrun the push for legislation in the region, as has been the case globally, and that people in the MENA region will find that their rights are being increasingly violated.

This mapping sought to identify ways that Lebanon, Jordan, Morocco and Tunisia can potentially create a better environment for the protection of digital rights and human rights. Due to the limited publicly available information, the following was identified through extensive desk review of previous research studies and surveys, national data available and the survey and expert focus groups conducted as a part of this mapping:

1. **The Right to Access the Internet:** The focus of this chapter is on the digital infrastructure needed for citizens to be able to access the Internet. This includes access via computers, laptops and mobile devices, as well as access to different types of broadband and mobile internet services. The chapter also looks at the affordability of accessing the internet and understand what kind of digital divide exists amongst citizens and consider how this digital divide can be overcome.
2. **The Right to Privacy:** Several countries in this study have attempted to address issues related to the right to privacy, either through their constitutions, or other laws. This includes their right to privacy, including personal information, their online data and activity among other communications and correspondence. There is a particular attention paid to the increased use of surveillance technologies by both governments and companies to gain further resources, power and control of citizens as well as restrictions on the use of encryption and other protective measures that people can take to protect their right to privacy.
3. **The Right to Be Forgotten:** Most digital material remains retrievable on the web in the MENA regions, making people easily susceptible to surveillance. Although states like Tunisia and Jordan are ahead regarding the matter, where Tunisia was the first Arab country to discuss this right in the legal framework and as Jordan has declared partnership regarding human rights with the EU, the realistic measures regarding this right are absent in Lebanon and Morocco.
4. **The Right to Access Information:** Although Jordan and Tunisia have legislation that protects the right to access information legislation, there is a lack of public awareness about how to use the right effectively. Nevertheless, advocacy efforts have been growing in the past years at the regional level as

civil society, anti-corruption organizations, and journalists came together to support the adoption of access to information laws.

5. **The Right to Access the Digital Economy:** Accessing the digital economy is a key part of the development of the countries in this study. However, Lebanon is the only country to enact an e-commerce law. Similarly, Jordan also has sparse clauses that address e-commerce issues. However Tunisia and Morocco do not have any legal framework related to e-commerce which could better support the development of their countries.
6. **The Right to Freedom of Expression:** Even though freedom of expression is protected by the constitution, in all four countries, authorities have found ways to silence, sideline and punish voices of opposition and dissent by exploiting loopholes in the countries' penal and press codes, or creating exceptions using emergency and counter-terrorism laws. They have also expanded their control over ICT infrastructure as well as service providers, either through semi-governmental ownership (as evident in Tunisia and Jordan) or political influence and affiliation (as evident in Lebanon and Morocco). However, in all four countries and especially in Tunisia, civil society has been a key agent in combating such censorship, either through monitoring the state, protesting restrictive laws and policies and demanding reform.
7. **Hate Speech, discrimination and sexual harassment:** Hatespeech, racism and gender based violence are growing in all countries studied, which is often made exceptionally challenging because of large populations of refugees in several of the countries studied. While there are some laws, such as in Tunisia that are focused on addressing racism and hate speech, these laws do not protect all minorities, especially people from LGBTQI+ communities. Other laws, such as the Cybercrime Law in Jordan criminalizes hate speech, but the definition of hate speech is vague and can easily be manipulated to silence dissidents. There are also very few laws protecting against gender based violence online.
8. **Fake News:** Since the beginning of the COVID-19 pandemic, unreliable and false information has been spreading around the world to a large extent. Tunisia and Jordan have enacted laws combating fake-news. However, broad definitions are usually found in these laws which are often viewed by human rights organizations as government attempts to restrict free speech. Other countries still lack a legal framework to protect the public from fake news and provide accurate evidence-based information. There have been, however, efforts by civil society to counter the spread of misinformation through fact-checking websites and initiatives.

## Recommendations

Digital rights awareness and	There is a need to raise the awareness of the public, decision makers and power holders to better understand their digital rights and how they can
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media literacy	be protected through policies and practices of government, media, civil society and educational institutions. There is also a need for investment in media literacy education, especially in rural areas in the region, which are generally disadvantaged.
Access to Internet	Internet access providers should respect net neutrality and be transparent about the traffic or information management policies and practices they employ. Policy makers and regulators should promote competitive and diverse broadband markets in order to reduce the cost of accessing the Internet. Internet access providers should invest in developing and expanding the infrastructure for providing access to the Internet at an affordable cost for average citizens with average income.
Access to Information	There is a need for governments to adopt laws that protect the right to access information and include minimal exceptions related to national security or public interest. Laws should enable anyone to submit requests for access to information without identifying themselves legally and with very minimal costs, if any, and to receive written responses within a maximum of 20 days. Those who infringe upon the right of people to access information should be subject to disciplinary and criminal sanctions.
Access to Digital Markets	There is a need to create a system of trust for online economic transactions. Governments also need to enact e-commerce laws that solidify a strong legal framework relating to consumer activity, new customer experiences, and created opportunities for large and small businesses, as well as for a new generation of retailers.
Privacy Laws	Governments should ensure that policy development, policies and practices regarding privacy and data are open to the public and engage multiple stakeholders. This includes establishing privacy laws, enforcement mechanisms and encouraging the development of codes of conduct and awareness raising programs for institutions and individuals that does not discriminate against anyone. In case of failures to comply with privacy laws, governments must provide adequate remedies.
Data protection	Privacy laws and guidelines or regulations related to personal data, must address how data is being collected, stored, processed and disseminated. Private companies must be transparent and disclose when institutions obtain personal data. Collection of data should be limited and obtained lawfully, with consent, and be a part of a privacy management programme that ensures protection of personal data. Individuals should, also, have the right to obtain information about their data.
National Security Laws	The laws relating to national security and public order should be known to the public. Surveillance and counter-terrorism policies and practices

and Surveillance	should be assessed for their compliance with international human rights norms and reformed accordingly. Governments should not weaken or undermine encryption standards, ban or limit users' access to encryption, or enact legislation requiring companies to provide encryption systems.
Digital ID	Digital ID should only be adopted on a voluntary basis when a secure technology infrastructure and cybersecurity framework is in place and should not be a requirement for people to access basic services. Minimum data should be collected and transferred to reduce the harm if data is compromised and biometric information should not be a requirement to receive aid or services.
Right to Be Forgotten	It is imperative that individuals have the right to erase data and their right to object to personal data processing against online databases. Users should be notified of their rights to their personal data, and have access to information regarding the right to be forgotten. Governments should also enact strong policies and regulations that protect this right .
Freedom of Expression	Governments should repeal all legislation that enables arbitrary and unbalanced restrictions on freedom of speech. Governments should also publish regular and accessible data disclosing the volume, nature, and purpose of all government requests made to companies affecting users' freedom of expression and privacy. Companies should be required by law to disclose meaningful and comprehensive information about the actions they take that may affect users' freedom of expression.
Racism, hate speech, gender based violence	Racism, discrimination, gender based violence online and cyberbullying, should be addressed by specific laws and implemented with the oversight of independent bodies. In particular, attention should be paid to how some laws actually further discrimination, by excluding people like members of the LGBTQI+ community.
Fake News	MENA governments need to develop crisis communication plans to provide an immediate response to disinformation. Governments should have transparent communication with the public. Media literacy in schools and campaigns to promote responsible information sharing practices, and define the responsibilities of technology companies in combating fake news, are necessary. Anti-fake news laws should be updated, in consultation with civil society ensuring laws protect the citizens without compromising their basic rights such as the right to freedom of expression.



