



**Position Paper:
Endless Violation and Mistreatment of
Palestinians' Right to Privacy and
Personal Data**

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Introduction

The concept of privacy and personal space is intrinsically connected to human rights and freedom framework, and democratic atmosphere. Infringement of privacy, by any party, must be impermissible. This is especially true considering the technological revolution, the age of digitalization, and the expansion of the international data system. The need for protective solutions for the massive data available through the Internet has grown. Despite being private and personal, this data is often used without the permission of its owners, which is a clear infringement of individuals' privacy rights.

Palestinians are languishing under the weight of the Israeli occupation; they are denied their collective and individual rights and freedom. The right to privacy is one of the rights that are outrageously violated as safeguarding personal data becomes increasingly difficult. The most prominent challenges to privacy for Palestinians living in the occupied Palestinian territory are (oPt) posed by the Israeli authorities. However, despite the magnitude of such challenges, the practices of the Palestinian Authority (PA), and the violations it allows and neglects, add up to the internal infringement of personal data. The PA is responsible for the encroachment of security services into civilian life; the lack of imposition of decisive policies; lack of legislation based on a human rights approach; lack of accountability for privacy Breaches; the private sector's exploitation of people's data. The PA's practices pose additional concern, and an undeniable double challenge to obtaining Palestinian rights, especially the right to privacy.

The purpose of this paper was to provide an overview of the right to privacy, with focus on personal data, in the oPt. In this paper, shortcomings in Palestinian legislation, and practices were discussed, a clear position on the Palestinian right to privacy was stated, and recommendations and procedures to address existing issues were proposed. Furthermore, the importance of enacting legislation to protect and regulate the right to privacy, including personal data and particularly digital data, was addressed. In addition, 7amleh examined the required, independent standards, systems, regulations, and procedures that guarantee the implementation of the right to privacy, obligate the responsible authorities to monitor and hold perpetrators accountable, and hold decision-makers responsible.

The position of 7amleh – The Arab Center for the Advancement of Social Media, which was reflected in this paper, is based on the importance of aligning the Palestinian situation and legislation with the main principles included in the Palestinian Basic Law and international human rights covenants and treaties that the State of Palestine has agreed to without reservation. In addition, they should be in line with the European General Data Protection Regulation (GDPR), the most comprehensive international reference on the context of personal data.

The Limitation of Palestinian Legislation Despite Acceding to International Conventions

Implementation of human rights is an essential criterion for assessing democracy and the judicial system in a country. The right to privacy is a fundamental human right that is protected by local laws as well as international covenants and instruments. Accordingly, privacy is defined as "the individuals' right to voluntarily and freely preserve their personal information and private life, and to prevent their involuntary acquisition."¹ According to the GDPR², personal data is any information related to individuals that can be used to identify them directly or indirectly. For example, name, e-mail address, geographic location, ethnicity, sex, photo, religion, beliefs, site browsing information, political opinions, pseudonyms and nicknames and anything else that can be considered personal data, which may be the tip of a thread to identify a particular person.³

The right to privacy is also one of the rights expressly stipulated in international conventions and covenants, as Article (12) of the Universal Declaration of Human Rights states, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."⁴, which emphasizes the importance of respecting and not violating privacy, as well as the role of the law in safeguarding and guaranteeing this right. Moreover, other relevant international conventions stress the importance of this right and the necessity to uphold it, such as Article (17) of the International Covenant on Civil and Political Rights, and Article (16) of the Convention on the Rights of the Child. The member states of the conventions take full measures to ensure this.

At the Palestinian legislative level, the amended Palestinian Basic Law of 2003 dealt with the issue of privacy and its protection clearly and explicitly in two articles. First, Article (10) states: "1. Basic human rights and liberties shall be protected and respected, ². The Palestinian National Authority shall promptly work to become a party to regional and

1 Omar Abu Arqoub. An Exploratory Study: The Reality of Privacy and Digital Data Protection in Palestine. 7amleh –The Arab Center for Social Media Advancement, August 2021, 8.

2 The General Data Protection Regulation (GDPR) is a European privacy law that became enforceable on May 25, 2018. It is meant to align data protection laws throughout the European Union (EU) by implementing a single data protection law that is binding throughout each member state. The (GDPR) protects the fundamental right of individuals within the EU to privacy and the protection of personal data. It includes powerful requirements that align and expand standards for data protection, security and compliance. The (GDPR) applies to all organizations established in the EU and to organizations, whether or not established in the EU, that process the personal data of EU individuals in connection with either the offering of goods or services to data subjects in the EU or the monitoring of actions that takes place within the EU, AWS. Retrieved: 212023/03/.

<https://aws.amazon.com/ar/compliance/gdpr-center/>

3 Abu Arqoub. An Exploratory Study, 9.

4 The Universal Declaration of Human Rights. Retrieved: 212023/03/.

<https://www.un.org/ar/universal-declaration-human-rights/>

international declarations and covenants that protect human rights.” This means that what is stated in the international conventions and covenants acceded by the Palestinian state relating to the right to privacy and its protection, is binding on the competent authorities. Second, Article (32) confirms the right to individual freedom and the sanctity of private life and criminalized assault on it by stating: “Any violation of individual freedom, of the sanctity of the private life of human beings, or of any of the rights or freedoms that are guaranteed by the law or by this Basic Law shall be considered a crime. Criminal and civil actions resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.”⁵

General principles set forth in the Basic Law guarantee adherence to the protection of the right to privacy and the right to personal data protection. There are additional articles that also provide the protection of some components of the right to privacy, such as the privacy of the body (Articles 11 and 16)⁶, and the privacy of spatial space (Articles 17)⁷. However, the failure to protect personal data privacy and matters related to technological progress are apparent shortfalls.⁸

Nevertheless, monitoring practice in real-life and digital space, demonstrates violations and breaches of general legal texts and principles related to the right to privacy and personal data protection contained in the Palestinian Basic Law and international charters and treaties. It also shows a lack of societal awareness of those laws and individual rights. Despite the shortcomings in current Palestinian legislation, it is important to focus on raising awareness that must accompany the enactment of relevant laws. Laws must be implemented in relation to the digital space which offers a relatively new environment for existence and interaction.

7amleh observed a legislative failure in issuing the Cybercrime Law by Decree which was passed in its first version in 2017. It was issued as a law by decree, based on Article (43) of

5 The Palestinian Basic Law. Al-Muqtafi. Retrieved: 2123 20/03/.

<http://muqtafi.birzeit.edu/pg/getleg.asp?id=14138>

6 Article 11:

1. Personal freedom is a natural right, shall be guaranteed and may not be violated.
2. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of any person, except by judicial order in accordance with the provisions of the law. The law shall specify the period of prearrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.

Article 16:

It is unlawful to conduct any medical or scientific experiment on any person without prior legal consent. No person shall be subject to medical examination, treatment or surgery, except in accordance with the law.

Transplantation of human organs and new scientific developments shall be regulated by the law in order to serve legitimate humanitarian purposes.

7 Article 17:

- Homes shall be inviolable; they may not be subject to surveillance, broken into or searched, except in accordance with a valid judicial order and in accordance with the provisions of the law.
- Any consequences resulting from violations of this article shall be considered invalid. Individuals who suffer from such violation shall be entitled to a fair remedy, guaranteed by the Palestinian National Authority.

8 Firas al Taweel and Buthaina Saffarini. Privacy & Personal Data in Palestine: Double Violations & Absence of Legislation. 7amleh –The Arab Center for Social Media Advancement, June 2022, 2.

the Palestinian Basic Law, and then it was amended via further laws by decrees⁹.

The Cybercrime Law is still heavily criticized, primarily because it infringes freedom of opinion and expression, and it regulates and facilitates violations of the right to privacy.¹⁰ In addition, the law gave the Public Prosecution and judicial officers new and expanded authorities. The provisions of the law by decree omitted the requirement of a judicial order causing the search or seizure and replaced it with a mere warrant issued by the Public Prosecution, the Attorney General, or one of his assistants. This is clearly in conflict with Articles (11 and 17), which deal with the right to privacy, of the Palestinian Basic Law.

Despite the shortcomings in the Cybercrime Law by Decree, it is worth noting what it stipulated in terms of the right to privacy and the protection of personal data. Article (22) states the following:

1. Arbitrary or illegal interference with the privacy of any person or the affairs of his family, home or correspondence shall be prohibited.
2. Anyone who creates an electronic website, application or account or disseminates information on the electronic network or a means of information technology with the intention of disseminating live or recorded news, images, audio or visual recordings relating to the illegal interference with the private or family life of individuals, even if they were true, shall be punished by either or both confinement for a term of not less than one year and a fine of not less than one thousand Jordanian dinars and not more than three thousand Jordanian dinars or its equivalent in the legal currency of circulation.¹¹

The Palestinian Cabinet Decision No. (3) of 2019 regarding citizens' personal data was an act forward as well. However, it was intended to address companies and institutions rather than government bodies. According to Article (1) of the decision, "it is prohibited to use personal data (direct / indirect) of citizens who are recipients of services from companies and institutions that are provided with the data for commercial purposes, without first obtaining citizens permission, under legal liability."¹²

9 Law by Decree No. (38) of 2021 amending Law by Decree No. (10) of 2018 on Cybercrimes and its amendments. Law-by-Decree No. (28) of 2020 amending Law by Decree No. (10) of 2018 on Cybercrimes, and Law-by-Decree No. (10) of 2018 on Cybercrimes, and Law-by-Decree No. (16) of 2017 on Cybercrimes. Al-Muqtafi. Retrieved: 212023/03/. https://maqam.najah.edu/media/uploads/202112//legislations/%D8%A7%D984%D8%AC%D8%B1%D8%A7%D8%A6%D985_%D8%A7%D984%D8%A5%D984%D983%D8%AA%D8%B1%D988%D986%D98%A%D8%A9.pdf

10 For more, see: Al Taweel, 7amleh Center, Privacy document.

11 Law by Decree No. 10 of 2018 on Cybercrime. Al-Muqtafi. Retrieved: 212023/03/. <http://muqtafi.birzeit.edu/pg/getleg.asp?id=17018>

12 Palestinian Cabinet Decision No.(3) of 2019 on Citizen's Personal Data. Al-Muqtafi. Retrieved: 212023/03/. <http://muqtafi.birzeit.edu/pg/getleg.asp?id=17171>

Despite that the aforementioned articles address privacy, the complete protection of personal data is still a far cry from comprehensive legal regulation. No legal text in force in the State of Palestine addresses the definition of this data. Furthermore, no text defines subsidiary rights to the right to protect personal data, which must be considered and preserved. People should have rights to safeguard their data, for example: the right of access; to object; to erasure; to rectification; to be informed. The shortcoming of current laws and regulations keeps citizens from knowing their rights, and therefore obtaining them; or holding those who violate them accountable, no matter of the party they are affiliated with.

The Palestinian government is interested in digital transformation and technological revolution. This is clear in the actions it takes towards developing electronic services, starting automation processes, and creating electronic portals for various services. In addition, the State of Palestine has joined a number of international conventions concerned with human rights, and in particular regulating the right to privacy. However, a comprehensive regulatory legal framework that guarantees the right of individuals to complete privacy is still absent. There is a need for a framework that can provide protection of personal data, particularly digital data. It must also provide a legal framework for monitoring and accountability for violations, as well as criminalizing violations of the right to privacy in all aspects and within government, civil, and private sectors.

A Multiplex Reality of Violations in Palestine

Palestinians living in the oPt experience a reality full of violations from multiple sources that threaten their civil, political, economic, social and cultural rights in real life as well as in the digital space. Israeli authorities perform the most severe and systematic types of violations against Palestinians including violations of the right to privacy. Examples of such violations include hacking and circulating personal data, establishing a widespread system of censorship and electronic surveillance, and using personal data to bring charges against Palestinians in Israeli military courts. On the contrary, the Israeli authorities are not subject to any form of accountability, punishment, or legal procedures, whether locally or internationally, for the crimes and violations they commit against Palestinians' rights including the right to privacy. Furthermore, there is a close relationship between the occupation authorities and the Israeli private sector. The Israeli private sector is a master in the field of censorship and espionage and has created a host of spyware programs and technology that fueled privacy breaches, such as ""Al-Munasiq" (The coordinator) and "Pegasus" applications. Those applications are known for their use in obtaining personal and private data, primarily of the Palestinians in the oPt.

In regard to the official Palestinian public sector, the system of accountability and the

judiciary are threatened by the dissolution of the Legislative Council and the dominance of the executive authority over the rest of the authorities, in addition to the absence of an advanced and comprehensive Palestinian legislation, and the weakness of the rule of law. This facilitates violations of privacy against Palestinian, especially ones committed by the official Palestinian authorities. The private and personal information of citizens can be acquired at the request of the security services as they can obtain a search and seizure warrant issued by the Public Prosecution, the Attorney General, or one of his assistants. This can take place without a judicial decision and without the knowledge or prior permission of the data subject. An example of this is what journalists and demonstrators were subjected to during the protests that followed the killing of activist Nizar Banat in June 2021; offenses such as theft of mobile phones, access to and use of private information or hinting at it, publishing personal photos, extortion and attempts to defame individuals' social reputation were reported.¹³

Moreover, violations of privacy and the use of subscribers' data are acts committed by the private sector, specifically service providers such as internet and telecommunications companies. Participants' numbers are sometimes used for commercial purposes without the consent of the data subjects or their knowledge.¹⁴ In addition, the digital data of Palestinians is available, without most of them knowing, through applications that can be downloaded on any phone, and therefore their data can be accessed and circulated as well. An example of this is the application of the "Palestinian Civil Registry", which the Palestinian Ministry of Interior disclaims responsibility for. The app allows any user to search for personal information for a large number of Palestinians, including information related to their names, dates of birth, place of residence, and details related to their families, and share it. This app is still available to the public without any attempts from the official Palestinian authorities to remove it despite the fact that it compromises the privacy of most Palestinians.

In contrast with the Palestinian private sector, the Central Bank of Jordan issued binding regulations on Jordanian banks, which impose the protection and confidentiality of banking data for customers. Those regulations were based on the GDPR, and they apply to foreign banks in Palestine as well.¹⁵ However, the Palestinian Monetary Authority did not issue any clear instructions on this matter yet. The Palestinian Authority, through the Palestine Monetary Authority, fails to enact regulations that can ensure the commitment of the private sector in protecting the personal data of Palestinians. This would also include banks operating in Palestine adhering to the principles of data protection included in Europe's GDPR.

13 For more, see: Al-Taweel, privacy document.

14 Tamleh - Arab Center for the Development of Social Media. Survey on the Reality of Privacy and Personal Data Protection. June 2022.

15 Declaration to all banks operating in the Kingdom of Jordan. Retrieved: 04/2023/04/, <https://www.cbj.gov.jo/EchoBusV3.0/SystemAssets/da6730514-7528-a70-a34f-2bca731af541.pdf>

7amleh has examined the collusion between Israeli authorities and international companies such as Amazon and Google in supporting Israel with advanced technologies for digital monitoring and censorship. This imposes international liability on international companies, Israeli companies, and Israel as an occupying power. It is a must that any state party to the relevant international covenants and agreements abide by them. In addition, there is an international and ethical duty for businesses to respect the UN Guiding Principles on Business and Human Rights.

There are multiple parties and technologies that collect information about individuals through the Internet, such as: Internet service providers, online sites using cookies, and hackers. Furthermore, mobile phones with their integrated technology, such as identifying the geographical location and sharing it on social media platforms, helps marketers direct their advertisements according to geographical location and users' interest which browsers can reveal.¹⁶

The Need for a Palestinian Law to Protect the Right to Privacy and Personal Data

According to a 7amleh survey titled "Perceptions of Privacy and Personal Data Protection in the Occupied Palestinian Territory", 69% of respondents believed that a Palestinian law to protect personal data is necessary.¹⁷ Moreover, 30% believed that the Palestinian Authority had accessed, utilized and shared their personal data.¹⁸ While 48% believe that Palestinian telecommunications companies can access, use and trade personal data without their knowledge or consent,¹⁹ 47% reported receiving promotional messages and advertisements from companies on their mobile phones and applications they did not download or choose to contract with.²⁰

These statistics show the opinions of Palestinians regarding the issue of privacy in connection with the government and the private sector. There is a general feeling of lack of privacy protection and the permissibility of personal data, as it is obtained and circulated between third parties without the knowledge or permission of its owners. This is why it is important to pass a Palestinian law to protect the right to privacy and respect the limits of personal data.

Despite the importance of passing a law to protect the right to privacy and personal data in order to protect rights; It should be noted that sufficient care must be taken to enact it.

¹⁶ Abu Arqoub, Exploratory Study, 10- 11.

¹⁷ 7amleh Center. Survey, 17

¹⁸ 7amleh Center. Survey, 19

¹⁹ 7amleh Center. Survey, 21

²⁰ 7amleh Center. Survey, 23

It should be in line with constitutional standards in terms of form and content and based on foundations and standards of human rights and the basic international charters and treaties. In addition, it must follow the lead of principal global regulations in this context, such as the GDPR.

It is also necessary to issue a law protecting the right to privacy that is comprehensive and applicable to the West Bank and Gaza Strip and includes a set of rights which without privacy cannot be protected. Namely, the right of access, by which individuals must give prior consent to the collection or use of their personal data; the right to object to the collection of this data; the right to erasure/ to be forgotten to ensure the deletion of personal data; the right to rectification to amend and update the data and its accuracy; the right to be informed so to know the results of the use of personal data, and the decisions based on it. The framework must define and limit access to personal data and prohibit broad and comprehensive power over the use of data, except to the extent necessary to perform the job. To ensure the application of this law, human resources should be mobilized, and adequate budgets should be set. In addition, a financially and administratively independent oversight body should be established; it should be defined, formed, and given power to monitor and ensure privacy and protection of personal data. Finally, principles for accountability and clear penalties for those who infringe the right to privacy and personal data should be determined.

Recommendations

- Implement a comprehensive Palestinian law to protect the right to privacy, including personal data, in a transparent, participatory and constitutionally sound manner. The principle of separation of powers and the rule of law in terms of issuance and application should be guaranteed. Moreover, the local law must be consistent with the principles of international law, human rights standards and the GDPR. This law must be valid in the West Bank and Gaza Strip, and should apply to all parties, whether the government, civil or private sector. This includes ensuring that Internet and telecommunications providers, banks, and any other parties that obtain user data, directly or indirectly, are required to develop clear, binding, and public protection policies on dealing with the right to privacy and customers' personal data.
- Establish a national, financially and administratively independent oversight body, to regulate and protect the right to privacy, including personal data. The body must monitor violations, and work to ensure that perpetrators are held accountable in a transparent manner that guarantees justice.
- Raise Palestinians' awareness of human rights concerning the concept of privacy, the content of personal data, and the sanctity of private life, especially with regard to the relationship of individuals with companies and official government agencies.
- Develop Palestinians' knowledge of the institutions and platforms that work to monitor digital rights violations, such as the first Palestinian Observatory for Digital Rights Violations (7or) which documents violations in the digital space.²¹
- Carry on and expand work to monitor, and document digital violations, especially those related to privacy. This includes work done through Palestinian platforms, such as the Palestinian Observatory for Digital Rights Violations (7or). Furthermore, support must be provided for the work of joint civil action in terms of advocacy and putting pressure on decision-makers.

²¹ The Palestinian Observatory of Digital Rights Violations (7or). <https://7or.7amleh.org/ar/>.