

The Challenges of Palestinian Media Legislation: Analyzing the Impact of Laws on Media Freedoms

Mohamed Ahmed Anjass^{1,*}, Prof. Dr. Larbi Bouamama²

¹ University of Abdelhamid Ben Badis - Mostaganem, Faculty of Social and Human Sciences, Department of Media and Communication Studies

Researcher at the Laboratory of Media and Communication Studies and Discourse

Analysis, Email: ahmedmohamed.anjass@etu.univ-mosta.dz

() <https://orcid.org/0009-0008-1838-1944>)

² University of Abdelhamid Ben Badis - Mostaganem, Faculty of Social and Human Sciences, Head of the Department of Media and Communication Studies

Director of the Laboratory of Media and Communication Studies and Discourse

Analysis, Email: Bouamama.larbi@univ-mosta.dz

() <https://orcid.org/0000-0001-5563-8552>)

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Abstract:

Freedom of opinion and expression, including press freedom, is a fundamental human right enshrined in various international agreements, national constitutions, and regional charters. In Palestine, despite constitutional guarantees, there has been increasing suppression of these freedoms, particularly concerning media access and journalistic integrity. This paper examines the current state of media freedom in Palestine, focusing on legal frameworks such as the Palestinian Basic Law, restrictive laws like the 1995 Press & Publications Law, and the 2018 Cybercrime Law. Additionally, the paper explores the challenges faced by Palestinian journalists in accessing their rights amidst restrictive policies. Reports from organizations like the Independent Commission on Human Rights highlight ongoing violations and suggest areas for legislative reform to enhance media freedoms. This study aims to address key questions about Palestinian media laws, restrictions, and the necessary legal developments to ensure full freedom of expression in Palestine.

Keywords: *freedom of expression; freedom of opinion; human rights; legislative reform; media freedom in Palestine; Palestinian media laws; press freedom.*

* Mohamed Ahmed Anjass

1. INTRODUCTION

Freedom of opinion and expression, including freedom of the press, is considered one of the most fundamental rights and liberties. In fact, it is one of the cornerstones of public freedoms, as it ensures the exercise of other rights and freedoms. These freedoms provide individuals with a means to access information and exercise their right to hold decision-makers and state officials accountable. They are also the only way to combat all forms of corruption and prevent its exacerbation, as corruption is one of the main causes of state collapse and decline (Ammar, 2023). Freedom of opinion and expression is a fundamental human right, guaranteed by laws, international agreements, and treaties, as well as many national legislations such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Palestinian Basic Law, and regional charters. Since it is a constitutional right, any violation of it is considered a crime, and civil or criminal lawsuits arising from such violations do not expire with time.

In recent years, especially in Palestine, there has been increasing pressure and suppression of these freedoms, notably the freedom of the press in terms of the right to express opinions and the right to access information (Habiba, 2023). Without these freedoms, journalists will not be able to perform their duties with integrity and transparency, free from obfuscation. The Press Freedom Index measured in 2018 indicated alarming levels of violations against journalists, with the West Bank scoring 492 points and the Gaza Strip scoring 475 points (Harzallah, 2024). There has been a noticeable increase in the infringement on freedom of opinion and expression through policies that silence voices and prevent criticism of decision-makers. Although this right is stipulated in the Palestinian Basic Law and in the agreements that Palestine has signed, Palestinian journalists still face many challenges in accessing rights that are considered natural for any journalist around the world. In this context, several important questions arise: What are the current Palestinian laws related to media? Which laws restrict media freedom? What are the draft laws that need to be passed by the authorities to enhance Palestinian media? When do authorities use these laws to restrict freedom of expression? What needs to be developed in the future to achieve sufficient and guaranteed legislation for media freedom and freedom of expression in Palestine?

2.1 Literature review

Article 19 of the Universal Declaration of Human Rights affirms the right of every individual to enjoy freedom of opinion and expression, which includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media, regardless of frontiers. Similarly, Article 19 of the International Covenant on Civil and Political Rights states that everyone has the right to hold opinions without interference and the right to freedom of expression, including the right to receive and impart information and ideas to others. In the Palestinian context, the Palestinian Basic Law enshrines freedom of opinion and expression as a human right. Article 19 emphasizes the inviolability of this freedom and asserts that every person has the right to express their opinions and publish them through various means (Bilal, 2021). The Basic Law specifically addresses media freedoms, with Article 27 stating that the establishment of newspapers and media outlets is a right for all, prohibiting censorship, and clarifying that any legal intervention in this area must be based on a judicial ruling. UNESCO's 1978 declaration emphasized the importance of media in promoting human rights and supporting global peace, while the 2002

Johannesburg Declaration endorsed the right to access information as essential to freedom of opinion and expression (Barakat, 2020). Furthermore, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression underscores the significance of government-held information and imposes positive obligations on states to uphold this right. Furthermore, the Arab Charter on Human Rights of 2004 guarantees the right to media and freedom of opinion and expression. However, most Arab constitutions, including the Palestinian Basic Law, impose limitations on these freedoms under the phrase “within the limits of the law.” This is evident in Palestinian laws related to media freedom, such as the Press and Publications Law of 1995, which sparked controversy over its impact on individuals' and groups' rights to expression. Similarly, despite amending in response to public pressure, the 2018 Cybercrime Law No. 10 faced widespread criticism for violating freedom of expression and privacy. Many studies have addressed violations of freedom of opinion and expression in Palestine, such as the report by Al-Haq on media freedoms and the study by the Media Development Centre at Birzeit University on freedom of the press in Palestinian legislation. These laws and the challenges associated with them demonstrate that, despite the existence of legal provisions supporting freedom of opinion and expression, implementation often faces obstacles that negatively impact media freedoms in Palestine (Klaus, 2023).

The Independent Commission for Human Rights issues annual and monthly reports on human rights violations and freedoms in Palestine, including the West Bank and Gaza Strip. These reports shed light on the state of media freedoms and the challenges they face, presenting various findings related to the impact of media legislation on freedom of opinion and expression. Below are some of the key findings highlighted in these reports (Wael, 2020):

Table (1) Violations of Freedom of Opinion, Expression, and Peaceful Assembly in Palestine During 2020

Month	West Bank	Gaza Strip
December	4	7
January	5	4
February	1	5
March	8	16
April	2	4
May	2	9
June	7	6
July	8	4

Source: Mohamed Ahmed Anjass, Larbi Bouamama, [year](#), [page](#)

Table (1) Violations of Freedom of Opinion, Expression, and Peaceful Assembly in Palestine During 2020

Month	West Bank	Gaza Strip
December	6	8
January	5	7
February	3	6
March	2	1
April	13	8
May	6	3

June	6	8
July	4	5
August	4	2
September	4	3
October	6	4
November	3	3

Source: Mohamed Ahmed Anjass, Larbi Bouamama, year, page

Cybercrime Law

Regarding Cybercrime Law No. 10 of 2018, it repealed the crime of defamation as stipulated in Cybercrime Law No. 16 of 2017. However, this law remains ambiguous, allowing the executive authority to use it to prosecute journalists and monitor media outlets (Abu Rubb, 2018).

Article 39 clearly demonstrates this (Abdel Baqi, 2018).

Blocking Procedures: For the competent investigative and enforcement authorities, if they detect that websites hosted inside or outside the state are posting any statements, numbers, images, films, or any promotional materials that threaten national security, public order, or public morals, they may submit a report to the Attorney General or one of his assistants, requesting permission to block the website(s) or some of its links from display.

Court Permission: The Attorney General or one of his assistants must submit a request for permission to the Magistrate Court within 24 hours, accompanied by a memorandum of his opinion. The court shall issue its decision on the request on the same day it is presented, either by acceptance or rejection, provided that the blocking period does not exceed six months, unless it is renewed in accordance with the procedures stipulated in this article. This article includes terms related to national security, public order, or public morals, which are broad and vague terms that authorities can use as justification for blocking websites and prosecuting journalists.

The Cybercrime Law also states in Article 21 (Qaddan, 2020):

Right to Expression: Every person has the right to express their opinion by speech, writing, photography, or other means of expression and publication in accordance with the law.

The government guarantees the freedom of artistic and literary creativity, and only a court order can initiate lawsuits to stop or confiscate artistic, literary, or intellectual works, or against their creators. Crimes committed due to the public nature of artistic, literary, or intellectual products shall not result in imprisonment or preventive detention.

Freedom of the Press: We guarantee freedom of the press, printing, and publication, whether in printed, audio-visual, or electronic forms. Palestinians, whether natural or legal persons, have the right to own and publish newspapers and to establish audio-visual media and digital media in accordance with the law.

Press Restrictions: Only a court ruling can impose restrictions on the press, including its confiscation, suspension, warning, or cancellation. Although Article 21 stipulates media freedom, it restricts this freedom in Article 39, which allows the Public Prosecution to issue a court order to close any website.

Press and Publication Law

The President of the Palestinian National Authority, who held legislative powers at the time, issued the Press and Publication Law in 1995, prior to the establishment of the Legislative Council, through a presidential decree. Articles (2) and (4) of the law included the fundamental idea of ensuring freedom of expression, publication, and distribution. The Press and Publication Law is considered one of the best laws enacted since the establishment of the Palestinian National Authority, as Palestine has witnessed significant growth in the number of newspapers, magazines, and radio and television stations, all thanks to the enactment of this law. However, certain provisions of the law have faced significant criticism, indicating the need for amendments and changes to better align with the current needs of journalism and keep pace with significant media developments from 1995 to the present. The law's Article (4) outlines the freedom of the press, yet its practical application contradicts the law, as the executive authority persists in interfering with journalists' work, preventing them from publishing, and prosecuting them for it. These issues pose significant challenges that negatively impact the freedom of journalistic work (Al-Talabani, 2017).

In a critical study, Palestinian Legislative Council member Dr. Azmi Shuaibi highlighted several inconsistencies between this bill and the Palestinian Basic Bill. The Basic Law enshrines the right to access information, but the Press and Publication Law's requirements neither appropriately prioritize it nor give it clear expression. Some argue that the Press and Publication Law violates the idea of equality before the law since it allows for party journalism. p The Press and Publication Law has its detractors, who argue that it breaches press freedom and the concept of equality before the law by favoring party journalism over non-party journalism and providing special interests with special treatment instead of stressing their journalistic rights, like the right to acquire information, which limits press freedom and goes against the point of passing this law (Jegić, 2024). It is also essential by law to obtain a license before starting a publishing, printing, or publishing business, including a newspaper. Rather than imposing limitations, this approach should guarantee impartiality and preserve press freedom. To further guarantee accessibility, it is critical to determine which media outlets are accountable for these publications. In practice, the dominance of the executive branch, the disruption of the legislative branch, and the lack of the principle of separation of powers deprive journalism of its supervisory role, despite journalism's status as the fourth authority due to its monitoring of the three branches of government (executive, legislative, and judicial). Articles (18–21), which mandate a licensing system for press publications and the dominance of the executive authority over journalistic work, go against international standards, according to Saeed Al-Salmi and Toby Mendel, two other critics of this law. The owner, chief editor, and managing editor of the publication are also required by law to meet certain criteria, such as being a Palestinian citizen and living in Palestine. The proper person should be in charge, yet these regulations make it harder for journalists to voice their opinions and stifle free speech (Alexander, 2024). By including vague language and clauses that limit dissemination, the law gives the executive branch the discretion to interpret them in a manner consistent with Palestinian ethics and culture. Furthermore, the legislation restricts journalistic freedom by imposing severe punishments, such as jail time, for breaches of its provisions, which are

out of proportion to the gravity of the offense or violation. Therefore, we need to reevaluate these harsh regulations and replace them with more appropriate punishments, such as a system of monetary fines. The law also restricts media freedom by requiring the newspaper's capital to be at least 25,000 dinars. A fair quantity of money should be available for the publication so that it may meet its needs and protect its employees' rights. The statute, which mandates the deposit of four copies of every publication with the ministry's Publications and Press Department, violates Article (2/13) of the American Convention on Human Rights, which addresses previous limitations on publication. The lack of a comprehensive set of regulations meant to control press freedom in Palestine has a negative effect on press freedoms there and makes media legislation more difficult (Jamshidi, 2024).

Draft Law on the Right to Access Information

Access to information, a prime example of democracy at its most refined, activates the principle of freedom of expression, as outlined in the Basic Law. This law empowers citizens to access information and hold officials accountable by keeping them informed about institutional happenings, enhancing transparency, and extending the government to the people. The Palestinian Legislative Council approved the first reading of a draft law on the right to access information in 2005. However, media and journalistic institutions led a campaign in 2010, calling for a legal environment that would allow them to exercise their rights in journalism and media as they should. In 2011, the Anti-Corruption Commission intervened and drafted the law with the participation of several institutions, aligning it with international requirements. Despite receiving a copy by the end of 2013, the Council of Ministers has not implemented the law since then (Falah, 2023). Several standards established by the Article 19 Organization serve as the foundation for accessing information laws worldwide. The Anti-Corruption Commission employed these standards to develop the most recent iteration of the law. The presumption of disclosure of information to the public, except in very limited instances, is one of these standards, as outlined in Article (3). The obligation to publish necessitates the automatic and prior publication of information, such as strategies and minutes, to the public in advance of requests. We should restrict the scope of exceptions to ensure that they are explicit and precise, based on specific criteria, and do not exempt any institution from the law's scope. The right to access information is occasionally undermined by the law, which expands exceptions to restrict it, transforming it from a law that allows access to information into one that restricts it. Moreover, we should simplify the procedures for obtaining information to make the process of submitting requests easy and flexible, without imposing high costs that may discourage individuals from requesting information. Instead, we should implement nominal expenses (Khalidi, 2023).

This draft established a General Commission for Information, granting it complete independence and full authority to achieve its objectives. The General Commission for Information also served as an appeals body, reviewing decisions made by institutions subject to its provisions but refusing to provide information. The project implemented procedures and regulations that facilitate information acquisition and provided its affiliated institutions with a reasonable amount of time to respond to requests for information. Article 1 of the draft extensively defines information, mandating citizens to have access to it in all its forms without restriction based on its non-legal category. Article (3) established the right of citizens and residents to request information, granting this right to both Palestinians and non-Palestinians residing in

Palestine. Article (18) provided the commission with a number of responsibilities, such as educating the public about the importance of the right to access information, training staff to handle requests, monitoring for violations, and preparing the commission's annual report for submission to the appropriate authorities (Fnez-Flores, 2024).

Chapter Five, which pertains to the General Commission for Information, stipulated the establishment of a unique entity or institution that would be accountable for reviewing requests for information at the national level. Articles (21, 20, 19, 12) of the law, which established deadlines for responding to requests, procedures, and appeals timelines, underscored the importance of promptly and appropriately processing information requests. The law mandated that every institution must disclose the date, time, and purpose of a public meeting. Except for the specific exceptions outlined in Article (8), the public cannot attend the meeting prior to its occurrence. The law's Article 31 requires the cancellation of any provision that is in conflict with its provisions, which in turn requires the amendment or revocation of laws that contradict the principle of information disclosure. The primary reference for evaluating the confidentiality of any information should be the laws that pertain to the right to access it. In the event of a conflict between the right to access information law and any other law that specifies the confidentiality of a specific item of information, the interpretation should favour the right to access information. Upon reviewing and analyzing this draft, we have determined that it is logical and in accordance with international standards, thereby protecting the rights of both the government and its citizens. Consequently, it is imperative that we expedite the approval process. The government recently expressed its opposition to this proposal, citing the absence of a budget and apprehensions regarding the feasibility of establishing a commission and preparing staff for it. Rasha Ammarneh, who contributed to the draughting of the submitted proposal, stated that the Anti-Corruption Commission and its staff would assume the powers of a commission for appeals from any institution that refuses to provide the requested information. The Palestinian people are politically and socially capable, and the existence of this privilege enhances their effectiveness, thereby contributing to the establishment of a democratic and transparent State of Palestine (King, 2021).

Challenges of Palestinian Media Legislation: An Analysis of the Impact of the Audio-Visual Law on Media Freedoms

The current draft of the Audio-Visual Law, which consists of 44 articles, includes technical regulations for obtaining broadcasting licenses for radio and television, but it does not impose strict restrictions like those in the Press and Publication Law. Moreover, the draft law does not contain any imprisonment-related penalties, a positive trend that encourages press and media freedom and reduces hesitation among those involved in media and journalistic outlets to exercise freedom of expression and disseminate information. Additionally, Article 3 of the draft emphasizes the enhancement of freedom of expression and opinion.

It is noteworthy that the Cabinet Decision No. 182 of 2004 regarding the licensing of radio, television, satellite, and wireless stations, which was amended by Cabinet Decision No. 6 of 2009, granted the Ministry of Interior the authority to examine the legality of the station's capital and gave the Ministry of Information the authority to issue licenses, while the Ministry of Communications was assigned to handle the technical aspects related to the station. However, this decision contradicts the Palestinian Basic Law, specifically Article 19 and other articles that require the regulation of this right under a law according to the legislative hierarchy rather than

through a Cabinet decision. Furthermore, it imposes restrictions on media freedom. Therefore, issuing the Audio-Visual Law will help rectify any legal violations related to the licensing of stations and their technical aspects (Dabed, 2021).

Challenges of Palestinian Media Legislation: An Analysis of the Impact of the Draft Law on the Palestinian Journalists' Union on Media Freedoms

The draft law for the Palestinian Journalists' Union is characterized by the regulation and organization of the journalism profession. Article 3 guarantees the freedom of journalists and the defense of professional members' rights before official and unofficial entities. Article 4 of the draft asserts the freedom of the press, the state's commitment to ensuring its independence and improving its working conditions, and the enshrinement of the journalist's right to knowledge and access to information. In this context, it is crucial to expedite the issuance of this law, consulting with the Journalists' Union and relevant parties to amend the articles that contain issues before its approval (Yousef, 2022).

Draft Law of the Higher Media Council

The draft law for the Higher Media Council stipulates in Article 2 that the freedom of media is guaranteed, and it cannot be closed, warned, suspended, confiscated, abolished, or restricted except in accordance with this law and by a final judicial ruling issued by a competent court, with all guarantees of defense. This approach is considered positive and is an asset to the draft. Article 3 forbids the imposition of restrictions that hinder media operations in gathering information, news, and opinions, unless they are mandated by law and necessary in a democratic society to protect others' rights and reputations, or to safeguard national security and public morals. However, we must amend this provision to prevent the use of public morals and national security as a justification for restricting media freedom, given the broad interpretation of these terms. The legal text must be clear and unambiguous (Fuchs, 2021).

Article 7 stipulates that the Higher Education Council should choose one member and the Cabinet should choose three members for the Board of Directors. This is considered a negative trend, as it may make the council subordinate to the executive authority, threatening its independence. The requirement in Article 8 for a member to be at least 30 years old and have eight years of experience is a concerning indicator. We should allow young people to join without an age requirement, as this contradicts international decisions, particularly United Nations Resolution 2250, which advocates for youth participation in public life and policymaking. The Higher Media Council's draft law does not include imprisonment-related penalties, a positive trend that promotes and aligns with media freedom. According to Mr. Majed Al-Aarouri, an activist in media freedoms, freedom of the press is guaranteed by the Basic Law and international charters that state no restrictions should be imposed on press freedom.

Al-Aarouri pointed out that the executive authority, not the legislative council, has passed all laws since the establishment of the Palestinian Authority in 1993 to the present, making it natural for the executive authority to attempt to impose some restrictions on press freedom. He emphasized the need for an actual legislative council and laws that protect press rights and freedoms, as well as the necessity to reconsider reducing government control over the media and creating genuine, independent media

Al-Aarouri asserted that a review of the Press and Publication Law is necessary, given its outdated nature and the need to adapt it to modern developments. He also raised the issue of criminalising the editor-in-chief, stating that accountability should extend to all those involved in the criminal act, not just the editor-in-chief.

Al-Aarouri emphasized the need to amend laws pertaining to penalties for journalists based on their work, particularly in relation to the penal aspect of detention and trial of journalists for defamation, slander, and insult cases, and to convert these into civil matters (Barakat, 2020).

Recommendations

1. **Review the Media Regulations:** Reassess the laws governing media in the territories of the Palestinian Authority, updating outdated laws to align with developments in media freedom.
2. **Abolish Executive Powers:** Eliminate the legal powers of the executive authority that grant it the right to close media outlets without a judicial ruling.
3. **Amend Criminal Legislations:** It is necessary to amend the criminal laws related to prosecuting journalists in accordance with international standards.
4. **Expedite the Information Access Law:** Accelerate the adoption of a law that guarantees the right to access information.
5. **Engage Journalists and Civil Society Organizations:** Involve journalists and civil society organizations in any official discussions regarding amendments to laws related to media freedom.
6. **Enact the Higher Media Council Law:** Issue the law for the Higher Media Council to establish an independent council that ensures press freedom.
7. **Form a Review Committee:** Establish a committee to review the legal framework regulating the practice of media freedom in Palestinian territories.

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