



## **Monitoring Report**

**On**

**The Extent to which the Rights of the Accused are respected in Detention Procedures**

**and**

**Precautionary Detention Proceedings in the Magistrate Courts**

**Prepared By**

**The National Commission for the Independence of Judiciary and Rule of Law (ISTIQLAL)**

**Palestinian Bar Association- Gaza Center**

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### **The Civil Coalition for Judiciary Reform and Protection (ISTIQLAL)**

The Coalition is an umbrella under which its members participate and contribute to building an independent and effective Palestinian judiciary in accordance with relevant international standards and best practices in democratic systems. Members propose professional opinion, vision and constructive positions regarding issues related to the independence of the judiciary and ensuring that it functions free of prejudice. Members present constructive, useful, and viable proposals to strengthen the independence of the judiciary, and specifically offer the best mechanisms to face the challenges. On a broader level, members provide public protection as it is a key pillar in the constitutional and legal protection of the independence of the judiciary and rule of law.

The Coalition is composed of the National Commission for the Independence of the Judiciary (Istiqlal), which hosts the coalition, as well as the AMAN Coalition, Al-Mezan Center for Human Rights, Jerusalem Legal Aid and Human Rights Center, the Women's Centre for Legal Aid and Counselling (WCLAC), *Addameer* Prisoner Support and Human Rights Association - Gaza, Adwar Foundation for Social Change, Hurriyat Center, General Union of Independent Syndicates, Al-Marsad, the Palestinian Center for Democracy and Conflict Resolution, Reform Foundation, Knights of Tomorrow Organization, Yalu Society, Faculty of Law at Palestine Ahliya University, Faculty of Law and Political Sciences at Hebron University, Human Rights and Media Democracy Center "Shams", Palestinian Center for Development and Media Freedoms (MADA), The Palestinian Initiative for the Promotion of Global Dialogue "MIFTAH", Filastiniyat Organization, Women Media and Development (TAM), Treatment and Rehabilitation Centre for Victims of Torture (TRC), Ramallah Center for Human Rights Studies. The Independent Commission for Human Rights, and the NGOs Network serve as observer members and the Palestinian Human Rights Organizations Council (PHROC) is a supporter.

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## Introduction

This report is the first of its kind to be issued in the Palestinian territories, focusing on monitoring detention proceedings in the Magistrate Courts in the West Bank and Gaza Strip. The report reviews a set of indicators related to detention and detention extension proceedings, specifically: having the accused physically appear before a judge to hear arrest requests; including the investigation file with the detention extension request; Public Prosecution criteria at the time of submission of detention requests; Public Prosecution presence in the detention hearings; the extent to which Magistrate judges respond to the Public Prosecution detention requests; classification of crimes related to detention requests according to their severity; Magistrate judges' justification for detention extensions; crimes upon which detention is carried out; the role of Magistrate judges in examining torture crimes while considering detention requests; testimony from researchers on handling allegations of torture during the detention request hearings; the need for specialized judges to hear detention extension requests; lack of professional staff; hearing release requests in terms of verification, and basic rights of the accused when the Magistrate judge hears detention requests.

This report, conducted by the National Coalition for the Independence of the Judiciary (ISTIQLAL) and the Palestinian Bar Association- Gaza, is part of an effort carried out by the Civil Coalition for Judiciary Reform and Protection. The monitoring process was implemented over a two-month period. This period was sufficient to draw important conclusions regarding the reality of detention in the Magistrate Courts, and illustrating that the simplest formal procedures are not implemented due to the spread of the Corona epidemic, as most of the hearings were held in absentia, particularly in the Gaza Strip.

In terms of monitoring of detention rights, the results were disappointing in most detention extension request hearings. The majority of judges in these hearings respond to the prosecution's request regarding detention and extension in a mechanical manner without requesting the presentation of investigative files to be included in the detention requests. They also do not distinguish between the nature of charges when issuing detention decisions nor do they seriously deal with allegations of torture. In addition, the prosecution requests the maximum detention period in most cases and the judges abide by these requests; as a result, the presumption of innocence is compromised which is the most important right for detention and preventive arrest as well as the absence of judicial oversight on detention requests submitted by the prosecution.

This report is the second of its kind in the framework of trial monitoring. The National Commission for the Independence of the Judiciary and Rule of Law (ISTIQLAL) previously issued a report on monitoring criminal trials in the West Bank in partnership with the National Coalition for Judicial Reform and Protection, thus strengthening public oversight over court work.

## Chapter One

### Methodology

This chapter includes a presentation of the study's methodology, population, sample and tools, selection of the work team and training on data collection (the data collection phase includes timeframe for field work, field follow-up mechanism), the data entry phase and statistical processing. The following details the methodology:

#### **1. Study Methodology:**

This study with its exploratory methodology is the first of its kind in measuring Palestinian court implementation of legal proceedings and respect for detainee rights. A qualitative and quantitative approach was utilized to monitor hearing proceedings before courts. A comprehensive survey of all hearings as well as field monitoring took place during the data collection phase gathering information from the study population (Magistrate Courts) in several West Bank and Gaza Strip governorates in order to identify the characteristics of **detention and precautionary detention** proceedings indicators in the Magistrate Courts. This method is appropriate for the purpose of this study. Methodology to measure the extent of the Magistrate Courts enforcement of detention proceedings was also developed in accordance with the Criminal Procedures Code.

#### **2. Study Population:**

For the purposes of developing the study, comprehensive monitoring of a number of Magistrate Courts was conducted in each of the following West Bank governorates: Jenin, Tubas, Nablus, Tulkarem, Qalqilya, Ramallah and Al-Bireh, Jericho, Bethlehem, Hebron as well as the Gaza Strip governorates of Gaza, Khan Yunis, Rafah, Deir Al-Balah, and Jabalia.

#### **3. Study Sample:**

For the purposes of the monitoring process, the professional team was selected to include experienced and competent lawyers representing both genders. The team consisted of 17 principal researchers, including (eight males and nine females), distributed according to the district (11 male/female researchers in the West Bank and 6 male/female researchers in the Gaza Strip). Istiqlal supervised the work of the team while the Bar Association supervised the work of the research team in the Gaza Strip. The monitoring team monitored detention proceedings through the Magistrate Courts in the West Bank and Gaza Strip, during the period from 8/11/2020 to 31/12/2020. During this time period 3,789 hearings were monitored, including 1,303 in the West Bank Magistrate Courts and 2,486 hearings in the Gaza Strip Magistrate Courts.



#### **4. Study Tool**

The study tools were developed to collect data related to the monitoring report on detention- extension hearings of the Magistrate Courts in both the West Bank and Gaza Strip. Study tools included reviewing previous studies from other countries and developing a draft indicators framework which was shared with numerous bodies that monitor the Judicial Authority and law institutions. The study tools and measurement indicators were then developed according to the main pillars of detention proceedings, followed by monitoring observations by researchers on the proceedings of the detention extension hearings.

#### **5. Study Procedures:**

The study was conducted by a team of researchers that supervised the detention extension hearings which fall within the category targeted by the study, namely the Magistrate Courts. The study was conducted based on the following steps.

##### **Phase one: preparing for project launching and team selection**

This specialized study is considered the first-of-its-kind in the field of monitoring detention proceedings and precautionary detention at the Magistrate Courts. To implement this effort, a team of competent male/female lawyers was selected.

##### **Phase two: training on data collection for the pilot study**

Preliminary training was conducted for field researchers on 05/11/2020 to evaluate the questionnaires, identify the needs and goals of study implementation, and to review the questionnaires in terms of form and content. This was followed by several training meetings in the wake of the project implementation period in which the work ethics document was reviewed and signed by the researchers. The training covered all topics related to field work and completion of questionnaires; mechanisms utilized in conducting the interview and completing the questionnaires as well as the study objectives, its importance and the skills necessary to ensure project success. Staff were trained in the West Bank and Gaza Strip through joint workshops conducted via video conferencing. A joint group for researchers and the entire project team in the West Bank and Gaza Strip was formed to offer them an opportunity to exchange information on any problems or challenges regarding field work on a daily basis.

##### **Phase three: data collection**

Upon completing the study tools pilot phase, reviewing field results, considering researchers' feedback on indicators, and holding discussions with them to respond to questions, the questionnaire was developed after incorporating necessary amendments. This phase resulted in the study implementation tool in its final formula.

**1. Time reference:**

The survey was carried out in the field during the period from 08/11/2020 to 31/12/2020. It should be noted that the monitoring process was complete when the three Decree Laws were issued on 30/12/2020, including the amendment of the Judicial Authority Law which is expected to adversely affect detention procedures.

**2. Field follow-up mechanism:**

1. An evaluation meeting was held with researchers three days after the pilot field work phase was completed. Performance was discussed and evaluated. Questionnaires were amended based on practical experiences in the field and the manner of dealing with response choices.
2. Producing and examining data regularly and the extent of consistency and coherence of results as well as inquiring about the existing changes.

**Phase four: data entry**

**Programming:**

During this phase, data entry software was developed using computerized forms on a tablet. Data entry rules were also created in a manner that ensures good data entry for questionnaires. In addition, cleaning rules to examine the data after entry were developed, as these rules examine the variables at the questionnaire level.

**Data entry:**

The data entry process period began on 8/11/2020 and concluded on 30/12/2020, which is otherwise referred to as the data collection period.

**Data cleaning stage:**

Comprehensive automated cleaning rules were developed between the questions at the questionnaire level in order to ensure the consistency of questions with each other and the answers that are out of the context or irrational.

**Phase five: data processing**

For the purposes of developing this study, the numbers, and percentages of answer options for each indicator were produced.

**1. The Demographic Dimension of Detainees:**

1. **The gender of the accused males/females whose detention extension requests were presented before the Magistrate Courts.**

**Table No. (1) shows gender of accused males/females whose detention extension requests were presented before the Magistrate Courts**

Gender of the Accused	West Bank		Gaza Strip	
	Number	%	Number	%
Male	1,294	99.3%	2,468	99.3%
Female	9	0.7%	18	0.7%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

Out of the total cases monitored by the monitoring team, it was found that only nine women were brought before the Magistrate Courts in the West Bank to request a detention extension out of 1,303 people that were presented. This shows that the percentage of the submitted requests reached 0.7%, which is the same percentage of requests presented before the Magistrate Courts in the Gaza Strip, where only 18 out of 2,486 detention extension requests for women were presented.

**2. Age groups of the accused males/females whose detention requests were presented before the Magistrate Courts.**

**Table No. ( 2 ) shows the age groups of the accused males/females whose detention requests were presented before the Magistrate Courts**

Age groups	West Bank		Gaza Strip	
	Number	%	Number	%
Under 18 years	0	0.1%	132	7.1%
18-30 years	638	57.0%	1,020	54.7%
31-40 years	279	25.0%	469	25.1%
41-60 years	190	17.0%	229	12.3%
Over 60 years	11	1.0%	16	0.9%
Unknown	185	14.2%	620	24.9%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

By monitoring the age groups of the accused males/females, to whom the Public Prosecution submitted detention extension requests in the West Bank Magistrate Courts, it was found that 57% of the cases fall in 18-30 year old age group, while 55% of cases in this age group were found in the Gaza Strip Magistrate Courts.

The percentage of persons 31-40 years-old reached 25% in both West Bank and Gaza Strip Magistrate Courts alike, and the percentage of those in the 41-60 age group reached 17% in the West Bank and 12% in the Gaza Strip. As for those over 60 years old, the percentage reached 1% in both the West Bank and Gaza Strip courts.

No cases of children under 18 year-old were reported in the West Bank Magistrate Courts; however, 132 cases of juveniles under the age of 18 years were reported to appear before Magistrate Court judges in the Gaza Strip, although the Decree Law No. (4) of 2016 on the Protection of Juveniles is only applied in the West Bank due to the political split. This law is the basis upon which juveniles are presented before competent judges but the Decree is not applied in the Gaza Strip; yet, there is some degree of specialization in the courts in dealing with juvenile cases as they are often presented before judges that visit Juvenile Protection Centers.

## **Chapter Two**

### **Key Results and Report Recommendations**

In this chapter, the most significant results concluded in the West Bank and Gaza Strip Magistrate Courts monitoring process are reported.

#### **First: Study Results**

1. The detention procedures in the Gaza Strip Magistrate Courts face serious violations in cases presented before Magistrate judges. During the monitoring of 3,789 detention extension hearings, including 1,599 in the West Bank and 2,190 in the Gaza Strip it is noted that the number of defendants that appeared before the West Bank Magistrate judges reached 1,281 cases, representing 98.3% of the total number of defendants. In the Gaza Strip Magistrate courts, there were 318 cases representing 12.8% of the number of defendants due to the detention extension request measures taken as a result of the spread of the Corona epidemic.
2. The majority of judges in the West Bank Magistrate Courts decide to detain defendants without submitting an investigative file. It was found that the investigation file is presented in the West Bank Magistrate Courts with a rate of 37%, and most requests are submitted during the detention extension hearings. As for the Magistrate Courts in the Gaza Strip, the investigation file was presented in 85% of the limited hearings in which the defendant

physically appeared before a judge, but in 87% of the hearings the defendants did not appear and were arrested in absentia. In most cases, the investigation file is not brought to the Magistrate Courts except upon the request of the defendant's attorney or the Public Prosecution after the judge's approval. In many cases the judge refuses the request to present the investigation file and rules to extend the defendant's detention without the investigation file or reviewing it and even without justifying his/her decision.

3. According to report findings, the Public Prosecution in the West Bank and Gaza Strip chose the maximum detention period in the requests it submitted. The prosecution requested a 15-day detention for about 78% of the requests it submitted to the West Bank Magistrate Courts and 83% to the Gaza Strip Magistrate Courts. As for the cases in which the prosecution requested a detention period of 1- 7 days, it reached 7% in the West Bank and 0% in the Gaza Strip.
4. Most of the detention hearings in the Gaza Strip Magistrate Courts are held in the absence of prosecutors, unlike the West Bank Magistrate Courts, in which there was a full presence of the prosecution at detention hearings. In the Gaza Strip Magistrate Courts, the attendance rate of the Public Prosecution reached only 6%, and the Judicial Police represented the prosecution in 94% of the hearings. This act constitutes a grave breach in the law and renders the detention procedures and court hearings invalid since detention requests must only be submitted by the Public Prosecutor and in the presence of the prosecution as well.
5. The majority of Magistrate Court judges in both the West Bank and Gaza Strip tend to be harsh and exercise the maximum detention period allowed by the law, which is 15 days. The number of cases in which the accused were arrested for 15 days in the West Bank Magistrate Courts reached 777 cases, a total of 60% of the requests heard by the courts, and it reached 76% of the total prosecution requests to detain the accused for 15 days. In the Gaza Strip Magistrate Courts, the number of cases in which the defendant was detained for 15 days reached 1992, representing a total of 80% of the cases, and 97% of the prosecution's detention requests for 15 days.
6. It is noted that the judges were harsh in detention decisions in a manner that is not commensurate with the gravity of the charge. It was found that about 60% of the charges brought before the West Bank Magistrate Courts on arrest requests were classified as misdemeanors or violations related to the emergency law, whereas the other 40% were felonies. As for the Gaza Strip Magistrate Courts, 81% of the charges were classified as misdemeanors or violations, and the remaining charges were felonies.
7. The majority of rulings issued by Magistrate Court judges did not project justification. Judges attributed most of the detention or the detention extension rulings to completing the investigation procedures (50% in the West Bank courts and 43% in the Gaza Strip Magistrate Courts) followed by justification for the gravity of the charge with 25% in the West Bank courts compared to 6% in the Gaza Strip courts. The reason for detention was not mentioned in 45% of cases in the Gaza Strip courts compared to 3% in the West Bank Magistrate Courts.
8. Crimes committed against individuals constituted the highest percentage of crimes for which accused persons were presented before Magistrate Court judges in the West Bank Magistrate Courts with a rate of 38% of the total crimes, followed by financial crimes by 28% of the total crimes against which detention requests were heard, then drug trafficking, possession or drug use crimes with 21% of the total crimes. As for the Gaza Strip Magistrate courts, crimes against individuals reached 41%, followed by

financial crimes with 34%, drug crimes with 15.5%, and the remaining crimes constituted less than 10%.

9. The efforts of West Bank Magistrate judges in combating torture crimes are weak. In the Gaza Strip, they were not monitored due to the fact that most of the defendants did not physically appear before the judges. In the West Bank Magistrate Courts, 29 allegations of torture or cases that showed signs of torture were recorded, representing 2.2% of the total number of accused. Out of the 29 cases, 20 defendants showed signs of torture or mistreatment, whereas 26 of them stated before the court that they were exposed to violence, torture or mistreatment; three of these individuals did not dare declare this issue despite signs of violence and torture on their bodies. A total of 17 cases were recorded in the minutes of the hearings, representing 57%, and the judges decided to refer only 10 detainees for medical examination, representing 34.5% of the cases that were exposed to torture. No decision was issued to refer any of the suspects of torture against the detainees or illegal detention, which means that the perpetrators of the torture crime enjoyed impunity. In 83% of the cases the judge did not publicly read the decision on the suspicion of torture.
10. Judges hear detention or detention extension requests while they hear the daily files presented to them. There are no full-time or specialized judges to hear these requests. This increases the confusion of judges and prevents allocation of due time for such files in terms of time and content. It is noted that more than 78% of detention files in the Gaza Strip and 33% of the files in the West Bank were addressed within a period of less than five minutes.
11. One of the most serious problems facing the defendants/ detainees is that the Magistrate Courts consider the release requests on bail in terms of verification, but not in public hearings<sup>1</sup>. The release request is submitted by the defense attorney to the court registry officer, who in turn introduces it to the judge for consideration. The judge then makes a decision in the absence of the accused or their attorney or the Public Prosecution and without hearing the statement of the accused or their defense. This mechanism impacts the right of the accused to defend himself/herself and to hear their statements and testimony in addition to impacting the most basic fair trial guarantees.
12. The role of Magistrate judges in imposing their control over the legality of detention centers is weak and below the required levels. The location of detention for those accused and who appear before them is often not mentioned in the hearings. The judge does not specify in their ruling the location in which the defendant should be detained. The percentage of cases in which the location of detention was mentioned reached 17% in the West Bank and 7% in the Gaza Strip Magistrate Courts.
13. The vast majority of defendants to whom the prosecution submits detention requests to the Magistrate Courts do not have a defense attorney to defend them. It was found that 52% in the West Bank, and 98% of accused persons appear before a judge without a lawyer to defend them, constituting a major violation of the simplest rights of the accused to have a defense attorney.

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<sup>1</sup> The text of Article (4) of the Decree Law No. 17 of 2014 amending the Criminal Procedures Code, which is the article that amended Article (137) of the original code.

14. A significant percentage of the hearings are still not held in public. This unjustified secrecy constitutes a violation of the most basic guarantees of a fair trial. A total 127 cases were monitored in which the accused was detained in a secret hearing, representing 9.7% of the hearings that were attended; 150 hearings were monitored in the Gaza Strip, representing 6% of the cases that were conducted in secrecy.
15. It is noted that members of the security apparatuses hold the accused inside the Magistrate Courts chambers while hearing the files of accused detained in their detention centers, this constitutes a form of pressure on the accused and on the judges that rule in these decisions. The monitors noted that in 47% of the hearings monitored in the West Bank Magistrate Courts, members of the security apparatuses or members of the Judicial Police (other than the court security police) were present. They were also present in all hearings that took place in the Gaza Magistrate Courts.
16. The cases in which the defendants or his/her attorney discuss with the Public Prosecution or its representative cases are still limited. It is noted that the percentage in which the accused is allowed to speak before the judge is higher than the cases in which the accused is allowed to discuss their case with the prosecution. The monitoring team in the West Bank monitored 369 cases in which the accused or his/her attorney discussed cases with the prosecution, representing 28% and the team monitored 23 cases in the Gaza Strip, representing 7.2% of the total cases monitored. There were 1157 cases in which the judge allowed the accused to speak upon his/her request in the West Bank, representing 90.3% of the total cases; and there were 317 cases in the Gaza Strip, representing 13% of the cases as the majority of hearings were held in absentia.

#### Second: Recommendations

1. International human rights law and international humanitarian law principles and standards must be incorporated in Public Prosecution work, in a manner consistent with the provisions of the Palestinian Basic Law, Criminal Procedure Code as well as the text stated in the Public Prosecution Strategy and the Justice Sector National Strategy 2017-2022.
2. Citizens must exercise their right to request civil compensation for arbitrary and illegal detention as well as for the harm due to an unfair detention order.
3. It shall be necessary to develop capacity building and professional development plans and programs for the judicial sector based on international standards of human rights.
4. The Judicial Control and Inspection Department shall be activated to monitor Magistrate judges and the Public Prosecution in terms of detention and detention extension requests to ensure transparency, objectivity, integrity and impartiality principles are practiced in addition to mechanisms for control, follow-up and evaluation.
5. Accountability mechanisms and holding the security, Public Prosecution and judges accountable for their role in arbitrary and illegal detention shall be activated, including disciplinary and criminal accountability for perpetrators that illegally withhold freedom.
6. Harmonizing domestic legislations with the international conventions on human rights that Palestine joined, particularly those concerning the crime of torture.
7. The Gaza Strip Magistrate Courts shall immediately hold detention and detention extension hearings in person to ensure that the detainees can be physically present before Magistrate

judges during hearing detention and detention extension hearings. This measure should be exempt from the preventive measures practiced during the Corona pandemic.

8. The Public Prosecution in the Gaza Strip represented by the prosecutor or prosecutor's assistant must attend the detention hearings in accordance with Article (120) of the Criminal Procedures Code, which stated (after hearing the statements of the Public Prosecution and the detainee, the Magistrate judge may release the detainee or extend his/her detention for a period not exceeding 15 days). The text of this article confirms that the Public Prosecution representative must attend the detention hearing in order to ensure a fair trial.
9. It is necessary for the Public Prosecution to include the investigation file in the detention request it submits to the Magistrate Court judges so judges can make decisions regarding detention based on the investigation procedures and the need for detention. Judges shall refrain from arresting any person if the investigative file is not included in their detention request.
10. Detention periods shall be for a limited period and judges should not resort to the maximum period provided by the law, which is 15 days in most cases. This time currently serves as a fixed procedure that is requested by the prosecution and accepted by judges.
11. The prosecution and judges' rigidity should be commensurate to the gravity of charge. The Criminal Procedures Code should be amended to prohibit detention in misdemeanors for which the sentence period is less than two years.
12. All decisions made by judges regarding detention requests submitted to them by the Public Prosecution should be well justified. The justification should state thorough information, not merely the gravity of the charge, or completion of the investigation procedures without justifying the danger, the necessity for investigation, or even the release decision.
13. Judges shall take all the measures that the law and their conscience dictates in dealing with the crime of torture, particularly regarding recording torture allegations in court hearing minutes. Persons suspected to be victims of torture should be referred to a forensic doctor, and a criminal investigation should be initiated on all allegations of torture.
14. Judges with at least three years of practical experience in the judiciary should be assigned to hear detention requests; such requests should not be heard during hearing the other cases before the Magistrate judges, and detention requests should be given sufficient time and effort to be heard.
15. The law should be amended in such a way that obliges a defense attorney to be present with the defendant during the hearing of detention requests. Free legal aid should be provided to defendants that are unable to hire a lawyer to defend them.
16. Release requests on bail shall be heard in public and not through scrutinization; requests shall be heard in the presence of the defendant and the Public Prosecution. Any legal article that prevents public hearings of release on bail requests should be repealed.
17. Magistrate Court judges should enforce their control on the legality of detention locations while hearing detention requests. Judges' rulings on detention should include determining the detention location of the accused. Detention should be in locations specified by the Law on Correction and Rehabilitation Centers as legal detention centers.
18. Any person from the security apparatuses, with the exception of the Judicial Police in charge of court security, should be prevented from attending the detention hearings, as their presence results in moral pressure on the judges and prevents the accused from being able to speak freely before the judge.



19. Magistrate judges should state all the rights that the accused enjoys while hearing their detention requests, as included in the legal standards for a fair trial.
20. Magistrate courts should be prepared to hear detention requests in a gender-balanced manner. The needs of women should be taken into consideration in the event that their detention requests are heard.
21. Juveniles under the age of eighteen should not be present before Magistrate judges, and all rules guaranteeing the rights of juveniles included in the Law on Protection of Delinquent Juveniles in the West Bank and Gaza Strip should be equally applied.
22. The decision to hold secret hearings should not extend to detention extension requests, as such hearings should only be held in necessary cases stipulated in the law.

## Chapter Three

### Results of Magistrate Courts Monitoring Process in Light of Legal Standards

This section reports on the results of the monitoring process on guaranteeing the rights of the accused during the Public Prosecution's hearing requests to extend detention as this matter is related to the right to liberty and personal safety in accordance with Articles 11 and 32 of the Basic Law<sup>2</sup>. A set of indicators were also monitored, namely the physical appearance of the accused before the judge to hear the detention extension requests; attaching the investigation file to the detention extension request; the absence of clear criteria by the Public Prosecution when submitting arrest requests; Public Prosecution representative presence in detention extension hearings; the extent to which the Magistrate judges respond to Prosecution requests to extend the detention; classifications of the crimes related to detention; extension requests according to their degree of severity; justifications provided by Magistrate judges to extend detention; crimes upon which the accused are detained; the role of Magistrate judges in eliminating the crime of torture while examining detention requests; testimony from researchers on handling torture allegations during the detention extension hearing requests; lack of competent judges to hear detention extension requests; lack of professional staff; hearing bail requests for verification; basic rights for the accused when Magistrate judges hear detention extension requests.

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<sup>2</sup> 2. Article (11) of the Palestinian Basic Law stipulates that "It shall be 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.

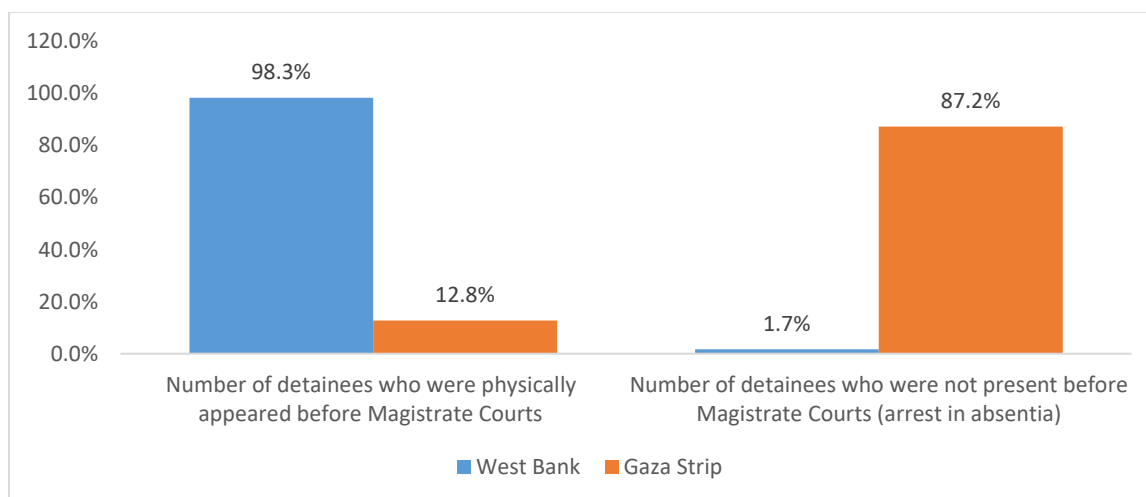
Article (32) of the Basic Law also stipulates that "Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be dropped by prescription, and the National Authority shall guarantee a fair remedy to those who suffer from such damage.

Physical appearance of the accused before the judge to hear arrest requests:

**Table No. (3) shows the percentage of detainee presence before Magistrate Courts in the West Bank and Gaza Strip**

Physical appearance of the accused before the judge	West Bank		Gaza Strip		Total	
	Number	%	Number	%	Number	%
Number of detainees whose trial procedures before Magistrate Courts were monitored	1,303	100.0%	2,486	100.0%	3,789	100.0%
Number of detainees that physically appeared before Magistrate Courts	1,281	98.3%	318	12.8%	1,599	42.2%
Number of detainees that were not present before Magistrate Courts (arrest in absentia)	22	1.7%	2,168	87.2%	2,190	57.8%

**Percentage of detainee presence before Magistrate Courts in the West Bank and Gaza Strip**



Article (119) of the Criminal Procedures Code No. (3) of 2001 stipulates that “if the investigation procedures require keeping the detainee under arrest for more than twenty-four hours, the public prosecutor may request the Magistrate judge to extend the detention for a

period not exceeding fifteen days.” Article (120) also stipulated that, “the Magistrate judge, after hearing the statements of the public prosecution representative and the detainee, may release the detainee or keep him/her in detention for a period not exceeding fifteen days, and he/she may also renew his/her detention for other periods not exceeding forty-five days in total. Article (121) also stipulated that “it shall not be permissible to issue an arrest warrant for any accused person in his/her absence, unless the judge is convinced, based on medical evidence, that he/she cannot be brought before him, because of his/her illness.”

Based on the above, issuing a decision to extend the detention in a manner consistent with the Palestinian Criminal Procedures Code and international human rights standards, as well as the International Covenant on Civil and Political Rights, and in particular the right to a fair trial which stipulates that the accused shall appear before the judge and the judge shall hear his/her statements. There is only one exception which was stated in Article (121) of the aforementioned law that authorized the extension judge authority to extend the detention of the accused without his/her presence, provided that medical evidence is submitted indicating that he/she was unable to appear before the judge due to illness<sup>3</sup>.

The monitoring team attended and monitored a total of 3,789 detention extension hearings, including 1,599 detention extension hearings before the Magistrate Courts in the West Bank, and 2,190 detention extension hearings before the Magistrate Courts in the Gaza Strip. Despite similar health conditions in the West Bank and the Gaza Strip due to the spread of the Corona epidemic, and the occurrence of more complex security circumstances in the West Bank due to the suspension of security coordination, it is noted that the number of accused males/females that appeared before the Magistrate judges in the West Bank reached 1,281, representing 98.3% of the total cases that appeared before the courts. The number of accused males/females that appeared before the Magistrate judges to hear the Prosecution’s requests to extend their detention in the Gaza Strip reached 318, representing 12.8% of the accused persons that were arrested. This variation resulted from various measures taken on detention extension requests due to the spread of the Corona epidemic. The Transitional Higher Judicial Council<sup>4</sup> issued a decision in which it excluded detention extension and release on bail requests from any closure or work suspension. The Magistrate Courts in the Gaza Strip adopted a policy of arrest in absentia without the accused being present before the judge; this was reflected in the majority of cases heard by the Magistrate Courts in light of Corona epidemic, which constituted a major violation of rights during detention.

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<sup>3</sup> “What is disclosed by the will of the legislator, and from the explicit text of Article 121 of the Criminal Procedure Code, is that no accused should be arrested in his/her absence and without being informed, while the exception to this original permits the arrest if the judge is convinced based on medical evidence that the accused cannot be brought before him because of his/her illness, and the aforementioned exception came exclusively and restricted to one single case, and it is known that it is not permissible to elaborate on the interpretation of the exception.” The ruling of the Palestinian Court of Cassation in Ramallah in Criminal Case No. 48 of 2005, dated 04/03/2006.

<sup>4</sup> The Transitional Higher Judicial Council was formed with a one-year term in accordance with Decree Law No. (17) of 2019 regarding the formation of a Transitional Higher Judicial Council, which was published in the Palestinian Official Gazette (Al-Waqai’a) in the excellence issue No. (20) on 16/07/2019. The mandate of this council was extended for a period of six months, starting from 16/07/2020 AD according to Resolution No. (27) of 2020 AD regarding the extension of the mandate of the Transitional Higher Judicial Council, published in the Official Gazette (Al-Waqai’a) in edition No. (168) dated 25/06/2020 AD.

The foregoing indicates that there have been large-scale breaches of the right to have the defendant physically present before the Magistrate Courts in the Gaza Strip, and limited cases of breaches in some Magistrate Courts in the West Bank. Such breaches can be summarized as follows:

1. Being convinced of the medical evidence is dependent upon the judge, as these decisions are not made collectively, but rather each case is heard separately. The detainee, in case of absence should be due to illness and the judge should be convinced of this reason; however,, this task has not been achieved to a large extent in the arrest by absentia extension requests.
2. The procedure for extending the detention of the accused in absentia led to eliminating the requirement to hear statements from the Public Prosecution representative, and the legal requirements that the judge must hear the answers of the accused to statements and to record all statements in this regard in accordance with article (120) of the Criminal Procedures Code. Detention extension procedures when implemented in absentia lose the most important elements that affect the judge's conviction when issuing his rulings on detention. Due to this practice, detention and precautionary detention are transformed from a precautionary measure to a penalty on account in an explicit violation of the principle of presumption of innocence which is stipulated in Article (14) of the Basic Law<sup>5</sup>.
3. Attendance of the detention extension hearing by the accused's attorney without the accused is an invalid procedure and should not be an alternative to the accused's attendance. This was confirmed by the Palestinian Court of Cassation in its decision contradicting the decision of the Court of Appeal, which includes the extension of the suspect's detention in his/her absence, justifying the absence for imperative security reasons, procedures and closures in the country, as well as the seriousness of the charges against the accused, in the event of premeditated murder, in which case the attorney of the accused attends the detention extension procedures<sup>6</sup>.

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<sup>5</sup> Detention and precautionary detention is "a procedure of criminal investigation procedures issued by the person granted this right by the legislator, and it includes an order to the prison director to accept the accused and arrest him/her upon that and to remain in detention for a period that may be longer or shorter depending on the circumstances of each lawsuit until it ends either with the release of the accused during the preliminary investigation or during the trial, or by a ruling issued on the lawsuit."

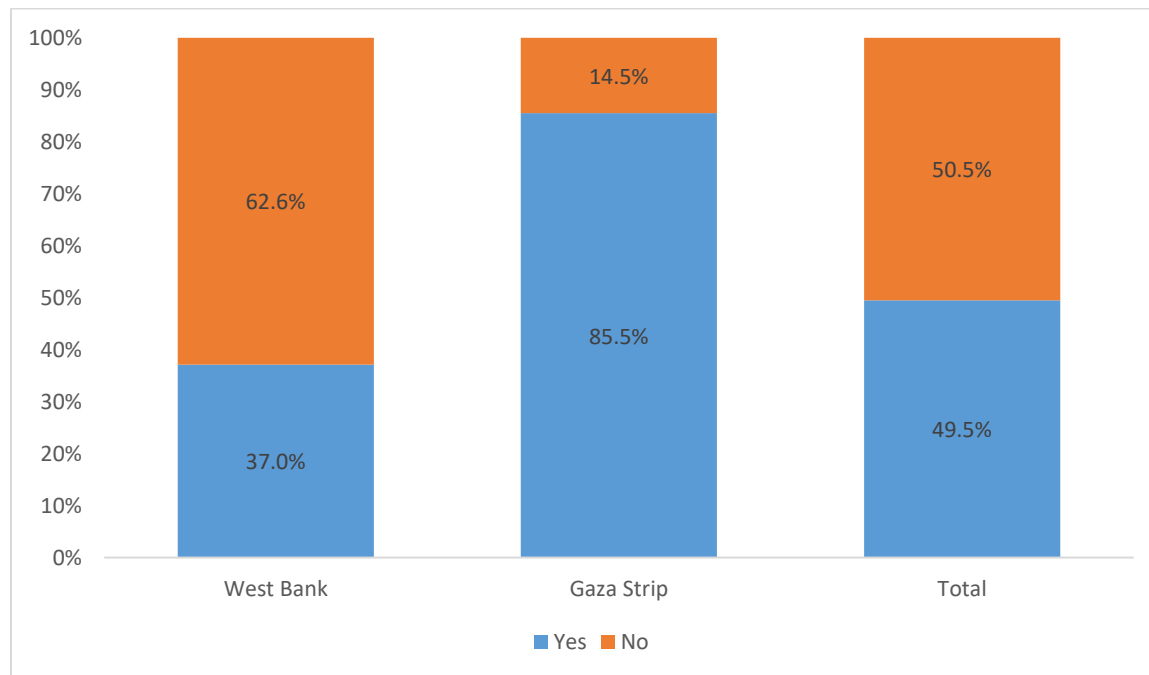
Hasan Sadiq Al-Marsafawi, *Precautionary Detention and Guarantee of Individual Freedom in Egyptian Legislation*, PhD Thesis, Cairo University, 1954 AD, p. 22

<sup>6</sup> The Court of Appeal concluded that the detention of the accused was extended in his absence, but it justified the extension of the detention in light of his absence for imperative security reasons and the measures and closures to which the country is exposed, in addition to the seriousness of the accusation against him/her and that his attorney attended procedures for extending the detention. Article 121 of the Criminal Procedure Code states (It is not permissible to issue an order to arrest any accused person in his absence, unless the judge is convinced, based on medical evidence, that he/she cannot be brought before him/her because of his/her illness), then what was disclosed by the will of the legislator and the explicit text of Article 121 of the Criminal Procedures Code is that no accused shall be arrested in his/her absence and without being informed, while the exception to this principle permits the arrest if the judge is convinced based on medical evidence that it is impossible to bring the accused before him/her because of his/her illness, and the aforementioned exception was exclusive and limited to one single case. It is known that it is not permissible to expand the explanation of the exception: regarding the contents of the appealed decision that the extension of the arrested accused was extended in the presence of his attorney, we do not find a basis for that in the lawsuit papers and it contradicts the reality. Therefore, since the appeal decision was based on reasons that are incapable of bearing it and that the detention extension is not an appellant took place in his absence and without his knowledge and without a justification from the law, so the appeal becomes and this case in place, and that the decision to appeal was incorrect and deserving of to be appealed, "the ruling of the Palestinian Court of Cassation in Ramallah in the Criminal Case No. 48 of 2005, dated 04/03/2006.

### Attachment of Investigation File to the Detention Extension Request

The monitoring team in all monitored courts noted that when the Public Prosecution sends a request to the West Bank and Gaza Strip courts to extend a detention, the investigation file is not brought forth or attached to the request to be presented to the judge for the purposes of examining extension detention justifications in order to issue a valid decision in accordance with law. The Public Prosecution sends the request without any attachments that constitute the body, components, and an integral part of the detention extension request. The investigation file includes the interrogation minutes of the accused, testimony of the complainant witness, testimonies of witnesses, attorneys' power of attorney and their reviews, minutes of collecting evidence and all the evidence and attachments made during the Public Prosecution investigation in the file. This information constitutes the important and largest part of the file and its basis. Such a file constitutes the Public Prosecution's conviction that the investigation procedures require keeping the accused under detention and prompts the prosecution to submit the extension request. The judge who hears the detention extension request without reviewing the investigation file will not be fully aware of the file and therefore his ability to understand its content and all its details will be incomplete.

### The extent to which the Public Prosecution provides an investigation file when requesting detention extension



Through monitoring it was noted that 1,281 detention and extension hearings in the **West Bank Magistrate courts** presented the investigation file in 37% of the total hearings monitored, with most of these files submitted in detention extension hearings. With regard to the Gaza Strip Magistrate Courts, 85% of the hearings took place where the accused physically appeared

before the judge, but in 87% of the hearings the accused did not appear and was arrested in absentia.

Out of the total cases that were monitored to hear the detention extension motives, 27 cases were monitored in the West Bank Magistrate Courts, representing 2% of the total cases that were brought before the Magistrate Courts in which the Public Prosecution representative was asked to submit the investigation file. No such case was recorded in trials that took place in the Magistrate Courts in the Gaza Strip.

The monitors' observed that in most detention requests the lawyers' powers of attorney which allows them to represent the accused and litigate before the Public Prosecution are not included in detention extension requests. Some researchers noted that a lawyer is present with the accused during the hearing request and without a power of attorney because the Public Prosecution does not attach any papers or documents to the detention extension request. Upon starting to hear the request, the judge informed the attorney that he does not have a power of attorney in the file, so the lawyer must leave the hearing to the prosecution to search for his power of attorney and submit it. This results in examining the request without the presence of the defendant's lawyer, which affects the simplest rights of the accused and their right to a fair trial in terms of having a lawyer to represent him/her!

In this regard, and according to what the monitoring team observations, it must be noted that the investigation file is not brought except upon the request of the defendant's lawyer or the Public Prosecution after the judge's approval. In many cases the judge refuses the request to bring the investigation file and decides to extend the defendant's detention without the file or reviewing it. The judge in this case does not even justify his/her decision.

Attaching or reviewing the investigation file by the judge enables them to see how serious the Public Prosecution is in the investigation and whether or not the detention requirements are justified. When the judge reviews the investigation file, he/she can learn if the Public Prosecution is justified in requesting an extension that needs time and entails measures, such as summoning the witnesses and hearing the evidence ... etc. They can also learn that the investigation procedures are ongoing, uninterrupted and require keeping the accused in detention, or if the extension request is simply a result of the Public Prosecution's failure to duly proceed with the procedures, and their willingness to exhaust the detention periods and deal with the extension request as a routine procedure to only gain time. At other times, the detention extension request is treated as a punishment that aims at keeping the accused in detention and not as a legal precautionary measure.

The absence of presenting the investigation file or presenting it based on a decision by the judge raised a question among the monitors: on what basis does the judge decide the seriousness of the charge or whether the investigation requirements call for keeping the defendant in detention as long as he has not reviewed the investigation minutes, the details of the incident and the charge recorded on paper? And, what are the developments in the investigation file? Does the Public Prosecution really need time to complete the investigation? Since the detention of the accused and his/her precautionary detention is a serious procedure, the accused must be interrogated before detention and thus he/she will be given an opportunity

to refute the charge. The accused shall be entitled to see the evidence against them so they can defend themselves and refute the charges against them. The law obliges the Public Prosecution to inform the Magistrate judge not only the charge attributed to the accused, but also, and more importantly, the facts of the charge, and established evidence. If the accused is not interrogated, arrest and precautionary detention should be negated.

In a closer look at what is happening in most Magistrate Court chambers during detention extension hearings, it is observed that the majority of requests to extend detention for the first time are not accompanied by the investigation file, and yet, the defendants are detained.

Submitting the investigation file requires the judge to carefully review the request and to then rule accordingly to respond or dismiss the prosecution's request. Reviewing the file details requires, in many cases, adjourning the hearing for scrutiny before issuing a ruling.

The results of monitoring detention extension hearings indicates that the number cases where hearings were adjourned for some time due to scrutiny prior to issuing the ruling reached 53 in the West Bank Magistrate Courts, representing 4% of the number of hearings that were convened by the Magistrate Courts during the monitoring period. The number of cases in the Gaza Strip Magistrate Courts reached only 7, representing 0.3% of the number of cases heard by these courts.

#### Having Clear Criteria at the Public Prosecution when Detention Requests are submitted:

Detention is one of the cruelest investigation procedures that can only be carried out by the public prosecution or the court. Detention in the Palestinian Criminal Procedures Code is permissible, subject to the assessment of the prosecution that a serious crime has taken place. The condition is that this must take place prior to the expiration of the 48-hour period granted to both the prosecution and court if the prosecution requests the extension of detention in order to complete the investigation. For the detention to take place, a crime of a grave gravity must be committed which requires investigation and detention of the accused for a period of time pending the ability of the prosecution to carry out its full responsibilities. According to legal scholars, detention is also justified in several circumstances including ensure the integrity of investigation procedures; ensuring that the accused does not commit other crimes, or in an effort to protect the accused from retaliation by the victim or his/her family; fear of influencing a witnesses or the victim, or for fear of contacting his/her accomplices in the crime and directing them to hide the crime evidence or to hide from justice officials; fear of running away and not being present upon the request for investigation, or if the accused does not have a known or permanent residence in Palestine.

Whereas, the Criminal Procedures Code of 2001 permits should investigation procedures require, the continued detention of the accused, the Public Prosecutor may ask the Magistrate judge to extend the detention for a period not exceeding 15 days. This means that the prosecution can request detention for a maximum period of 15 days, provided that the total of this periods before the Magistrate judge does not exceed 45 days. The prosecution may request an extension for a period of less than 15 days in each request and the court may decide to agree or dismiss the request or to extend the detention for a period of less than 15 days. The



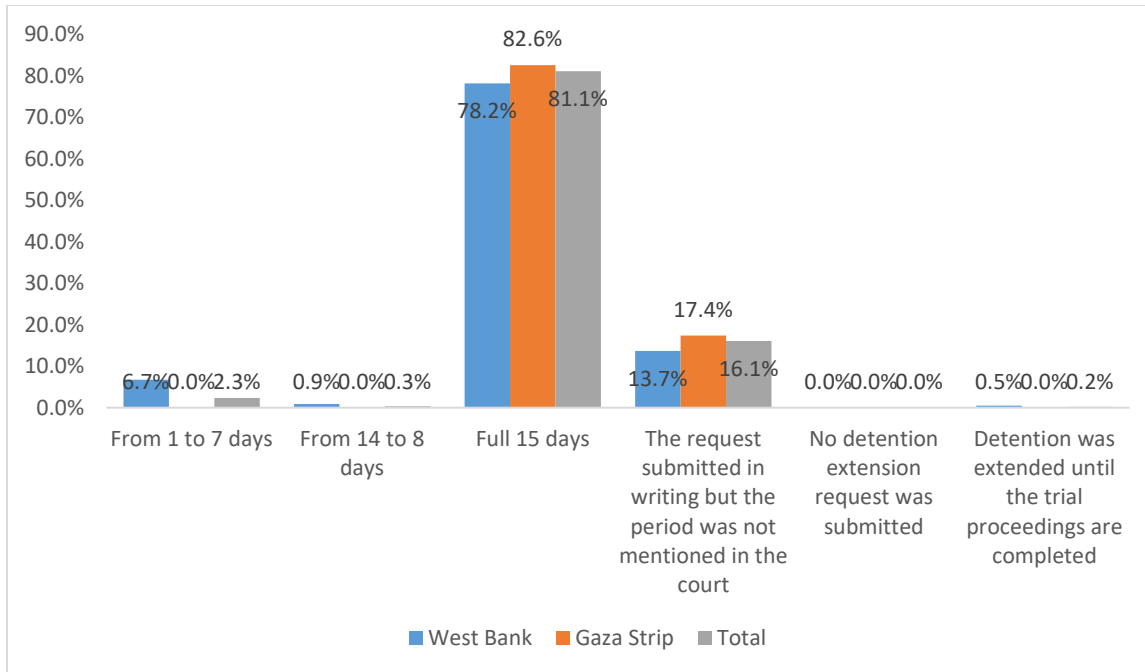
Palestinian legislation considered the investigation requirements that finds that based on the availability of evidence on the charge against the accused that a danger exists if the accused remains free, such as witness testimony or making a decision as justification for the purposes of accepting the extension request without considering the other justification cited by the jurists.

Detention is an exceptional procedure and a deviation from the norm. The basic principle calls for the accused to remain free until a final ruling is issued to convict and sentence him/her by a penalty of deprivation of liberty. Restricting liberty after that is a penalty for the criminal act he/she has committed. Therefore, detention is an exception to the origin of acquittal, so we find various legislations resort to it at a minimum when the public interest prevails over individual freedom. Detention is a guaranteed procedure that is only justified if it is in favor of investigation, and if this justification is removed, the accused must be immediately released. It is also a temporary measure for a period that may not be exceeded, otherwise it shall be considered a penalty that has no right to be imposed. In addition, the legislator aimed at identifying the maximum periods of detention to urge the Public Prosecution to quickly finalize action in order restrict power in this regard. It is worth noting that the accused can be held without a list of charges for six months according to Article (120) of the Criminal Procedures Code.

**Table No. (4) shows the distribution of detention periods requested by the Public Prosecution**

Periods	West Bank		Gaza Strip		Total	
	Number	%	Number	%	Number	%
<b>From 1 to 7 days</b>	87	6.7%	0	0.0%	87	2.3%
<b>From 14 to 8 days</b>	12	0.9%	0	0.0%	12	0.3%
<b>Full 15 days</b>	1,019	78.2%	2,053	82.6%	3,072	81.1%
<b>Request submitted in writing but the period was not mentioned in court</b>	178	13.7%	432	17.4%	610	16.1%
<b>No detention extension request was submitted</b>	0	0.0%	1	0.0%	1	0.0%
<b>Detention was extended until the trial proceedings are completed</b>	7	0.5%	0	0.0%	7	0.2%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>	<b>3,789</b>	<b>100.0%</b>

According to the results of the monitoring team, the Public Prosecution in the West Bank and Gaza Strip requested the maximum detention period. The Public Prosecution requested a 15-day detention period for about 78% of the requests it submitted to the West Bank Magistrate Courts and 83% of the Gaza Strip Magistrate Courts.



Cases in which the prosecution requested detention for a period of 1-7 days, reached 7% in the West Bank and 0% in the Gaza Strip; requests for the period of 8-14 days in the Magistrate Courts in the West Bank was 14% compared to 0% in the Gaza Strip courts.

The above table shows that 14% of the requests submitted to the West Bank Magistrate Courts and 17% of the requests to the Gaza Strip Magistrate Courts were submitted to the judge in writing; the detention period requested by the prosecution was not mentioned even though the Public Prosecution submits these requests through a form that always requests an extension for a period of 15 days.

According to the observations recorded by the majority of male/female researchers in the West Bank, the detention extension request is sent to the court by the Public Prosecution, so that the Magistrate's Court Registry registers such a request, processes them via Al-Mizan software, assigns the case a number and sends the file to the judge for consideration. There is no coordination or cooperation between the Public Prosecution and the Magistrate Court Registry and neither the judge nor the staff of the Registry know the time of bringing the requests from the Public Prosecution, or the number of requests. This matter is up to the Public Prosecution which sends the request to the Registry for registration, and then up to the judge to hear the request. In many cases, sending and registration of requests is conducted after 1 p.m., other times it takes place after 2 p.m. and still at other times it take place at the very last moments in the work day. This, of course, leads to examining these requests very quickly and justice is not served in these cases as there is insufficient time for them to be heard.

Regarding the components and content of the detention extension request as noted by the monitoring team, the detention request contains only one piece of paper with the header of the Public Prosecution! It contains the name and/or names of the accused (if there is more than one accused in the file), their age, the charge and/or charges against them. The Public Prosecution requests to extend the detention of the accused for the period requested by the Public Prosecution and the reason for such a request is usually to complete the investigation procedures and /or due to the seriousness of charge(s).

In the Gaza Strip, detention requests are brought daily by an officer from one of the Judicial Police apparatuses authorized by the Public Prosecution. They are directly handed over to the judge by the officer so the judge decides either on detention or extension. Then, the officer duly hands over the files to the Court Registry for signature. Finally, they are handed over to the court's penal department to be added to the files and the file becomes available for copying.

In both cases, through the methods used in the West Bank or in the Gaza Strip, we find a clear violation of the detention rights stipulated in the Palestinian Criminal Procedures Code, and thus a serious violation of the guarantees of a fair trial for the accused.

#### [Attending Detention Hearings by the Public Prosecution:](#)

Article 119 of the Criminal Procedures Code stipulates that if the investigation procedures require the defendant to continue to be held for more than twenty-four hours, the public prosecutor may request the Magistrate judge to extend the detention for a period not exceeding fifteen days. Article (120) of the law stipulates that the Magistrate, after hearing the statements of the Public Prosecution representative and the arrested person, should release him/her or suspend them for a period not exceeding fifteen days. He may also renew the detention for other periods of no more than 45 days in total. Thus, the law clearly stated that one of the conditions for the validity of the detention procedures in the Magistrate Courts is that the detention request shall be submitted by the public prosecutor, and the Public Prosecution representative shall attend the detention hearing so that the judge hears their statements as the criminal trial must not be held without the presence of the Public Prosecution representative, otherwise it shall be deemed void.

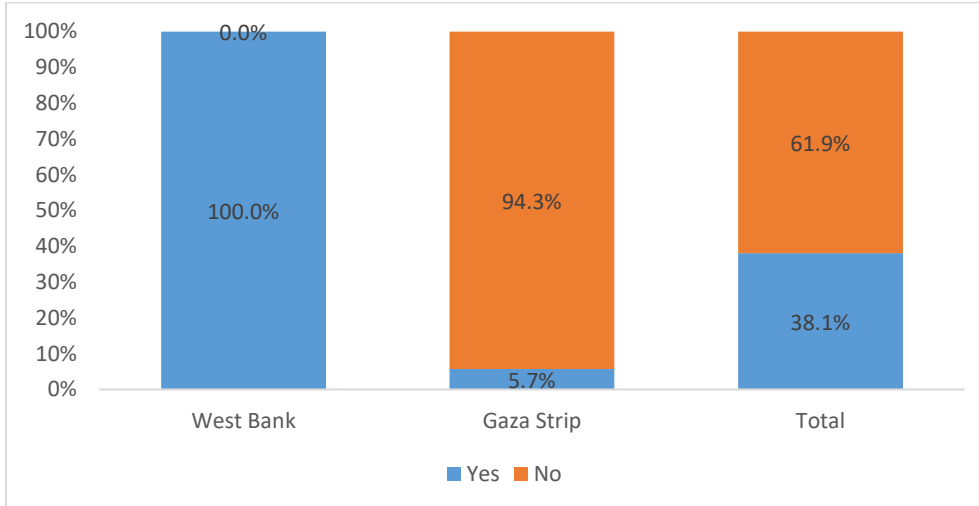
Article (119) of the Criminal Procedures Code No. (3) of 2001 stipulated that "if the investigation procedures require keeping the detainee under arrest for more than twenty-four hours, the public prosecutor may ask the Magistrate judge to extend the detention for a period not exceeding fifteen days." Article (120) also stipulated that, "the Magistrate judge, after hearing the statements of the public prosecution representative and the detainee, may release the detainee or keep him/her under arrest for a period not exceeding fifteen days, and he/she may also renew his/her detention for other periods not exceeding forty-five days in total. Thus, the law clearly stated that one of the conditions for the validity of the detention procedures in the Magistrate courts is that the detention request shall be submitted by the public prosecutor, and it requires that the public prosecution representative shall attend the detention hearing so

that the judge hears their statements. A criminal trial shall not be held without the presence of the public prosecution, otherwise it is deemed void.

**Table No. ( 5 ) shows the extent to which the Public Prosecution attends the extension hearings**

Attendees	West Bank		Gaza Strip		Total	
	Number	%	Number	%	Number	%
<b>Yes</b>	1,303	100.0%	142	5.7%	1,445	38.1%
<b>No</b>	0	0.0%	2,344	94.3%	2,344	61.9%
<b>Total</b>	1,303	100.0%	2,486	100.0%	3,789	100.0%

**The extent to which the Public Prosecution attends the extension hearings**



The process of monitoring the detention hearings demonstrated that the prosecution’s attendance of hearings in the West Bank Magistrate Courts was taking place at a rate of 100%, and only a few cases were noticed where the ruling was delayed until the arrival of the prosecution representative. As for the Gaza Strip Magistrate Courts, the absence of the prosecution representation from the trial hearings, and the presence of representatives from detention centers in which the accused are held accounted for 94% of the total cases reported in the Gaza Strip Magistrate Courts. The interpretation of the Gaza judges on convening hearings to hear detention requests, in light of the absence of prosecutors and the presence of security officers from the Judicial Police, is that such a procedure is based on the text of Article (55) of the Criminal Procedures Code under the Chapter on Investigation. This states that the Attorney General or the competent public prosecutor shall be entitled to delegate one of the Judicial Police officers that is competent in carrying out any investigation in a specific lawsuit, with the exception of interrogating the accused in criminal matters. This mandate may not be general and the delegated officer shall enjoy, within the limits of his/her mandate, all the powers vested in the public prosecutor.

Detention procedures in the Gaza Strip Magistrate courts that are carried out without the presence of the Public Prosecution's representative violate the law and render the detention procedure and the court hearings void as detention requests must be submitted only by the public prosecutor. The law also stipulates that the prosecution shall attend all detention hearings. The two above mentioned conditions were stated in the Chapter on Precautionary Detention and Imprisonment that organizes the detention process, unlike Article (55) related to the delegation, which was mentioned under the Chapter on Investigation, and therefore cannot be applied to detention procedures.

#### The Extent to which Magistrate Judges Respond to the Prosecution Requests on Detention:

According to provisions of the Criminal Procedures Code, the accused may be detained for a period not exceeding 48 hours by an order from the Public Prosecution. If there is a need to detain him/her for a longer period, it must be referred to the Magistrate judge, who in turn can order detention for a maximum period of 15 days each time, provided that the total period does not exceed 45 days. Then, the decision to detain the accused shall be with the knowledge of the First Instance Court based on a request submitted by the Attorney General or one of their assistants<sup>7</sup>. If the detention of the accused continues for six months without a decision of referral to the court, detention may not be renewed and he/she must be released unless the arrest warrant has been issued by the competent court to try the accused. Therefore, the Magistrate judge may decide to release the accused, either with or without guarantee when the prosecution asks them to renew the detention<sup>8</sup>.

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<sup>7</sup> The legislator placed restrictions on precautionary detention procedures according to strict and precise controls. Such restrictions and controls include detention requests of a period exceeding forty-five days shall be restricted to the Attorney General or one of his/her assistants, and that if he/she did so as a belief that is not permissible to abuse or sacrifice human freedom in the absence of necessity required by an interest that shall be considered, and that the assessment of this interest requires that it be entrusted to the Attorney General or one of his/her assistants and not to other members of the prosecution. What the legislator stipulated in this aspect is relates to a right guaranteed in the Basic Law, as the second paragraph of Article (11) of the aforementioned law stipulated, "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. Since the legislator has exclusively entrusted the submission of requests for detention for a period exceeding forty-five days with the Attorney General or one of his/her assistants, while such a request was not submitted by any accused but was submitted by the Public Prosecutor. It is deemed submitted by those who are not entitled to submit it. Moreover, it is a matter of taking the powers of the Public Prosecutor and his/her assistants, and claiming that the seriousness of the charge attributed to the accused (the appellant) justifies this measure transgresses an imperative rule that relates to rights and freedoms, as imprisonment according to its nature is considered a penalty and it is the principle. Thus it must be imposed under a conviction ruling; however, since it is one of the investigation procedures, it is a violation of the principle, which requires compliance with the guarantees and controls imposed by the legislator". The ruling of the Palestinian Court of Cassation, held in Ramallah, in Criminal Case No. 55 of 2005, dated 11/02/2006.

<sup>8</sup> Paragraph (4) of Article (120) of the Criminal Procedures Code has included an imperative rule stating that the maximum period for arresting the accused shall be six months; and he/she must be released immediately if not referred to the competent court during that time. So, the legislator placed a restriction on the detention procedures and authority; and precise controls that lead to not prolong the detention period and shall expedite the completion of the investigation in order to protect human freedom. This is not contradicting the legislator's will, according to the clear text of Article 120/4 of the Criminal Procedures Code, with the right of the prosecution to request the competent court to conduct the trial of the accused after the latter has been in detention for a period of six months and he/she was released for not being referred for trial during the aforementioned period, and was re-arrested after the referral if detention justified such a procedure. Absolutely there is no difference between the request to the court to reconsider the situation of the person who was released, whether the release was issued by a ruling from the court in accordance with the procedures stipulated in the law or that the release is by virtue of the law in accordance with the text of Article 120/4.

**Table No. (6) The extent to which the court's responds to the prosecution's detention request**

responds	West Bank		Gaza Strip		Total	
	Number	%	Number	%	Number	%
<b>Detainee was released based on the defense attorney's request</b>	33	2.5%	53	2.1%	86	2.3%
<b>Prosecution request was dismissed</b>	128	9.8%	1	0.0%	129	3.4%
<b>From 1-7 days</b>	174	13.4%	9	0.4%	183	4.8%
<b>From 1-14 days</b>	45	3.5%	5	0.2%	50	1.3%
<b>Detention was extended before the court for 15 days</b>	777	59.6%	1,992	80.1%	2,769	73.1%
<b>The court responded to the request submitted in writing without mentioning the period</b>	134	10.3%	426	17.1%	560	14.8%
<b>Ruling was issued in the hearing</b>	12	0.9%	0	0.0%	12	0.3%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>	<b>3,789</b>	<b>100.0%</b>

**In the West Bank Magistrate courts**, the number of cases in which the accused were detained for 15 days reached 777, representing 60% of the requests heard by the courts (76% of the total number of requests in which the prosecution requested the full detention for the accused of 15 days).

The percentage of detention from 8 to 14 days was 3.5% of the number of cases presented, and the detention percentage from 1 to 7 days reached 13%. The prosecution's detention requests were dismissed in 10% of cases, and 2.5% of the total cases brought before the Magistrate courts were released.

**In the Gaza Strip Magistrate courts**, the number of cases in which the accused was detained for a period of 15 days reached 1992 cases, representing 80% of the cases heard by the Magistrate courts (97% of the prosecution's detention requests for a period of 15 days out of the total number of requests in which the prosecution requested the full 15 days of detention).

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The ruling of the Palestinian Court of Cassation, held in Ramallah, in Criminal Case No. 10 of 2004, Decision No. (11), dated 29/05/2004.

In a few cases, that do not exceed five, the accused were detained for a period of 8 to 14 days; nine cases from 1 to 7 days, and in one case only the prosecution's request was dismissed. The percentage of release on bail by the Magistrate judge represented only 2%.

The above information indicates a high response by the judges to detention requests submitted by the prosecution without imposing real control on the Public Prosecution requests, which in turn highly respond to the desire of the security apparatuses when they submit detention requests. It was found that despite the differences between the rate of response to detention requests in the West Bank and Gaza Strip in favor of the West Bank Magistrate courts, most of the courts are highly responsive to the Prosecution's requests. The majority of cases in which detention is not enforced for the maximum time permitted are the cases in which the Prosecution submits detention requests for the second time. This issue weakens the role of the Magistrate Courts in imposing their control over the arrest procedures. The role of the judiciary has become limited to issuing detention extension rulings or release on bail based on the Public Prosecution's will without justifying its detention rulings as it is satisfied with the prosecution's justifications regarding investigation requirements and the severity of charges which require these measures without any regard to detention conditions of the accused and the real reasons for detention. Thus, the oversight role of the judiciary is absent, robbing it of its official role.

#### Classifications of the Crimes related to Detention Requests According to their Degree of Severity:

**Table No. (7) shows the classifications of the crime related to the detention request**

Classification of the crime	West Bank		Gaza Strip		Total	
	Count	%	Count	%	Count	%
<b>Violation</b>	6	0.5%	7	0.3%	13	0.3%
<b>Misdemeanor</b>	775	59.5%	2,000	80.5%	2,775	73.2%
<b>Crime</b>	522	40.1%	479	19.3%	1,001	26.4%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>	<b>3,789</b>	<b>100.0%</b>

The rigid response to detention requests submitted by the Public Prosecution to the Magistrate Courts is not commensurate with the severity of the charges against the accused, as about 60% of the charges for detention requests submitted to the West Bank Magistrate Courts were classified as misdemeanors or violations related to the emergency law, and 40% of the charges were classified as crimes. As for the Magistrate Courts in the Gaza Strip, 81% of the charges were classified as misdemeanors or violations, and 19% of the charges were classified as crimes. This is a high percentage for misdemeanors compared to a higher percentage of the maximum detention period Magistrate judges allows. This means that there is a tendency towards strict detention procedures with no consideration for the severity of the charges, which is further utilized as a punishment rather than a legal procedure.

The law specifies the maximum period authorized to the Magistrate judges for detention as 15 days each time, and the law did not state that they must be arrested for 15 days. It also specifies the maximum period of detention as 45 days but does not specify the number of times the accused shall be present before the judge based on the investigation requirements even if it reaches 45 times, should the investigation procedures require this action. However, according to the monitoring team's data, 70% of the accused were only brought once to the Magistrate judge in relation to their detention before being released; about 22% are brought before the judge twice; 8% are brought before the judge three times to extend their detention, and less than 1% are brought for four times or more regardless of the number of their detention days, which does not exceed 45 days for all cases. It is true that the Palestinian Criminal Procedures Code does not specify the crimes in which detention is permissible<sup>9</sup>, and it leaves the assessment to the competent judicial authorities in all types of crimes. It should be noted, however, that setting a minimum penalty for which the accused may be in detention is consistent with the fact that this measure is precautionary and not a penalty. The results of the monitoring process have concluded that the competent authorities exaggerate detention periods without justification, and the majority of prosecutors and judges do not deal with the arrest warrant as a matter of permissibility. Accordingly, it became necessary to address the judge's detention mandate and the degree of gravity of the crime as a standard to comply with when they resort to detention or extension procedures. Detention must not exceed the period of the penalty stipulated in the law and detention may not be allowed in crimes that can only be fined.

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<sup>9</sup> Most of the legislations agree on the permissibility of detention and precautionary detention in felonies due to the gravity of the crime. They also agree on the prohibition of precautionary detention in the Articles on violations for their simplicity; but, for misdemeanors precautionary detention is permissible under conditions.

For example, Article (114/1) of the Jordanian Criminal Procedure Code, the public prosecutor may issue an arrest warrant against the accused if the act assigned to him/her is punishable by imprisonment for a period exceeding two years or by a temporary criminal penalty. The second paragraph of Article (114) of the same law stated that "despite what was stated in Paragraph (1), the public prosecutor may issue an arrest warrant against the accused in the following cases:

- A- If the act ascribed to him/her is a crime of harm, unintended harm, or theft.
- B- If he/she does not have a permanent and known place of residence in the Kingdom.



Reasons for Extending Detention by Magistrate Judges:

**Table No. (8) shows the reasons for extending detention by Magistrate judges**

Reasons	West Bank		Gaza Strip	
	Number	%	Number	%
No extension (either release or dismissing the prosecution's request )	161	12.4%	54	2.2%
Not posting bail	15	1.2%	5	0.2%
Proceeding in investigation procedure	647	49.7%	1,077	43.3%
Gravity of the crime	319	24.5%	159	6.4%
Authorizing the Public Prosecution to issue the lawsuit file	27	2.1%	0	0.0%
Lack of reconciliation	15	1.2%	18	0.7%
Until the end of trial proceedings	69	5.3%	45	1.8%
No reason mentioned	38	2.9%	1,128	45.4%
Other	12	0.9%	0	0.0%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

Reasoning the detention extension decision calls for demonstrating the reasons on which the court relied. Providing a reason for the decision of detention or the decision for detention extension is one of the important matters that must be taken into account when a ruling is made to arrest the accused or to extend his/her detention. The importance of this decision is reflected in being one of the legal controls set by the law as a motive to wait before taking such a serious measure which should not be resorted to except after thorough examination and full awareness of the overall circumstances of the investigation. Moreover, this reason has the highest impact on assisting the party to which the appeal is raised against, thus facilitating its task in monitoring and determining whether the arrest was arbitrary or if it is in accordance with law. The lack of reasoning, however, leads to making the decision void. Therefore, it was also noted that making the reasoning obligatory extends to every decision issued to extend the detention.

Most of the rulings issued by the Magistrates judges do not provide a reason for the decisions made.

However, it is clear in the above table that 12% of the decisions made by the West Bank Magistrate courts and 2% of the decisions made by the Gaza Strip Magistrate courts did not extend the detention in their ruling (release on bail, or dismissing the prosecution's request).

Most of detention decisions made by Magistrate Courts were justified by completing the investigation procedures (50% in the West Bank Magistrate courts and 43% in the Gaza Strip courts), followed by the gravity of the charge by 25% in the West Bank courts compared to 6% in the Gaza Strip courts, or the reason of detention was not mentioned which accounted for 45% in the Gaza Strip courts compared to 3% in the West Bank Magistrate Courts.

Requesting the lawsuit file (the investigation file) was one of the detention extension reasons in the West Bank Magistrate courts by 2%, while it was never requested in the Gaza Strip Magistrate courts. There were additional reasons behind the issuance of detention rulings, such as not paying, providing bail or the lack of reconciliation, although the latter is not a legal reason to rely on for detention extensions until the end of the trial proceedings. In addition, there were reasons not stated in the above table such as obtaining health clarifications regarding Corona infections or the accused did not pay the value of the check and did not resolve the file.

### Crimes upon in which the Accused are Detained

**Table No. ( 9 ) shows the categories of crimes for which the accused males/females were present for detention**

categories of crimes	West Bank		Gaza Strip	
	Number	%	Number	%
Cybercrimes	16	1.2%	90	3.6%
Money crimes	370	28.4%	837	33.7%
Crimes against public office	23	1.8%	54	2.2%
Crimes against persons	505	38.8%	1,029	41.4%
State security crimes	46	3.5%	12	0.5%
Economic crimes	6	0.5%	21	0.8%
Traffic crimes	11	0.8%	1	0.0%
Drug usage/trafficking	272	20.9%	386	15.5%
Rape and/or indecent assault	26	2.0%	36	1.4%
Other crimes	28	2.1%	20	0.8%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

In the West Bank Magistrate Courts, crimes committed against persons constitute the highest percentage of crimes for which the accused were presented before Magistrate Court judges; these crimes account for 38% of the total crimes presented. These crimes were followed by crimes against money, representing 28% of the total crimes against which arrest requests were heard, followed by the crimes of drug trafficking, possession, or drug use, representing 21% of the total crimes. In addition, there are cybercrimes, crimes against public office, crimes of state security, economic crimes, rape and/or indecent assault crimes, and these crimes represented about 13%. This type of crimes against women are classified as honor crimes.

As for the Gaza Strip Magistrate Courts, crimes against persons reached 41%, followed by money crimes by 34%, drug crimes with 15.5%, and the remaining crimes were less than 10%.

### 9. The Role of Magistrate Judges in the Extermination of the Crime of Torture:

Torture is considered one of the most heinous and serious crimes against human rights as its consequences can leave a life impact. Therefore, the world's countries are keen to protect their legal system with controls to protect society from these crimes, explaining the methods to address and identify the parties in charge of combating them and prosecuting the perpetrators. The most important of these controls is the judicial system, as it is one of the most important state institutions concerned with the extermination of this crime. Articles (10), (13) and (32) of the Palestinian Basic Law as well as Article (208) of the Jordanian Penal Code and Article (108) of the British Mandate applied in Gaza criminalized torture.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obligates each state party to ensure that all acts of torture are crimes, and the state has a duty to conduct an investigation into acts of torture and ill-treatment under its criminal law. Therefore, Palestine, which is a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, must take effective legislative, administrative, or judicial measures or any other measures to prevent acts of torture within its jurisdiction.

Cases of torture and combating torture are closely interrelated to the judicial work, particularly the judiciary that is tasked with hearing criminal cases. The role of judges requires them to deal with cases that involve forcing the accused to confess that they committed crimes under torture, and imposing rule of law by repealing any measure that occurs under torture, and imposing the maximum penalties prescribed in the law against the perpetrators of such crimes.

The Palestinian legislator defined the conditions of confession that is heard before the criminal court, as Article (214) of the Palestinian Criminal Procedures Code stipulates: "The following shall be required for the validity of the confession: 1- It shall be made voluntarily and optionally, and without physical or moral pressure or coercion, or a promise, or a threat, 2- The confession shall conform to the circumstances of the incident, 3- The confession shall be explicit and conclusive to the commission of the crime.

In this context, the Istiqlal monitoring team monitored how Magistrate judges deal with the accused that appear before them in case they claim torture or if signs of torture appear on their bodies when they appear before the judge. This has been monitored quantitatively and qualitatively through conveying the facts monitored by the researchers themselves.

**Table (10 ) shows the extent to which the accused before the Magistrate judges were exposed to torture due to detention requests**

Monitoring torture cases	West Bank		Gaza Strip	
	Number	%	Number	%
<b>Yes</b>	29	%2.2	0	%0.0
<b>No</b>	1,281	%98.3	318	%12.8
<b>Cannot be identified as the accused was not brought before the court (in absentia)</b>	22	%1.7	2,168	%87.2
<b>Total</b>	<b>1,303</b>	<b>%100.0</b>	<b>2,486</b>	<b>%100.0</b>

**In the West Bank**, 1,281 detention hearings were monitored in person before the Magistrate Courts, during which 29 cases of allegation of torture were monitored for defendants that were brought by the Public Prosecution to the courts or persons that have signs of torture. These cases represent 2.2% of the total number of the accused.

**In the Gaza Strip**, the monitoring team could not monitor any case of torture among the accused due to the fact that the number of accused males/females whose files were heard by the courts during the monitoring period amounted to 2,486 and 318 of them physically appeared before the Magistrate judges, representing only 13% . Their failure to appear has prevented effective monitoring of the role of Magistrate Court judges in dealing with cases of torture.

**Table (11) shows quantitatively the role of Magistrate judges in combating the crime of torture when they hear detention requests**

Indicators on the proceedings of West Bank Magistrates	Yes		No	
	Number	%	Number	%
Signs of torture or ill-treatment appeared on the accused	20	69.0%	9	31.0%
The accused stated before the court that <b>they</b> had been subjected to violence, torture, or ill-treatment.	26	89.7%	3	10.3%
The accused's allegation was recorded in the hearing minutes	17	58.6%	12	41.4%
The judge decided to refer the detainee to medical examination	10	34.5%	19	65.5%
The judge referred those suspected of practicing torture against the detainee or unlawful detention to the competent investigation authority	0	0.0%	29	100.0%
<b>The ruling related to suspected torture was read</b>	<b>5</b>	<b>17.2%</b>	<b>24</b>	<b>82.8%</b>

The monitoring reports indicate that out of the 29 cases in which a suspicion of the occurrence of the crime of torture was monitored, 20 cases showed signs of torture or ill-treatment; 26 individuals stated prior to the court that they were exposed to violence, torture or ill-treatment, and three individuals did not dare to declare before the judge that torture occurred, as the

monitoring team noted, despite the appearance of signs of violence on their bodies or fractures in one of their body parts.

The role of judges in dealing with torture crime was very limited given what they are capable of doing. Out of the total cases of suspected torture that appeared before judges in the West Bank Magistrate Courts, only 17 cases were confirmed and 12 cases were left undocumented in the hearing minutes. The documented cases in the record represented 57%, however, the rest of the cases were either disregarded or completely ignored by the Magistrate judges.

The cases that showed signs of torture were declared either by accused themselves or by their attorney. The judges in the West Bank Magistrate Courts decided to refer 10 detainees to medical examination, equivalent to 34.5% of the total cases, and they disregarded 19 cases, representing 65.5% of those cases and without making a decision to refer them to medical examination.

It is interesting to note that none of the Magistrate Court judges in the West Bank issued any decision against any of those suspected of practicing torture against the detainee or illegal detention nor have they referred cases to the competent investigative authority. This has allowed the perpetrators of the crime of torture to enjoy impunity. The judges have not fulfilled the role that legislators assigned them, specifically allowing that the mandate of detention to be within the powers of the judiciary.

In 83% of the monitored cases, the judge did not publicly read the decision on suspected torture with the exception of five out of 29 cases, representing 17%.

### Monitors' Testimony on Addressing Torture Allegations during the Detention Hearing Requests:

Among the cases that were brought before the Jenin Magistrate Court on 12/11/2020, the accused (T.H) informed the judge about signs of torture on his eye due to a blow he received, leading him to lose consciousness. When he woke up, they forced him to sign a confession and asked him to say that he fell on the ground. The court saw his eyelids and the bruise that resulted from the blow. He told the court that he had removed the stitches from his eyelids two days ago. The court decided to contact medical services to conduct examinations of the accused and to provide the court with a medical report, in addition to providing him with special medication provided by specialized doctors. At the same time, the court decided to accept of the Public Prosecution's request to extend his detention for a second time for a 15-day period due to the gravity of the charge brought against him.

In the Qalqiliya Magistrate Court, the accused (M.T.) stated on 29/11/2020 that he was beaten and his nose was broken as a result. Signs of torture appeared on his face. He stated that his confession was due to beating and hanging; however, the court decided not to take any action regarding torture. The judge told the accused that he can submit a request to the prison director in order to follow up the issue of being beaten. In addition, no action was taken regarding the accused (R.A.) on 9/12/2020, as signs of torture and beatings appeared on his face. The defense

attorney stated that the accused was exposed to torture, but the judge decided not to take any action regarding torture.

In the case of the accused (A. Zahran), 35 years old, in the Qalqilya Magistrate Court, a request was received on 6/12/2020 for a 15-day detention extension to complete the investigation procedures. The Public Prosecution repeated the request pleading to extend the detention of the accused for 15 days. The accused stated that he was beaten and the judge did allow him to speak. The judge then recorded that he was beaten; he also asked to see and to record that the bruises on his face were the result of beatings from the special police. The court noticed the bruises on his cheek and nose and recorded this in the hearing minutes. Then, the court decided to refer him to medical services to provide the court with a report on his health condition; yet, at the same time, the court decided to extend his detention for 15 days.

Another case was monitored that included a statement by the accused and the defense attorney before **Nablus Magistrate Court** on 16/11/2020. The case of the accused (S.A) was exposed to psychological and physical torture. However, despite the statement of the accused and the defense attorney, no action was taken on torture despite the fact that the signs of torture were clear on the detainee. The defense attorney spoke of the torture before the court and pointed to the wounds that appeared on the face of the accused. The charge against the accused was defaming the Palestinian Authority. The judge disregarded the defense attorney's presentation and did not take any action; he even referred the accused to medical examination despite the blood that was clearly visible on his face.

On 01/12/2020, signs of torture appeared on the accused (A.S.), who was brought before the Nablus Magistrate Court on charges of resisting the security apparatuses. He showed signs of torture, including a brain concussion, a blue right eye, fractures on his hands, bruises on his abdomen, and remains of blood on his face.

The defense attorney pointed to signs of torture on the accused, noting that he was severely beaten by police officers and spent a full day in the hospital. The defense attorney was unable to visit him and the hospital did not provide any medical report due to pressure exerted by the police. The accused was not allowed to file a complaint that was beaten during detention at the detention center.

When the accused uncovered the signs of torture and described them, the judge ordered the (Istiqlal) monitor to leave the courtroom. They closed the door until examination of the accused was the complete. The judge then allowed the observer to return to the courtroom, thus, the court hearing was characterized with a state of ambiguity and blackout. Although the accused and his attorney claimed that torture had occurred and there were clear signs, the judge's decision was limited to writing a letter to the Nablus Rehabilitation Center in order to provide the court with a report on the health condition of the accused. It is also noted that the condition of the accused was severe when he entered the hearing as he was dizzy and could not stand due to suffering a severe concussion as demonstrated in the detention hearing.

**The (Istiqlal) monitor states,** “during my monitoring of the detention procedures of the accused (A. H) before the Nablus Magistrate Court on 03/12/2020, the court disregarded the

claims of torture by the accused despite his statement that he was tortured during his detention. He showed the signs of torture that appeared on various parts of his body. The judge only wrote a letter to the Rehabilitation Center in order to refer the accused to medical services for medical examination and treatment, if necessary, and to provide the court with a report on his health condition, without making any decision on the incident or holding the perpetrators accountable.”

On 07/12/2020, a case of violence was monitored inside the court in which a police officer from the guards of the Magistrate Court in Nablus was severely beaten (A.A.) as brother of one of the accused knocked him to the ground and police officers continued beating him. He was then sent to the Nablus detention center.

**In Ramallah Magistrate Court** and during the hearing of a detention request on 06/12/2020, the accused (M.F) was asked if he had a representative (lawyer). He stated that he does not have a lawyer. Then, the accused declared that he was exposed to ill-treatment and torture by the police. He began uncovering where he was tortured on his body; however, the judge ordered him to stop and did not listen to his complaint. This was not recorded in the hearing minutes. Later on, the judge decided to extend the detention of the accused for two days, as after that time he will exceed 45 days and he will be transferred to the First Instance Court. If it turns out that there are no serious investigations, the judge will release the accused, under the condition that he must apply for release, otherwise he will not be released.

Likewise, the accused and his brother, who were brought together to the hearing, stated that they were exposed to torture/mistreatment by the Drug Enforcement Agency at the Police. Their attorney declared this information in the hearing and this was recorded in the hearing minutes; however, the judge decided to extend the detention for the two accused brothers for ten days each in order to provide an opportunity for the Public Prosecution to compile an investigation file. They were not referred to a medical committee following their statement.

During the hearing held on 13/12/2020 in the Ramallah Magistrate Court, the attorney of the accused detainee (S.A) stated that his client was mistreated by the Drug Enforcement Agency of the General Police Force, and this was evident in the pleading of the attorney and recorded in the hearing minutes; however, the judge did not refer the accused to a medical committee. He extended the detention for ten days to give the prosecution an opportunity to compile an investigation file.

During the same hearing, the accused (Y.A.), who is the brother of the above mentioned accused, stated that he was exposed to torture and mistreatment by the police, as he was detained for three days before appearing before the judge. The accused said that he was hanged and beaten and he requested making a phone call; however, this request was denied. The judge then asked him if he is hungry and whether food was provided to him by the police. He said that he is hungry and did not receive a meal. However, despite the statements of the accused, this information was not recorded in the hearing minutes and the judge did not refer him to medical examination.

The accused (N.N) was brought to the Ramallah courtroom on 16/12/2020 with signs of abuse on his body. Severe reddish-blue bruises were seen on and underneath his eyes as well as on his forehead. The judge asked him about the cause of these injuries. He replied that he was not exposed to torture, but rather a car hit him. He also stated that he hit himself, and this was recorded in the hearing minutes. The court then decided to extend his detention for a period of 15 days to give the prosecution an opportunity to compile an investigation file.

In the Jericho Magistrate Court, the accused (A.T) stated that he was tortured during his detention at the General Intelligence headquarters, and that he was forced to sign his testimony at the General Intelligence; however, he refused to sign before the prosecution. He stated that he had to sign before the intelligence because they used to give him a bucket of water and ask him to water the flowers and the plants by a spoon. The accused (A.M) also stated before the Jericho Magistrate Court that he was exposed to psychological torture while in detention at the General Intelligence headquarters; he was also watering the flowers using a spoon at the Security Committee prison.

One of the Istiqlal female monitors noticed the manifestations of fear on the face of the accused (A.A), who appeared before the Magistrate Judge of the Jericho Court. His hand was bandaged with a piece of cloth hung to his neck. The defense attorney stated that the accused is ill and needs treatment. When the judge asked him about the reason for reason for his bandaged hand, he stated that he fell in the bathroom of his cell phone and broke his hand. He uncovered it for the judge to see. The judge asked him if he was seen by a doctor. He responded, “yes and I have another visit to the doctor today.” He was confused in his speech, and the judge decided to extend his arrest and refer him to the military medical services. At the end of the extension hearing, the monitor asked the defense attorney regarding the cause of his injury. He stated that it was a sign of beating and torture. The accused was afraid to say that his hand broke as result of torture.

During his appearance before the Jericho Magistrate's Court Judge on 15/12/2020, the accused (A. A) had a wound on his wrist (a deep wound). The judge asked him about the cause of the wound. He replied that he had fallen while he was handcuffed and blindfolded when he was entering into the security car. The judge then asked him if he has a lawyer. He responded that he was not allowed to make a phone call and his family did not know where he was being detained. The judge ordered the door closed and asked him for his family's number and called the accused's wife via his own phone. The accused spoke to his wife and told her about his detention location and asked her to hire a lawyer.



## Having Competent Judges to Hear Detention Extension Requests and Lack of Professional Staff:

**Table No. ( 12 ) shows the time spent by the judge in detention hearing requests**

Time spent	West Bank		Gaza Strip	
	Number	%	Number	%
Less than 5 minutes	430	33.0%	1,952	78.5%
From 5 to 10 minutes	443	34.0%	504	20.3%
From 10 to 15 minutes	387	29.7%	22	0.9%
More than 15 minutes	43	3.3%	8	0.3%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

Most of the observers noticed that detention extension requests are heard by judges while hearing the daily files pending before them. Judges either consider these requests as soon as they are registered and brought before them or they delay their consideration until they complete reviewing the daily files pending before them, or they consider them while intermittently reviewing regular files. This manner of work can certainly confuse the judge and is problematic for some judges as there is high pressure due to the volume of pending files before him/her. Therefore, examining regular and pending files, hearing evidence and witnesses in cases, and registering the file on AL-MIZAN Software can delay hearings of detention extension files, which may be reviewed in the last working hours as it was noted by most monitors. There are no competent or full-time judges to exclusively consider the detention files. This can certainly make it easier for judges to review such files without distracting themselves in reviewing ordinary files along with extension files. Reviewing various types of files can of course affect the judge who is already under pressure in reviewing ordinary files, and can also distract him/her when the court registry employees bring him/her files and detention extension while they reviews ordinary and rotated files which constitute a huge burden.

The problem of the **shortage of specialized and trained professional cadres of clerks, janitors and employees** is clearly and significantly apparent when judges consider detention extension files. When the court registry is late in file registration and bringing the files to the judge, the shortage in specialized and trained professional cadres of clerks, janitors and employees affects, in one way or another, the consideration of detention extension requests. Therefore, there should be a sufficient number of employees in the court registry to receive extension requests sent by the Public Prosecution, can register them quickly, and then bring them to the judge for consideration. This work requires a sufficient number of full-time employees and janitors to quickly consider these requests without delay. However, to the contrary, we noticed severe shortages in the number of employees in the Penal Magistrate

Court Registry as well as clerks, janitors and their substitutes in case of leaves, which in one way or another affects the consideration of detention extension requests and can sometimes delay their consideration.

## 12. Verification of Hearing Release Requests:

One of the most serious problems facing the accused/detainees is that the Magistrate Courts consider the release requests on bail in terms of verification, but not in public hearings.<sup>10</sup> The release request is submitted by the defense attorney with the court registry officer, who in turn introduces it to the judge for consideration. The judge then makes a decision in the absence of the accused or his/her attorney or the Public Prosecution. The judge also does not hearing statements from the accused or his/her defense which affects the rights of the accused to defend himself/herself and to hear their statements and testimony. This process adversely affects the simplest fair trial guarantees.

**Table No. ( 13) shows the procedure taken by the Magistrate judge in release requests on bail**

Measure taken on release requests	West Bank	
	Number	%
Released	95	15.5%
Not released	510	83.3%
Not mentioned in the hearing	7	1.1%
<b>Total</b>	<b>612</b>	<b>100.0%</b>

The monitoring team followed the submission of 612 requests in the West Bank Magistrate Courts. During this monitoring period, the team found through information monitored from court registries, lawyers, or considered publicly before the Magistrate Courts, that only 95 requests were accepted, representing 15.5% of the submitted requests. 510 release requests were dismissed, representing 83.3% of the requests, and the outcome of the remaining requests were not determined.

## **Monitoring the Legality of Detention Centers and Spatial Jurisdiction during the Consideration of Arrest Requests:**

The Correction and Rehabilitation Centers Law No. (6) of 1998 stipulated in its definition that an inmate is every person imprisoned as a result of enforcing a ruling issued by a criminal or ad hoc court or detained under legal custody, or any person referred to the center as an implementation of a legal measure. The same law also stipulated in Article (2) that correction and rehabilitation centers shall be established and their locations shall be determined in a decision by the Minister, and he/she may cancel them and refrain from using them when necessary. Article (6) stipulates that the inmate shall be admitted to the center based on a legal memorandum and it shall be prohibited to keep him/her in the center after the expiry of the legal period specified in the memorandum. Article (7) stipulates that anyone that who is seized, arrested, kept, or whose freedom is restricted in accordance with the law shall be admitted in

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<sup>10</sup> The text of Article (4) of the Decree Law No. 17 of 2014 amending the Criminal Procedures Code, which is the article that amended Article (137 ) of the original code.

one of the places specified in a decision by the Minister in accordance with Article Two of this law. The inmates in any center shall be legally kept under the custodianship of the center's director and they shall be subject to the discipline of the center and the regulations of the General Directorate.

The philosophy of granting the judiciary detention authority is to ensure that accused persons are detained in legal centers, in addition to ensuring that persons who appear before judges to request or to extend their detention have come from legal detention centers and will be transferred to legal detention centers if they are detained. The role of Magistrate judges in imposing their control over the legality of detention centers is still weak and below the required level, as detention centers holding detainees are not identified in most hearings, and the judge does not specify in his decision that the location where the accused is held should be identified if they decide to detain him/her.

**Table No. (14 ) shows cases in which detention centers were mentioned**

The Detention	West Bank		Gaza Strip	
	Number	%	Number	%
The detention center was mentioned	221	17.0%	116	4.7%
The detention center was not mentioned	1,082	83.0%	2,370	95.3%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

Research team data indicates that the percentage of cases in which the place of detention was mentioned during detention requests was 17% in the West Bank Magistrate courts, and 7% in the Gaza Strip Magistrate Courts. The place of detention was not mentioned in the remaining cases.

**Table No. (15) Shows the cases in which the party withholding the accused's freedom was mentioned**

Mentioning the security entity withholding freedom of detainee	West Bank		Gaza Strip	
	Number	%	Number	%
Yes	250	19.2%	356	14.3%
No	1,053	80.8%	2,130	85.7%
<b>Total</b>	<b>1,303</b>	<b>100.0%</b>	<b>2,486</b>	<b>100.0%</b>

The general impression that prevails during the appearance of the accused before the judges is the authority that is responsible for detention. For example, some of them are known as detainees of the General Intelligence, Preventive Security, or the Criminal Police in the West Bank, other are known as detainees of the Internal Security in the Gaza Strip. The name of the party to which the accused is detained is often mentioned. The security party holding the accused was mentioned in about 19% of the detention hearings in the West Bank Magistrate Courts and in 14% of the hearings held in the Gaza Strip Magistrate Courts.

Basic Guarantees for the Accused when the Magistrate Judge Considers Arrest Request:

**Table No. (16) Shows the Basic Guarantees for the Accused when the Magistrate Judge Considers Arrest Request**

Guarantees	Gaza Strip			West Bank		
	Number	Percentage compared to the in person cases 318	Percentage compared to the cases presented to the court in person and absentia 2486	Number	Percentage compared to the in person cases 1281	Percentage compared to the cases presented to the court in person and absentia 1303
Number of accused that were allowed <b>to speak</b> upon their request	317	99.7%	12.8%	1,157	90.3%	88.8%
Number and percentage of cases in which the accused or his/her attorney were allowed to discuss with the prosecutor	23	7.2%	0.9%	369	28.8%	28.3%
Number and percentage of cases in which the court informed the accused of the procedures taken against him/her	317	99.7%	12.8%	1,231	96.1%	94.5%
The hearing was adjourned for debate before issuing the detention decision.	0	0.0%	0.0%	50	3.9%	3.8%
The charge against the detainee was discussed with him/her	313	98.4%	12.6%	666	52.0%	51.1%
Either the Judicial Police/ representative of security apparatuses attended the detention extension hearing	318	100.0%	12.8%	599	46.8%	46.0%
The defense attorney was not represented/present during the detention hearing	2,481		<b>%0.2</b>	681		<b>99.8%</b>
Detention was not extended in a public hearing	150		<b>%6</b>	127		<b>%9.7</b>
The hearing was adjourned for debate before issuing the detention decision	7		<b>%0.3</b>	53		<b>%4.1</b>
Detention was not extended in a public hearing	150		<b>%6</b>	127		<b>%9.7</b>
Cases in which the place of detention was not mentioned	2,370		<b>95.3%</b>	1,082		<b>83.0%</b>

### **1. Obligation to hear the Accused's Statement**

The Magistrate judge may not be allowed to extend the detention of the accused except after hearing his statements as well as the statements of the prosecution. This is stipulated in Article (120) of the Criminal Procedures Code No. (3) of 2001 which stated that, "After hearing the statements of the prosecution representative and the detainee, the Magistrate judge may release the detainee or arrest him for a period not exceeding fifteen days ...." The role of the Magistrate judge is optional but not obligatory. This means that he has the choice to either detain or release the accused after hearing his statements, and the statements of the Public Prosecution. Therefore, as we indicated above, the legislator has made the presence of the accused before the Magistrate judge to extend his/her detention by the Public Prosecution obligatory, which is a basic right to justify his/her position and defend him/herself against an accusation of which he may be innocent. The monitoring team in the West Bank monitored 1157 cases in which the judge allowed the accused to speak upon his/her request, this represents 90.3% of the total detention extension hearings that were monitored. Researchers in the Gaza Strip monitored 317 cases in which the accused was allowed to speak upon his/her request, representing only 13% of the total detention extension hearings that were attended, this figure constitutes a dangerous indicator regarding the rights of a detainees to enjoy their basic rights, whether by speaking or self-defense.

### **2. The accused or his representative discuss with the Public Prosecution representative**

After hearing Public Prosecution statements, the judge hears the statements of the accused or his/her attorney as this is of great importance to ensure the right of defense, and clarifying the truth of the charges against them. The accused may deny the charges against them, and he/she may submit or request evidence proving a discrepancy in the Public Prosecution statements; this serves as one of the basic rights of the accused as it can help influence the judge's conviction. It is the right of the accused to speak and discuss the case with the Public Prosecution and the court. The monitoring team in the West Bank monitored 369 cases in which the accused or his/her representative discussed cases with the Public Prosecution, representing 28% of the total detention extension hearings that were monitored. Monitors in the Gaza Strip monitored 23 cases, during which the accused or his/her representative discussed with the Public Prosecution, representing 7.2% of the total hearings that were monitored.

### **3. Informing the accused of the measures taken against him/her by the court**

There is no doubt that the right of the accused or his attorney to learn about the measure taken by the court against him/her is one of the most important rights of the accused, as this constitutes one of the most important guarantees of a fair trial. Therefore, the accused must know the measure that the court has taken against them, whether it is to release him/her or keep them in detention. The court shall clarify the measure through legal reasoning, sufficiently and convincingly. The monitors team in the West Bank monitored 1,231 cases in which the court informed the accused or his/her attorney of the measures taken against him/her, representing 96% of the total hearings that were monitored, while the monitoring

team in the Gaza Strip monitored 317 cases in which the accused or his/her attorney were informed of the measures taken against them.

#### **4. Suspending the Hearing for Deliberation before Issuing a Detention Ruling**

It is of great importance for the judge to suspend the hearing for deliberation before issuing a decision regarding extension of detention. The purpose of such a matter is to enable the judge to review and read the request file carefully and calmly in order to issue the appropriate decision. The judge may need time to review the file and read statements from the Public Prosecution and the accused or his/her attorney and their arguments in the detention extension request. There is no doubt that this measure plays a major role in allowing judges to carefully and calmly issue an appropriate decision without getting engaged with either party to the request. The monitoring team in the West Bank monitored only 50 cases in which the judge suspended the hearing, representing 4% of the total hearings that were monitored. This is a very low percentage that is almost insufficient; therefore, it is necessary to study this issue to learn the cause and circumstances. However, no judge has suspended the hearing for deliberation in Gaza!!!

#### **5. The presence of Judicial Police or security apparatuses affiliates in the detention extension hearing**

The presence of judicial police or security apparatus affiliates in the detention extension hearing is a grave violation of the most important guarantees and rights of the accused. The presence of members of the Judicial Police or security apparatuses produces a negative feelings among the accused and his/her attorney. It also affects the judge's conviction and sometimes causes a distraction or chaos during the detention extension hearing, which represents the domination of the Executive Authority over the Judicial Authority and an interference in its affairs. The West Bank monitors monitored 599 cases in which judicial police or security affiliates attended the detention extension hearings, representing 46% of the total hearings. The monitoring team in the Gaza Strip monitored Judicial Police and security affiliates attending 318 hearings, which constitutes a major infringement on the independence of the judiciary and interference in its affairs.

#### **6. The right of the accused to hire a lawyer**

The right of the accused to hire a lawyer is one of the most important guarantees of a fair trial that is stipulated in various international legislations and laws as well as in national legislation. Its importance stems from the fact that the right to defense is a sacred right. The Palestinian Basic Law Stipulated in Article (14) that the accused shall be deemed innocent unless proven guilty before a legal court in which self-defense is guaranteed, and each accused person in a crime must have a lawyer to defend him/herself. In addition, the Palestinian Criminal Procedures Code No. (3) of 2001 stipulated in Article (96) that, "... and shall notify him/her that he/she is entitled to seek the assistance of a lawyer...". This right was also affirmed in the International Covenant on Civil and Political Rights in Article (14), which states, "To be given sufficient time and facilities to prepare his defense and to contact a lawyer of his own choice." It is clear from the above mentioned articles

that the aim of appointing a lawyer for the accused is to defend him/her, and as the lawyer is more knowledgeable of means to protect the accused, preserve his/her rights and ensure that they are not violated. The monitoring team followed-up and documented 681 cases in which a lawyer did not attend hearings with the accused, representing 99.8% in the West Bank. The monitors also monitored 2,481 cases in the Gaza Strip in which a lawyer did not attend hearings with the accused, representing 0.2%. Perhaps this difference in ratios between the West Bank and the Gaza Strip is due to the fact that the accused did not appear in most of the hearings in the Gaza Strip, so the detention extension is ruled in absentia, constituting a major violation of the most important right of the accused which is the right to defense and his/her right to appoint a lawyer to defend them.

## **7. Detention over a Public Hearing**

Public hearings are one of the most important guarantees of the rights of the accused, especially in criminal cases due to its importance in achieving a form of oversight over the judiciary and allowing all parties to see and attend trial proceedings. There is no doubt that public hearings contribute to achieving a general deterrence and contribute to extending the control of the parties over the court proceedings. They also give the accused a sense of reassurance, which was affirmed in the Palestinian Criminal Procedures Code No. (3) of 2001 in Article (237) which stipulates that "the trial shall be conducted in public, unless the court decides to conduct it in secrecy for considerations of maintaining public order or morals, and it may be permissible in all cases to prevent minors or a certain group of people from attending the trial. " During the monitoring conducted by researchers in the West Bank, 127 cases were monitored in which the detention of the accused was not extended during a public hearing, representing 9.7% of the total hearings that were monitored, while the monitoring team in the Gaza Strip monitored 150 cases in which the detention was not extended in public hearings, representing 6% of the total hearings that were monitored in the Gaza Strip. There is no doubt that extending the detention of the accused in non-public hearings constitutes a serious violation of the most important rights of the accused, which is the right to public trial proceedings and violates guarantees of their rights.