



# **Court Monitoring Report on Criminal Cases in both the Northern Governorates (West Bank) and Southern Governorates (Gaza Strip)**

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## **Civil Coalition for Judicial Reform and Protection**

The Coalition is an umbrella under which its members work to participate and contribute to building an independent and effective Palestinian judiciary per the relevant international standards and best practices of democratic systems, providing a professional opinion, visions and constructive positions regarding any issues related to the independence of the judiciary, ensuring its functioning without prejudice, presenting constructive, useful and feasible proposals aiming at strengthening the independence of the judiciary, offering the best mechanisms and ways to face the challenges within this context, and in general providing popular protection as being a pillar of 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), the hosting institution for the coalition, , AMAN Coalition, Jerusalem Legal Aid and Human Rights Centre, Women's Center for Legal Aid, Addameer Association for Human Rights – 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, Yalo Association, Faculty of Law at Palestine Ahliyya University, Faculty of Law and Political Science at Hebron University, Shams Center for Rights Human, 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, and the Coalition includes the Independent Commission for Human Rights, the NGOs Network as an observer member.



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## Executive Summary

1. During the monitoring period from November 1, 2021, to June 30, 2022, all 13 courts of first instance in Palestine were subject to monitoring. The monitoring team y observed a total of 4,932 trial sessions. These sessions were distributed across the region, with 3,063 sessions taking place in the northern governorates (West Bank) and 1,869 sessions in the southern governorates (Gaza Strip).<sup>1</sup>
2. The monitoring team observed that in the first instance courts of the northern governorates (West Bank), 798 criminal cases were processed and 2265 were postponed. Meanwhile, in the courts of the southern governorates (Gaza Strip), 1869 criminal cases progressed, and 678 sessions were postponed, as noted by the Istiqlal team in their monitoring of criminal cases.
3. An analysis of 798 criminal case sessions in the First Instance Court of the northern governorates (West Bank) revealed that the highest stage of trial was the prosecution evidence, accounting for 39.3% in the monitored sessions, followed by the defense evidence at 22.9% and verdicts at 14.9% of the total sessions monitored. In the First Instance Court of the southern governorates (Gaza Strip), the analysis of 1989 criminal cases showed that the highest stage of trial was verdicts, at 55.3%, with reading of charges at 12.4%. This indicates a faster pace of decision-making in the criminal courts of the southern governorates (Gaza Strip).
4. In the northern governorates (West Bank) and southern governorates (Gaza Strip), the monitoring team noticed a recurring issue in all courts. The requests for detention extension, sent by the Public Prosecution to the court, lacked the necessary investigation files. As a result, the court was unable to thoroughly review and assess the justifications for detention extension. Consequently, this led to decisions that might not have been in accordance with the law. The Public Prosecution sent the requests separately, without any accompanying attachments.
5. The absence of the accused during trial sessions has emerged as a significant factor contributing to trial postponements. In the courts of the northern governorates (West Bank), the absence of the accused constituted 39.4% of the reasons for postponements, marking a notable increase of 13.3 percentage points from 2020, where the absence rate stood at 26.1%. This upward trend suggests a lack of effective measures by the court to deter defendants who have been released or are subject to arrest warrants. Similarly, in the southern governorates (Gaza Strip), the absence of the accused from trial sessions accounted for 36.4% of the total absence rate, reflecting a 13.3% increase compared to 2020, when the absence rate was 23.1% for the same reasons.
6. The absence of the prosecution witnesses from the postponed sessions in the First Instance Courts in the northern governorates (West Bank) constituted 33.1% of the total sessions monitored in 2022, with an increase of 6.1 percentage compared to 2020, where the absence of the prosecution witnesses was 27%. The absence of defence witnesses in the courts of the northern governorates (West Bank) in 2022 was 4.5% of the reasons for adjournment in 101 sessions monitored without any fundamental change from 2020, where the absence rate of defence witnesses was 5.6%.
7. During the process of monitoring trial sessions, 367 sessions were postponed due to the absence of a lawyer, which constituted 16.2% of the reasons for postponement in the courts of

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<sup>1</sup> The monitoring did not include the Major Criminal Commission in Gaza, which was established in February 2022 based on a decision issued by the High Judicial Council in its session No. (1/2022), and the monitoring program remained applicable to the criminal bodies in the courts of first instance.

the northern governorates (West Bank), an increase of 2% from 2020, where the percentage was 14.2%. In addition, 1.1% is represented by the delay in the assignment of a lawyer by the Bar Association, for reasons that vary from one lawyer to another.

8. During the year 2022 in the southern governorates (Gaza Strip), there was a notable improvement in the presence of lawyers at court hearings. The absence of a lawyer was reported as the reason for postponing 7.5% of the hearings, compared to 13.4% in 2020, a decrease of 5.9 percentage. However, a delay in hiring a lawyer was still noted, with 1.9% of the sessions being postponed due to this reason. Additionally, 33.3% of the monitored sessions were postponed because the defendant was given time to appoint a lawyer, which showed a significant improvement compared to the year 2020.
9. The supervisory team noted that the First Instance Court in the northern governorates (West Bank) were more reactive to the allegations of torture of the defendants, as such statements were recorded in the minutes in more than (90.9% of cases) compared to 41.7% of cases before the First Instance Court in the southern governorates (Gaza Strip). The First Instance Court in the northern governorates (West Bank) ordered referral to the doctor in 18.2% of cases, the accused was not referred to the medical committee in the southern governorates (Gaza Strip), and the court or the prosecution did not transfer any file suspected of torture for investigation.
10. The monitoring team found that there was no designated area for female detainees in the majority of cases in both the northern governorates (West Bank) (90.3%) and the southern governorates (Gaza Strip) (96.4%). The lack of proper facilities for women was also reported, with a high percentage in both regions lacking special holding cells (83.9% in the northern governorates (West Bank) and 78.6% in the southern governorates (Gaza Strip)). Adequate provisions, and safe paths and rooms for women, children, persons with disabilities and the elderly were also found to be lacking, with 92.9% of cases in the southern governorates (Gaza Strip) lacking such facilities, while the situation was similarly dire in the northern governorates (West Bank).
11. Istiqlal monitoring team found that there is no legal system that protects witnesses in serious criminal cases, and this reflects negatively on the failure of witnesses to appear to testify before the court.

### **The main recommendations are:**

#### **Recommendations to the High Judicial Council:**

1. Establishing a specialized national team to develop justice in its four outputs: judicial, administrative, financial and legal aspects, from which specialized committees emerge: the first for the development of the judiciary, the second for the development of the Public Prosecution, the third for the development of law faculties, the fourth for the development of the legal profession and the fifth for the development of the judicial police so that it sets a development plan whose time span does not exceed five years within the available and expected capabilities.
2. Appointing (200) magistrate judges in the West Bank and Gaza (120 West Bank and 80 in the Gaza Strip) over a period of five years, who have the judicial qualifications to achieve outstanding results to reduce the backlog of cases.
3. Ensure judicial departments and bodies do not have staff change or administrative shuffles, with the need not to make any amendment during the judicial year, except in emergency cases, and a reserve member may be added to each department to replace those who are rotated into other units.

4. Preparing an additional emergency shift program for a period of three years aimed at reducing the backlog of criminal cases in the courts, by extending the working period until five in the evening, working two shifts morning and evening, as well as working on Saturdays, provided that judges are granted an additional bonus for added work that contributes to increasing their salaries.
5. Digitizing the adjournment system to set the date of adjournment by the hour to ensure that lawyers and citizens do not wait long hours for their turn to hear their cases.
6. Developing the notification system by approving an e-notification system and establishing an independent department to manage, supervise, monitor, evaluate achievements, hold accountable and reward distinguished process servers .
7. Draft a comprehensive survey of the experiences, specializations and interests of magistrate judges and conducting a comprehensive screening according to the basis of criminal and legal specialization, then creating an internal specialized categories to know the interests and experiences of judges within the same specialization so as to ensure judicial diversity that enables the Judicial Council to provide the necessary needs of specialized judges for felonies, juveniles, insurance, settlement and other specialties necessary for the emergence and development of the judiciary.

#### **The Council of Ministers:**

1. Support the budget of the judiciary with real tangible financial support so that it can provide the requirements for judicial work, in terms of headquarters, appointment of judges and other logistical needs, provide a budget for an additional programme to overcome the backlog of issues.
2. Ensure judge's transportation is appropriate to their job position or seek a system that facilitates for judges to acquire cars.
3. Establishing a department in the Prime Minister's Office for Judges' Affairs to provide the financial needs of the High Judicial Council.
4. Ensure that modern technical development is put into place to advance judicial work by equipping courts with the latest information and communication technologies.
5. Endorse the e-notification system to gain time and improve performance, establishing an independent Serves of Process department, and appointing a supervisory body over the work of notifiers.
6. The effective and official abolition of the security safety requirement and the security background check for judges when they are appointed to judicial positions.
7. The need to issue a special system for the protection of witnesses and their relatives, victims, process servers, whistleblowers, justice agents in serious criminal cases.
8. The need to issue a system that sets out the mechanisms for detaining women in places designated and works to meet their needs.

#### **The Legislative Authority:**

1. Implementing the necessary legislative amendments to ensure the abolishment of used loopholes to manipulate, extend trials, filing false accusations and absenting from sessions.
2. Setting deterrent rules regarding the postponed cases requests and the timing for these cases.

3. Ensuring the electronic system and notifications is set per the Basic Law and issuing the necessary legislation to back up such a system.
4. Issuing the necessary legislation for the reformation process of the criminal system in the Palestinian courts, including ensuring remote trials in emergency cases, establishing an electronic subpoena system, imposing efficacious fines on justice parties who are absent from trial sessions.
5. Creating specialized judicial bodies for serious cases and setting rules that guarantee their effectiveness and accelerate decision-making in cases, and providing fair trial guarantees.

#### **Recommendations for the Judges of First Instance in Southern Governorates (Gaza Strip):**

1. Imposing effective criminal penalties for those who commit dangerous crimes, and not relying solely on financial penalties to achieve a deterrent effect.
2. Limiting the imposition of financial fines and exploring alternative penalties in crimes that require such penalty.
3. Allowing enough time for the prosecution and lawyers to present their oral arguments.
4. Reviewing the justification for extending the detention of the accused before accepting or rejecting it.

#### **Recommendations for the Judges of First Instance in Northern Governorates (West Bank):**

1. The necessity of starting trial sessions early in the morning to enable setting a specific time, and informing the parties of the scheduled time, also imposing legal penalties on those who fail to attend at the specified time.
2. Improving the efficiency of the courts by improving work hours and increasing the time allocated for sessions.
3. Issuing the necessary guidelines to speed up the proceedings.
4. Activating the legal provisions regarding the absence of the notified accused to improve the proceedings.
5. Imposing penal measures in case of repeated absence without lawful justification of one of the parties.

#### **Recommendations for the Public Prosecution.**

1. It is necessary for the Public Prosecution to attach a list of evidence to the referral to the court, and to include in the list the effective witnesses and ensure their attendance, and to refer only the necessary number of witnesses relating to the case in the event of more than one witness is needed so that the court can hear them.
2. It is necessary for the Public Prosecution to present sufficient evidence for the indictment, and to request the court to dispense with any non-productive witness in the claim, and to leave it to the court to make the discretionary determination to accept or reject the request to exclude a non-productive witnesses, and to refrain from adding witnesses without statements in order to provide an opportunity to hear their statements in case they cannot make it to the court.
3. The Public Prosecution must bear the responsibility of bringing the prosecution's witnesses, especially the witnesses who are relevant to the case and to attach to the referral only the witnesses who are ready to attend the court, and to exclude the witnesses who refuse to attend the court sessions, which requires the Public Prosecution to re-evaluate its witnesses assisted by law

enforcement, and to put a "black" list with the names of the witnesses who repeatedly refused to attend the court sessions and hindered the course of justice, and to refrain from including them in the evidence processing list.

4. The Public Prosecution should deal seriously with torture allegations, and immediately refer anyone who claims to have been tortured to the doctor, and to prove that in the investigative file, and to refer the accused of torture to the military or civil courts in a timely manner, and to prepare a comprehensive and professional report on the investigation of torture allegations.

**Recommendations to the Palestinian Bar Association:**

1. Signing a memorandum of understanding with the High Judicial Council to define a clear and explicit mechanism to inform lawyers of the date of the hearings legally and correctly.
2. Impose administrative penalties on lawyers who are absent from hearings without a proper excuse.
3. Strengthening cooperation between the Technical Office of the Bar Association and the Technical Office of the Supreme Court and publishing judgments issued by the Supreme Courts electronically.
4. Consider the availability of appropriate expertise in criminal cases in cases where lawyers are assigned to attend criminal trial sessions or legal aid.

## Chapter one

### **Project background and methodology.**

This report reviews the monitoring of the First Instance Court in the northern governorates (West Bank) and in the southern governorates (Gaza Strip). It is part of a project that aims to support the readiness and accountability of the Palestinian judiciary by increasing the capacity of civil society, and to monitor and evaluate the work of Palestinian courts. The project was supported by the Strengthening the Rule of Law in the State of Palestine "Sawasya II" programme the Joint Program of the United Nations Development Programme (UNDP) / UN Women / UNICEF.

The project extends onto the experience of the first monitoring project implemented by Istiqlal.

The project was formed by the lessons learned from the first court monitoring project carried out by Istiqlal in 2019- 2020. The project was assessed by an international expert with expertise in court monitoring, who used his insights to improve the project and review the indicators used in this stage of monitoring.

It must be noted that the monitoring was conducted only on days when the courts were functioning normally without disruptions, strikes, suspensions, or closures. This excluded any results from the monitoring process during periods of suspension due to the Bar Association's declaration of strike, the two times of judicial holidays or due to Israeli invasions in the West Bank or disruptions in the security situation in the Gaza Strip, which prevented the regular functioning of the courts.

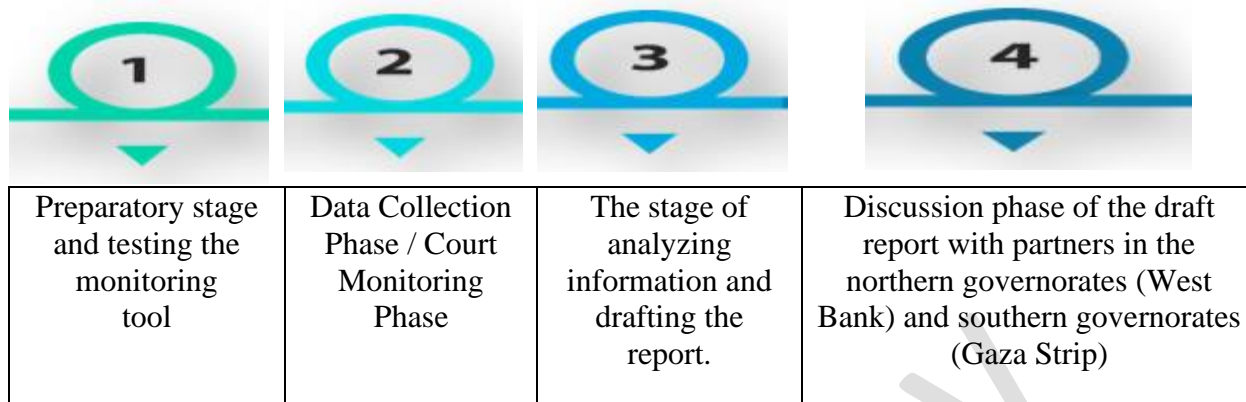
#### **Project Steering Committee:**

The project had a reference committee called the Steering Committee to supervise the monitoring program, which included (the National Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal), the Independent Commission for Human Rights (ICHR), the Coalition for Accountability and Integrity (AMAN), the Jerusalem Center for Legal Aid (JLAC), the Palestinian Center for Development and Media Freedoms (MADA), Addameer Association for Human Rights – Gaza, and this committee held a series of meetings to follow up the progress of the work monitoring project, and approve the action plans required to implement the project.

#### **Project implementation:**

The first step included holding meetings to discuss the project objectives and implementation timeline, in addition to determining the outputs for each stage of the project, reviewing and the methodology proposed by the project management, and determining the target group. The implementation plan of the survey and the implementation timetable were also discussed. During these meetings, study expectations were conducted as well, as needs and challenges related to implementation including important parties to communicate with were also discussed.

The main activities of the project fell under four general phases as follows:



**The first stage: the preparatory stage.**

The preparatory phase started on 1/9/2021, and lasted for three months, during which a series of trainings (8 training days) were carried out for the entire project with the monitoring team consisting of (8 observers in the northern governorates (West Bank) and 4 in the southern governorates (Gaza Strip))<sup>2</sup> using a training curriculum that contributed to increasing the awareness of observers and developing their capabilities.

After developing the models and methodology for monitoring trials, a series of initial meetings were held with official authorities in the northern governorates (West Bank) and in the southern governorates (Gaza Strip) to introduce the project, including with the Chief Justice, the heads of courts in the northern governorates (West Bank), the Head of the High Judicial Council in the southern governorates (Gaza Strip) and the Attorney General.

**The second stage: the stage of collecting quantitative data (the stage of monitoring court sessions).**

In the second phase, monitoring covered all 13 first instance courts<sup>3</sup>. During the monitoring period (monitoring of court sessions), which lasted from November 1, 2021 to June 30, 2022, the team monitored 4,932 trial sessions. Distributed into 3,063 sessions in the northern governorates (West Bank), and 1,869 sessions in the southern governorates (Gaza Strip).<sup>4</sup>

**Third stage: analysis of information and drafting of the report.**

This phase began during the period between July 1, 2022 - October 30, 2022, during which the statistician prepared analytical tables for the information observed. The monitoring team began

<sup>2</sup> The monitoring team consisting of 12 observers was selected through a competition that was announced by Istiqlal on 10/28/2021, and accordingly the observers were selected, for more see: link to an announcement can be found here: <https://www.facebook.com/pal.Istiqlal/posts/pfbid036dvaGFgyHzAdkgVUhVRwiEk8NieZfVaJy8qy1MGEwoCG39xeHHwwkjgk5L1xi28Pl>

<sup>3</sup> The courts are distributed over 8 Northern Governorates (West Bank) (Jenin, Tulkarem, Nablus, Qalqilya, Ramallah and Al-Bireh, Jericho, Bethlehem, Hebron). 5 in the southern governorates (Gaza Strip) (North Gaza, Gaza, Deir al-Balah, Khan Yunis, Rafah).

<sup>4</sup> The monitoring did not include the High Crimes Court in Gaza, which was established at the beginning of February 2022 based on a decision issued by the High Judicial Council in its session No. (1/2022)), and the monitoring program remained applied to criminal bodies in the courts of first instance.

to analyze the information, write the report, and hold meetings and interviews with judges, lawyers, and members of the Public Prosecution<sup>5</sup>.

#### **Fourth stage: Discussion of the draft report with partners.**

This phase started on 1/11/2022 and continued until 31/12/2023. On 27/11/2022, Istiqlal held a workshop to discuss the draft report in Gaza Strip, attended by a number of lawyers, civil society organizations and the Public Prosecution in Gaza to listen to comments on the draft report before it is issued.<sup>6</sup> On 28/11/2022, the Istiqlal team held a meeting with the High Judicial Council in the governorates of the Gaza Strip with the participation of a number of judges to listen to their observations on the results of the draft report.<sup>7</sup>

On 20/12/2022, Istiqlal received a written response from the High Judicial Council, which included a set of comments on the draft report which were dealt with positively, since comments of the concerned parties are a part of the methodology, and the Council's response was considered part of the report's appendices.

On 14/12/2023, Istiqlal organized a workshop to discuss the draft the monitoring report on "Criminal Trials in the Northern and Southern Governorates (West Bank and Gaza Strip)" at the headquarters of the Modern University College in Ramallah, with the presence of representatives of civil society organizations and academics. On December 11, the High Judicial Council was provided with a copy of the draft report to make comments on it, and the copy was referred to the Technical Office of the High Judicial Council, which in turn read the report and extracted the necessary recommendations to be implemented from the High Judicial Council. (Any written response received from the High Judicial Council can be found in the appendices.)

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<sup>5</sup> This phase included a large number of meetings and interviews conducted by the head and members of the monitoring team with the heads of courts and members of the Criminal Authority in the northern governorates to obtain explanations of the results of the criminal cases in the courts of the West Bank.

<sup>6</sup> The workshop was attended by: Assistant Waleed Al-Fakhidi / Public Prosecution, Nael Saad Shalakh / Public Prosecution, Dr. Abdelkader Jarada / Arab Center for Criminal Science, Iyad Abu Hajib / Conflict Resolution Center, Bakr Al-Turkmani / Independent Commission for Human Rights, Jamil Sarhan / Independent Commission for Human Rights, Ziad Atta Al-Najjar / Bar Association, Heba Al-Danaf / Aisha for the Protection of Women, Majed Al-Aroui / Istiqlal, Ghada Ibrahim Abed / Sharia Bar Association, Karam Mohammed Al-Halabi / Syndicates Committee, Alaa Skafi / Addameer, Fadi Ghanima / Istiqlal, Faten Lulu / Istiqlal, Wael Balloushi / Aman, Aya Al-Maghrabi / Istiqlal, Mohammed Al-Dabous / Lawyer, Sherine Jamil Ghaith / Lawyer, Shaima Adel Khalifa / Lawyer, Rana Youssef Al-Haddad / Lawyer.

<sup>7</sup> A meeting was held between the supervisory team and each of Counselor / Ashraf Nasrallah, Secretary-General of the Supreme Judicial Council, Counselor / Ihab Arafat, media spokesman for the Supreme Judicial Council, Counselor / Sami Al-Ashram, and the President of the High Criminal Court, Mr. / Jamil Khalil, Director of the Technical Office.



## **Chapter Two**

### **The court environment and the cases monitored**

This chapter of the report focuses on cases heard by the First Instance Court's criminal bodies during the monitoring period. The analysis considers several indicators, such as the types of crimes prosecuted, the issued sentences, the defendants and their gender. The analysis of both quantitative and qualitative data led to interesting findings, which were interpreted to facilitate the decision-making process of the monitoring team. The goal is to identify the root causes of these findings and to implement policies that can lead to a change in the approach towards tackling the underlying causes of crime, as well as the readiness of the courts to handle such cases.

#### **First: Distribution of trial sessions according to the type of crime.**

During the period of monitoring the criminal bodies in the courts of the northern governorates (West Bank) and the southern governorates (Gaza Strip), 4,932 trial sessions were monitored, distributed by (3,063) sessions in the First Instance Court of the northern governorates (West Bank) and **(1,869)** sessions in the First Instance Court of the southern governorates (Gaza Strip). During the monitoring of the sessions of the First Instance Court held in the northern governorates (West Bank) during the year 2022, it was found that the highest percentage of crimes that are tried before the First Instance Court in the northern governorates (West Bank) are crimes against money by **(33.2%)**, followed by crimes against persons by **(23.6%)**, and the **most prominent of these crimes were interference with intentional killing, manslaughter, abuse and infirmity** <sup>8</sup>**(45)**.

**The crimes also included rape, attempted rape, harassment and battery.**<sup>9</sup> These crimes amounted to **(0.8%)** of the total crimes tried in the First Instance Court in the northern governorates (West Bank).<sup>10</sup>

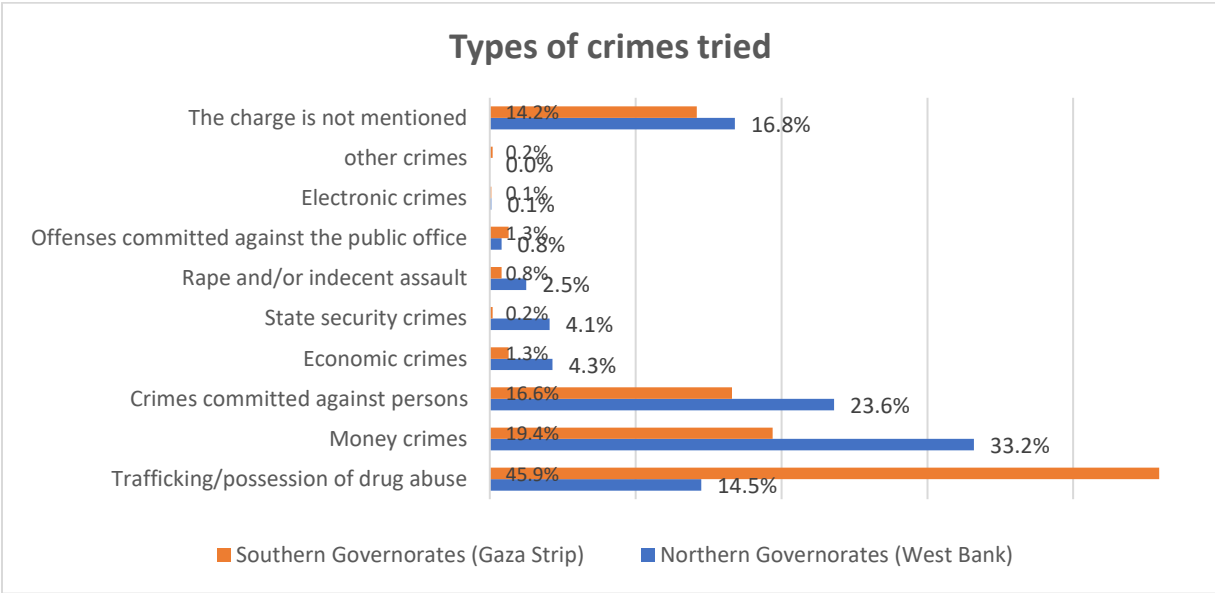
On the other hand, **(1,869)** sessions of the First Instance Court were monitored in the southern governorates (Gaza Strip) for the year **2022**, during this monitoring phase it was found that the highest percentage of crimes that are tried before the First Instance Court in the southern governorates (Gaza Strip) are the crimes of dealing / possession and use of drugs by **(45.9%)**, followed by crimes against money by **(19.4%)**. While crimes against public office came at a very small rate, amounting to **(1.3%)** of the total crimes that are tried in the First Instance Court in the southern governorates (Gaza Strip).

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<sup>8</sup> The total number of criminal cases received by regular courts in the West Bank reached (4670), while (749) criminal cases were dismissed, according to the report PCBS for 2021 See: Palestinian Central Bureau of Statistics, <https://www.pcbs.gov.ps/Portals/Rainbow/Documents/MRV182256966658.html>

<sup>9</sup> The report by Shaima Taniniyeh, a researcher within the Istiqlal team, is unpublished.

<sup>10</sup> For more information, please see Appendix Table No. (1) showing the types of crimes prosecuted.



According to the reports, drugs constituted the most prevalent issue before the courts, and according to the statistics of the Anti-Narcotics Department of the police in Gaza, 80% of those who are seized for drug charges are between the ages of 18-35 years, that narcotic substances seized by dealers and users in the southern governorates (Gaza Strip) were as follows: tramadol 60%, Hashish 30%, and Ecstasy pills 10%.

During the sessions monitored by Istiqlal team for the First Instance Court in the northern governorates (West Bank), (3063) trial sessions were monitored, including (31) cases of women, while (1869) trial sessions were monitored before the First Instance Court in the southern governorates (Gaza Strip), including (28) cases of women.

**Second: Verdicts issued by the first instance courts.**

The monitoring team observed 778 predetermined sessions for verdict issuance during the field monitoring period of the First Instance Court sessions in the northern governorates (West Bank) and southern governorates (Gaza Strip). Out of these sessions, 694 verdicts were issued. During the monitoring period, the team monitored 91 judgments issued by the First Instance Court in the northern governorates (West Bank) and 603 judgments issued by the same court in the southern governorates (Gaza Strip).

An analysis of the results of the monitoring sessions in the northern governorates (West Bank) shows that 603 out of 1869 sessions in the southern governorates (Gaza Strip) were sentenced, i.e., a 31.9% rate of all sessions observed. Judgments were issued in 91 sessions in the courts of the northern governorates (West Bank) out of 3063 sessions amounting to a 2.9% of the number of sessions observed, indicating a significant difference in the percentage of judgments issued

between the courts of the northern governorates (West Bank) and the southern governorates (Gaza Strip).<sup>11</sup>

### **1. Type of Sentences in the Judgments Issued by the First Instance Court in the Northern Governorates (West Bank) and Southern Governorates (Gaza Strip):**

As shown in **Table 4** below, 24% of the cases were acquitted by the First Instance Court in the northern governorates (West Bank), while the percentage of acquittal in judgments issued by the First Instance Court in the southern governorates (Gaza Strip) was a 6% rate. As for the penalty of deprivation of liberty (imprisonment), the percentage of sentences monitored was 44% in the courts of the northern governorates (West Bank) compared to 7.1% in the First Instance Court of the southern governorates (Gaza Strip).

Upon reviewing the rulings issued by criminal authorities in the First Instance Court of the northern governorates (West Bank) and the southern governorates (Gaza Strip), a notable disparity in sentencing practices has been identified. In the southern governorates, courts exhibit a greater inclination towards imposing fines on individuals convicted in criminal cases compared to their counterparts in the northern governorates. Notably, the First Instance Court in the southern governorates handles a substantial number of drug-related cases, where sentences commonly involve fines and the suspension of imprisonment. Despite the number and the gravity of these offenses, the court often considers the period of detention served by the accused, typically ranging from six months to a year or longer, as sufficient. Consequently, judges frequently opt for suspended prison sentences and opt for monetary penalties, with most fines falling within the range of 1,000 to 3,000 shekels.

Moreover, in certain drug cases, the accused individuals have been released upon arrest, and their trials have been pending for an extended period, often exceeding three years. Throughout this prolonged duration, the bail amount remains substantial, yet no significant progress is made in the case. After several years have passed, a judgment is finally rendered, typically resulting in suspended imprisonment and a fine comparable to or equivalent to the previously deposited bail amount in court.<sup>12</sup>

During the monitoring period, the team observed that 21.4% of court rulings in the southern governorates (Gaza Strip) resulted in termination of the case, while no judgments were recorded in the northern governorates (West Bank). This higher percentage in the southern governorates is due to a variety of reasons, including the statute of limitations in lawsuits, penal reconciliation in many cases,<sup>13</sup> and the expiry of term for cases that have gone unresolved for years, as there is large number of cases that passed its statute of limitation due to no action been taken in the file of case. Furthermore, the existence of the Criminal Reconciliation Law No. (1) Of 2017 has provided legitimacy and justification for case expiration.<sup>14</sup> It is permissible to reconcile between the accused

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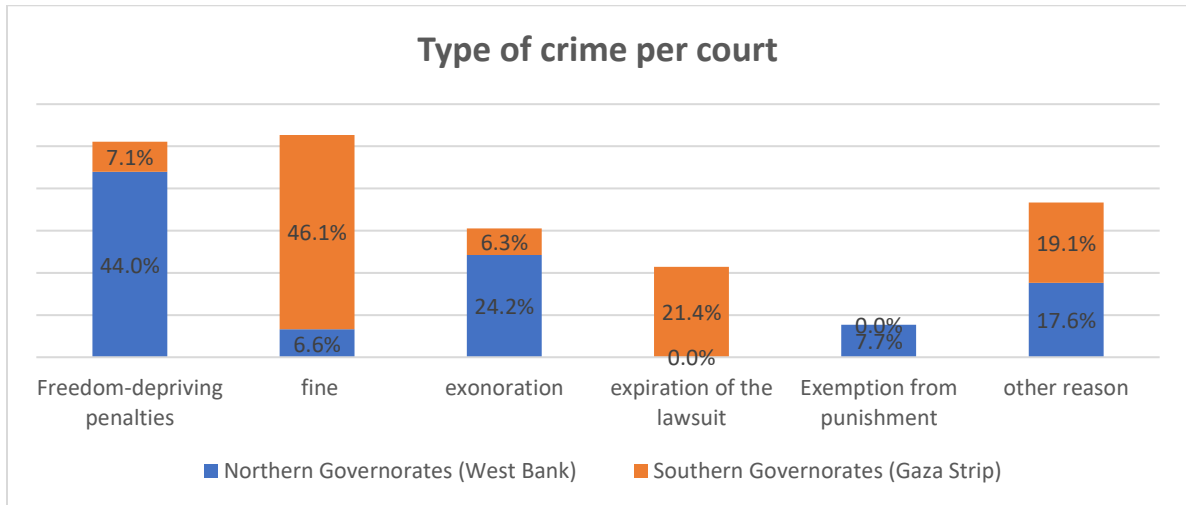
<sup>11</sup> These percentages are based on observing hearings by the monitoring team and not on the monitoring of all judgments issued by the courts of first instance in the West Bank and the southern governorates (Gaza Strip).

<sup>12</sup> The report of Faten Lulu, a researcher within the "Istiqlal" team, is unpublished.

<sup>13</sup> Article (1) of the Criminal Reconciliation Law No. (1) Of 2017, defines Reconciliation as a plea presented by the public prosecution or judicial clerks to defendants in misdemeanor and infractions. On the other hand it defines conciliation as an agreement between the defendant and the victim, or the victim's legal represents the victim, in order to reach a Nolle prosequi.

<sup>14</sup> Criminal reconciliation Law relates to criminal affairs and comes in the context of global criminal trends for the implementation of alternative penalties, as an answer to the phenomenon of overcrowding of inmates in correction and rehabilitation centers, where the law was effective since April 2018 and is still applied, and legislation was also passed for infractions in general, misdemeanors

and the victim or his private lawyer or his heirs or their private lawyer in all crimes unless they are crimes in which reconciliation is not permissible legally or not acceptable according to Sharia Law.<sup>15</sup>



## 2. Sentences of deprivation of liberty:

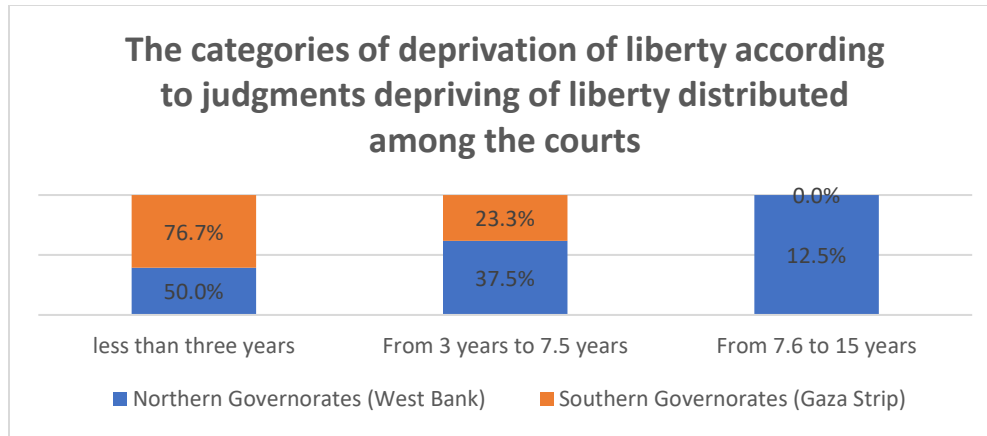
This paragraph reviews the prison sentences imposed by the First Instance Court and examines the duration in absolute terms (the number of years of imprisonment imposed regardless of the penalty provided by law) and their severity (whether the courts have imposed sentences of equal strictness to both the legal minimum, maximum or medium strictness).

During the monitoring period of 603 judgments, it was noticed that the first instance court in Southern Governments (Gaza Strip) tends to impose fines more than jail time. It was discovered that 7.1% of these judgments resulted in the deprivation of the defendants' freedom. However, it was observed that fines were imposed on 46.1% of those convicted in the monitored cases. The reason behind this observation is because this report does not cover the severe sentences issued by the High Crimes Court in the Gaza Strip. In other cases, alternative penalties were preferred to reduce the costs at detaining facilities, and avoid imposing serious charges, with fines being collected for the benefit of the public treasury.

The approach of the First Instance Courts in the northern governorates (West Bank) was different from the courts of the southern governorates (Gaza Strip), as during the monitoring of 91 judgments; it was found that the sentences depriving liberty amounted to 44%, while the judgments imposing fines amounted to 6.6%.

punishable by a fine, and misdemeanors punishable by imprisonment not exceeding six months. See: Article (2) of the Penal Law No. (1) For the year 2017.

<sup>15</sup> See: Article (4) of the Penal Law No. (1) for the year 2017.



The duration of all prison sentences issued by the First Instance Court in the northern governorates (West Bank) was approximately 15 years or less, and the percentage of imprisonment of three years or less exceeded 50% of the rulings, for several reasons, most notably amending the charge from a felony to a misdemeanor or violation if the court is convinced that the act attributed to the defendant does not constitute a felony, but rather constitutes a misdemeanor or infraction, or provides mitigating circumstances (if any). In crimes that its minimum punishment is no less than three years of imprisonment, and mitigating circumstances existed; the court may reduce to of at least one year,<sup>16</sup> or because the complainant waived their personal right to the appellant for a discretionary mitigating reason as stipulated in Article (99) of the Penal Code. Where there is reconciliation and the complainant waived their personal right, it affects the verdict in terms of the severity/length of the penalty. E.G. in one of the Palestinian Cassation Court decisions, the court stated that: “After reviewing the whole file, it revealed that there is reconciliation and a waiver of personal right, signed the deceased victim father (who happened to be a female) and her heirs. The court qualifies these finding to be aligned with the law; since the heirs waived their personal rights against the defendant (Mahmoud), leading to consider this as a mitigating circumstance according to article 99 of the Penal Code.”<sup>17</sup>

<sup>16</sup> “The jurisprudence of the court has established in all its rulings that dropping a personal right is a discretionary mitigating reason and there is no justification for reversing this principle. - Since the proof of reconciliation would affect the verdict in terms of the severity/length of the penalty, the requirements of justice and good application of the law require that the court prove this and have its effect on the request in terms of granting the appellant discretionary mitigating circumstances, considering that the Court of Appeal did repeal, and thus these two reasons respond to the appealed judgment, which requires its reversal and transfer back into the Cassation court for reconsideration. Penal Code No. 16 of 1960”, Published "Maqam", for more see: <https://maqam.najah.edu/legislation/33/>

<sup>17</sup> Judgment of the Palestinian Court of Cassation in Criminal Cassation No. 192 of 2021, verdict dated 29 December, 2021, published on "Maqam" for more details see: <https://maqam.najah.edu/judgments/8128/>

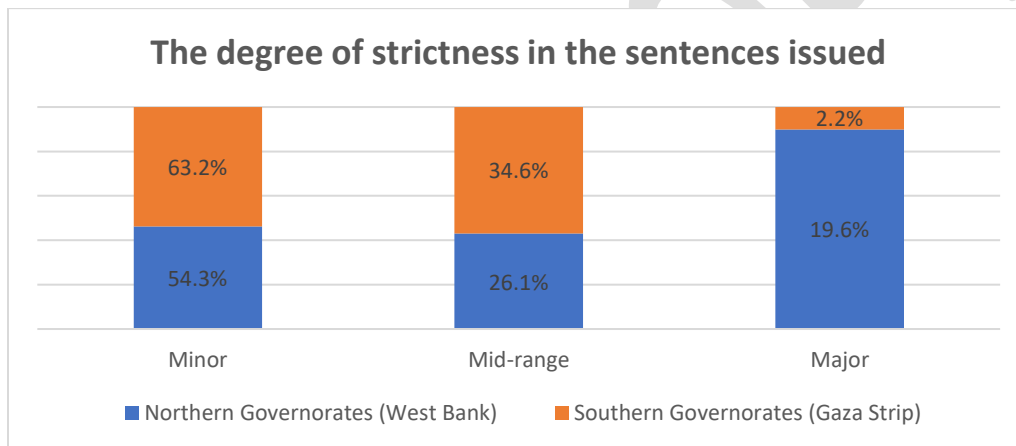
Additionally, it is stated: "For all the documents presented we decide to dismiss the appeal on merits but accept it in form in terms of penalty. We therefore overturn the appealed judgment in this regard to sentence the convict A.F. to temporary hard labor for a period of seven and a half years per the provisions of Article 338, and in reference to Article 326 of the Penal Code, and in view of reconciliation and the dropping personal rights, we decide to consider it as one of the discretionary mitigating reasons, and to reduce the penalty against him by half per the provisions of Article 99/3 of the Penal Code. This in turn assures that A.F (the accused) is placed in temporary hard labor for a period of three years and nine months, including the period of arrest, considering that this penalty is the most severe form of penalty imposed for the charge of possessing a firearm without a license.

Out of all the observed judgments, 37.5% ruled for a sentence duration ranging from three to seven and a half years, while 12.5% ruled for a duration ranging from 7.6 to 15 years.

As for the First Instance Court in the southern governorates (Gaza Strip), the percentage of sentences of less than three years of imprisonment was approximately 76.7%, while the percentage of sentences between three and seven and a half years was 23.3%, and there are no prison sentences of 15 years during the period of supervision in the southern governorates (Gaza Strip), and this is due to the fact that such high sentences are issued by the High Criminal Court after its formation in February 2022.

### 3. The degree of strictness of sentences before First Instance courts of first instance.

The First Instance Court in the northern governorates (West Bank) and in the southern governorates (Gaza Strip) differed with regard to the degree of strictness, as the courts-imposed penalties that fall within the minimum, moderate, and maximum legal scope, an indication that these courts made an effort to adapt the sentence to the seriousness of the crime and the accused.



Through field monitoring of the courts of first instance sessions, Istiqlal team observed the degree of strictness in the prison sentence in the courts of the northern governorates (West Bank) as an indicator to assess the degree of strictness in imposing a minimum level prison sentence or average legal limit within the standards stipulated by the Penal Code for each felony,<sup>18</sup> and it was found that more than 54.3% of the judgments issued by the courts of the northern governorates (West Bank) tended towards the least severe punishment while 63.2% of the rulings of the courts of the southern governorates (Gaza Strip) were similarly not being strict in the rulings issued.

On the other hand, the courts of the northern governorates (West Bank) sentenced 19.6% cases with the maximum penalty, a percentage a lot higher than the one in southern governorates (Gaza Strip) that was 2.2%.

Judgment of the Palestinian Court of Cassation in Criminal Cassation No. 558 of 2019, verdict dated 28 June, 2020, published on "Maqam" for more details see: <https://maqam.najah.edu/judgments/7289/>

<sup>18</sup> Jordanian Penal Code No. 16 of 1960, see: <https://maqam.najah.edu/legislation/33/>

- Article (14) The criminal penalties are: 1. Death. 2- Hard labor (for life). 3- Life imprisonment. 4. Temporary hard labor. 5. Temporary detention.

Article (15) The misdemeanor penalties are: 1- Imprisonment. 2. Fine. 3- Bonding with bail.

- Article (18) Hard labor means employing the convicted person in strenuous work commensurate with his health and age, whether inside or outside the prison.

### Third: The organizational competence of the courts to hear criminal cases.

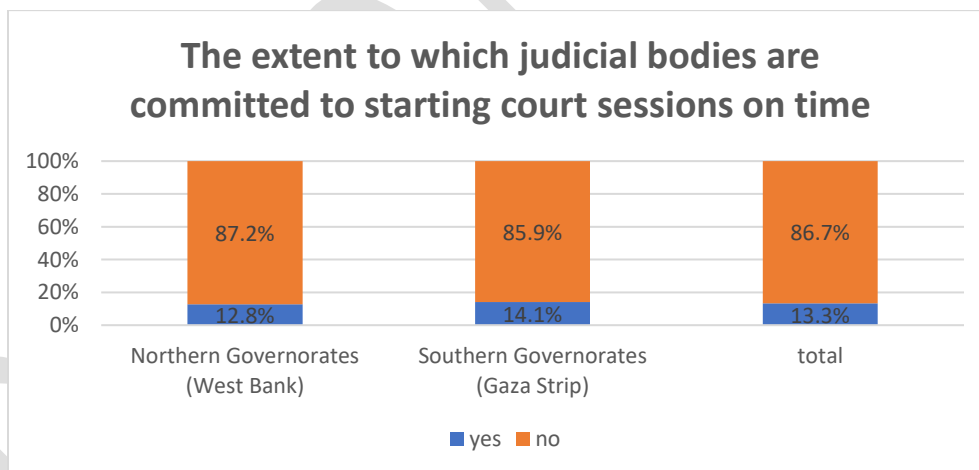
This section examines the readiness of Palestinian courts in terms of organizational capacity and infrastructure to enable the court to perform its functions. Istiqlal used several indicators mainly working hours of the judicial bodies like starting at the specified times, adherence to the daily court schedule, and the rotating and shuffling of judicial bodies and its impact on the progress of pending criminal cases.

#### A. Organizational Capabilities.

Monitoring the organizational capacity of courts has been a crucial aspect of the monitoring work, especially in terms of their ability to manage their workload. The monitoring team evaluated two indicators to assess this capacity: the court's adherence to the start time of hearings, and its compliance with its daily agenda, which specifies the order in which cases should be heard. The table below provides a summary of the key findings.

##### 1. Commencement of the work of judicial bodies at the specified times:

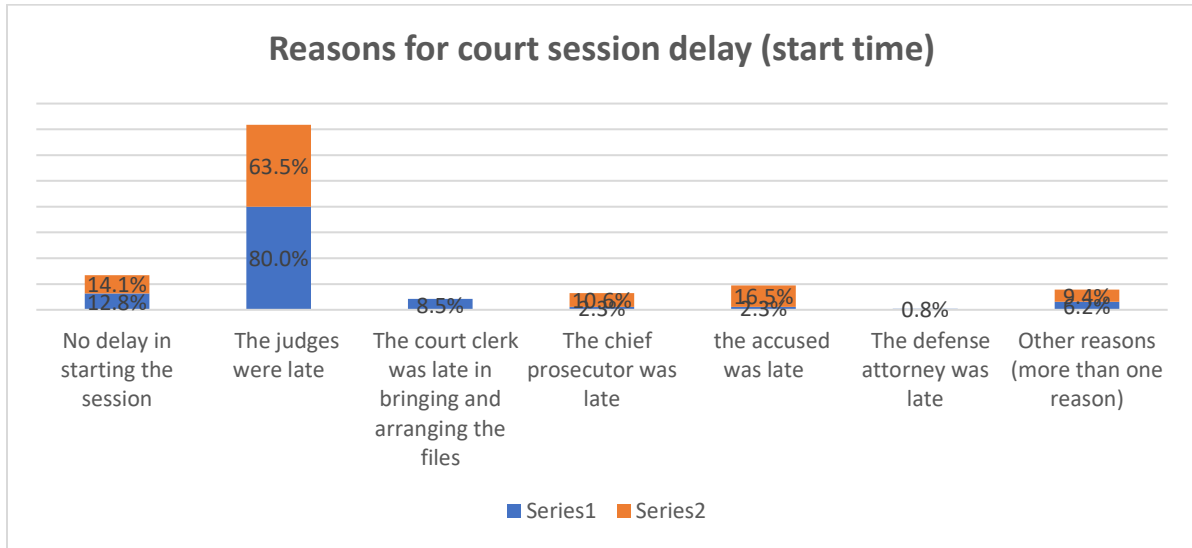
The official working hours in all courts in the northern governorates (West Bank) and the southern governorates (Gaza Strip) are from eight in the morning to three in the afternoon, and the sessions are supposed to start from nine in the morning. On most days, the vast majority of sessions did not start on time, not starting before ten in the morning mostly.



As shown in the **table** above, the vast majority of trial sessions did not commence at the scheduled time, with higher rates of delays observed in the First Instance Court of the northern governorates (West Bank) compared to the courts in the southern governorates (Gaza Strip). Specifically, the percentage of judges delaying the start of court sessions in the northern governorates was 80%, whereas in the southern governorates, it was 63.5% for the same indicator.

The delay of judges in commencing trial sessions from the scheduled time was found to impact the punctuality of the other parties involved in the proceedings. If judges begin sessions on time, all parties will become accustomed to arriving promptly. As the authority responsible for managing the case and ensuring timely hearings, judges lead by example. Additionally, judges may use legal

provisions when necessary to enforce the court's set deadlines and ensure adherence by third parties.



Court session delayed for many reasons, one of the reasons is the delay of judges in starting the sessions, which constituted 80% rate in the First Instance Court of the northern governorates (West Bank) and 63.5% of the reasons for the delay in the southern governorates (Gaza Strip) according to the 149 monitoring days in the northern governorates (West Bank) and the 99 monitoring days in the governorates Southern (Gaza Strip).

Furthermore, there were other factors that contributed to delays in smaller proportions. These included the delay of the Public Prosecution in attending the courtroom, the Palestinian police being delayed in bringing defendants from their place of detention,<sup>19</sup> judges being preoccupied with multiple judicial tasks, judges themselves being delayed in arriving to their court,<sup>20</sup> and the High Judicial Council's policy in the northern governorates (West Bank) of transferring/rotating judges near the beginning of the judicial year, which sometimes caused delays as judges were unable to reach their work before half past nine. It should be noted that even the delay of one judge can prevent the tripartite judicial bodies from convening on time.

### 1. Adhere to the daily court schedule.

Respect for the order and sequence of files and cases varied between different courts. The monitoring process showed adherence in a number of courts in following the sequence of files and cases, included the courts of first instance in Bethlehem, Ramallah, and Nablus. While the courts of Jenin and Qalqilya were less committed to the daily schedule and following the sequence of cases (for more information see Appendix (4) and E and a table showing the extent to which the courts adhere to the daily case follow-up agenda between 2020 and 2022).

Overall, the level of commitment to the court schedule in the First Instance Court in Gaza was like that of the courts in the northern governorates (West Bank). However, the field monitoring indicated that there was a stronger commitment to the sequence of files and cases in the First

<sup>19</sup> Report by Diana al-Ghoul, a researcher on the Istiqlal team, is unpublished.

<sup>20</sup> Report by Shaima Taniniyeh, a researcher on the Istiqlal team, is unpublished.



Instance Court in the southern governorates (Gaza Strip) compared to the previous year, and a noticeable improvement in adherence to the daily court schedule.<sup>21</sup>

### **b. Change of judicial bodies and its impact on criminal cases.**

The change of judicial bodies negatively affects the effectiveness and productivity of the courts, because when the trial bodies change, the new bodies need time to study the highlights of the case.<sup>22</sup> In various governorates, Istiqlal team found a remarkable and commendable improvement compared to 2020, with regard to the stability of judicial bodies in the various criminal bodies in the courts of the northern governorates (West Bank) and the southern governorates (Gaza Strip). It was also found that the change in the bodies of the courts of the northern governorates (West Bank) decreased during the year 2022 to 14.7% compared to 36.5% rate it was in 2020.<sup>23</sup>

The criminal bodies in the First Instance Court of the Gaza Strip showed a significant improvement, with a monitored change percentage of 11.7% compared to 34.9% in 2022.

However, the instability of judicial bodies in both the northern and southern governorates can be attributed to several reasons. One major factor is the spread of the Corona epidemic, resulting in illness and absence of some judges. Additionally, transfers or promotions of judges and problems related to judicial formations have also contributed to the instability.<sup>24</sup>

After conducting several qualitative interviews with judges and lawyers,<sup>25</sup> the Istiqlal team found that unexpectedly issuing judicial formations in the northern governorates (West Bank) a few days before the beginning of the judicial year has a negative impact on the progress of criminal cases. Judicial formations are characterized by the absence of clear criteria for selecting and transferring judges from one court to another. Some courts have an excess of judges with criminal experience, while others lack judges with experience in criminal cases. The First Instance Court's judicial formations do not consider the needs of the courts for specialized judges when they are issued. Furthermore, forming bodies, including criminal bodies, is left to the discretion of the court president, who often encounters this dilemma, leading to a negative impact on the quality and stability of judicial bodies.<sup>26</sup>

The instability of judicial bodies is directly reflected in the progress of the criminal case, and exacerbates employees errors within the judicial institution, for several reasons and indicators, summed up as follows: **(1)** The need of the new judicial body for sufficient time to study the case file in charge of its functions and the time needed to study carried over files and review the legal reasons contained therein, **(2)** The distance between judge's residences and the place of work reflects negatively on the start times of trial sessions. **(3)** Knowledge that a judge can be transferred to hear a criminal case, constitutes an additional burden on the judge who works on civil cases, who has no experience in dealing with criminal cases **(4)** the principle of judicial

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<sup>21</sup> Ibid

<sup>22</sup> The charts above do not mean a comprehensive change in judicial bodies, as some changes were limited to the change of only one judge from the panel with the head of the panel remaining the same.

<sup>23</sup> For more information, see: Table (5) in the appendices.

<sup>24</sup> (Distribution of judicial bodies in the various courts), which is a procedure that the Judicial Council undertakes annually before the end of the judicial recess, but these formations are subject to many modifications during the judicial year.

<sup>25</sup> Interviews conducted with a number of judges and lawyers in the northern governorates (West Bank), interviews conducted by the "Istiqlal" monitoring team.

<sup>26</sup> Ibid.

reforms is sudden, and is not informed ahead of time. The judge is not notified of the change and therefore file accumulates when he is transferred, usually these are files that await a verdict. The law obliges the judge to issue a verdict once the case reaches the verdict stage, hence, the judge after transfers bound to issue verdicts in his previous cases before the transfer, also, needs to follow up his new daily workload (5) Lack of sufficient number of Judges, and there is no one to replace them or cover for the absent judge.<sup>27</sup>

According to Istiqlal team, the legal mechanism applied faced several problems and difficulties as per interviews conducted with judges. The most prominent problems and difficulties unspecified by the law included determining which judge should sign the verdict decision: the judge who wrote the verdict or the judge assigned by the president of the court to read it. This lack of clarity can render the proceedings invalid. Additionally, transferred judges were required to write judgments within two months of their transfer while also considering new cases. This resulted in significant confusion for the judge's work, particularly due to transfers happening frequently during the announcement of judicial formations prior to the start of the judicial year, catching the judge off guard. Moreover, the composition of the judiciary was altered multiple times after the initial announcement, and judges were frequently relocated to different judicial sites within a short span of time. These constant transfers only added to the already existing confusion and burden placed on the judges. Consequently, there were instances where cases were delayed in being submitted for judgment, as judges sought to avoid the additional pressure of writing judgments within a two-month period if they were transferred to new judicial positions.

**c. Time spent in the adjudication of cases before judicial bodies.**

The first indicators used to assess the efficiency of the courts were related to the overall workload of the court and its ability to adjudicate cases, the most detailed indicators included the average number of sessions held per day, and the average daily work rate before the First Instance Court in the northern governorates (West Bank) and the southern governorates (Gaza Strip) Gaza.

**Table (1): Compares the average working time of criminal case bodies**

The Court	Number of days of monitoring		Number of sessions		Average number of sessions held		Work rate per day	
	2020	2022	2020	2022	2020	2022	2020	2022
Years								

<sup>27</sup> Article 11 of Law by Decree No. (39) of 2020 on the formation of regular courts states paragraph 4 "When the Court of First Instance convenes by a single judge and he is transferred to another judicial position, he remains competent to issue verdicts in cases filed before the decision to transfer him takes effect, within a period of two months from the date of his transfer, and immediately after the issuance of the judgment or decision he deems appropriate, it is sent to the head of the court from which he was transferred to assign a judge in it to read the judgment or take the necessary action. This Law by Decree applies practically to the courts of first instance in the northern governorates (West Bank) and does not apply to the courts of the southern governorates (Gaza Strip). But the High Judicial Council in Gaza and after providing them with the draft report to express their opinion, the Chief Justice in the Gaza Strip obligated all judges involved to complete the drafting of all judgments for cases reserved before him, provided that the role of the new bodies is limited to reading the judgment.

The Secretary-General of the High Judicial Council, His Excellency Judge Ahmed Wauld Ali, issued a circular on 28/11/2022 regarding the application of the provisions of Article 8/3 of the Law by Decree on the formation of courts, a study by the Technical Office.

<b>Total Northern Governorates (West Bank)</b>	506	147	7,846	3,063	16	20.8	2:33	2:51
<b>Total Areas of the Southern Governorates (Gaza Strip)</b>	266	99	2,986	1,869	11	18.9	2:39	2:20

### **1. The average number of files pending before the courts of first instance.**

The monitoring of the First Instance Court sessions in the northern governorates (West Bank) in 2022 revealed an improvement in the average number of daily sessions held, with 20.8 sessions monitored per working day compared to the average of 16 sessions in 2020. This represents an increase of approximately 5 sessions per working day.

During the monitoring of First Instance Court sessions in the northern governorates (West Bank) in 2022, an improvement in the average number of daily sessions was observed. Specifically, the Nablus Court of First Instance saw a significant increase in the number of daily sessions, from an average of 12 to 30 sessions per day, with each session hearing one file. Similarly, the panel of the Qalqilya Court of First Instance witnessed an increased average of 14 sessions per day to 35 sessions, based on the days the court's work was monitored. The average number of daily sessions in the Bethlehem Court of First Instance also increased, from 12 to 23 sessions. The other courts in the northern governorates did not undergo significant changes, except for the Ramallah Court of First Instance, which saw a decrease in the average number of sessions per day, from 18.7 sessions in 2020 to 7 sessions in 2022.

It was also noted in the First Instance Court in the southern governorates (Gaza Strip) that the average number of sessions monitored in the criminal judicial panels increased during the monitoring period in 2022 to an average of 18.9 compared to 11 sessions in the average of daily work in 2020, meaning that there was an average improvement of 8 additional sessions per working day.

In the southern governorates (Gaza Strip), it is difficult to make a comparison between the two years mentioned above at the court level, as the supervision expanded to include 5 courts during the year 2022 compared to only two courts that were supervised in 2020, as these new courts were established at the end of the monitoring period. However, the monitoring team concluded that there was an improvement in the average number of sessions held by the Gaza Court of First Instance, as the average number of sessions held per day during 2022 was an average 22.3 sessions per day compared to an average of 10 sessions in 2020, while the team did not observe significant changes in the Khan Yunis court.

### **2. The average daily work time in criminal bodies in the courts of first instance.**

In 2022, the average daily work of the First Instance Court in the northern governorates (West Bank) was two hours and fifty-one minutes (2:51), representing an increase from the 2020 average of two hours and thirty-three minutes (2:33). Among the northern governorates, the Ramallah and Bethlehem Court of First Instance had the highest average daily work rate of three hours and sixteen minutes (3:16), followed by the Hebron Court of First Instance with a daily rate of three

hours and four minutes (3:04), demonstrating an increase in the average daily work compared to 2020.<sup>28</sup>

During 2022, the monitoring team observed five First Instance Courts in the southern governorates (Gaza Strip), compared to the two First Instance Courts monitored in 2020. The average daily work rate of the First Instance Courts in the southern governorates (Gaza Strip) in 2022 was two hours and twenty minutes (2:20). The monitoring team noted that the Gaza Court of First Instance increased its average daily work in 2022 to two hours and fifteen minutes (2:15) compared to (1:58) hours during the year 2020, as the Khan Younis Court, the average daily work according to the inspection days decreased to (2:00) hours during the year 2022 compared to (3:01) hours during the last year.

Istiqlal team, reviewing the schedule of the Gaza Court of First Instance on 14/12/2021, noted that the number of cases considered before the Court is (70) criminal cases, but what has actually been considered is approximately (45) criminal cases and the rest of the lawsuits the judge assigned the clerk to postpone them to another date, knowing that court went through (45) cases within about an hour and a half.<sup>29</sup>

As reported by the judges of the First Instance Court to the field research team, the primary factor contributing to the decreased average workload of the court is the excessive burden placed on the judges. Many of them are assigned additional responsibilities beyond their work in criminal cases, such as serving as individual criminal judges, execution judges, or juvenile judges. These additional tasks demand their time and attention, leaving them with limited capacity to handle the workload of the First Instance Court effectively.

There appears to be a shortage of qualified judges to hear criminal cases, to fill the gap judges are mandated from other courts to serve as a first instance judge in criminal panels; as some of these judges are brought from juvenile or magistrate Courts, and there is a state of injustice in the distribution of the burden on judges.

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<sup>28</sup> These statistics relate to the judge's time in examining criminal cases during the panel session, and not the period of his presence in court or his carrying out other judicial work.

<sup>29</sup> The report by Faten Lulu, a researcher within the Istiqlal supervisory team, is unpublished.

On 20/12/2021, the monitoring team observed the work of the Gaza Court of First Instance (the second body). The session was opened at 10:05 and adjourned at 10:54. During this time, the panel was able to review only 27 out of the 50 files that were scheduled to be considered, even though there was sufficient time to review all of them. Despite the police bringing in a detainee later than the others, however, the court didn't get through their file.

## **Chapter Three**

### **Efficiency of courts in adjudicating criminal cases**

This chapter aims to measure the efficiency of the First Instance Court in adjudicating cases, as stated in the Palestinian Basic Law, the importance of right to trial within a reasonable time, as stipulated in Article (3/9) of the International Covenant on Civil and Political Rights,<sup>30</sup> also highlighted by the European Court of Justice,<sup>31</sup> for a trial within a reasonable period of time as a prerequisite for a fair trial: "the right of individuals to have their case resolved within a reasonable time is integral to the right of individuals to a fair trial."<sup>32</sup>

The right to a fair trial encompasses the right to have one's case heard within a reasonable timeframe. When justice is delayed, it becomes inherently unjust, as it undermines the security that litigants should feel towards their right to fair trial and access to justice in a timely manner, a right that is protected under International conventions, basic law and procedural law.

The right to fair trial in a reasonable time serves justice, by ending the uncertainty & instability in litigation to reach a final verdict to resolve legal disputes. In particular, in criminal cases, there are various interests to reach a final verdict, whether for the victim, society, or even the accused. The accused benefit from this by putting an end to the state of instability suffered, putting an end to the pain to which the accused is exposed, as a result of placing the accused under the accusation, reducing imprisonment from the period of pre-trial detention, and ensuring the accused's right to defense for what may result from the slowdown of judicial procedures, the disappearance of evidence or the disappearance of witnesses and bad witness memory.

As for the interest of society, it is also verified in more than one respect, as the guarantee of a reasonable period of judicial proceedings achieves the purposes of punishment such as general deterrence and private deterrence, ensuring the right of society to detect crime and the proper administration of justice, enhancing citizens' confidence in the justice and effectiveness of judicial procedures, and rationalizing the expenses that may be incurred by the state due to the length of judicial procedures.

To achieve what was mentioned earlier, the team considered the total capacity of each court to handle cases in terms of the number of sessions, and the average time allocated to each session, then the team examined the effectiveness of the court's work, by looking at the number of sessions that contributed to some progress in the case and analyzing the reasons for the lack of progress in the course of litigation, and also considered the measures taken by the court to avoid delay by the parties. The report

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<sup>30</sup> Article (30/1) (Litigation is a protected right guaranteed to all people, and every Palestinian has the right to resort to a judge, and the law regulates litigation procedures to ensure the speedy adjudication of cases).

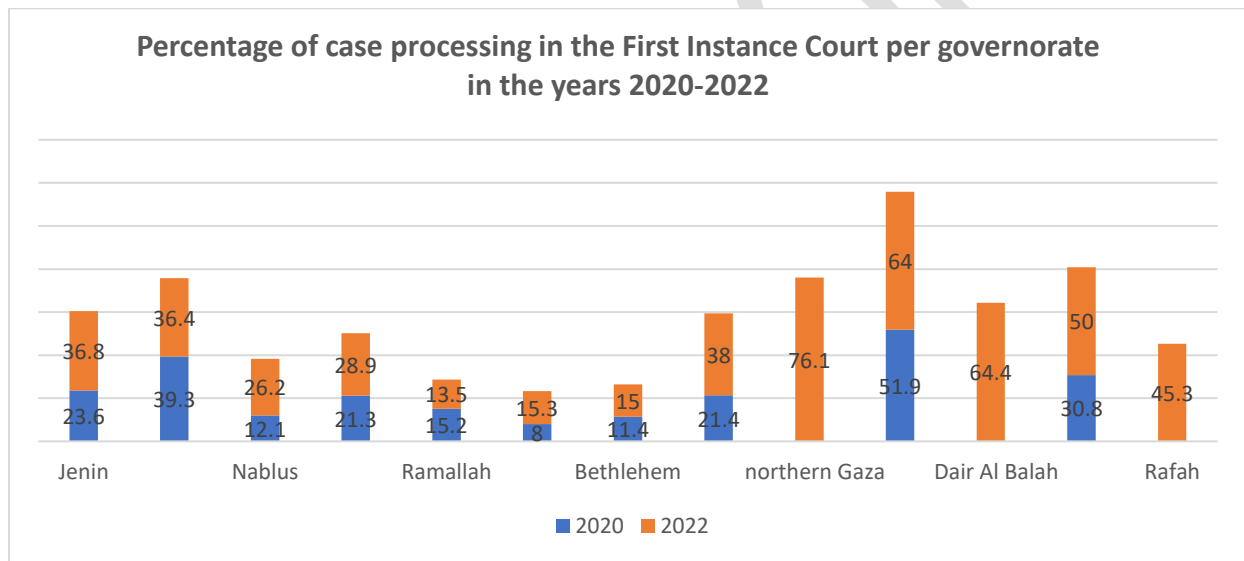
<sup>31</sup>Article (3\9) of the International Covenant on Civil and Political Rights: Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

<sup>32</sup> Ibrahim Shiha, the Right to a Fair Trial within a Reasonable Time between Rooting and Activation, p. 37.

also analyzes the duration of the postponement of trial sessions and the negative impact resulting from the change of members of judicial bodies, while it is difficult to limit the reasons for the delay before the Palestinian courts to one main reason, and it is difficult to identify some of the main factors that have emerged continuously and contributed to the delay in the adjudication of cases before the courts that have been monitored.

**First: The progress of the criminal case procedures.**

Istiqal team conducted an analysis of the criminal proceedings in the First Instance Courts of the northern governorates (West Bank) and found that out of the 3,063 observed sessions, action was taken in 798 sessions while no action was taken in 2,265 sessions. This means that the percentage of pending criminal cases before the court in the northern governorates (West Bank) for 2022 was 26.1%, an improvement compared to the 18.4% rate in 2020, which is a great indicator of improvement in the processing of criminal cases.



Istiqal team noted that there has been remarkable progress in processing of criminal cases during 2022 compared to 2020 in all courts in the northern governorates (West Bank), with the exception of the Ramallah Court, in which productivity decreased by 1.7% points, as the percentage of criminal cases reached 13.5% of the total number of sessions that were monitored.

The highest percentage of progress in the cases was in the Hebron Court of First Instance, which saw in 2022 a progress of 16.6% when compared to 2020, and the percentage of progress reached 38% of the total sessions monitored, followed by the increase in progress the Nablus Court, which advanced by 14.1 points, and the percentage of progress in cases reached 26.2%, and the rate of progress in the Jenin Court of First Instance reached 13.2 points for the year 2020, and the percentage of cases during this year was 36.8%. The Tulkarm Court has a professionally

established notification system, and it is monitored on a daily basis to ensure that witnesses are effectively notified.<sup>33</sup>

As for the First Instance Court in the southern governorates (Gaza Strip), the procedures of (1869) criminal cases were proceeded, compared to the postponement of (678) for the same year, i.e. a change in of 63.7% of the total sessions that were monitored by (Istiqlal) team before the courts of first instance compared to the year 2020, where the progress rate in the progress of procedures reached (37%) of the total number of sessions that were monitored, i.e. an improvement in productivity for Gaza courts of 26.7% in 2022.

Istiqlal team noted that the progress rate in the proceedings in the Gaza Court of First Instance reached 64% in 2022 when compared to 51.9% in 2020, i.e., an improvement in productivity of 12.1%, the progress in Khan Younis Court reached 50% in 2022, compared to 30.8% in 2020, i.e., an increase in productivity of 19.2%.

**The noticeable improvement in the courts of the northern governorates (West Bank)** per the **monitoring team** is due to **several reasons**, in the Hebron Court of First Instance, unifying procedures, same kind of the case and witnesses to be considered by the court on the same day were of a great help. For example, all criminal cases related to a specific framework such as drugs are placed and heard in court at the same day, and therefore the prosecution witness who appears in court testifies in several cases on the same day. The High Judicial Council also briefed judges on the amendments made to the penal codes, making the judge fully prepared to face any new change, in addition to drawing the attention of the competent authorities to any problem or invalidity in the procedures to shorten the duration of litigation.<sup>34</sup>

Another contributing factor is the exceptional level of cooperation between the Judicial Police and certain courts, notably the Nablus Court of First Instance. This cooperation is evident in the execution of arrest warrants and the emphasis on enforcing subpoenas against witnesses. As a result, the police's involvement in facilitating the judicial process has been commendable, and their contribution to achieving effective cooperation has been significant. Furthermore, the powers vested in the head of the court have played a crucial role in ensuring a qualitative distribution of case files among the various court bodies. This distribution has had a positive impact on streamlining trial procedures and enhancing overall judicial efficiency.

**Several factors have contributed to the tangible improvement in the progress of cases in the southern governorates (Gaza Strip).** The foremost factor is the establishment of new courts of beginning in the southern governorates, including the Court of First Instance of North Gaza, the Central "Deir Al-Balah," and Rafah. Additionally, several circulars have been issued, obliging judges to begin hearings at earlier times and requiring lawyers and prosecutors to plead promptly and not postpone proceedings due to procrastination. The judicial bodies also work quickly to conduct trials in cases where the accused enters a guilty plea, with the pleadings and defence occurring in the same session. It has also been observed in some sessions that

<sup>33</sup> Observations of the team during a visit to the Notification Department on September 21, 2022.

<sup>34</sup> Meeting with His Excellency Judge Yasmine Jarad, Head of Hebron Court of First Instance, on 29/5/2022.

lawyers are appointed to represent accused individuals who are unable to retain a lawyer to follow up on their case proceedings.

Several factors have contributed to the progress of the courts in the southern governorates (Gaza Strip). The foremost factor is the increase in the number of judges and judicial bodies, as well as an increase in the number of working days and consideration of a larger number of case files. In cases where a judge is absent, the administrative postponement of case files is avoided by assigning another judge. Other contributing factors include the obligation of lawyers to attend sessions early and the importance of promptly bringing in detainees.

### **Reasons for the postponement of hearings and measures taken by judicial bodies.**

Through field monitoring, it was found that the most common reasons for the postponement in the First Instance Court in the northern governorates (West Bank) and the southern governorates (Gaza Strip) are defendants missing their trial sessions, second is witnesses of the Public Prosecution missing trial appointments, and then the defense lawyer's absence missing trial sessions, among other reasons.

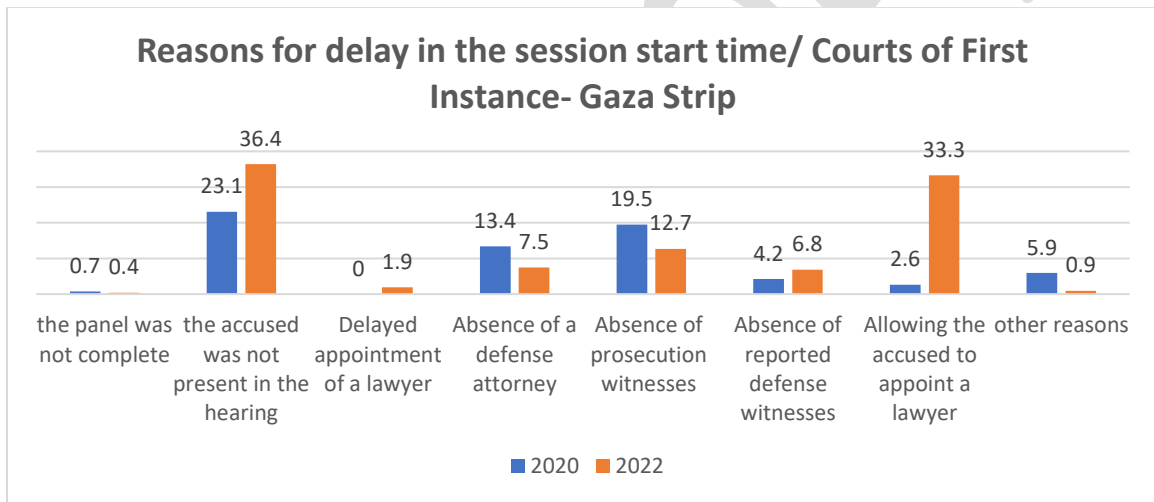
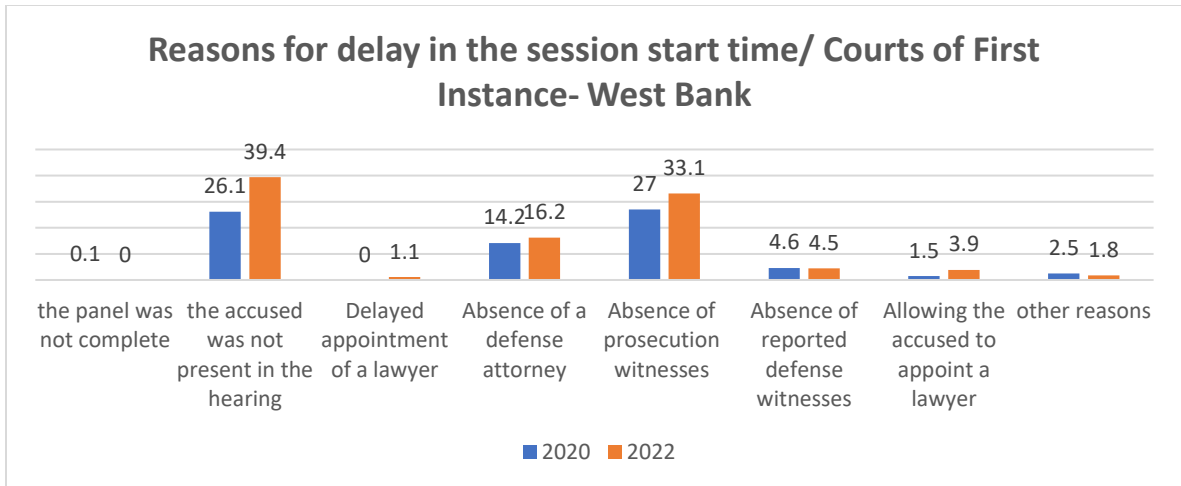
#### **1. The absence of the accused from the trial sessions.<sup>35</sup>**

The absence of accused individuals from trial sessions is the most significant factor causing session postponements. In the West Bank courts, the absence of the accused accounted for 39.4% of session postponements, an increase of 13.3 percentage points from 2020, when such absences accounted for 26.1% of postponement reasons. This indicator highlights a lack of deterrence, as defendants released from custody or individuals with arrest warrants remain without anything assuring their attendance to court.

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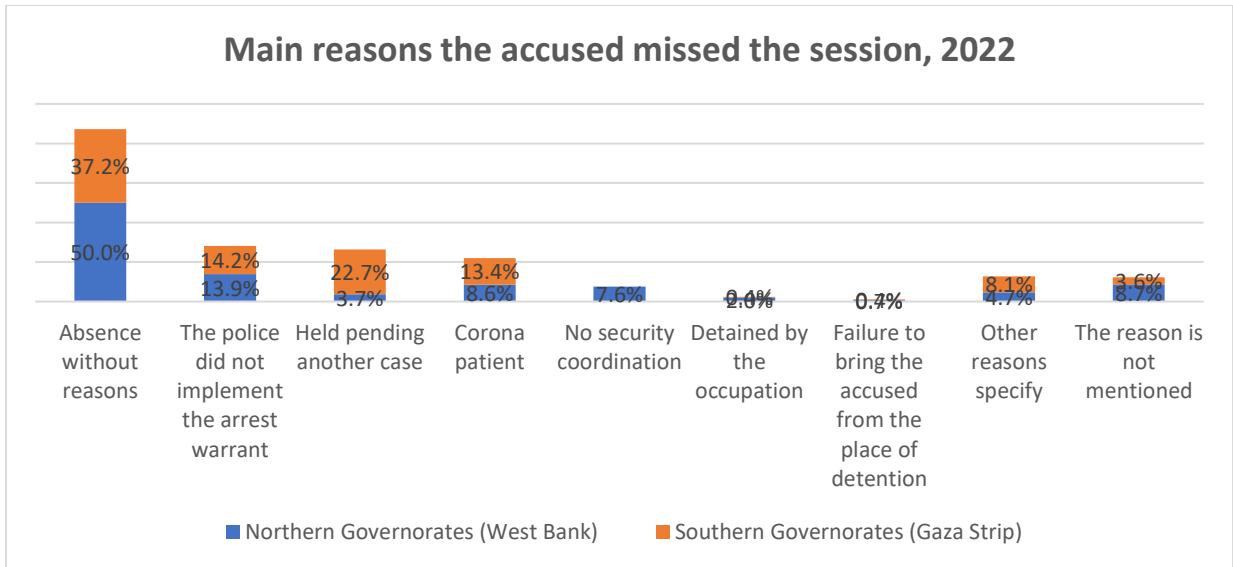
<sup>35</sup> According to the report on Thursday 30/12/2021 on the Gaza Court of First Instance, the third panel there was an administrative postponement for the sessions. In the minutes it was not recorded that the reason for the postponement is the incompleteness of the judicial body, but it was recorded as a postponement because the defendants did not appear in Criminal Case No. 29/2011, 445/2013, 27/2020, 917/2011, 250/2013, 835/2012, 987/2012, 1137/2021, 1297/2021, 627/2021, 909/2013, 347/2011 and 900/2013. However, the written response received by Istiqlal from the High Judicial Council in the Gaza Strip indicated that the postponement was due to the court body being busy before the Juvenile Court unlike what our monitor had reported.





In the courts of the southern governorates (Gaza Strip), the absence of the accused from the sessions constituted 36.4% of the absence rate, an increase of 13.3% when compared to 2020, where absence at that time constituted 23.1% of the reasons for absence.

**The absence of accused individuals from trial sessions can be due to several legal reasons and justifications.** One reason is the accused's lack of knowledge of the hearing date, either because the notification was not directed to them or was not done in compliance with Article 242 of the Code of Criminal Procedure, which specifies how to inform the accused of the hearing date. Another reason may for compelling excuse that prevented the accused from attending, such as illness, transportation interruption, or other acceptable reasons. In such cases, the court has discretion in assessing the validity and strength of the excuse, and if deemed acceptable, the session must be postponed. Alternatively, the accused may choose not to attend the trial session, either due to negligence or fear of facing the judiciary. In such cases, the court may proceed with the case in the accused's absence after confirming the validity of the notifications.



It was striking that the highest reason for the absence of the defendants was because no legal reasons or justifications, as the percentage reached (50% for the West Bank and 47% for the southern governorates (Gaza Strip)), and for the reasons for the absence of the defendants, for example in Hebron governorate, it was found that most of the defendants were workers and / or employees they cannot be absent from work because their vacations are limited, some defendants work in Israeli occupied areas and unwilling to interrupt work to attend a court hearing<sup>36</sup>

The indicator that came next was the lack of enforcement of arrest warrants, it was close between the northern governorates (West Bank) by 13.9% and 14% in the southern governorates (Gaza Strip), while the absence of the defendants due to infection with Corona was low compared to the rest of the reasons, as the percentage of this indicator reached 8.6% in the northern governorates (West Bank) compared to 5.4% in the southern governorates (Gaza Strip).<sup>37</sup>

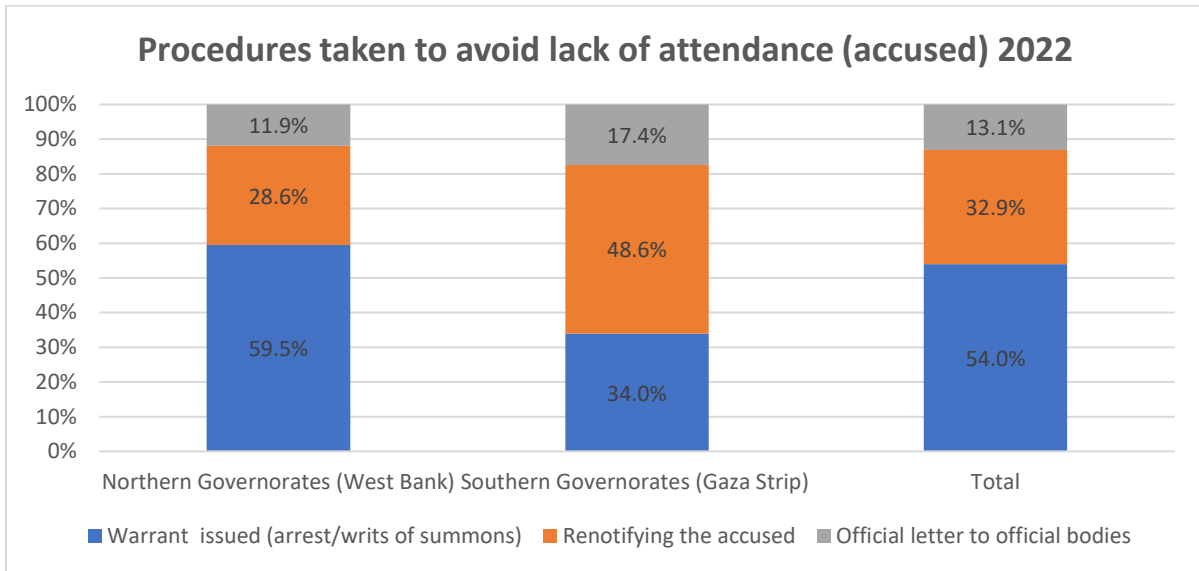
The monitoring process on trial sessions revealed that the Palestinian police failed to execute a significant number of arrest warrants issued by courts, with the highest number of unexecuted warrants observed in the northern governorates of the West Bank. Specifically, the number of warrants that were not executed in Jenin governorate was 41, followed by Nablus with 25, Tulkarm with 16, and Qalqila with 8. On the other hand, Hebron had the lowest number of unexecuted warrants with only 2, and it is worth noting that no unexecuted warrants were observed in Bethlehem. In the southern governorates of Gaza Strip, there were 35 unexecuted warrants across various governorates.

The delay in the execution of writs of summons in the southern governorates (Gaza Strip) is due to a number of reasons, foremost is that arrest warrants take time to get to the police stations and the police follow up on the arrest warrant, in addition to backlogged warrants that were not executed as a result of factual reasons such as: the

<sup>36</sup> Meeting with her Excellency Judge Yasmine Jarad, President of Hebron Court of First Instance, on 29/5/2022.

<sup>37</sup> Article (111) of the Code of Criminal Procedure" judicial officers are responsible to execute court notification and subpoena shall execute summons."

person to be arrested is not present at the place or is a fugitive or whose address of residence is not known which is why there is a failure to implement these writs.



The Palestinian legislator obliges the accused to appear in person before the court, and the presence of a legal representative does not replace the accused, as the legislator stated in the Code of Criminal Procedure in the folds of Article (247): "If the accused does not appear in court on the scheduled day and at the time specified in the summons, he shall be notified again, and if he does not appear, a subpoena will be issued against him." The first instance courts have taken different measures pertaining to this clause.

Through the "Istiqlal" monitoring team, it was found that the First Instance Court in the northern governorates (West Bank) during the monitoring period issued a total of (531) memos against defendants for not attending the trial session a 59.5% rate, while the First Instance Court in the southern governorates (Gaza Strip) issued a total of (84) memos against defendants for the same reasons, a 34% rate.

## 2. Absence of prosecution and defense witnesses.

The absence of prosecution witnesses from the sessions in the First Instance Court in the northern governorates (West Bank) constituted 33.1% of the reasons for the postponement in 2022, an increase of 6.1% when compared to 2020, where the percentage of absence of prosecution witnesses was 27%. That is, one third of the cases postponed in the northern governorates (West Bank) during 2022 are due to the absence of prosecution witnesses.

The absence of defense witnesses in the courts of the northern governorates (West Bank) during the year 2022 constituted 4.5% of the reasons for the postponement of 101 sessions that were monitored without any fundamental change from the year 2020, where the percentage of absence of defense witnesses was 5.6%.

In monitoring the work of the Jericho Court of First Instance, Istiqlal observer noted: "The court postponed hearing the witness who came to testify after (7) years of failed

attempts by competent authorities to bring them in for testimony and the court claimed that it was 2:30 pm and discussing the witness needs a long time."<sup>38</sup>

**At the level of the First Instance Court in the southern governorates (Gaza Strip),** there was a significant development in the presence of witnesses of the Public Prosecution, as absence of witnesses decreased in 2022 to 12.7% in 367 sessions monitored compared to 19.5% in 2020. On the other hand, there was a decrease in the attendance of defense witnesses by 2.6%, as the absence of defense witnesses was a reason for postponing hearings by 6.8% in 2022 when compared to 4.2% in 2020.

The "Istiqlal" monitored noted in Criminal Case No. (1905/2020 AD) that the defendant stated before the court panel: "This session is the fifth session to be postponed only to bring the Public Prosecution witnesses. The defendant was affected negatively at work by his attendance at the court without taking any action except to re-notify the witnesses of the Public Prosecution, and the court panel decided to dispense with the testimony of the witnesses of the Public Prosecution", cases were monitored where the names of the witnesses were not mentioned in the indictment, but the Public Prosecutor took advantage of their presence in the courtroom to add them to the prosecution's witnesses, despite the objections of the defense attorneys, but the court added the names of the witnesses to the indictment.

**The Istiqlal team found that the Public Prosecution in the northern governorates (West Bank) is increasing** the number of witnesses it attaches to the cases, knowing that a large number is not any substantial addition to the innocence or conviction, but the absence of some of them prevents the proceeding of the lawsuit which is an obstacle to the case and therefore these lawsuits stop at this stage without any progress in the case<sup>39</sup>. We also find that the Public Prosecution did not name the witness R.O among the prosecution witnesses as mentioned above, and did not notify the accused (Appellant) or his lawyer, nor had the witness or his lawyer waive their right to notify the notice, which makes the decision of the Court of Appeal and before it the Court of First Instance excluded the testimony of witness R.O. without legal bases. However, the Court of Appeal and before it the Court of First Instance should excluded what was stated in the witness's statement of evidence."<sup>40</sup>

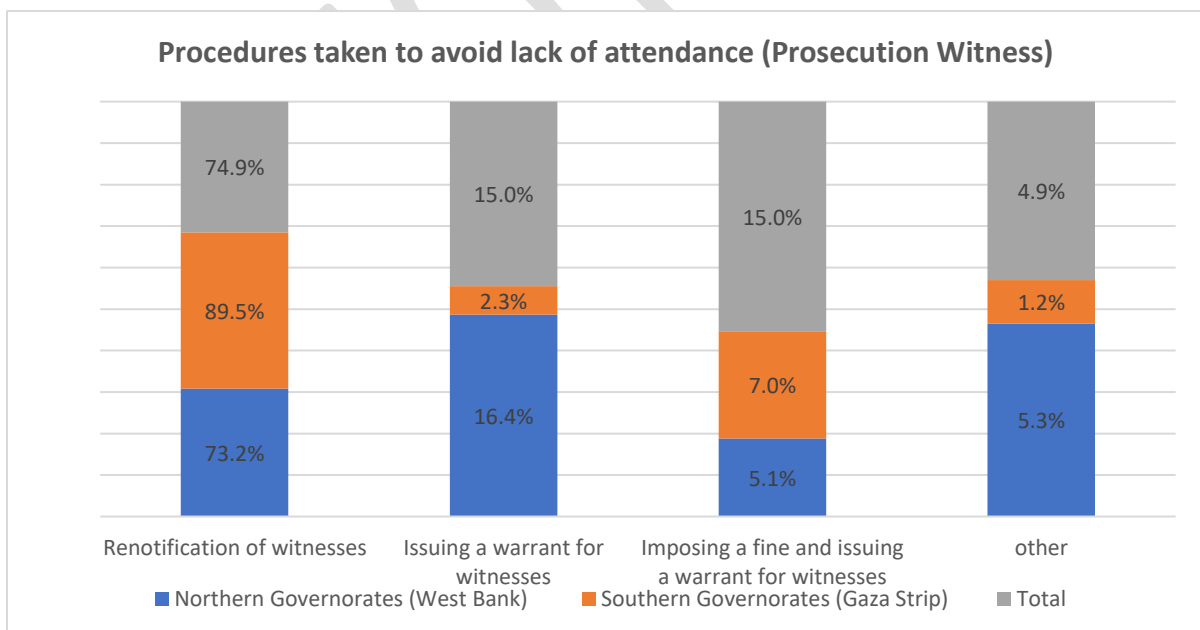
<sup>38</sup> Lina Tal, Monitoring the Jericho Court of First Instance criminal capacity, on December 19, 2021.

<sup>39</sup> The jurisprudence of the Ramallah Court of Appeal stated: "On the one hand the prosecution has ten witnesses, the court only heard three witnesses, and there was no indication of why it was not possible to bring the rest of the witnesses before the court. Whereas it is not permissible to waive hearing the testimony of any of the prosecution witnesses mentioned in the indictment without a convincing reason, the court cannot see that it is impossible to reach the witness. Evidence on which the court relies is the evidence that is presented and discussed with the exception in Article 229 where it must be read out when presented if the cases proceeded without the presence of the witness. Since the Court of First Instance hasn't followed the procedure, it violated the law, which must return the file to its source as mentioned above."<sup>39</sup> the Palestinian Court of Cassation: "Referring to the judgment issued by the Court of Appeal, we find that the Court of Appeal, and before it the Court of First Instance, had relied in the judgment subject of the present appeal on the statement given by the so-called R.O (document N/23) and highlighted before the Court of First Instance in the session of 14/12/2014 and by checking the names of the prosecution witnesses whose names are mentioned at the end of the indictment, we do not find that the aforementioned R.O. was named among the prosecution witnesses. The Code of Criminal Procedure reserves space for testimony given by the witness after taking the oath in the preliminary investigation under Article 229, and since the Court of First Instance did not read out the testimony of the aforementioned witness, and the defendant's attorney (Appellant) objected to the statement and that the said witness was not sick or incapacitated, and the court did not ascertain the validity of the excuse that the said witness works and normally resides within the Green Line as stated in the fourth paragraph of Article ( 229).

<sup>40</sup> Decision issued by the Palestinian Court of Cassation in Criminal Appeal No. 95 of 2016, dated 21 March, 2016, published on "Maqam" For more information, see: <https://maqam.najah.edu/judgments/2146/>

During the process of monitoring, the absence of prosecution witnesses was noted to a large degree and the absence of defense witnesses to a lesser extent. Many factors contribute to the increase in the absence of witnesses as the team has noticed while monitoring cases, most notably the notification system. The reasons for the absence of witnesses can be summarized as follows:

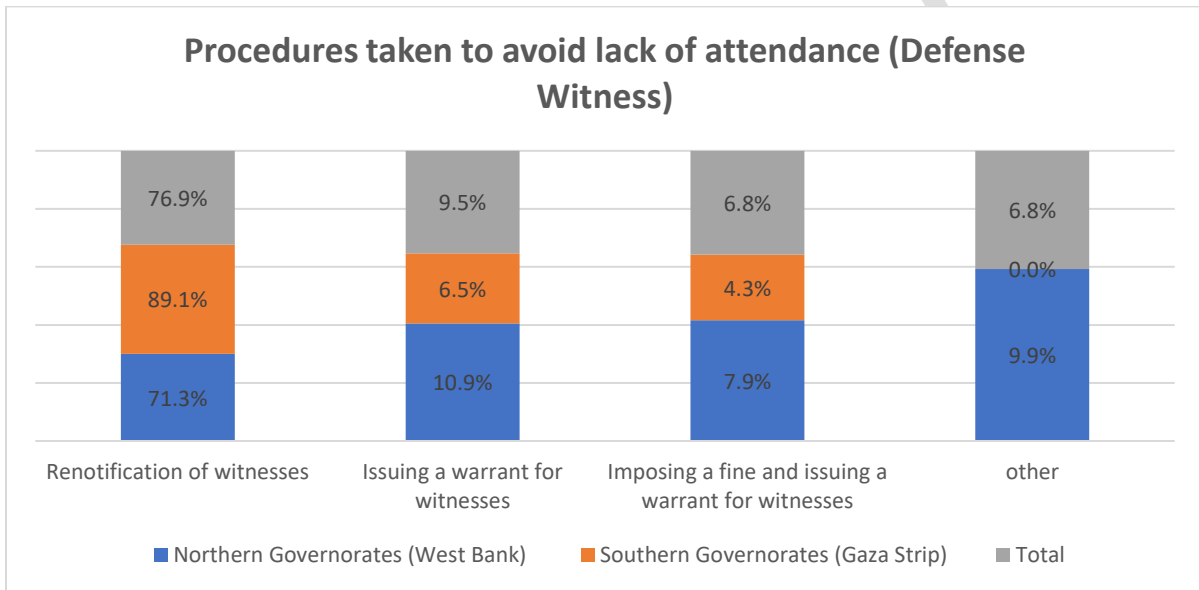
- (1) Financial reasons: The court incidentals are very limited and not always available. The witnesses are not paid as amounts are disbursed to witnesses according per residence and distance from the court, ranging from 50-200 shekels, which is useless when the witness is forced to come from a governorate in the north (West Bank) to a governorate in the south of west bank due to his place of work/residence.
- (2) Personal considerations: Most of the files in which witnesses are absent are witnesses of serious crimes, as the witness refuses to attend for fear of rehabilitation or being exposed to danger since there is no witness protection program.
- (3) Most of the witnesses who are members of the security services are subject to frequent shuffles and many of them cannot come from the northern governorates, for example, to the southern governorates to testify.
- (4) Special considerations of the Public Prosecution: Where it was found in some criminal cases that the Public Prosecution has witnesses whose statements are not heard in the indictment and the investigation report, when the names are not on the records, the court resorts to Article (229) of the criminal procedures in the event that it is not possible to notify or reach the witness.<sup>41</sup>



<sup>41</sup>The head of Istiqlal team interviewed the president of a court of first instance in the West Bank, who preferred not to be named in the report.

A review of the measures taken by the courts towards absence of witnesses shows that the First Instance Court have taken various measures to address the absence of prosecution witnesses, as the criminal bodies in the courts of the northern governorates (West Bank) decided to re-notify witnesses in 73.2% of these hearings, issue subpoenas for witnesses by 16.4%, impose a fine and issue a subpoena for 5.1%.

The procedures taken in the courts of the southern governorates (Gaza Strip) to address the absence of prosecution witnesses were very similar to those taken in the northern governorates (West Bank).



While the procedures and measures taken by the courts of the northern governorates (West Bank) to address the absence of defense witnesses were the same as the procedures towards prosecution, 71.3% decided to re-notify witnesses, 10.9% to issue a subpoena for witnesses, and 7.9% to impose a fine and issue a subpoena for witnesses.

As for the courts of the southern governorates (Gaza Strip), 89.1% decided to re-notify witnesses, 6.5% issued a subpoena for witnesses, and 4.3% imposed a fine and issued a subpoena for witnesses.

The notification system followed in the courts of the northern governorates (West Bank) is still largely ineffective for several reasons, foremost of which are 1) Lack of staff in the Notifications Department 2) Lack of clear address of the accused and too general addresses 3) Lack of communication between the Notifications Department and the Civil Registry to provide it with clear addresses for the accused 4) The large number of notifications to be delivered 5) The difficulty of movement between cities and villages due to the Occupation and the weak capabilities available to the Notifications Department, it was found that there is a severe weakness in the judicial authorities' handling of subpoenas, as the general characteristic is that the judicial authorities do not deal seriously enough with subpoenas, but some of them lack experiences. One of the judges pointed out that some of the subpoenas were returned to the court and were commented on by law enforcement authorities as “seen”, and there

are no explanations that enable the court to deal with defendants who do not attend the court as fugitives from justice.<sup>42</sup>

At the level of notifications in the southern governorates (Gaza Strip), a contract was concluded between the Ministry of Justice and the International Logistics Company "Mersal" for delivering judicial notification, whereby the mechanism of distributing notifications and documents become the responsibility of the company instead of reporting by the judicial police, and one of the problems that were monitored in the privatization of notifications has led to the fact that the employees of Mersal Company are not civil servants or governmental employees, and therefore will not be held accountable per the anti-corruption laws that mainly target civil servants, but<sup>43</sup> rather per the legal texts (namely the Civil and Commercial litigations Law no (2) for the year 2001), unlike judicial police officers, there will be challenges observes in the environment of judicial notifications pertaining to integrity, accountability and anti-corruption as well as the conditions for the validity with exhaustion of time and non-delivery to the person concerned, the inadmissibility of reporting on holidays, in addition to the imposition of new financial fees.<sup>44</sup>

### **3. Absence and delay in appointing lawyers.**

The absence of a lawyer or the delay in the assignment of a lawyer was one of the reasons that increased the rate of adjournment of cases without making any progress in the case. During the process of monitoring trial sessions, 367 sessions were postponed for the absence of a lawyer, which constituted 16.2% of the reasons for postponement in the courts of the northern governorates (West Bank), an increase of 2% when compared to 14.2% in 2020. In addition, 1.1% delay in the assignment of a lawyer by the Bar Association, for reasons that differ from one lawyer to another. Some of the reasons for absence in specific cases may be justified and resulting from force majeure circumstances, such as travel, illness, or other emergency circumstances, and may be due to the lawyer's refusal to attend the session while he is inside the court to pressure his client to pay his fees, or because of his awareness that the absence of witness won't allow the case to move forward. From a legal point of view, the Bar Association does not have the authority to oblige the lawyer to attend the session, also, the Bar Association can't take action against the deliberately absent lawyers from the sessions, unless their clients comes forward with an official complaint.

Court are reluctant to contact the Bar Association, since they don't always get the results they hope from correspondence about lawyer missing their court sessions, although the Bar Association responds to most of the correspondence addressed to it by the Public Prosecution and the Palestinian courts: where the Bar Association received approximately 360 letters from the Public Prosecution, all of which were answered except for some for technical reasons, while the Bar Association received approximately 260 letters from the Palestinian courts on various topics, including providing the court with explanations and reasons for absence of lawyers for the court

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<sup>42</sup> Interview of the field monitoring team with a judicial source.

<sup>43</sup> Published on the official website of the Palestinian Ministry of Justice, Gaza, for more see: <http://www.moj.ps/site/adel/newsdetail/ministry/919>

<sup>44</sup> Investigation: Violations of the law and powers in the decision to privatize judicial notifications, published on Nawa Network, on 10/9/2019, investigation within the Investigators Against Corruption initiative (2) Implementation of the Southern Media Forum in partnership with the Coalition for Integrity and accountability "AMAN", For more see: <https://www.nawa.ps/ar/post/42484>

session, and the source indicated that the lawyer is contacted and informed of the need to attend the sessions.<sup>45</sup>

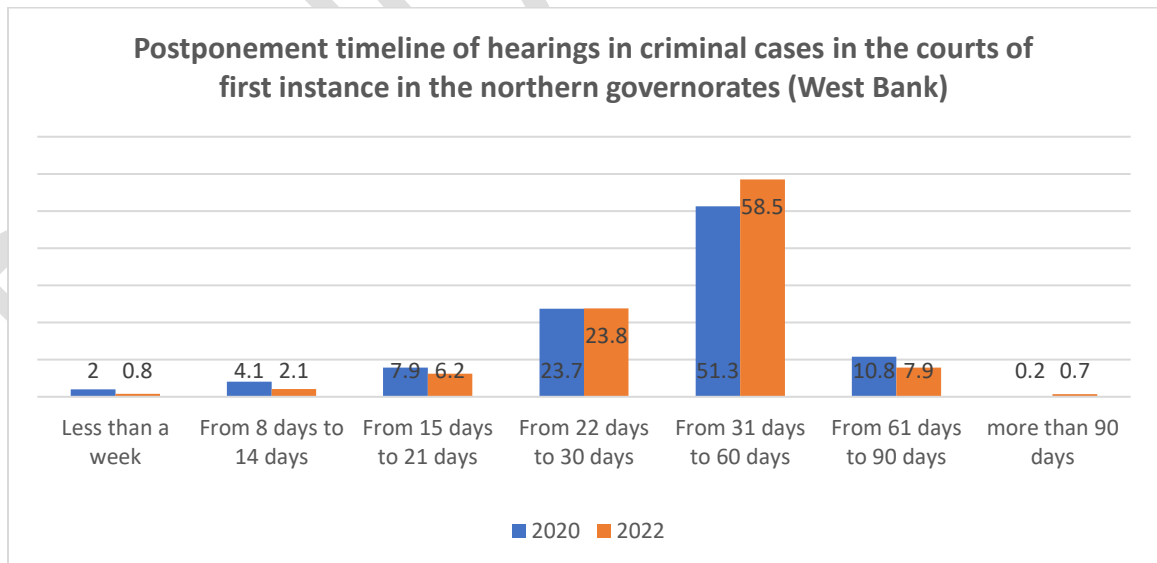
As for providing time to defendants to appoint a lawyer, 3.9% of the cases that were postponed during the year 2022 compared to 1.5% it was the primary reason for the postponement in the year 2020.

In the southern governorates (Gaza Strip), the absence of a lawyer from hearings constituted 7.5% during the year 2022, compared to 13.4 in the year 2020. That is, there was an improvement of 5.9% points in the presence of the lawyer at court sessions and a reduction in the rate of postponement. As for the delay in hiring a lawyer, the percentage was 1.9% as the reason for postponing the hearings.

Of the total sessions that were monitored in the southern governorates (Gaza Strip), the defendant's grace to appoint a lawyer constituted 33.3% as a reason for postponing the sessions without proceeding with the case, which constituted a significant decline from the year 2020.

In order to address the dilemma of the absence of lawyers, the First Instance Court decided in its criminal capacity to address the Bar Association in 173 cases, or 47.1% in the northern governorates (West Bank). In the southern governorates (Gaza Strip), the Bar Association was addressed in 191 cases, or 45.7% of the cases in which the lawyer was absent from the trial session. As for the rest of the cases related to the absence of a lawyer, the delay in the assignment of a lawyer or the absence of a lawyer, the court decided to give the accused time to appoint a lawyer.<sup>46</sup>

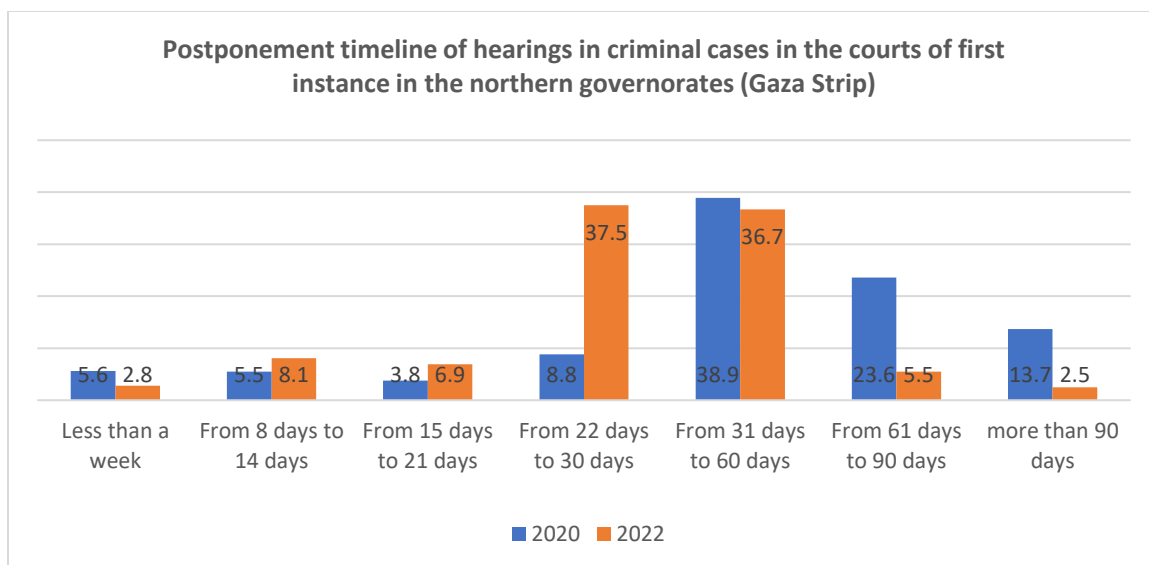
**Third: Extending the postponement of criminal hearings in the courts of first instance.**



<sup>45</sup> Source in the Palestinian Bar Association.

<sup>46</sup> For more information, see: Table No. (8) in the list of appendices.





One aspect of the repeated postponement had to do with the length of the postponement period. As the data shown in the table above indicates, a small percentage of adjournments in all short-term courts (i.e. one week or less) constituted 1.3% of first instance court cases in the northern governorates (West Bank) and southern governorates (Gaza Strip).

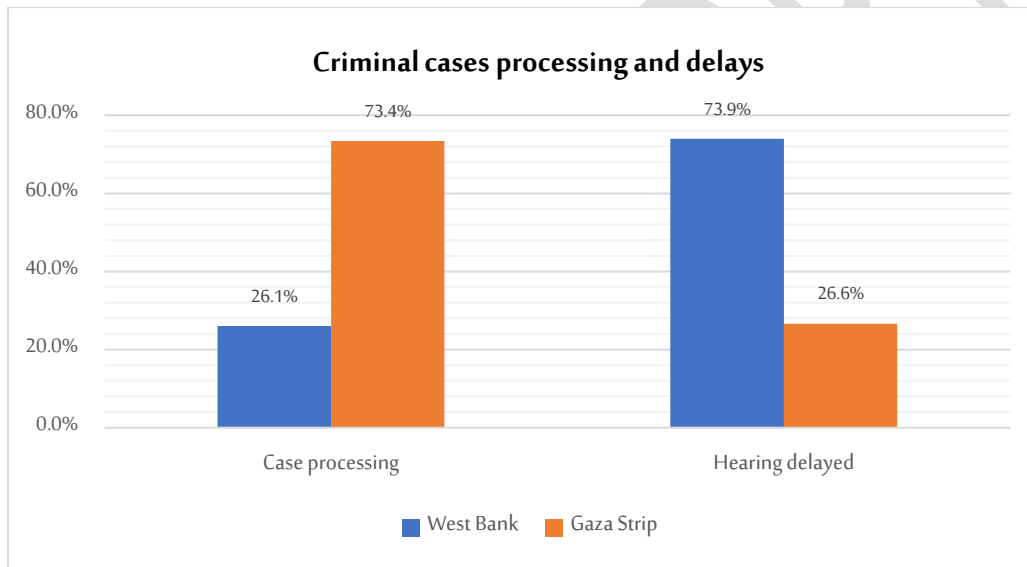
According to the results of the monitoring team, the percentage of postponement for less than 30 days between the session and the next decreased to 32.9% compared to 37.7% in 2020. That is, the majority of postponements in the courts of the northern governorates (West Bank) are for a period that is more than a month, this reached the percentage of 67.1%, and there are cases by 0.7% in which postponements were monitored for more than three months.

In the criminal bodies operating in the courts of the southern governorates (Gaza Strip), there has been a significant improvement in the direction of the courts to reduce the periods of adjournment between sessions. The percentage of cases postponed for less than 30 days to the next session constituted 55.3% of the total number of postponed cases, compared to 23.7% in 2020, meaning that the Gaza courts improved in this indicator by 31.6 points. Cases postponed for more than three months have decreased significantly to 2.5% from 13.7% in 2020. The improvement in the southern governorates (Gaza Strip) is due to the issuance of a series of circulars that contributed mainly to the progress of trials and the completion of a larger number of files, in addition to the fact that the date of postponement has become limited to a certain period not exceeding one and a half months or two months as a maximum.

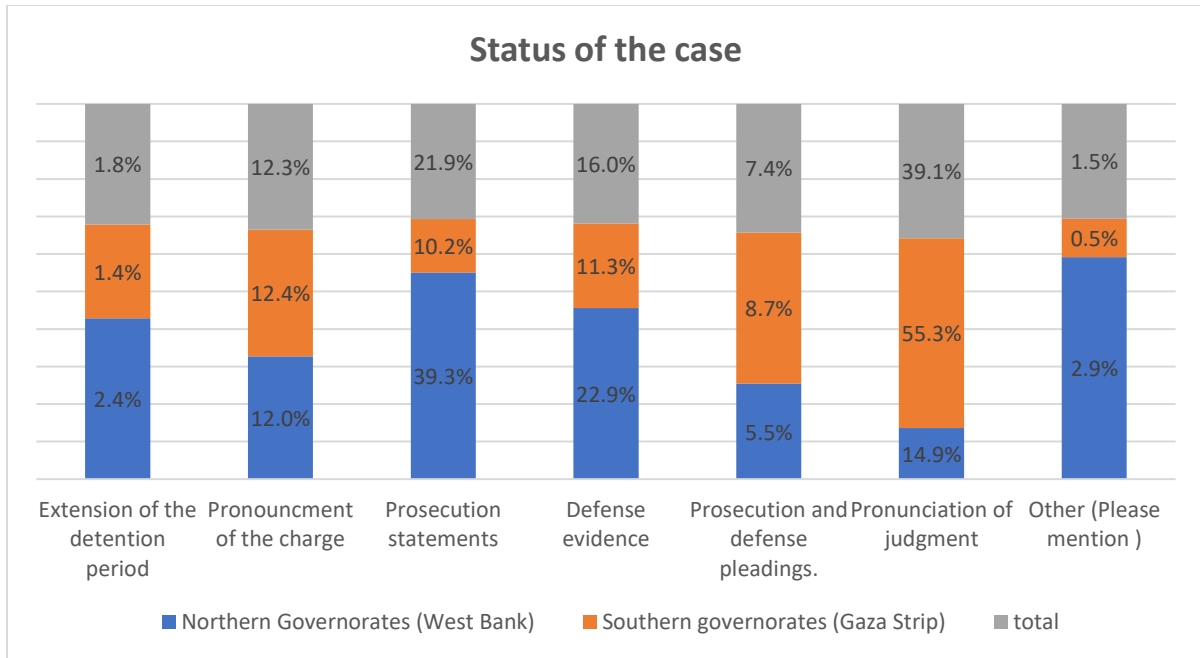
## Chapter Four

### Fair trial guarantees in criminal cases heard by the courts

The objective of this chapter is to examine the guarantees of fair trial in criminal cases. The international community, including the State of Palestine, has signed, and committed to various human rights conventions, which have established principles and foundations to ensure the protection of individuals' rights from the time of their arrest until the end of their trial. Non-adherence to these principles results in the violation of human rights, particularly the right to be tried on evidence. The judiciary system is built on several fundamental principles that enhance its credibility and legitimacy and embody most human rights charters and constitutions. These principles are also vital in ensuring the right to trial on evidence in criminal cases and upholding rule of law principles.



After monitoring criminal trial sessions in the northern governorates (West Bank) and the southern governorates (Gaza Strip) in 2022, the following data was collected: In the northern governorates, 798 criminal cases were processed, while 2265 cases were postponed. In the southern governorates, 1869 criminal cases were processed, and 678 cases were postponed. These statistics were gathered by the Istiqlal team during their monitoring of criminal cases in first instance courts, this chapter will review and analyse the sessions that have been processed in court.



Through the analysis of 798 criminal case sessions in the first instance courts of the northern governorates (West Bank) that were carried forward, it was found that the highest percentage of the distribution of cases percentages in the trial sessions is the stage of prosecution evidence, which reached 39.3%, followed by the stage of defense evidence by 22.9%, and the stage of pronouncing the verdict reached 14.9% of the total sessions monitored.

At the level of the First Instance Court in the southern governorates (Gaza Strip), the analysis of 1989 criminal cases showed that the highest percentage in the stages of trial was for the stage of pronouncing the verdict, reaching 55.3%, followed by the stage of listing the charges at 12.4%, which reflects the progress in the speed of deciding cases considered in the criminal bodies in the First Instance Court of the southern governorates (Gaza Strip).

**The following is an analysis of some stages per the results of the monitoring:**

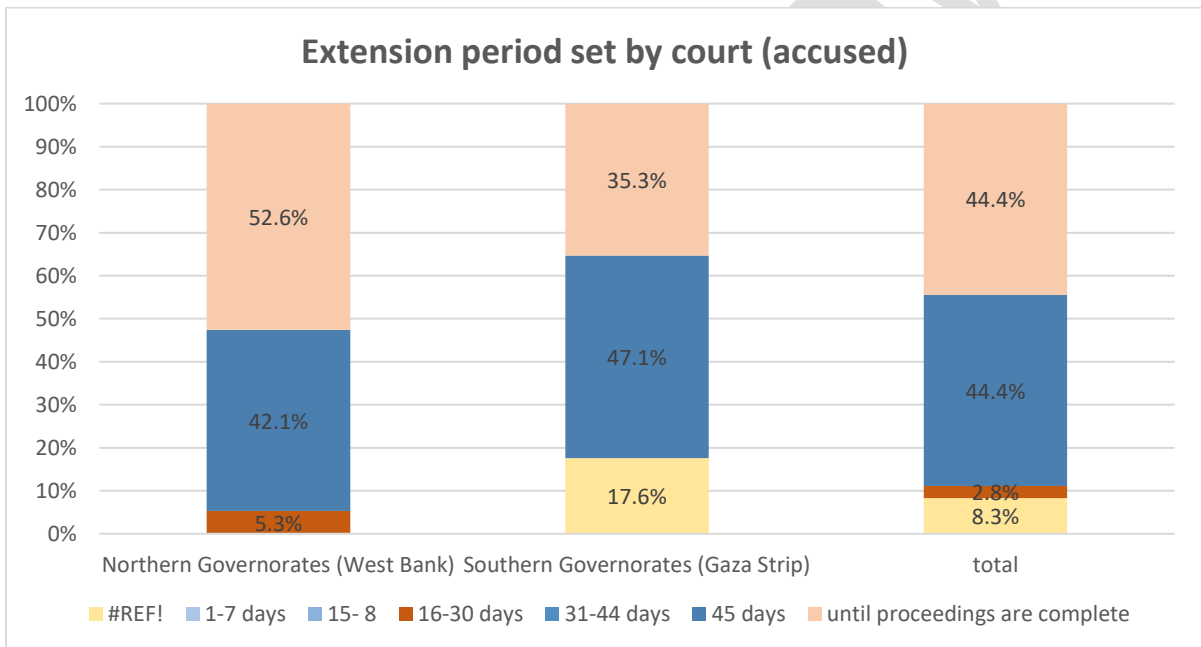
**1. Observing the principle of the right to liberty at the stage of arrest.**

The Basic Law as well as international conventions on human rights called for making human freedom at the forefront,<sup>47</sup> all had recognized the right to freedom, and this supposes that people are free, at the same time the legislator gave society the right to hold perpetrators accountable. This was not unregulated, but rather texts have been developed that protect individuals, even if they are being accused of a crime, from violating laws and regulations in arrest. We looked into the periods during which the Public Prosecution and the court may arrest a defendant without presenting him to the court through referring his file to trial.<sup>48</sup>

<sup>47</sup> Article 9 of the International Covenant on Civil and Political Rights.

<sup>48</sup> The Code of Criminal Procedure is defined in jurisprudence as the Law of Public Freedoms, as it represents a fundamental guarantee of personal rights and freedoms and ensures a balance between those and the public interest. Since the relationship between freedom and law is very close, the law is a restriction on freedom, but a restriction intended to elevate human behavior to the level of civilization and the organization of social life. The ultimate goal of the Code of Criminal Procedure is to balance personal freedom with the public interest, in other words, to balance the state's right to punishment with the right of an individual

As for the Court of First Instance, we find that the legislator obligated the prosecution to submit the request to the Attorney General, or one of his assistants,<sup>49</sup> to ensure integrity, as well as granting the right to request an extension of detention to the Court of First Instance, (which normally consists of three judges), to ensure justice and protecting the right to freedom. This however limited the right of the Court of First Instance in its capacity, though it is competent to hear the charge, by only forty-five days without extension. The Code of Criminal Procedure also explicitly states that in no case may the periods of detention exceed six months, otherwise the accused shall be released immediately unless he is referred to the competent court for trial.<sup>50</sup> The table below shows the reasons and justifications for extending detention before the courts of first instance.



The Istiqlal monitoring team attended and monitored a total of 36 detention extension sessions, including 19 before the First Instance Court in the northern governorates (West Bank) and 17 before the First Instance Court in the southern governorates (Gaza Strip). The observer team closely observed all of the monitored courts. In the northern governorates, the First Instance Court accepted the requests for the arrest of all 19 defendants whose arrest requests were submitted. The majority of arrest requests (52.6%) were responded to with detention periods of 45 days, while 42.1% were granted detention for less than the maximum period allowed by law. Only one case was observed in which the detention period was less than the maximum allowed by law, and no cases were observed in which requests for extension were denied.

to defend oneself against a potentially false charge. One of the original principles of this law is the presumption of innocence that "the accused is innocent until proven guilty by a final judicial ruling."

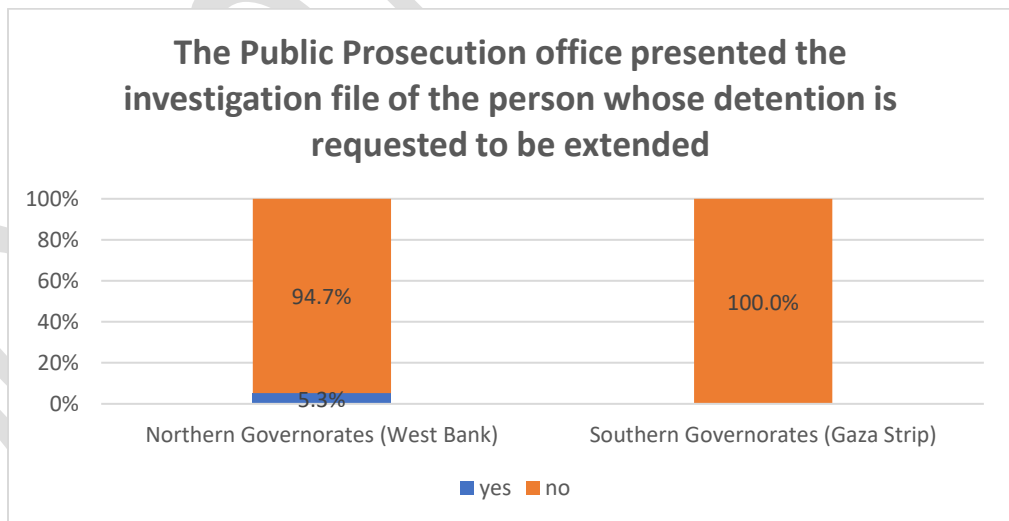
<sup>49</sup> Arrest could be made by the magistrate judge by request from the deputy attorney general; the law has not made it obligatory that the head of the prosecution or one of his assistants file the request of arrest. Extending detention is done before a magistrate judge.

<sup>50</sup> Article 120, Code of Criminal Procedure No. 3 of 2001

At the level of the First Instance Court in the southern governorates (Gaza Strip), the court decided to respond to requests for arrest until the completion of the trial procedures in 35.3% and for a period of 45 days (43.1%), and rejected the extension of 3 requests for arrest in three files, i.e. 17.6%. When analyzing the reasons for extending the detention before the bodies of the courts, it was found that the completion of the investigation procedures and the seriousness of the charge are the most prominent justifications used to accept requests for arrest, as 52.6% of the cases presented in the northern governorates (West Bank) were caused by the completion of the investigation procedures, and 47.1% in the First Instance Court in the southern governorates (Gaza Strip).<sup>51</sup>

The reason for the seriousness of the charge constituted 21.1% in the First Instance Court in the northern governorates (West Bank) and 17.6% in the courts of the southern governorates (Gaza Strip). The reason for the arrest by completing the trial procedures reached 52.6% in the courts of the northern governorates (West Bank) and in the southern governorates (Gaza Strip) 35.3%, and none of the cases of arrest that were monitored were for: ordering Public Prosecution's to bring the case file to court, non-payment of bail, or lack of reconciliation.

In case No. 799/2019, the team observed that the defendant stated to the court: "During nine months of detention, he did not enter the courtroom and that it is the first time he was brought before the court", and observers noted in Criminal Case No. 763/2021 that the police officers brought the defendant in handcuffs and kept him handcuffed while he was in the dock, while the defendant stated in Criminal Case No. 19/2003: "He spent 18 days in detention."<sup>52</sup>



The "Istiqlal" team noted in all the courts monitored, that when a request to extend the detention is sent by the Public Prosecution to the court, the **investigative file is not brought or attached to the request presented to the court panel for the purposes of examining it and studying the**

<sup>51</sup> Istiqlal monitoring team

<sup>52</sup> Researcher Faten Lulu, Monitoring the Criminal Cases, Gaza Court of First Instance.

**justifications for extending the detention** to issue the decision per the law, the Public Prosecution sends the request individually and without any attachments.<sup>53</sup>

Most of the judges' decisions to arrest or even acquit also lack causation due to the absence of investigative files on which the judge bases his decision, and they are accompanied by well-known and stereotyped preambles such as the seriousness of the charge or the prosecution's justification contained in the arrest request, generally that there is no explicit provision in the Palestinian Code of Criminal Procedure that requires reasoning for the arrest. However, Article (12) of the Palestinian Basic Law stipulates that any person arrested or detained must be informed of the reasons for his arrest or detention, and when issuing an arrest warrant, there must be factual and legal reasons justifying the issuance of this decision, and the decision must be included on these reasons.

**Judges refrain from reasoning or extending the arrest decision in violation of international guidelines guaranteeing the rights of the detainee contained in this regard.** The Sixth International Conference on Penal Law, held in Rome on 27/9/1953, recommended the reasoning of the arrest decision and the decision to extend its duration, which naturally constitute the body and components of the request for extension of detention and are an integral part of it.<sup>54</sup>

The investigative file is a crucial part of the detention extension process, as it contains the minutes of the accused's interrogation, the testimony of the complainant, the witnesses' testimonies, the lawyers' reports and interpretations, the minutes of evidence collection, and all other evidence and highlights that arose during the Public Prosecution's investigation into the file. This file constitutes the most significant and essential part of the evidence base. If the Public Prosecution believes that the investigative procedures necessitate the continuation of the accused's detention, it may submit a request for extension. However, when the judge considers the request to extend detention without having the investigative file before them, they lack a full understanding of the file's contents and details, which may lead to incomplete decision-making.

During the monitoring of detention extension sessions before the First Instance Court in the northern governorates (West Bank), it was observed that the investigative file was not presented in 94.7% of the total monitored sessions. The majority of the detention extension requests submitted lacked the necessary investigative file. Similarly, at the First Instance Court in the southern governorates (Gaza Strip), the investigative file was not presented to the court panel in any of the observed detention sessions.

## **2. The right to cross-examine prosecution witnesses and to summon witnesses to testify in defense.**

The principle of confrontation of the accused with evidence against them is a defining feature of criminal trials. This principle allows the accused to respond to the evidence presented against them. As part of this principle, the accused has the right to be present during the court's questioning of prosecution witnesses and may ask questions under the supervision of the court. This oral exchange

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<sup>53</sup> The decision of the Palestinian Court of Cassation in Criminal Appeal No. (113/2021) issued on June 30, 2021 "The Public Prosecution must include in the indictment the name of the accused, the date of his arrest, the type of crime committed, its legal description, the date of its commission, the details of the charge and its circumstances, the legal articles that apply to it, the name of the victim and the names of witnesses, and the Public Prosecution may not claim acts outside the indictment, otherwise its claim is invalid per the provisions of Articles 239 and 419 of the Code of Criminal Procedure and in the same practice as in criminal proceedings."

<sup>54</sup> <https://penal.org/sites/default/files/files/RICPL%201953.pdf>

of testimony creates the best conditions for the judge to assess the credibility of the witnesses and the accused. Judges rely not only on the case file but also on their personal and human experience, as well as the testimony of witnesses and the accused. Originally, testimony had to be given orally, and written submissions were not allowed.<sup>55</sup>

Article 208 of the Code of Criminal Procedures allows the court to order, even on its own motion during the hearing of the case and at any stage, the presentation of any evidence necessary for the truth to emerge. This is a permissible power by which the Court of First Instance in its capacity is independent to establish the truth.

If a number of witnesses are called on the same day,<sup>56</sup> the witnesses are heard individually; the witnesses wait their turn outside the courtroom, so that their testimony is not affected by other witnesses. Prosecutors first question prosecution witnesses, then the lawyer, then the civil plaintiff's lawyer, and finally the court. In the vast majority of cases observed, lawyers exercised their right to cross-examine prosecution witnesses and prosecutors did cross-examine defense witnesses. The First Instance Court asked witnesses a number of questions. Courts guarantee witnesses sufficient time to answer questions in detail and recount their knowledge of events and the courts do not influence or prevent witnesses from speaking.<sup>57</sup>

Upon monitoring the sessions of the First Instance Court in the northern governorates (West Bank), it was discovered that 51% of the witnesses failed to appear before the court to give testimony. This percentage increased to 58% in the southern governorates (Gaza Strip). Additionally, it was observed that the First Instance Court in the northern governorates allowed the defense to discuss the prosecution witness or denial in approximately 90.9% of the total sessions where all parties, including witnesses, attended and procedures were followed. In the southern governorates (Gaza Strip), the same indicator had a percentage of 97.2%.<sup>58</sup>

### **3. Equality between the prosecution and the defense in the presentation of arguments.**

Pleading is all statements or regulations submitted by the litigants or their representatives in order to clarify the facts of the dispute and to indicate the evidence and legal grounds on which they rely to support their position. Accordingly, pleading plays a key role in litigation before the judiciary as a system whose basis is the principle of equality between litigants and its purpose is to exercise the rights of defense in order to achieve justice before the judiciary. The second paragraph of Article 252 stipulates: "The court may instruct the prosecutor and the defense attorney to present written pleadings within a certain period it deems appropriate, and within the specified time, the pleadings shall be read out, and they shall be added to the minutes after being signed by the court panel."<sup>59</sup>

The observer team observed in all the courts that were monitored that the first instance courts in the northern governorates (West Bank) allowed the Public Prosecution to present its closing

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<sup>55</sup> Article 235 of the Code of Criminal Procedure No. 3 of 2001.

<sup>56</sup> Witnesses are the persons who received their name at the bottom of the indictment filed by the Public Prosecution or the persons requested by the defense lawyers, or the persons whom the court deems necessary, even on its own initiative, to testify.

<sup>57</sup> For more details please refer to Table No. 11 in appendices.

<sup>58</sup> Article 252, Code of Criminal Procedure No. 3 of 2001.

<sup>59</sup> For more Details please see Table 12

argument in all criminal cases monitored. In the same respect, the court allowed defense lawyers to present their closing arguments also in all criminal proceedings that were monitored.

**At the level of the First Instance Court in the southern governorates (Gaza Strip), the courts did not prevent the Public Prosecution from presenting its closing argument in all the criminal cases monitored,** while the court did not allow defense lawyers to present their closing arguments, amounting to 1.9% of the criminal cases monitored.

Istiqlal team noted that the court panel rejected the appeal of bail applications submitted to the court before the Public Prosecution finished its pleading. The court panel rejects the request submitted by the defense attorney without researching the reasons for the defense pleading, which constitutes bias towards the Public Prosecution in criminal cases No. 407/2021, 415/2021, 299/2021, and 413/2021.<sup>60</sup>

The observers noted that the same court rejected the bail applications, before the Public Prosecution concluded its pleading in the bail application and without fully scrutinizing the reasons and justifications for the request and without fully hearing the prosecution's pleading in criminal cases No. 23/2022, 22/2022, 27/2022, 19/2022, 14/2022, 8/2022, 24/2022, and 26/2022.<sup>61</sup>

#### **4. Defendant's/Accused's right to have a lawyer.**

The International Covenant on Civil and Political Rights (ICCPR) stipulates that the right to a defense counsel of one's choice is essential, and human rights case law has interpreted this right as meaning that the accused cannot be forced to accept a government-appointed lawyer. Denying the accused the choice of defense counsel or access to a lawyer altogether is considered a violation of the right to a fair trial. Article 14 of the Palestinian Basic Law enshrines this fundamental right, stating that "every person accused of a felony shall have a lawyer to defend them." This includes ensuring the right of the accused to choose their lawyer and the right to free legal assistance for defendants who cannot afford it.

As noted earlier (see above, Chapter 3), in some cases the defense counsel did not attend the hearings, but the procedure followed was either that the court adjourned the hearing or appointed counsel for the accused. In the case of the absence of a lawyer, the court may request the Palestinian Bar Association to appoint a lawyer, or in the absence of sufficient time, a lawyer can be appointed directly. When the Bar Association is late in responding to the court's request, the judge simply asks any lawyer who was present in the courtroom to represent the accused. In other cases, dealing with fair trial guarantees means it is only by form and not to the essence of serving the case, this means clear/proper measures have to be put in place regarding legal aid to ensure the fair trial guarantees are in place. As in the court adjourned the hearing to allow time for the defendant to appoint a lawyer of his choice. In other cases, courts of first instance, including the Nablus court, have appointed lawyers from institutions that provide free legal aid services in the event that the defendant is unable to appoint a lawyer due to financial indignance, with the defendants' consent. Observers noted some cases where lawyers were present at the beginning of the hearing but had to leave before the end of the hearing due to other obligations in other courts, at which point the courts postponed the hearings.

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<sup>60</sup> Researcher Faten Lulu, Monitoring Criminals Cases, Gaza Court of First Instance.

<sup>61</sup> Ibid, in Criminal Case No. 265/2021 and 2721/2021, a "volunteer" lawyer was present and was not assigned from the court, and the lawyer agreed with the defendant to volunteer to plead for him in exchange for a sum of money, and the judge warned the lawyers about this system and that it will be canceled soon.



The decision of the Palestinian Court of Cassation in Criminal Appeal No. (27/2016) issued on September 1, 2016: "Since the right of the accused to seek the assistance of a lawyer is one of the basic guarantees in the defense that the court may not neglect (primarily)." <sup>62</sup>

The Istiqlal team noted that the court panel convened to hear criminal cases without the presence of a lawyer in criminal case no. 506/2010, which constitutes a violation of the rules of trial and justice and a clear violation of the provisions of the Palestinian Code of Criminal Procedure. <sup>63</sup>

The "Istiqlal" team also noted through the supervision of the North Gaza Court of First Instance that when assigning a lawyer to the accused, the defendant is obliged, after being sentenced, to pay an amount of (50) shekels provided that the court is mandated to pay the lawyer any fees incurred, and this was noted in the following cases 2486/2020, 1912/2020, 205/2020, 2074/2020, and 2614/2020, and criminal case no. 333/2021, where the lawyer was assigned during the session without knowledge or access to the criminal case documents, which led to the weakening of the defense's pleading before the Public Prosecution. <sup>64</sup>

Through the monitoring team, it was found that (23) cases of approximately 2.9% of the trial sessions held in the First Instance Court in the northern governorates (West Bank) did not have a lawyer representing the accused, in the same regard, it was found that this number increased in the trial sessions held in the southern governorates (Gaza Strip), where the percentage reached 6.4% (76) cases in which there is no legal representative.

In the context of defense lawyers, it was found that 95.6% of lawyers in the First Instance Court in the northern governorates (West Bank) attended the trial sessions on time, and the percentage of lawyers' commitment was higher in the southern governorates (Gaza Strip), where the percentage reached 98.7%.

#### **Indicators related to the absence of the defendant's lawyer:**

Through the supervision of the First Instance Court in the northern governorates (West Bank) and the southern governorates (Gaza Strip), it was found that the First Instance Court took a set of measures in the event that the defense lawyer was absent from attending the trial sessions, as indicated in the table above, and it is clear that the most prominent measure taken by the First Instance Court was to re-inform the defense lawyer of the date of the next session (86.8% in the First Instance Court in the northern governorates (West Bank) – 35.4% in the First Instance Court held in the southern governorates (Gaza Strip). The indicator of the court's contacting to the Bar Association regarding the non-attendance of defense lawyers comes by 3.9% in the First Instance Court in the northern governorates (West Bank), while the First Instance Court in the southern governorates (Gaza Strip) did not address the Bar Association regarding lawyers absent from attending the trial sessions.

### **5. Right to judgment**

The announcement of the judgment involves reading the verdict of the judgment in a public session, even if the trial was conducted confidentially. This allows the litigants to read and review the judgment. After the conclusion of the trial, the court panel convenes in the deliberation room to examine the evidence and allegations presented before it. The verdict is then reached either

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<sup>62</sup> Criminal Appeal No. (27) of 2016, dated 1<sup>st</sup> September, 2016, published on "Maqam", for more see: <https://maqam.najah.edu/judgments/2488/>

<sup>63</sup> Gaza Criminal Court of First Instance, Case No. 506/2010.

<sup>64</sup> Researcher Faten Lulu, Monitoring the Criminal Case Gaza Court of First Instance.

unanimously or by a majority, except in cases of the death penalty, which requires a unanimous decision.<sup>65</sup> Per the law, the judgment is based on a set of principles. First, the court is free to rule the case based on its formed conviction and may not consider any evidence that has not been presented in the hearing or obtained unlawfully. Second, any statement made by the accused or witnesses under duress or threats is deemed unreliable and cannot be used as evidence. Finally, the verdict is issued in an open session, even if the trial was conducted confidentially. The verdict is signed by chief judges of the panel and read publicly in the presence of the Public Prosecutor and the accused. The chief judge informs defendants of their right to appeal the judgment within the legally prescribed period.<sup>66</sup> The law stipulates that for the validity of judgments in criminal cases, they must be based on legal evidence leading to conviction, and acquittal when the validity of the evidence is doubted, or the evidence is insufficient yet this is conditional on the fact that the judgment includes evidence and examined facts of the case in all aspects, circumstances were also noted.<sup>67</sup>

In Criminal Case No. 2552/2020, the Istiqlal team noted that "the panel of the North Gaza Court of First Instance does not convene again after filing the decision, and judgments are issued in absentia, and the accused or his representative must check with the registry to know the verdict issued in the criminal case."<sup>68</sup>

## **6. The right not to be subjected to torture or inhuman and degrading treatment and punishment.**

Freedom from torture or inhuman or degrading treatment or punishment is one of the most fundamental human rights and is guaranteed by a large number of provisions of international law, such as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the International Covenant on Civil and Political Rights.<sup>69</sup> The Convention against Torture has a clear definition of non-torture,<sup>70</sup> and Article VII of the Rome Statute of the International Criminal Court on crimes against humanity has defined what is meant

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<sup>65</sup> Article 272 of the Code of Criminal Procedure No. 3 of 2001.

<sup>66</sup> Article 277 of the Code of Criminal Procedure No. 3 of 2001.

<sup>67</sup> Criminal Appeal No. (229/2020) issued by the Palestinian Court of Cassation on January 19, 2021.

<sup>68</sup> Researcher Faten Lulu, Monitoring Criminal Case No. 2552/2020, North Gaza Court of First Instance.

<sup>69</sup> It states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Published on the official website of the United Nations, at the link: <https://www.ohchr.org/ar/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>70</sup> It defines it as: "Any act that results in severe pain or suffering, whether physical or mental, intentionally inflicted on a person with the intention of obtaining from that person, or from a third person, information or a confession, or punishing him for an act committed or suspected of (e) committed, intimidated or coerced by him or any third person, or when such pain or suffering is inflicted on any reason based on discrimination of any kind, or instigated, approved or tolerated by a public official or other person acting in an official capacity.

by torture in its second paragraph, item e,<sup>71</sup> and torture is considered a war crime<sup>72</sup> per the law of the International Criminal Court.<sup>73</sup>

With regards to the Palestinian national legislation, some of these legislations included procedural provisions or general rights relating to torture. However, the law does not criminalize torture as an offence independent of other acts affecting bodily integrity. The basic penal laws in force in the territory of the Palestinian National Authority, such as the Penal Code of 60 in force in the northern governorates (West Bank),<sup>74</sup> and the Penal Code of 36 in force in the southern governorates (Gaza Strip),<sup>75</sup> refer to the term "torture" to denote a crime called "torture in interrogation", which is committed by a public officials against persons detained by them. However, the law does not speak of this crime as a crime independent of other acts affecting bodily integrity "such as wounding, acts of recklessness, negligence, acts of abuse, or violence". Nor did it discuss the perpetrators who commit physical torture. Rather, the texts that used the term "torture" were limited to using it as an illegal measure, as the procedures that may be issued as a result of illegal procedures, without establishing a legal basis criminalizing the act of "torture", as a crime independent of other crimes, which may affect the human body.

The Basic Law stipulates that no one may be subjected to any coercion or torture, as well as the invalidity of any statement or confession made under the influence of acts of coercion or torture.<sup>76</sup> The Correction and Rehabilitation Act also prohibits the administration of detention centers from committing any acts of torture or using acts of force against inmates.<sup>77</sup> The Code of Criminal Procedure also requires confessions to be made voluntarily, without physical or moral pressure or coercion, but nevertheless does not use the term "torture".<sup>78</sup>

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<sup>71</sup> It states that torture means "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions

<sup>72</sup> Adopted by the General Assembly and opened for signature, ratification and accession in resolution 39/46 of 10 December, 1984 Date of entry into force: 26 June 1987, and the Preparatory Committee had completed its work in April 1998, and the draft establishment of the International Criminal Court was approved in preparation for discussion at the diplomatic conference in Rome to be held from the fifteenth of June until the seventeenth of July 1998, by a majority of one hundred and twenty countries, seven countries against and twenty-one abstention. The Rome Statute provided for its entry into force on the first day of the month following the passage of sixty days from the deposit of the instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations, which was actually done on the first of July 2002. See: Dr. Abdel Qader Saber Jarada, *International Criminal Justice, Bibliotheca Alexandrina*, 2020, 243.

<sup>73</sup> Article (8/2/A/2) of the Statute of the International Criminal Court.

<sup>74</sup> Article 208 of the Penal Code No. 16 of 1960:

Extraction confession and information 1. Anyone who commits any kind of violence and severity not permitted by law with the intention of obtaining a confession to a crime or information thereof shall be punished by imprisonment from three months to three years. If such acts of violence and distress result in illness or injury, the penalty shall be from six months to three years, unless such acts require a more severe penalty.

<sup>75</sup> The Penal Code in the Southern governorates defined torture that: "Subjugate or order the subjection of any person to force or violence, in order to force the person subject to torture or any person who cares about them to confess a crime or any related information to that crime. Or threatening a person, or giving orders to threaten this person/s to cause harm to them or their property or any person/person's property that they care for, in order to force a confession to a crime or any information relating to an offence. Article 108 of the Palestinian Penal Code No. 74 of 1936: "Any public servant who exposes another person to the use of force or violence with him or orders the use of force and violence in order to extract from him or from any member of his family a confession to a crime or information relating to a crime, shall be deemed to have committed a misdemeanor."

<sup>76</sup> See: Article (13) of the Basic Law.

<sup>77</sup>Article (37), paragraph (2), Law No. (6) of 1998 on correction and rehabilitation centers "prisons": "It is forbidden to torture inmates or use force against them."

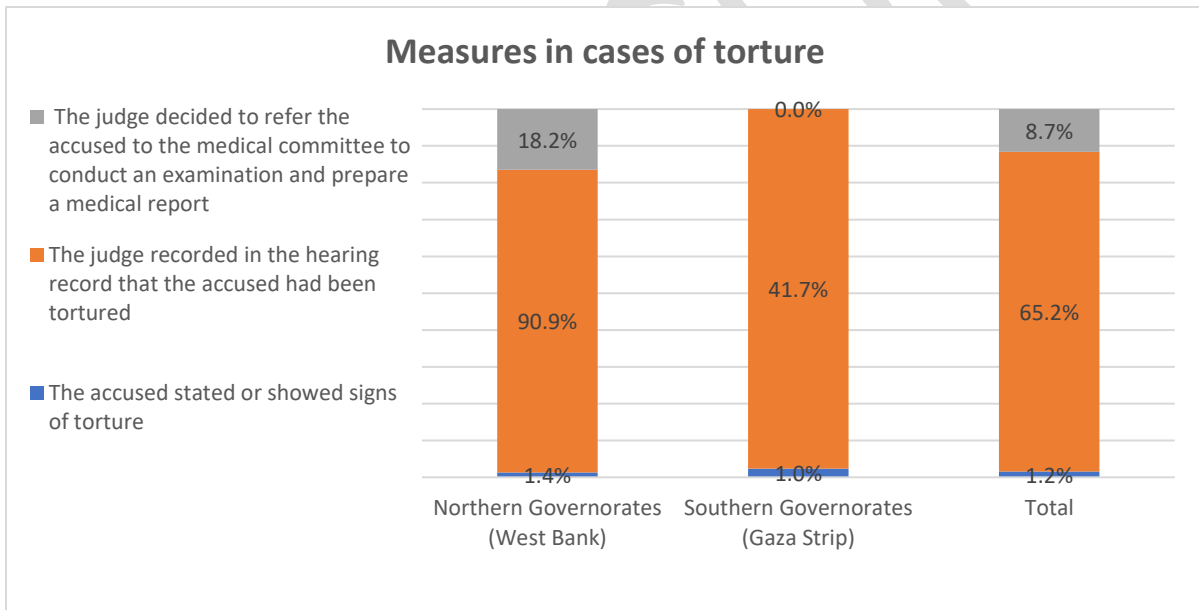
<sup>78</sup> See: Article (109) bis (b) of the Palestinian Penal Code No. (74) of 1936.

The Palestinian Code of Criminal Procedure also stipulates that: "No one may be arrested or imprisoned without an order by the legally competent authority, and they must be treated in a manner that preserves their dignity, and they may not be physically or mentally harmed."<sup>79</sup>

Based on the provisions of the applicable Palestinian legislations, and based on the provisions of international conventions and standards against torture, and because of the gravity of any allegation of torture, the courts must treat any admission of torture with the utmost attention; ensuring an appropriate investigation is conducted and that perpetrators are held accountable for their actions.

### Allegations of torture during interrogation

Istiqlal team expressed that in a number of cases before Palestinian courts, the defendants alleged that they were subjected to some form of torture (**23 cases: 11 in the West Bank and 12 in Gaza Strip**) as shown in Table 12, these allegations were repeated in the First Instance Court of the northern governorates (West Bank) (1.4% of all cases monitored) compared to the Gaza courts (1% of the total number of sessions monitored).



First Instance courts in the northern governorates (the West Bank) were more reactive to allegations that defendants were tortured while processing detention requests but were inadequate. Despite these allegations were recorded in the courts (90.9% of cases) in the hearing and, the court ordered in only that the accused be referred to the medical board for examination by a forensic doctor in 18.2% of cases, in no case where there was alleged torture did the judges decide to open an investigation into the crime of torture.

On the other hand, the First Instance Court in the southern governorates (Gaza Strip) confirmed the allegation of torture in 41.7% of the cases before the First Instance Court in the southern governorates (Gaza Strip), but the courts did not decide in any of the 23 cases that were monitored to be transferred to forensic medicine or open an investigation into the crime of torture.

<sup>79</sup> Article (29) of the Palestinian Code of Criminal Procedure No. (3) Of 2001, as amended in 2014.

The failure of the competent courts in proving the facts of torture would harm the course of justice, and result in impunity for people in the event that the incident of torture is proved, this matter was evident in Criminal Case No. 119/2019, in which the trial proceedings began on 14/5/2018 and the final decision was issued on 5/10/2022, meaning that the time period for the trial reached (1,605 days). In this case the Public Prosecution charged the defendants with incitement to premeditated murder by association and after reading out the charge the defendants alleged that they had been tortured.<sup>80</sup> The trial session continued and court listened to the Public Prosecution and the defense evidences, where all the defense evidence came about the physical and mental torture to which the defendants were subjected to during their interrogation, by request of the court and with regard to the investigative file, there was none for the court to include in the case file, the defense attorneys objected duly.

The court also found that the defendants had been transferred between more than one detention facility, whether the Beitunia Correction and Rehabilitation Center, the Junaid Center, the Ramallah Investigation Center, and the Security Committee in Nablus, and that the multiplicity of these places and the transfer of the defendants from one place of detention to another, the transfer of the defendants was accompanied with abuse by the judicial police, as proved to the court from the testimony of the two defense witnesses before the court and by report of Al-Haq Foundation. In excluding confession, no evidence remains linked to the accused.

On October 5, 2022, the court issued its decision regarding the case, declaring the defendant's innocent of the charges of incitement to premeditated murder and murder by association due to insufficient evidence. Pursuant to Article 75 of the Code of Criminal Procedure No. 3 of 2011 and its amendments, the court also ordered the return of the seized items to their rightful owners as documented in the seizure reports. The court's decision raises concerns about the harm caused to victims of torture. It is possible that the perpetrator of the aforementioned murder may escape punishment due to being unknown. It is also concerning that the court wasted time in the process, as it could have been resolved much sooner if the examination of the arrest procedures had proven the use of torture.

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<sup>80</sup> After reading of the indictment by the Public Prosecution stated the first defendant thus: "I am not guilty and that I was tortured during the investigation in the General Investigation Department," while the second defendant replied: "I am not guilty and I was tortured by the Security Committee in Al-Junaid prison and in the Ramallah Investigations Department," while the third defendant replied: "Not guilty and I was subjected to the most heinous types of torture in Al-Junaid prison and Ramallah Investigations Department"

## **Chapter Five**

### **Gender Sensitivity of Courts for Women in Conflict with the Law**

Criminality is a social stigma that leads to the perception that people who break the law are not rights holders; conflict with the law involves conflict with society. Statistics show that an increasing number of women appear as suspects, accused, and inmates; the proportion of women in correction and rehabilitation centers globally is increasing at a faster rate than the number of male inmates in correction and rehabilitation centers. While the number of male inmates in correction and rehabilitation centers in the world increased by about 20% between 2000 and 2015, the number of women and girls in inmates rose by 50% during the same period, but the circumstances in which women delinquency and commit crimes and felonies differ from those of men. The presence of women delinquents in prison is a direct or indirect result of multiple areas of discrimination and violence at the hands of their husbands, partners, family members and society. Crimes committed by women are closely linked to conditions of poverty and are often a means of survival and support for their families and children, and the charges against women tend to be related to simple, non-violent crimes, and do not pose a danger to the public.

Whether a woman is a suspect, accused or convicted, she has access to justice from the beginning to the end of the criminal justice chain, which in itself presents a wide-ranging challenge within the criminal justice system that begins through initial contact with law enforcement officers, investigation by the police, to charges, trial, sentencing and a range of post-sentencing scenarios, which in the most holistic approach including post-trial rehabilitation, recidivism prevention and tackling root causes of crime to prevent crime.

However, when dealing with women in conflict with the law there is limited traction compared to the field of violence against women, due to the limited awareness of the rights of these women among governmental and non-governmental agencies, and the limited data on the crimes committed, which leads to women in conflict with the law facing unique challenges throughout the justice chain that must be taken into account; be it discriminatory laws, policies and practices that are not sensitive to the needs of women who break the law, and the exclusion of non-custodial alternatives or access to legal aid.

UN Women (2018) has identified the challenges faced by women in conflict with the law before trial as follows:

- Lack of access to legal advice or representation before trial.
- The need for comprehensive legal aid services to comprehensively meet needs (in criminal, civil and family matters).
- Unnecessarily prolonged periods of pretrial detention, exposing women to additional social and economic consequences, which also affect their families.
- Limited opportunities to consider bail due to lack of legal representation.
- Slow trials and prolonged detention.
- Judges do not rely sufficiently on social services reports to determine mitigating circumstances for female offenders.
- Judges are unaware of women's history and background.

Comprehensive international standards have been developed to support gender mainstreaming in the processes of criminal justice systems, including measures to address the gender needs of women as suspects, defendants, and inmates. These include:

- United Nations Economic and Social Council resolution 2002/13, on guidelines for crime prevention, recommends that crime prevention strategies give due consideration to the different needs of men and women.
- United Nations General Assembly resolution 67/187, on access to legal aid in criminal justice systems, which establishes the responsibility of the State to develop a national legal aid system that is available, effective, sustainable, and reliable, and recognizes the right to legal aid for persons in contact with the law at all stages of criminal justice proceedings.
- United Nations General Assembly resolution 45/110, on the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules). Although there is no specific reference to measures for women, they were later covered in the Bangkok Rules.
- United Nations General Assembly Resolution 70/175, on the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the most comprehensive guiding principle on the treatment of prisoners, was initially adopted in 1955 and updated by the General Assembly in 2015.
- United Nations Economic and Social Council resolution 2002/12, on basic principles for the use of restorative justice programs in criminal matters and flexible, adaptable, and integrated measures for criminal justice systems that takes into considerations the legal, social and cultural conditions.

The following instruments relate specifically to the needs and rights of women:

- Article 2(G) of UN General Assembly Resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), obliges states to "repeal all provisions of national sanctions that constitute discrimination against women."
- United Nations General Assembly resolution 65/228, Updated Model Strategies and Practical Measures to Eliminate Violence against Women in Crime Prevention and Criminal Justice, provides guidance on crime prevention in the context of violence against women and on criminal justice responses such violence.
- UN General Assembly Resolution 65/229, The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) apply to

convicted female prisoners, suspects awaiting trial in detention, women offenders under non-custodial and corrective measures, and women in preventive detention.

**Results of monitoring women's cases:**

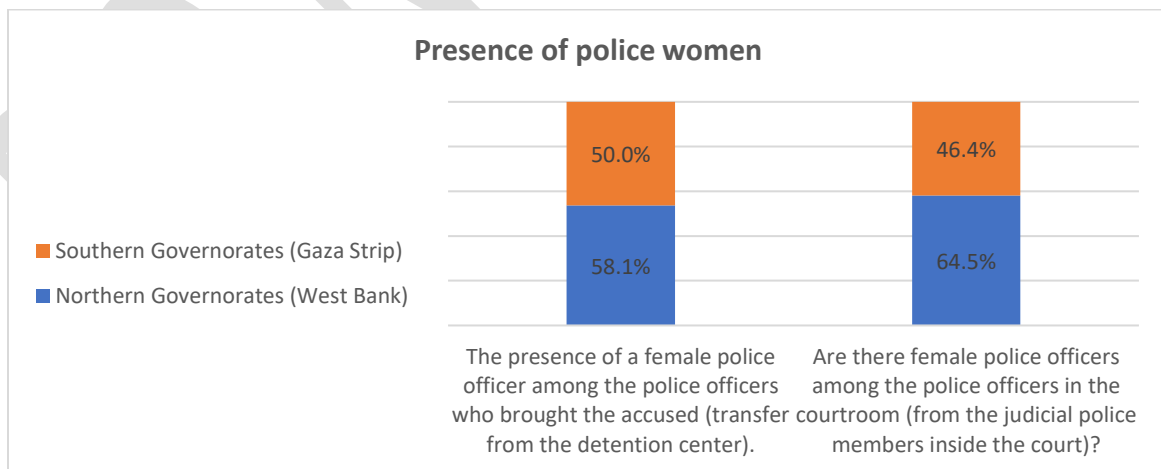
The percentage of females accused in criminal cases was 1% of the total cases in the northern governorates (West Bank) and 1.5% in the southern governorates (Gaza Strip).

➤ **Availability of female police officers in court**

Policing benefits society and it should represent the diversity of the community it serves. Both women and men make valuable contributions, and women should be represented in the rank structure and across all areas where the police operate.

As structures, policies, and practices have different impacts on men and women, promoting gender equality in policing requires the development and training of robust non-discrimination policies to ensure understanding. Gender considerations must be incorporated into research, planning, monitoring, and review, with a focus on recruiting more women to the police force and implementing gender mainstreaming to respond sensitively to security needs. This approach can serve as a bridge to other support sectors, such as legal aid, healthcare, and counseling, for both men and women. (DCAF, 2019)

According to the monitoring team, female police officers were not present among the police officers who brought female defendants to court in 41.9% of the cases in the northern governorates (West Bank) and in 50% of the cases in the southern governorates (Gaza Strip), and there were no female police officers among the police officers in the courtroom in 35.5% of the cases in the northern governorates (West Bank) and 53.6% of the cases in the southern governorates (Gaza Strip). This is a great set-back to law enforcement and access to justice. Various studies indicate that female police are skilled to address violence against women and sexual crimes, are less likely to use excessive force, and have an important role in improving police-community relations (Fritsvold, n.d.; Schuck & Rabe-Hemp, 2005).





➤ **Dealing with women in court**

Social and cultural gender norms that dictate women's behavior can influence criminal justice practitioners, who may enforce and perpetuate stereotypes when dealing with women who are in conflict with the law. This can result in blaming women and imposing harsher penalties on them for certain crimes or other acts perceived as violating women's standards of "proper conduct" compared to men.

**1. Police treatment**

According to monitoring reports, the police did not use harsh or violent tactics when transporting female defendants and detainees to and from courtrooms in both the northern governorates (West Bank) and southern governorates (Gaza Strip). However, special protection was not provided inside the court in 32.3% of cases in the northern governorates (West Bank) and 35.7% of cases in the southern governorates (Gaza Strip).

During the court session of Criminal Case No. 345/2021 at the Gaza Criminal Court of First Instance on 17/1/2022, the "Istiqlal" team noted that the defendant claimed that she was “being bullied by policewomen and detainees in the center. The judge ordered the Public Prosecution to investigate and prevent any abuse inside the detention center”.<sup>81</sup>

**Table 2: Police Dealing with Accused Women**

		Area			
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)	
		No.	%	No.	%
The police deal harshly and violently with female accused or detainees, during <b>transporting them from or to courtroom</b>	Yes	0	0.0%	0	0.0%
	No	31	100.0%	28	100.0%
Did the police provide special protection within the court in cases involving serious crimes?	Yes	21	67.7%	18	64.3%
	No	10	32.3%	10	35.7%

**2. How prosecution and Defense Attorney dealt with Women in Conflict with Law**

The monitoring team reported that there were no violations while the Prosecution and Defense attorney examined accused, the team found no attempts to confuse or question the accused's testimony by the prosecutor or defense lawyer in 96.8% of cases in the northern governorates (West Bank) and 100% of cases in the southern governorates (Gaza Strip).

**Table (3): Dealing with female defendants by the prosecutor or defense lawyer**

		Area			
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)	
		Number	%	Number	%

<sup>81</sup> Istiqlal has the report supported by the session’s minutes.

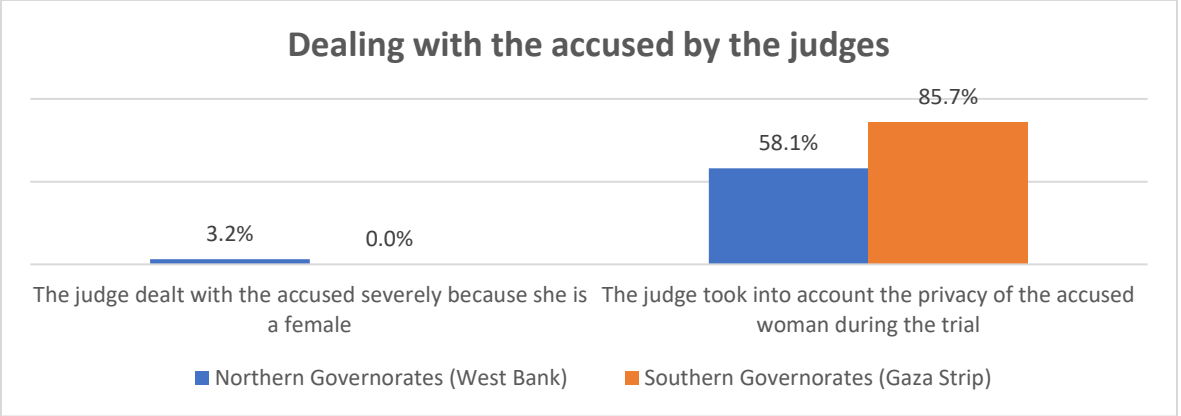
Have you noticed violations in the discussion of the accused by the prosecutor or defense lawyer with the <b>intention of</b> confusing her and questioning her testimony?	Yes	1	3.2%	0	0.0%
	No	30	96.8%	28	100.0%

### 3. Judges treatment of women in courts.

Defendants are given the opportunity to present their case to judges for the first time at trial, so it is important that due process is not compromised. In order to ensure that due process is not compromised, defendants are given the opportunity to present their case to judges for the first time at trial. The principle of "equality of the parties" guarantees that the accused has the ability to present evidence on an equal footing with that of the prosecuting party. If defendants perceive the judge to be harsh in their treatment and not allowing them to speak except to answer questions, they may not be able to present their account of events. This would be incompatible with the administration of justice, as fair trials are required. According to Article 11 of the Universal Declaration of Human Rights and Article 14.2 of the ICCPR, everyone charged with a crime has the right to "be presumed innocent until proven guilty." This means that defendants should be considered innocent until proven guilty and should not be treated as guilty before the trial has taken place. This principle is essential for protecting the rights of the accused and ensuring that justice is served in a fair and impartial manner.

On the other hand, it is incumbent upon judges to promote the fundamental values of judicial conduct, namely, independence, impartiality, eligibility, decency, equality, competence, and diligence. It is also their responsibility to improve the capacity of the criminal justice system to respond gender-sensitively, respect, protect and uphold human rights and gender equality principles, to make decisions on alternative punitive measures, to eliminate any discrimination against women in the penalties provided for certain crimes, to conduct the trial privately and to ensure that during trials, the testimony of women and girls is given equal weight to that of men. (CEDAW GR 33, paras. 37 (b) and 51 (m) and CEDAW GR 30, para. 81 (h)).

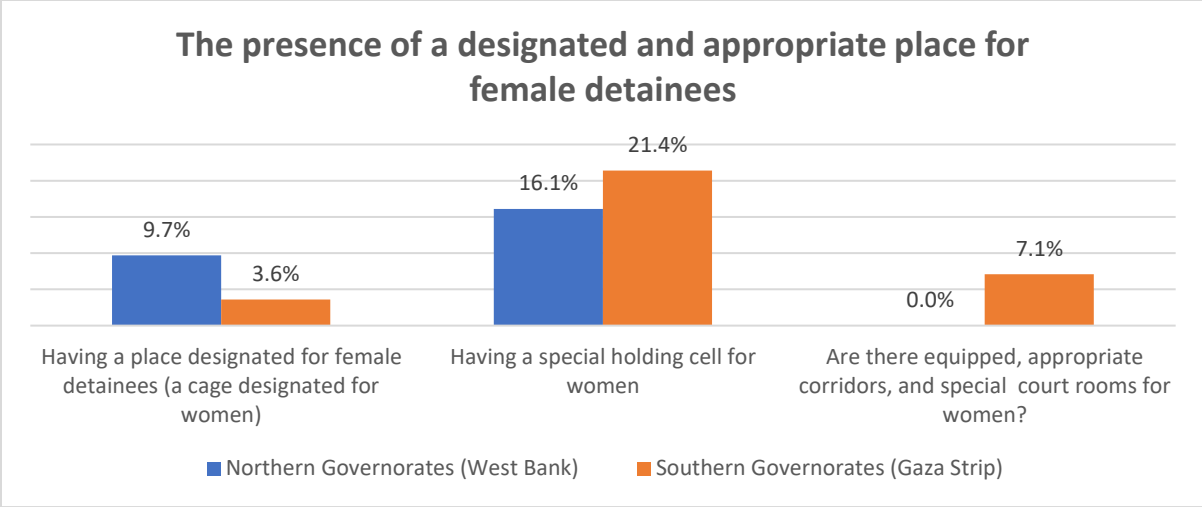
The monitoring team observed that in both the northern governorates (West Bank) and the southern governorates (Gaza Strip), the accused was not treated with bias based on their gender. Additionally, the majority (96.8%) of judges who did not deal severely with the accused were located in the northern governorates, while the percentage was 100% in the southern governorates. However, according to the reports, there were instances in which the privacy of the accused woman was not considered during the trial. This occurred in 41.9% of cases in the northern governorates and 14.3% of cases in the southern governorates. It is important for judges to prioritize the privacy of the accused during trials in order to ensure that the proceedings are fair and impartial. This requires sensitivity and awareness on the part of judges, as well as appropriate procedures and protocols to safeguard the privacy of the accused.



**4. Infrastructure development from a gender perspective: Availability of equipped, appropriate, and safe detention facilities, holding cells and court room.**

Criminal justice reforms are often designed and implemented from a male perspective, resulting in an imbalance that can negatively impact women. To address this issue, it is essential to integrate a gender perspective into current and future infrastructure development processes. This includes creating private meeting spaces for family members and lawyers, providing breastfeeding facilities, and offering training and educational opportunities to support women's rehabilitation and reintegration upon release.

In this regard, the availability of women's facilities in the courts was monitored; the monitoring team reported that there were no designated spaces for female detainees in 90.3% of cases in the northern governorates (West Bank) and 96.4% of cases in the southern governorates (Gaza Strip), and the absence of special detaining centre for women in 83.9% in the northern governorates (West Bank) and 78.6% in the southern governorates (Gaza Strip). The same applies to places and the presence of safe corridors and special courtrooms for women, children and persons with disabilities and the elderly in the northern governorates (West Bank), where the monitoring team reported that 92.9% of the cases in the southern governorates (Gaza Strip) these facilities were not available.



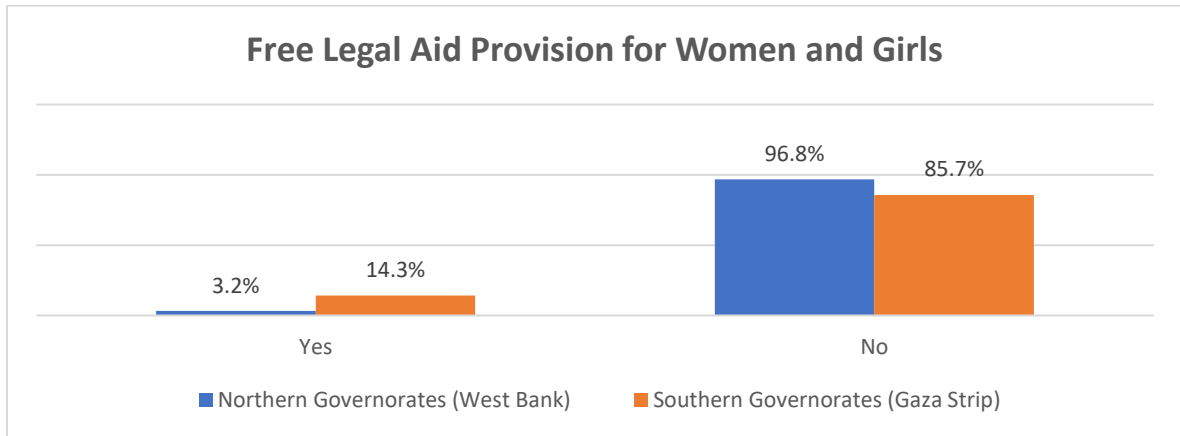
**5. Legal Aid**

The failure to provide adequate legal aid to illiterate women can expose them to the risk of coercion or ignorance when signing documents with serious legal consequences. The lack of legal representation can also lead to delays across the justice system, denial of bail, prolonged pre-trial detention, and inadequate sentencing. In response to these issues, the United Nations established the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in 2012, recognizing legal assistance as a positive duty for states to provide in criminal justice systems. United Nations General Assembly resolution 67/187 also called on states to provide legal assistance to all persons who are detained, arrested, imprisoned, suspected, or accused of a crime, and to ensure the right to legal assistance in their national systems at the highest level. CEDAW's general recommendations emphasize the need to institutionalize accessible, sustainable, and responsive legal aid and public defense systems, ensuring the timely, sustained, and effective delivery of these services at all stages of judicial or quasi-judicial procedures, including alternative dispute resolution and restorative justice mechanisms and processes. Additionally, it is essential to ensure unhindered access to legal aid and public defenders, including all relevant documents and other information, such as witness statements (CEDAW GR 33, para. 37(a)). Women's rights, in conflict with law, include access to legal services such as legal advice, legal aid, and representation in court.

In this context, States must consider the special needs of women when designing legal aid schemes at the national level, such as the effective integration of a gender perspective into legal policies, laws, procedures, programs, and practices that make it possible to represent women offenders with female lawyers and to take affirmative action in favor of women in legal training and education. Remedies must also be available if the right to legal aid is undermined, delayed, or inadequately informed. Legal aid providers shall be equipped with the necessary education, training, skills, and experience appropriate to the nature of their work, including the seriousness of the crimes being dealt with and the rights and needs of women.

After a review of the monitoring team's reports, it is evident that women and girls who are unable to defend themselves in criminal cases did not receive free legal aid in 96.8% of cases in the northern governorates (West Bank) and in 85.7% of cases in the southern governorates (Gaza Strip). It is worth noting that the Bar Association represented defendants in around 300 criminal

proceedings as part of the legal aid program for those who cannot afford lawyers (both sexes were targeted).<sup>82</sup>



## 6. Dealing with female witnesses

The right to a fair trial encompasses the accused's ability to present witnesses to testify in their defense and to challenge the accuracy of the testimony of prosecution witnesses on equal terms. The Universal Declaration of Human Rights summarizes this issue by stating the right to have the case heard "fairly and publicly." Article 14.3(e) of the International Covenant on Civil and Political Rights (ICCPR) specifies the right "to be examined, in person or by others, witnesses against him, and to obtain the attendance and examination of defense witnesses under the same conditions as witnesses against him." Article 16 (e) of the Arab Charter on Human Rights repeats the same text of the ICCPR verbatim.

Witness testimony plays an important role in proving the criminal case, and may be the only evidence to prove, and depends on the innocence or conviction of the accused. Therefore, witnesses must be protected by the law so that they are not threatened or attacked, otherwise witnesses will be reluctant to tell the truth and testify.

Simply providing legal protection for witnesses is insufficient to ensure the truth is revealed in court. The power dynamics in court proceedings are often unequal, with certain participants having greater control over the dialogue, prescribed roles dictating how participants can speak and where they can speak from, and language use playing a significant role in the proceedings. This means that professionals, such as judges, prosecutors, and lawyers, are the ones asking questions and controlling the information flow, while non-professionals, including defendants and witnesses, are restricted in their ability to contribute information at will. Moreover, the impact of the proceedings on non-professionals can vary greatly based on their personal experiences and circumstances, leaving them more vulnerable compared to professionals who only engage as part of their professional duties.

The monitoring team reported that there was no waiting room for female witnesses in about 94% of the courts where monitoring was carried out, and no special protection was provided to the

<sup>82</sup> Interview with an employee of the Palestinian Bar Association

witness in cases related to serious crimes, in the majority of cases. In 75% of cases, the female witness was called in public.

In the northern governorates (West Bank) and the southern governorates (Gaza Strip), there was a 50% division among judges regarding whether to consider the privacy of women during testimony. Non-observance of this practice was more prevalent in the northern governorates than in the southern governorates, where it was observed in 87.5% of cases. The monitoring team found that in 75% of cases, the court did not issue a subpoena for female witnesses who failed to appear to testify. In addition, in 75% of cases, older female witnesses were not allowed to testify while sitting, while in the southern governorates it was 0%.

The monitoring team observed that in 94% of cases in both the northern governorates (West Bank) and southern governorates (Gaza Strip), judges allotted women witnesses the same amount of time as male witnesses without prior consideration of gender. In 69% of cases, witnesses were reminded of the importance of their testimony and were asked to sign a written record. The monitoring team did not observe any violations in the questioning of witnesses or victims by the prosecutor or defense lawyer aimed at confusing or undermining their testimony in 94% of cases.

## Chapter VI Findings and recommendations

### ❖ Findings

1. The monitoring team observed that in the First Instance Courts of the northern governorates (West Bank), 798 criminal cases were proceeded and 2265 were postponed. Meanwhile, in the courts of the southern governorates (Gaza Strip), 1869 criminal cases progressed and 678 sessions were postponed, as noted by the Istiqlal team in their monitoring of criminal cases.
2. An analysis of 798 criminal case sessions in the First Instance Court of the northern governorates (West Bank) revealed that the highest stage of trial was the prosecution evidence, accounting for 39.3% of the monitored sessions, followed by the defense evidence at 22.9% and verdicts at 14.9% of the total sessions monitored. In the First Instance Court of the southern governorates (Gaza Strip), the analysis of 1989 criminal cases showed that the highest stage of trial was verdicts, at 55.3%, with reading of charges at 12.4%. This indicates a faster pace of decision-making in the criminal courts of the southern governorates (Gaza Strip).
3. The monitoring team observed the adherence to the right to liberty principle during the detention of defendants in both the northern governorates (West Bank) and southern governorates (Gaza Strip) courts. They noted 36 detention extension sessions, 19 in the First Instance Court of the northern governorates (West Bank) and 17 in the First Instance Court of the southern governorates (Gaza Strip).
4. The First Instance Court in the southern governorates (Gaza Strip) approved 35.3% of detention extension requests until the completion of trial proceedings, and 43.1% for a period of 45 days. The court rejected 3 arrest requests, accounting for 17.6%. Upon analysing the reasons for detention extension, the monitoring team found that the completion of investigation procedures and the seriousness of the charges were the primary justifications. In the northern governorates (West Bank), 52.6% of cases were due to the completion of investigation procedures, while 47.1% of cases in the First Instance Court of the southern governorates (Gaza Strip) were for the same reason.
5. The monitoring team observed in all courts in the northern governorates (West Bank) and southern governorates (Gaza Strip) that requests for detention extension sent by the Public Prosecution to the court did not include the investigation file. This prevented the court from examining and evaluating the justifications for detention extension, leading to decisions that may not be in line with the law. The Public Prosecution sent the requests individually, without any accompanying attachments.
6. The absence of the accused from trial sessions was a major factor in causing trial postponements. In the courts of the northern governorates (West Bank), the absence of the accused accounted for 39.4% of postponement reasons, an increase of 13.3% from 2020, when the absence was 26.1%. This increase is indicative of a lack of deterrence, which is demonstrated by the absence of defendants who have been arrested or are the subject of an arrest warrant. In the southern governorates (Gaza Strip), the absence of the accused from

trial sessions accounted for 36.4% of the absence rate, an increase of 13.3 points compared to 2020, when absence was 23.1% of the same reasons for absence.

7. The absence of the prosecution witnesses from the postponed sessions in the First Instance Courts in the northern governorates (West Bank) constituted 33.1% of the total sessions monitored in 2022, with an increase of 6.1 percentage compared to 2020, where the absence of the prosecution witnesses was 27%. The absence of defence witnesses in the courts of the northern governorates (West Bank) in 2022 was 4.5% of the reasons for adjournment in 101 sessions monitored without any fundamental change from 2020, where the absence rate of defence witnesses was 5.6%.
8. The First Instance Court in the southern governorates (Gaza Strip) saw significant improvement in the attendance of prosecution witnesses. In 2022, during the 367 monitored sessions, the absence of prosecution witnesses decreased to 12.7% from 19.5% in 2020, representing a 6.8 percentage point improvement. However, there was a slight decrease in the attendance of defence witnesses, as the absence of defence witnesses postponed hearings by 6.8% in 2022, up from 4.2% in 2020.
9. During the process of monitoring trial sessions, 367 sessions were postponed due to the absence of a lawyer, which constituted 16.2% of the reasons for postponement in the courts of the northern governorates (West Bank), an increase of 2% from 2020, where the percentage was 14.2%. In addition, 1.1% is represented by the delay in the assignment of a lawyer by the Bar Association, for reasons that vary from one lawyer to another.
10. During the year 2022 in the southern governorates (Gaza Strip), there was a notable improvement in the presence of lawyers at court hearings. The absence of a lawyer was reported as the reason for postponing 7.5% of the hearings, compared to 13.4% in 2020, a decrease of 5.9 percentage. However, a delay in hiring a lawyer was still noted, with 1.9% of the sessions being postponed due to this reason. Additionally, 33.3% of the monitored sessions were postponed because the court gave the defendant time to appoint a lawyer, which showed a significant improvement compared to the year 2020.
11. The monitoring team found that the percentage of adjournments for less than 30 days between sessions decreased to 32.9% in 2022, compared to 37.7% in 2020. This means that most adjournments in the First Instance Courts of the northern governorates (West Bank) are for more than a month, at 67.1%. In rare cases, the adjournment was for more than three months, at 0.7%. The First Instance Courts in the southern governorates (Gaza Strip) showed significant progress in reducing the periods of adjournment. In 2022, 55.3% of the adjourned cases were postponed for less than 30 days, compared to 23.7% in 2020.
12. The monitoring team noted that some First Instance Courts in the southern governorates (Gaza Strip) showed bias towards the Public Prosecution. The court panel sometimes rejected the defence attorney's request for bail before the Public Prosecution finished its pleading. The court panel also rejected the request submitted by the defence attorney without fully considering the reasons presented, even after the defence attorney finished presenting their case. In some cases, the court rejected the bail application before the Public Prosecution had finished its pleading, without thoroughly examining the reasons and justifications for the request and without fully hearing the prosecution's pleading.
13. The Istiqlal team noted that the court panel convened to hear criminal cases without the presence of a lawyer in some criminal cases, which constitutes a violation of the rules of the trial and justice and a clear violation of the provisions of the Palestinian Code of Criminal Procedure. The "Istiqlal" team noted through the supervision of the North Gaza Court of First Instance that when assigning a lawyer to the accused, the defendant is



- obligated after being sentenced to pay an amount of (50) shekels, as the lawyer was assigned during the session without his knowledge or access to the criminal case papers, which led to the weakening of the defense's pleading before the Public Prosecution.
14. The attendance rate of lawyers in the First Instance Court was found to be high, with 95.6% of lawyers in the northern governorates (West Bank) attending the trial sessions on time and 98.7% in the southern governorates (Gaza Strip) showing commitment. In the event of defense lawyers not showing up, the First Instance Court has established measures to address the situation. This includes re-informing the defense lawyer of the next session's date, with 86.8% of cases recorded in the First Instance Court in the northern governorates (West Bank) and 35.4% in the southern governorates (Gaza Strip). In the northern governorates (West Bank), the court also addressed the Bar Association in 3.9% of cases where defense lawyers were absent. However, no such action was taken in the First Instance Court in the southern governorates (Gaza Strip).
  15. The supervisory team noted that the First Instance Court in the northern governorates (West Bank) were more reactive to the allegations of torture of the defendants, as such statements were recorded in the minutes in more than (90.9% of cases) compared to 41.7% of cases before the First Instance Court in the southern governorates (Gaza Strip). The First Instance Court in the northern governorates (West Bank) ordered referral to the doctor in 18.2% of cases, the accused was not referred to the medical committee in the southern governorates (Gaza Strip), and the court or the prosecution did not transfer any file suspected of torture for investigation.
  16. It was noted that female police officers, according to the monitoring team, were not present among the police officers who brought the accused to court in 41.9% of the cases in the northern governorates (West Bank) and in 50% of the cases in the southern governorates (Gaza Strip), and there were no female police officers among the police officers in the courtroom in 35.5% of the cases in the northern governorates (West Bank) and 53.6% of the cases in the southern governorates (Gaza Strip). Various studies indicate that female police are skilled to address violence against women and sexual crimes, are less likely to use excessive force, and have an important role in improving relations between police and society.
  17. The monitoring reports showed that the police did not deal harshly and violently with the female defendants or detainees while bringing them to court or removing them from the courtrooms, by 100% in both the northern governorates (West Bank) and the southern governorates (Gaza Strip). However, the police did not provide special protection inside the court in 32.3% of cases in the northern governorates (West Bank), and in 35.7% of cases in the Southern governorates (Gaza Strip).
  18. The monitoring team found that there was no designated area for female detainees in most cases in both the northern governorates (West Bank) (90.3%) and the southern governorates (Gaza Strip) (96.4%). The lack of proper facilities for women was also reported, with a high percentage in both regions lacking special holding cells (83.9% in the northern governorates (West Bank) and 78.6% in the southern governorates (Gaza Strip)). Adequate provisions for women, children, persons with disabilities and the elderly were also found to be lacking, with 92.9% of cases in the southern governorates (Gaza Strip) lacking such facilities, while the situation was similarly dire in the northern governorates (West Bank).
  19. The monitoring team found that free legal aid was not provided to women and girls who are unable to afford trial by 96.8% in the northern governorates (West Bank), and by 85.7%

- in the southern governorates (Gaza Strip), and dropping of the personal right or waiving the complaint from the victim or by the guardian did not affect the punishment and the rights of the victims, especially if the victim was a minor, in 87.1% of the cases in the northern governorates (West Bank), and in 89.3% in Southern governorates (Gaza Strip).
20. The Istiqlal monitoring team found that there is no legal system that protects witnesses in serious criminal cases, and this reflects negatively on the failure of witnesses to appear to testify in defense before the court.

❖ **Second: Recommendations.**

**First: Recommendations to the High Judicial Council:**

1. Establishing a specialized national team to develop justice in its four outputs: judicial, administrative, financial and legal aspects, from which specialized committees emerge: the first for the development of the judiciary, the second for the development of the Public Prosecution, the third for the development of law faculties, the fourth for the development of the legal profession and the fifth for the development of the judicial police so that it sets a development plan whose time span does not exceed five years within the available and expected capabilities.
2. Appointing (200) magistrate judges in the West Bank and Gaza (120 West Bank and 80 in the Gaza Strip) over a period of five years, who have the judicial qualifications to achieve outstanding results to reduce the backlog of cases.
3. Attention should mainly be paid to the proper selection of judges, especially from the scientific and ethical points of view, strength of character and intellectual maturity.
4. Faithful pursuit of the best capabilities to set newly appointed judges up for training in judicial institutes, and subject them to specialized training in the legal and penal portfolios to end up with specialized judges to fill the shortage of criminal judges (in the courts of first instance).
5. Activating judicial inspection, monitoring the work of judges, and evaluating at all stages of work, while ensuring the best living conditions to ensure work is done impartially and fairly, and assigning judges to review all cases in which litigation has lasted for three years.
6. Restructuring the Judicial Inspection Department and activating its work, with the need to vacate judges to work only in the department.
7. Ensure judicial departments and bodies do not have staff change with the need not to make any amendment during the judicial year, except in emergency cases, and a reserve member may be added to each department to replace those who are rotated into other units.
8. Not to organize training courses for judges except during the period of judicial leave and regular vacations or after the daily working hours, in order to prevent conflict with judicial work.
9. Preparing an additional emergency shift program for a period of three years aimed at reducing the backlog of criminal cases in the courts, by extending the working period until five in the evening, working two shifts morning and evening, as well as working on Saturdays, provided that judges are granted an additional bonus for added work that contributes to increasing their salaries.
10. Digitizing the adjournment system to set the date of adjournment by the hour to ensure that lawyers and citizens do not wait long hours for their turn to hear their cases.

11. Train court employees to ensure their practice is to the fullest potential and organizing training courses to learn about the latest administrative systems in the world.
12. Taking into consideration the factors caused by the Occupation before issuing judicial court formation, considering the place of residence of judges and their family needs, and to announce the new formations at the beginning of the judicial recess, limiting it to the necessary needs for change to ensure sustainability in the workplaces. This process should ensure that future appointments consider the needs of the judiciary in courts across the different areas.
13. Developing and activating the media within the judicial system so that it is characterized by speed and credibility, especially in cases of public opinion, and reexamining the policy of non-disclosure in front of the media and appointing official spokespersons for the judiciary in the northern and southern governorates.
14. Developing the notification system by approving an e-notification system and establishing an independent department to manage, supervise, monitor, evaluate achievements, hold accountable and reward distinguished notifiers.
15. Draft a comprehensive survey of the experiences, specializations and interests of magistrate judges and conducting a comprehensive screening according to the basis of criminal and civil specialization, then conducting an internal specialization to know the interests and experiences of judges within the same specialization so as to ensure judicial diversity that enables the Judicial Council to provide the necessary needs of specialized judges for felonies, juveniles, insurance, settlement and other specialties necessary for the emergence and development of the judiciary.
16. The necessity of issuing the necessary instructions from the High Judicial Council in the West Bank and Gaza Strip to the heads of registrars in the criminal courts on the need to cooperate with observers and facilitate the task of researchers.

## **Second: The Council of Ministers:**

1. Support the budget of the judiciary with real tangible financial support so that it can provide the requirements for judicial work, in terms of headquarters, appointment of judges and other logistical needs, provide a budget for an additional program to overcome the backlog of issues.
2. Ensure judges transportation is appropriate to their job position or seek a system that facilitates the acquisition of cars.
3. Establishing a department in the Prime Minister's Office for Judges' Affairs to provide the financial needs of the High Judicial Council.
4. Ensure that modern technical development is put into place to advance judicial work by equipping courts with the latest information and communication technologies.
5. Establishment of the Bank of Legal and Judicial Information in cooperation with the Ministry of Justice and scientific research centers.
6. Endorse the e-notification system to gain time and improve performance, establishing an independent notification department, and appointing a supervisory body over the work of notifiers.
7. Providing free access for judges to communicate with Arab and international judicial data banks to expand judges' knowledge and enable them to benefit from the experiences of others.

8. The effective and official abolition of the security safety requirement and the security background check for judges when they are appointed to judicial positions.
9. The need to issue a special system for the protection of witnesses and their relatives, victims, whistleblowers, justice agents in serious criminal cases.
10. The need to issue a system that sets out the mechanisms for detaining women in places designated and works to meet their needs.
11. Spreading the legal culture among the Palestinian public, through holding workshops and training courses targeting universities and schools, in partnership with civil society organizations and the justice sector. Ensure a legal curriculum is taught as a subject in schools and universities.

### **Third: The Legislative Authority:**

1. Implementing the necessary legislative amendments to ensure challenges are bridged in tampering and extending the statute of limitations and deceitful litigation and absents from sessions.
2. Setting deterrent rules regarding the postponed cases requests and the timing for these cases.
3. Implementing a legislative amendment that clarifies the mandate of the High Judicial Council, the prosecution, and the Ministry of Justice, to ensure division and sharing of responsibilities without overlapping mandates.
4. Using the principle of competence and seniority for promotion in the judicial authority, instead of only using the principle of seniority.
5. The necessity of unifying criminal legislation in both WB and GZ by forming specialized committees that grant a specified period of time, not exceeding one year, to draft applicable laws.
6. Ensuring the electronic system and notifications is set per the basic law and issuing the necessary legislation to back up such a system.
7. Re-evaluating the salary scale of judges to reflect the cost of living and providing appropriate privileges for them.
8. Issuing the necessary legislation for the criminal reform process in the Palestinian courts, including ensuring remote trials in emergency cases, establishing an electronic reporting system, imposing hefty fines on justice parties who are absent from trial sessions.
9. Creating specialized judicial bodies for serious cases and setting rules that guarantee their effectiveness and speed of decision-making in cases and providing fair trial guarantees.

### **Fourth: Recommendations for Judges of First Instance in Southern Governorates (Gaza Strip):**

1. Imposing severe criminal penalties for those who commit dangerous crimes, and not relying solely on financial penalties to achieve a deterrent effect.
2. Limiting the imposition of financial fines and exploring alternative penalties in crimes that require such penalty.
3. Allowing enough time for the prosecution and lawyers to appeal.

4. Reviewing the justification for extending the detention of the accused before accepting or rejecting it.

**Fifth: Recommendations for Judges of First Instance in Northern Governorates (West Bank):**

1. The necessity of starting trial sessions early in the morning to enable setting a specific time and informing the parties of the scheduled time and imposing legal penalties on those who fail to attend at the specified time.
2. Improving the efficiency of the courts by improving work hours and increasing the time allocated for sessions.
3. Activating the legal provisions regarding the absence of the accused without lawful justification to improve the proceedings.
4. Imposing penal measures in case of repeated absence of one of the parties without lawful justification.
5. Activating judicial inspection of reform and rehabilitation centers and detention places to address the exposure of the accused to torture through the initiation of complaints and following up with relevant authorities.

**Sixth: Recommendations for the Public Prosecution.**

1. It is necessary for the Public Prosecution to attach a list of evidence when referring criminal files to court, and to include in the list the effective witnesses and ensure their attendance, and to refer only the necessary number of witnesses relating to the case in the event of more than one witness is needed so that the court can hear them.
2. It is necessary for the Public Prosecution to present sufficient evidence for the indictment, and to request the court to dispense with any non-productive witness in the claim, and to leave it to the court to make the discretionary determination to accept or reject the request to dispense with non-productive witnesses, and to refrain from adding witnesses without their statements in order to provide an opportunity to hear their statements in case they cannot make it to the court.
3. The Public Prosecution must bear the responsibility of bringing the prosecution's witnesses, especially the witnesses who are relevant to the case and to attach to the referral order only the witnesses who are ready to attend the court, and to exclude the witnesses who refuse to attend the court sessions, which requires the Public Prosecution to re-evaluate its witnesses assisted by law enforcement, and to put a "black" list with the names of the witnesses who repeatedly refused to attend the court sessions and hindered the course of justice, and to refrain from including them in the evidence processing list.
4. The Public Prosecution should deal seriously with torture allegations, and immediately refer anyone who claims to have been tortured to the doctor, and to prove that in the investigative file, and to refer the accused of torture to the court in a timely manner, and to prepare a comprehensive and professional report on the investigation of torture allegations.

**Seventh: recommendations to the Ministry of Interior, the Police, and the Security Services:**

1. It's necessary for security personnel who are required to testify in criminal cases to commit to appear in courts on the specified dates and to impose penalties on those who procrastinate or refuse to appear to testify.

2. The need to sign memorandums of understanding between the High Judicial Council and the security services to coordinate transporting the accused to appear before the courts and overcome security obstacles.

3. The need to e-link of the Civil Status Department with the Notifications Department in all Palestinian courts to provide it with the correct places of residence of the accused.

#### **Eighth: Recommendations to the Ministry of Justice:**

1. Work to prepare the courts, especially the Ramallah Court of First Instance, to consider all the needs of employees and citizens and to maintain the prestige of the judiciary.

2. Work to prepare courts and find safe corridors and rooms for women's court sessions that provide sufficient privacy.

3. Establish special detention places for women to meet the needs of women in the courts.

4. Provide a sufficient number of employees in the Notifications Department and providing transportation for bailiffs.

5. Feasibility study of contracting with private notification companies.

#### **Ninth: Recommendations to the Palestinian Bar Association:**

1. Signing a memorandum of understanding with the High Judicial Council to define a clear and explicit mechanism to inform lawyers of the date of the hearings legally and correctly.

2. Impose administrative penalties on lawyers who are absent from hearings without a proper excuse.

3. Conducting criminal legal courses targeting the public in cooperation with civil society institutions and the justice sector.

4. Strengthening cooperation between the Technical Office of the Bar Association and the Technical Office of the Supreme Court and publishing judgments issued by the Supreme Courts electronically.

5. Consider the availability of appropriate expertise in criminal cases in cases where lawyers are assigned to attend criminal trial sessions or legal aid.

#### **Tenth: Recommendations for Civil Society Institutions:**

1. Conducting awareness campaigns and spreading legal culture among the Palestinian public.

2. Strengthening monitoring of the work of the Judiciary in both the West Bank and Gaza Strip.

3. Issuing specialized monitoring reports on fair trial guarantees.

#### **Eleventh: Recommendations for Palestinian Media Institutions:**

1. Establishing a media center specialized in judicial affairs and providing information to journalists.

2. Strengthening monitoring over the sessions of the First Instance Criminal Court, especially in (cases of public opinion and the rest of the courts' work).

3. Contribute to the dissemination of legal culture by conducting awareness campaigns targeting the entire Palestinian public.

4. Shedding light on cases in which defendants are subjected to torture and following up complaints with the legally competent authorities.

5. Develop and institutionalize the Civil Coalition for Judicial Reform and Protection. Also, develop a comprehensive action plan for community monitoring for the coming years.

### **Twelfth: Recommendations for Palestinian Universities:**

1. Focusing the specialization of law faculties in Palestinian universities, so that some of them are specialized in criminal cases, others are specialized in regular law or family justice, so that law faculties contribute to providing the market with the needs necessary to establish a specialized judiciary and courts.
2. Establishing a specialized diploma in Palestinian universities, giving priority to the specialized criminal diploma to target practicing lawyers and provide them with theoretical and general experiences that qualify a specialized lawyer. In the coming years, it paves the way for providing the judiciary with the necessary needs to build specialized courts.
3. Signing memorandums of understanding with the Technical Office of the Supreme Court for the purpose of circulating the final judgments issued for review and publication and extrapolating general principles.
4. Conducting a range of activities and training courses aimed at raising the legal awareness of Palestinian university students.
5. Set up courses in universities that enhance the practical experience of students in the courts.

### **Thirteenth: Recommendations for Donors.**

1. Establishing a unified planning center for donors to the judiciary to conduct a comprehensive study of the infrastructure and its needs during the next ten years, and to develop a comprehensive ten-year plan for the development of the judiciary and its facilities and to determine in advance the contributions of each of the donor parties in the implementation of the plan during the next ten years.
2. This plan should give priority to developing regular and family justice, the highest percentage of its contribution should serve the development of the judiciary infrastructure, with a focus on the development of criminal justice in Palestine.
3. The plan should achieve equality and justice between the courts in the northern and southern governorates (West Bank and Gaza Strip) since the courts serve the rights of the Palestinian citizen first and are not there for political gain only.

### **Fourteenth: the private sector.**

1. There is a need for the private sector to give priority to the development of the infrastructure of court facilities in its action plans, as the stability of the judiciary, the effectiveness and independence of the courts and their guarantee of the principle of fair trials are important in achieving civil peace and development.
2. Applied studies and research related to judicial affairs shall be needed.

## Appendix

**Table No. (1) the types of crimes prosecuted**

Classification <sup>83</sup>	Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
	number <sup>84</sup>	%	number	%	number	%
Cybercrime	2	0.1%	2	0.1%	4	0.1%
Crimes against money <sup>85</sup>	1,016	33.2%	363	19.4%	1,379	28.0%
Crimes against public office	26	0.8%	24	1.3%	50	1.0%
Crimes against persons <sup>86</sup>	723	23.6%	311	16.6%	1,034	21.0%
State Security Crimes	125	4.1%	3	0.2%	128	2.6%
Economic crimes	131	4.3%	25	1.3%	156	3.2%
Traffic Crimes	1	0.0%	0	0.0%	1	0.0%
Trafficking/possession & drug use	445	14.5%	857	45.9%	1,302	26.4%
Rape and/or indecent assault	77	2.5%	15	0.8%	92	1.9%
Other crimes	1	0.0%	3	0.2%	4	0.1%
The charge is not mentioned <sup>87</sup>	516	16.8%	266	14.2%	782	15.9%
<b>Total</b>	<b>3,063</b>	<b>100.0%</b>	<b>1,869</b>	<b>100.0%</b>	<b>4,932</b>	<b>100.0%</b>

<sup>83</sup> Classification of the main charges against detainees 2022.

<sup>84</sup> Classification of the main charges against detainees 2022.

<sup>85</sup> Criminal case: these crimes constitute an assault or threaten rights and interests relating to financial value, dealt with in the Jordanian Penal Code No. 16 of 1960 in Chapter Eleven thereof, and the right or interest assaulted is of a financial nature, and crimes against property are committed either in the form of a legal assault on the right of property aimed at robbing money, as is the case in theft crimes (Articles 399-424 of the Penal Code), fraud (417) and credit abuse (422-424) or in the form of a physical attack that threatens the entity of the aggressed property, without the intention of the perpetrator to monopolize this property, as is the case in the crimes of demolition, vandalism and intentional damage to the movable property of others (Articles 433-445). Offences against funds also include fraudulent transactions (arts. 428-437), bankruptcy and fraud against creditors (arts. 438-442), offences of damage to State property and individuals (arts. 443-454) and offences relating to the water system (arts. 455-458).

<sup>86</sup> Criminal models contained in the Penal Code affect persons with their lives, health or safety, such as murders of all kinds, intended and unintentional.

<sup>87</sup> According to the monitoring team, the charge is not mentioned in a number of hearings, those that are adjourned, and it was difficult to challenge it by the Registry.



**Table No. (2) accused disaggregated by sex**

Area	Males	Females	Total
First Instance Courts of the Northern Governorates (West Bank)	3,032	31	3,063
First Instance Courts of the Southern Governorates (Gaza Strip)	1,841	28	1,869
<b>Total First Instance Courts in the Northern Governorates (West Bank) and Southern Governorates (Gaza Strip)</b>	<b>4,873</b>	<b>59</b>	<b>4,932</b>

Table No. (3) shows the judgments issued by the First Instance Court disaggregated by the governorates.

Area	The hearing issued a verdict					
	Yes		No		Total	
	no	%	no	%	no	%
Jenin	16	84.2%	3	15.8%	<b>19</b>	<b>100.0%</b>
Tulkarm	9	75.0%	3	25.0%	<b>12</b>	<b>100.0%</b>
Nablus	14	53.8%	12	46.2%	<b>26</b>	<b>100.0%</b>
Qalqilya	15	100.0%	0	0.0%	<b>15</b>	<b>100.0%</b>
Ramallah and Al-Bireh	18	85.7%	3	14.3%	<b>21</b>	<b>100.0%</b>
Jericho	3	50.0%	3	50.0%	<b>6</b>	<b>100.0%</b>
Bethlehem	4	80.0%	1	20.0%	<b>5</b>	<b>100.0%</b>
Hebron	12	80.0%	3	20.0%	<b>15</b>	<b>100.0%</b>
<b>Northern Governorates (West Bank)</b>	<b>91</b>	<b>76.5%</b>	<b>28</b>	<b>23.5%</b>	<b>119</b>	<b>100.0%</b>
North Gaza	153	89.0%	19	11.0%	<b>172</b>	<b>100.0%</b>
Gaza	283	96.3%	11	3.7%	<b>294</b>	<b>100.0%</b>
Deir Al – Balah	90	78.9%	24	21.1%	<b>114</b>	<b>100.0%</b>
Khan Younis	34	97.1%	1	2.9%	<b>35</b>	<b>100.0%</b>
Rafah	43	97.7%	1	2.3%	<b>44</b>	<b>100.0%</b>
<b>Southern Governorates (Gaza Strip)</b>	<b>603</b>	<b>91.5%</b>	<b>56</b>	<b>8.5%</b>	<b>659</b>	<b>100.0%</b>
<b>Total</b>	<b>694</b>	<b>89.2%</b>	<b>84</b>	<b>10.8%</b>	<b>778</b>	<b>100.0%</b>

**Table No. (4): the courts' commitment to the daily agenda between 2020 and 2022**

Area	year	
	2020	2022
Jenin Court of First Instance	10.5	87.5
Tulkarm Court of First Instance	94.3	100.0
Nablus Court of First Instance	33.3	69.2
Qalqilya Court of First Instance	10.5	50.0
Ramallah Court of First Instance	67.5	95.5
Jericho Court of First Instance	37.5	54.5
Bethlehem Court of First Instance	85.3	100.0
Hebron Court of First Instance	86.3	44.4
<b>First Instance Court in the Northern Governorates (West Bank) Total</b>	<b>65.7</b>	<b>78.9</b>
North Gaza	-	100.0
Gaza	27.4	95.2
Deir Al- Balah	-	91.7
Khan Younis	33.2	90.9
Rafah	-	94.1
<b>First Instance Court of the Southern Governorates (Gaza Strip)</b>	<b>30.5</b>	<b>94.9</b>
<b>Courts of First Instance Total</b>	<b>55.0</b>	<b>85.3</b>

**Table No. (5): Percentage of the Change of Judicial Bodies in the Different First Instance Court**

First Instance Courts	2020			2022		
	Changed		Number of sessions unchanged	Changed		Number of sessions unchanged
	Yes	No		Yes	No	
Jenin	39.1	60.9	133	2.7	97.3	111
Tulkarm	30.9	69.1	314	0.0	100.0	87
Nablus	53.3	46.7	105	25.8	74.2	198
Qalqilya	15.2	84.8	105	0.0	100.0	81
Ramallah	33.1	66.9	163	0.0	100.0	53
Jericho	58.3	41.7	48	12.9	87.1	31
Bethlehem	47.3	52.7	150	65.2	34.8	66
Hebron	35.6	64.4	278	9.4	90.6	171
<b>Northern Governorates (West Bank)</b>	<b>36.5</b>	<b>63.5</b>	<b>1,296</b>	<b>14.7</b>	<b>85.3</b>	<b>798</b>
North Gaza	-	-	-	13.9	86.1	280
Gaza	31.9	68.1	270	8.3	91.7	600
Deir Al -Balah	-	-	-	8.3	91.7	168
Khan Younis	37.6	62.4	298	8.2	91.8	61
Rafah	-	-	-	37.8	62.2	82
<b>Southern Governorates (Gaza Strip)</b>	<b>34.9</b>	<b>65.1</b>	<b>568</b>	<b>11.7</b>	<b>88.3</b>	<b>1,191</b>
<b>Total</b>	<b>36</b>	<b>64</b>	<b>1,864</b>	<b>12.9</b>	<b>87.1</b>	<b>1,989</b>

**Table No. (6): Compares the Average Working Time of Criminal Cases Bodies in First Instance Courts**

The Court	Number of monitoring days		Number of sessions monitored		Average number of sessions held		Work rate per day	
	2020	2022	2020	2022	2020	2022	2020	2022
Jenin	46	25	564	302	12	12.1	2:05	2:13
Tulkarm	67	20	804	239	12	12	2:23	3:12
Nablus	77	25	909	757	12	30.3	1:56	2:43
Qalqilya	36	8	494	280	14	35	1:52	2:42
Ramallah	62	21	1,524	392	25	18.7	3:04	3:16
Jericho	38	11	603	202	16	18.4	2:10	2:09
Bethlehem	114	19	1,325	441	12	23.2	3:13	3:16
Hebron	66	18	1,623	450	25	25	2:44	3:04
<b>Total Areas of the Northern Governorates (West Bank)</b>	<b>506</b>	<b>147</b>	<b>7,846</b>	<b>3,063</b>	<b>16</b>	<b>20.8</b>	<b>2:33</b>	<b>2:51</b>
North Gaza	-	16	-	368	-	23	-	2:36
Gaza	92	42	880	937	10	22.3	1:58	2:15
Deir Al-Balah	-	12	-	261	-	21.8	-	2:42
Khan Younis	174	11	2,106	122	12	11.1	3:01	2:00
Rafah	-	18	-	181	-	10.1	-	2:18
<b>Total Areas of the Southern Governorates (Gaza Strip)</b>	<b>266</b>	<b>99</b>	<b>2,986</b>	<b>1,869</b>	<b>11</b>	<b>18.9</b>	<b>2:39</b>	<b>2:20</b>
<b>Total Courts</b>	<b>772</b>	<b>246</b>	<b>10,832</b>	<b>4,932</b>	<b>14</b>	<b>20</b>	<b>2:35</b>	<b>2:28</b>

**Table No. (7): Measures taken to address the reasons for the absence of defense counsel**

Measures	Area					
	Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
	no	%	no	%	no	%
Addressing the Bar Association regarding the absence of the lawyer	173	47.1%	18	35.3%	191	45.7%
Give the accused time to assign a lawyer	194	52.9%	33	64.7%	227	54.3%
<b>Total</b>	<b>367</b>	<b>100.0%</b>	<b>51</b>	<b>100.0%</b>	<b>418</b>	<b>100.0%</b>

**Table No. (8): Respect for the guarantees of the defense attorney**

		Area					
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
		no	%	no	%	no	%
<b>Having a lawyer representing the defense</b>	1. Yes	775	97.1%	1,115	93.6%	1,890	95.0%
	2. No	23	2.9%	76	6.4%	99	5.0%
	<b>Total</b>	<b>798</b>	<b>100.0%</b>	<b>1,191</b>	<b>100.0%</b>	<b>1,989</b>	<b>100.0%</b>
<b>Did the lawyer appear at the court session on the date of the hearing?</b>	1. Yes	741	95.6%	1,101	98.7%	1,842	97.5%
	2. No	34	4.4%	14	1.3%	48	2.5%
	<b>Total</b>	<b>775</b>	<b>100.0%</b>	<b>1,115</b>	<b>100.0%</b>	<b>1,890</b>	<b>100.0%</b>
<b>Lawyer arriving early in the courtroom</b>	1. Yes	708	91.4%	1,062	95.2%	1,770	93.7%
	2. No	67	8.6%	53	4.8%	120	6.3%
	<b>Total</b>	<b>775</b>	<b>100.0%</b>	<b>1,115</b>	<b>100.0%</b>	<b>1,890</b>	<b>100.0%</b>
<b>Having a file with the lawyer</b>	1. Yes	735	94.8%	926	83.0%	1,661	87.9%
	2. No	40	5.2%	189	17.0%	229	12.1%
	<b>Total</b>	<b>775</b>	<b>100.0%</b>	<b>1,115</b>	<b>100.0%</b>	<b>1,890</b>	<b>100.0%</b>

**Table No. (9): Showing the entity that appointed defense counsel**

Area
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Entity appointing defense counsel	Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
	no	%	no	%	no	%
1. The accused	757	97.7%	866	77.7%	1,623	85.9%
2. Legal aid institution	10	1.3%	7	0.6%	17	0.9%
3. Court	6	0.8%	241	21.6%	247	13.1%
4. Other	2	0.3%	1	0.1%	3	0.2%
<b>Total</b>	<b>775</b>	<b>100.0%</b>	<b>1,115</b>	<b>100.0%</b>	<b>1,890</b>	<b>100.0%</b>

**Table 10: Arrest of Accused**

		Area					
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
		no	%	no	%	no	%
<b>Was the place of detention mentioned during the trial?</b>	Yes	1	5.3%	0	0.0%	1	2.8%
	No	18	94.7%	17	100.0%	35	97.2%
	<b>Total</b>	<b>19</b>	<b>100.0%</b>	<b>17</b>	<b>100.0%</b>	<b>36</b>	<b>100.0%</b>
<b>The security body that is currently arresting the detainee</b>	The police	18	94.7%	17	100.0%	35	97.2%
	Intelligence	0	0.0%	0	0.0%	0	0.0%
	Preventive Security	1	5.3%	0	0.0%	1	2.8%
	Internal Security	0	0.0%	0	0.0%	0	0.0%
	Other	0	0.0%	0	0.0%	0	0.0%
	<b>Total</b>	<b>19</b>	<b>100.0%</b>	<b>17</b>	<b>100.0%</b>	<b>36</b>	<b>100.0%</b>

**Table No. (11): The extent to which the right of the prosecution and the defense to present closing arguments is respected**

		Area					
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
<b>Was the prosecution allowed to present its case?</b>	1. Yes	44	97.7%	104	100.0 %	147	99.3%
	2. No	0	0.0%	0	0.0%	1	0.7%
	<b>Total</b>	<b>44</b>	<b>100.0 %</b>	<b>104</b>	<b>100.0 %</b>	<b>148</b>	<b>100.0 %</b>
<b>Presented the prosecution's pleading</b>	1. Written	24	54.5%	7	6.7%	31	20.9%
	2. Oral	20	45.5%	97	93.3%	117	79.1%
	<b>Total</b>	<b>44</b>	<b>100.0 %</b>	<b>104</b>	<b>100.0 %</b>	<b>148</b>	<b>100.0 %</b>
<b>Was the defense allowed to present its case?</b>	1. Yes	44	100.0 %	102	98.1%	143	96.6%
	2. No	0	0.0%	2	1.9%	5	3.4%
	<b>Total</b>	<b>44</b>	<b>100.0 %</b>	<b>104</b>	<b>100.0 %</b>	<b>148</b>	<b>100.0 %</b>
<b>Defense case filed</b>	1. Written	32	72.7%	13	12.5%	45	30.4%
	2. Oral	12	27.3%	91	87.5%	103	69.6%
	<b>Total</b>	<b>44</b>	<b>100.0 %</b>	<b>104</b>	<b>100.0 %</b>	<b>148</b>	<b>100.0 %</b>

**Table No. (12): The procedure taken in the absence of defense counsel**

		Area					
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
		no	%	no	%	no	%
<b>In the absence of the defendant's counsel, the court decided:</b>	Re-notification of defense counsel	335	86.8%	45	35.4%	380	74.1 %
	Correspondence with the Bar Association regarding the lawyer	15	3.9 %	0	0.0%	15	2.9%
	Re-arrest of the accused	0	0.0 %	5	3.9%	5	1.0%
	Lawyer fined	0	0.0 %	0	0.0%	0	0.0%
	Other	36	9.3 %	77	60.6%	113	22.0 %

	<b>Total</b>	<b>386</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>513</b>	<b>100.0%</b>
<b>Did the court write to the Bar Association regarding the defendant's lawyer:</b>	Yes	20	5.1%	0	0.0%	20	3.9%
	No	327	84.1%	127	100.0%	454	88.0%
	I don't know.	42	10.8%	0	0.0%	42	8.1%
	<b>Total</b>	<b>389</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>516</b>	<b>100.0%</b>
<b>Has the Court received a response from the Bar Association regarding the lawyer:</b>	Yes	1	0.3%	0	0.0%	1	0.2%
	No	342	87.9%	126	99.2%	468	90.7%
	I don't know.	46	11.8%	1	0.8%	47	9.1%
	<b>Total</b>	<b>389</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>516</b>	<b>100.0%</b>
<b>Is there a lawyer representing the prosecution in the case?</b>	Yes	18	4.6%	0	0.0%	18	3.5%
	No	371	95.4%	127	100.0%	498	96.5%
	<b>Total</b>	<b>389</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>516</b>	<b>100.0%</b>



**Table No. (13): The extent to which guarantees of the right of witnesses are respected**

		Area					
		Northern Governorates (West Bank)		Southern Governorates (Gaza Strip)		Total	
<b>Presence of a witness</b>	1. Yes	241	49.0%	106	41.2%	347	46.3%
	2. No	251	51.0%	151	58.8%	402	53.7%
	<b>Total</b>	<b>492</b>	<b>100.0%</b>	<b>257</b>	<b>100.0%</b>	<b>749</b>	<b>100.0%</b>
<b>Gender of the witness</b>	1. Male	229	95.0%	102	96.2%	331	95.4%
	2. Female	12	5.0%	4	3.8%	16	4.6%
	<b>Total</b>	<b>241</b>	<b>100.0%</b>	<b>106</b>	<b>100.0%</b>	<b>347</b>	<b>100.0%</b>
<b>Introduction of the witness (through the court taking his personal identity)</b>	1. Yes	240	99.6%	105	99.1%	345	99.4%
	2. No <sup>88</sup>	1	0.4%	1	0.9%	2	0.6%
<b>The witness was questioned by the Public Prosecution</b>	1. Yes	176	73.0%	103	97.2%	279	80.4%
	2. No	65	27.0%	3	2.8%	68	19.6%
<b>The witness was question through the defense attorney</b>	1. Yes	219	90.9%	103	97.2%	322	92.8%
	2. No	22	9.1%	3	2.8%	25	7.2%
<b>Discussion of the witness through the court</b>	1. Yes	223	92.5%	102	96.2%	325	93.7%
	2. No	18	7.5%	4	3.8%	22	6.3%
<b>The witness was allowed to take time when giving testimony</b>	1. Yes	234	97.1%	105	99.1%	339	97.7%
	2. No	7	2.9%	1	0.9%	8	2.3%
<b>Attendance expenses were paid to the witness instead of his attendance at the courtroom to testify</b>	1. Yes	122	50.6%	76	71.7%	198	57.1%
	2. No	119	49.4%	30	28.3%	149	42.9%
	<b>Total</b>	<b>241</b>	<b>100.0%</b>	<b>106</b>	<b>100.0%</b>	<b>347</b>	<b>100.0%</b>

<sup>88</sup> Criminal Case No. 103/2020 before the Nablus Court of First Instance, Criminal Case No. 122/2021 before the Gaza Court of First Instance.

Appendix No. ( 14) the response of the High Judicial Council in the Gaza Strip to  
the draft report

STATE OF PALESTINE  
JUDICIAL AUTHORITY  
High Judicial Council

دولة فلسطين  
السلطة القضائية  
المجلس الأعلى للقضاء



التاريخ: 2022/07/09م

حفظه الله

حضرة الأخ/ أ. ماجد العاروري

رئيس الهيئة الأهلية لاستقلال القضاء وسيادة القانون (استقلال)

السلام عليكم ورحمة الله وبركاته

الموضوع: ملاحظات على مسودة التقرير الرقابي حول

سير محاكمات الجنايات في الضفة الغربية وقطاع غزة

نهديكم أطيب التحيات وأعطرها، وإشارة إلى الموضوع، مرفق لحضرتكم طيه نسخة من  
الملاحظات على مسودة التقرير الرقابي حول سير محاكمات الجنايات في الضفة الغربية وقطاع غزة.

لطفاً التكرم بالاطلاع وتوجيه تعليماتكم لجهة الاختصاص لعمل اللازم حسب الأصول.

وتقبلوا فائق التقدير والاحترام

المستشار/ ضياء الدين المدهون

رئيس المحكمة العليا

رئيس المجلس الأعلى للقضاء

مرفق:

- نسخة عن كتاب أمين عام مجلس القضاء.

نسخة مع الاحترام إلى:

- الأمانة العامة بالمجلس للمتابعة

- الملف.



حفظه الله  
المجلس الأعلى للقضاء  
15-12-2022  
90/2022

بمساعدة المستشار/ ضياء الدين بن سعيد المدهون

رئيس المحكمة العليا  
رئيس المجلس الأعلى للقضاء

السلام عليكم ورحمة الله وبركاته،

الموضوع: ملاحظات على مسودة التقرير الرقابي حول

سير محاكمات الجنايات في الضفة الغربية وقطاع غزة

نهديكم أطيب التحيات وتمننى لكم دوام الصحة والعافية، وبالإشارة إلى الموضوع أعلاه، وعطفاً على توجيهاتكم بوضع الملاحظات على مسودة التقرير الرقابي حول سير محاكمات الجنايات في الضفة الغربية وقطاع غزة والنصائح عن الهيئة الأهلية لاستقلال القضاء وسيادة القانون - استقلال بالتعاون مع برنامج موسمية، فقد عقد اجتماع مع رئيس الهيئة أ. ماجد العاروري بحضور كلاً من المستشار/ أ. إيهاب عرفات، و أ. سامي الأشور، و أ. محمد مراد، والاتفاق على إبداء الملاحظات على المسودة قبل النشر، وقد اجتمع السادة المستشارين وتم وضع الملاحظات حول ما جاء في التقرير الرقابي على سير محاكمات الجنايات في محكمة الضفة الغربية وقطاع غزة المرفقة في هذا الكتاب.

وتفضلوا بقبول فائق الاحترام والتقدير

المجلس الأعلى للقضاء  
15-12-2022  
90/2022

المستشار/ أشرف رفيق نصر الله  
أمين عام مجلس القضاء



لرئيس المحكمة العليا

د. مرام شقير

12.18

الملاحظات

- نشر الملاحظات حول ما جاء في التقرير الرقابي
- مسودة التقرير الرقابي

أ. مرام شقير

رئيسة





- ورد في ص 32 إلى أن من ضمن عيوب خصخصة التبليغ (أن موظفي الشركة الخاصة لن يكونوا خاضعين للمحاسبة استناداً لقوانين مكافحة الفساد)، وهذا غير دقيق، فبالإمكان محاسبتهم وتطبيق العديد من النصوص العقابية ذات الصلة على أي مخالفة قد تصدر عنهم، كالتزوير أو تضليل العدالة أو غير ذلك استناداً لقانون العقوبات والقوانين الأخرى.
- ورد في البند الرابع من التوصيات لمجلس القضاء الأعلى ص 58 (تفعيل دور القضاء في معالجة تعرض المتهمين للتعذيب من خلال تحريك الشكاوى القانونية والمتابعة مع الشرطة الفلسطينية والأجهزة الأمنية)، رغم أن ذلك خارج عن اختصاص القضاء وإنما هو أحد اختصاصات النيابة العامة، ولا يمكن للمؤسسة القضائية التي تراقب إنفاذ القانون تجاوز اختصاصاتها والتعدي على القانون.
- ورد في نهاية ص 18 أن (تغير الهيئات القضائية يؤدي إلى إعادة العمل على الأدلة من البداية)، في حين أن ذلك مخالف للقانون والواقع، ولا يوجد أي نص قانوني يستلزم في حال تغير الهيئة إعادة سماع الأدلة من البداية.
- ورد في البند 29 من حاشية ص 27 (أن هناك تأجيل إداري سببه عدم اكتمال الهيئة، وأن ما تم تسجيله في ضبط جلسات في العديد من دعاوى التأجيل لعدم حضور المتهمين)، وهذا غير صحيح ونو كان صحيحاً فإنه يمثل جريمة تزوير في محاضر رسمية، حيث إنه بمراجعة محاضر الدعاوى المشار إليها كان واضحاً أن سبب التأجيل هو (عدم انعقاد الجلسة بسبب انشغال الهيئة أمام محكمة الأحداث)، وليس كما ورد على لسان معد التقرير.
- رابعاً: أخطاء مادية:
- ورد في منتصف ص 12 (603 جلسات من أصل 1889 جلسة في قطاع غزة)، بطريق الخطأ، والصحيح أنه من أصل (1869 جلسة).
- ورد في ص 45 أن المتهم في الدعوى الجزائية 2021/343 بداية غزة قد صرحت بتعرضها للتمر من قبل الشرطيات والنوقرفات، وبمراجعة ملف الدعوى المذكور تبين أنه يحتوي على متهمين اثنين ذكور، ولا يوجد به أي متهمة أنثى.
- ورد في نهاية ص 20 بطريق الخطأ (مقارنة مع 10 جلسات في العام 2022)، والصحيح (في العام 2020).
- خامساً: التوصيات:
- كان الأجدر بمعد التقرير مراعاة الحقائق المتعلقة بأعمال هيئة الجنائيات الكبرى في قطاع غزة، وما يرتبط بها من إجراءات وضمائم وأحكام مشددة وغيرها.



- أشار معدّ التقرير في ص31 إلى أنّ بعض أسماء الشهود غير موجود في السجلات الرسمية (أسماء وهمية) وهم بنسبة 20% في الجنايات، ورغم خطورة هذه المعلومة إلا أنّ ليس لها مصدر واضح، ولم يشر معدّ التقرير كيف توصل لهذه النسبة.
- ورد في الرسم البياني ص35 إحصائيات مرتبطة بالسير والتأجيل في الدعاوى في الضفة الغربية وقطاع غزة، وبالمقارنة مع البيانات الواردة في العديد من مواضع التقرير يظهر أنّ الأرقام الخاصة بقطاع غزة وردت بطريق الخطأ، وهي تعبر عن مجموع الضفة وغزة، في حين أنّ الأرقام الحقيقية لقطاع غزة كما ورد في مواضع أخرى (678 تأجيل الدعوى) و (1191 السير بالدعوى)، وقد تكرر هذا الخطأ في البند الأول من الاستنتاجات الواردة في ص54.
- ورد أيضاً بطريق الخطأ في منتصف ص39 (في قطاع غزة تم تقديم الملف التحقيقي لهيئة المحكمة ما نسبته 2.8% من جلسات تمديد التوقيف)، في حين أنّ الرقم الصحيح كما هو وارد في الجدول ص38 هو 40%، وقد تكرر هذا الخطأ في البند الثامن من الاستنتاجات الواردة في ص55.

ثالثاً: ملاحظات قانونية:

- ورد في ص11 تعريفاً للجرائم المالية والإشارة إلى هذه الجرائم ضمن إطار قانون العقوبات لسنة 1936 الساري في قطاع غزة ومثله لسنة 1960 الساري في الضفة الغربية، دون الإشارة للجرائم المالية الواردة في القوانين الأخرى السارية (قانون التجارة لسنة 2014، قانون الشركات لسنة 2012، قانون حماية المستهلك لسنة 2005 وتديلاته، قانون حظر التعدي على العقارات والأراضي العامة المملوكة للدولة والشخصيات الاعتبارية لسنة 2017، غيرها).
- يظهر من خلال ما ورد في ص13 أنّ فريق البحث غير مطلع على أحكام قانون الصلح الجزائي لسنة 2017، من حيث نطاق التطبيق والجرائم التي يجوز فيها الصلح، والتفرقة بين الصلح والتصالح، حيث ورد (أنّ قانون الصلح الجزائي يشمل الجنايات التي يحدث فيها صلح ما عدا جرائم القتل والجرائم الكبرى كالأذى البليغ) رغم حقيقة أنّ القانون لم يستثن هذه الجرائم من نطاق التطبيق، وقد ورد أيضاً (أنّ القانون فرض للمخالفات والجنح المعاقب عليها بالغرامة أو الحبس أقل من ستة شهور)، في حين أنّ هذا التقييد وارد على إجراءات التصالح وليس الصلح الجزائي، وهناك فرق شاسع بينهما، نوصي الباحث أن يطلع عليه بصورة أفضل.
- ورد في ص29 النعي على المحكمة الاستجابية لطلب النيابة بإضافة شهود جدد إلى قائمة الشهود الواردة بالائحة الاتهام، وكان ذلك غير قانوني، رغم أنّ ذلك من صلاحيات المحكمة استناداً للمواد (208، 236) من قانون الإجراءات الجزائية لسنة 2001م.



المؤهلين للنظر في القضايا الجنائية)، وفي موضع ثالث (ص21: هناك حالة من عدم العدالة في توزيع العبء على القضاة)، وجميع ما ورد سابقاً يمثل وجهة نظر شخصية لمعد التقرير غير مبنية على إحصائيات ولم يستدل عليها بواسطة منهجية علمية دقيقة.

#### ثانياً: البيانات والإحصائيات

- ورد في النصفحتين (10، 11) استعراض جلسات المحاكم حسب نوع الجريمة، وقد تطرق التحليل إلى مناقشة أسباب الجريمة وأسباب ارتفاع معدلات بعض الجرائم؛ رغم أنه من المستقر والثابت أن ما ورد من نسب لا يعبر عن حقيقة معدلات أنواع الجريمة في المجتمع، وإنما يعبر عن نسبة نوع الجريمة خلال جلسات المحاكمة، وهما مسألتان مختلفتان، فتقد يتم نظر دعوى قتل 5 مرات خلال فترة البحث؛ ويتم إحصائها 5 مرات، في حين يتم نظر قضية مخدرات مرتين ويتم تسجيلها على هذا الأساس، في حين أن قضية القتل هي ذاتها؛ وقضية المخدرات هي ذاتها؛ ومن غير المنطق والمعقول احتسابها 5 مرات أو أقل أو أكثر، ومن ثم البناء على ذلك باعتبار أساس لتحديد معدّل نوع كل جريمة.
- ورد في الجدول رقم (1) الوارد في ص11 تصنيف الجرائم المرورية، رغم أن كافة الجرائم المرورية هي من قبيل الجنح استناداً لقانون المرور رقم 5 لسنة 2000م ولائحته التنفيذية، وهي خارج إطار موضوع الدراسة والبحث، وكان يجب استثنائها.
- ورد في الجدول رقم (1) الوارد في ص11 تصنيف جرائم أمن الدولة، رغم أن هذه الجرائم يختص بنظرها في قطاع غزة هيئة القضاء العسكري استناداً لقانون القضاء العسكري لسنة 2008م وتعديلاته، وكان الأولى الإشارة إلى ذلك ومعالجته.
- ورد في الجدول رقم (1) الوارد في ص11 تصنيفاً (لم يتم ذكر تهمة) وفي الحاشية (أفراد فريق الرقابة أنه لم يتم ذكر التهمة في عدد من الجلسات). ونسبة هذه الجلسات عالية حوالي 15% في الضفة وغزة، وكان الأجدر بالفريق البحثي مراجعة رئيس المحكمة أو رئيس القلم لتحديد التهم في تلك الدعاوى وتصنيفها، ككون النسبة مرتفعة ومؤثرة في الإحصائية.
- ورد في ص12، أنه تم رصد محاكمة (3036) شخص في الضفة الغربية، و(1869) شخص في قطاع غزة، في حين أنه من الثابت أن هذه الإحصائية تعبر عن عدد الجلسات التي حضرها الباحثين كما ورد في العديد من مواضع التقرير، وليس عدد الأشخاص الذي جرى محاكمتهم، ففي بعض القضايا قد يكون هناك تهمة أو اثنين أو خمسة أو غير ذلك، ومدلول المنصحين مختلف، ويجب تعديل ذلك.



وسائل علمية إضافية لاستقاء المعلومات من خلالها (التقارير الصادرة عن المجلس الأعلى للقضاء والمحاكم/ مراجعة أقسام المحاكم بشأن الإحصائيات/ الاطلاع الدقيق على محاضر الجلسات/ غيرها).

- المقابلات التي أجراها فريق البحث غير كافية، وغير متوازنة، رغم أهمية هذا العنصر في جمع البيانات واستجلاء الحقائق، وكان الأجدر الاعتماد على خطة متكاملة للمقابلات وفق أعداد محددة مسبقاً (قضاة/ محامين/ مهتمين/ مؤسسات حقوقية وقانونية/ جمهور المواطنين)
- بعض مصادر البيانات يشوبها الجهل وعدم التوضيح ويؤثر على المصدقية، مثال ذلك ما ورد في هامش ص31 (مصدر في السلطة القضائية)؛ و ص32 (مقابلة مع مصدر قضائي)، و ص33 (مصدر في نقابة المحامين التنظيميين) وغيرها، دون الإشارة إلى اسم وبيانات المصدر وتاريخ المقابلة.
- كذلك اعتمد التقرير في سرد بعض البيانات على أخبار صحفية منشورة في بعض المواقع الإلكترونية، مثال ذلك ما ورد في هامش ص12. رغم أن ذلك مخالف لمنهجية البحث العلمي والموضوعي، ورغم وجود بيانات وإحصائيات رسمية وموثقة صادرة عن الجهات ذات الصلة بموضوع الخبر.
- استنتج التقرير هيئة الجنايات الكبرى في قطاع غزة من نطاق الرقابة والدراسة، الأمر الذي أدى إلى وقوعه في خلل جسيم، لا سيما في بعض الجزئيات المتعلقة بطبيعة الأحكام والعقوبات السالبة للحرية (ص12، ص13) وشدة الحكم (ص14، ص15)، والتوصيات الخاصة بقضية محاكم البداية في قطاع غزة (ص57)، وغيرها، رغم أنه من المستقر أن قضايا الجنايات الخطيرة (القتل، محاولة القتل، الاتجار بالمخدرات، قضايا الفساد) منظورة أمام هيئة الجنايات الكبرى ومعظم الأحكام الصادرة في هذه الدعوى مشددة تصل إلى الإعدام أو الحبس المؤبد أو الحبس مع النفاذ وغيرها.
- ورد في ص32 النعي على مجلس القضاء في قطاع غزة اعتماد خصخصة التبليغات القضائية دون تسبب ذلك بوضوح؛ وكان الأجدر بعد البحث الرجوع إلى الدراسة التي أعدها لجنة متخصصة بالمجلس الأعلى للقضاء حديثاً لدراسة أثر خصخصة التبليغات على تنصير أمد التقاضي، والتي أظهرت أن ذلك أدى إلى تحسن نسبة التبليغات وسرعة انعقاد الخصومة.
- يعبر معد التقرير في العديد من النواضع عن رأيه الشخصي غير المستند لدليل علمي أو إحصائي، مثال ذلك (ص19: نجد في بعض المحاكم وجود فائض في عدد القضاة ذوي الخبرة الجزائية) فمن أين استطاع الباحث تقدير خبرة كل قاضي !!، وفي موضع آخر (ص21: هناك نقصاً في القضاة





### تقرير بالملاحظات حول ما جاء في التقرير الرقابي على سير

#### محاكمات الجنايات في محاكم الضفة الغربية وقطاع غزة

نيدبكم أطيب التحيات وأعطرها، وإشارة للموضوع أعلاه، وعطفاً على التكليف السابق بشأن دراسة التقرير المعد بواسطة الهيئة الأهلية لاستقلال القضاء وسيادة القانون (استقلال) وبإشراف الائتلاف الأهلي لإصلاح القضاء وحمايته، هاإننا نود إبداء الملاحظات التالية:

#### أولاً: الملاحظات العامة:

- جرى إعداد التقرير بصورة مهنية وعبر جيد كبير وواضح من خلال فرق البحث وجمع البيانات، وخبراء التحليل والإحصاء، ومن ثم فريق إعداد الدراسة وتدقيقها.
- يعبر التقرير عن العديد من الحقائق والبيانات الدقيقة التي تم جمعها بواسطة الباحثين خلال فترة الرقابة على سير المحاكمات في دعاوى الجنايات والتي امتدت لفترة ثمانية شهور في محاكم البداية في الضفة الغربية وقطاع غزة.
- استثنى الفريق الرقابي هيئة الجنايات الكبرى في محكمة بداية غزة من أعماله، مما أدى لوقوعه في خلل بيوي واضح أثر على مصداقية وموضوعية النتائج الواردة في العديد من فصوله المتعلقة بضمانات المحاكمة وطبيعة الأحكام الصادرة في الدعاوى وغيرها.
- وقع التقرير في بعض الأخطاء المهنية التي تؤثر على مصداقية ما ورد فيه، كان أبرزها تعبير كاتب التقرير في العديد من المواضع عن انطباعات شخصية/ وجهة نظر غير مبنية على حقائق علمية أو مشاهدة من واقع العمل الرقابي.
- ورد في التقرير بعض المغالطات القانونية المبنية على الجهل ببعض أحكام القانون أو التشريعات السارية أو الخطأ في تفسيرها، فضلاً عن بعض الأخطاء المادية في الإحصائيات وغيرها.
- اعتمد التقرير في بعض مواضعه النقل عن تقارير صحفية أو مقابلات مع جهات مجهولة، الأمر الذي يؤدي إلى إضعاف مصداقية ما ورد فيه من معلومات وحقائق.
- بالمجمل فإن التقرير قيم ويمكن الاستفادة من المعلومات الواردة فيه ومخرجاته بعد استدراك الملاحظات أعلاه، ويجب الاستفادة من النتائج والتوصيات بصورة عملية.

#### الملاحظات التفصيلية:

#### أولاً: المنهجية:

- اعتمد التقرير بشكل أساسي على المعلومات والبيانات التي قام الباحثون بتجميعها عبر حضور جلسات دعاوى الجنايات في محاكم البداية ومن ثم تحليل هذه البيانات، وكان الأجدد استخدام