



Oversight Report:

The extent of respect for the guarantees of the accused during arrest procedures in the Palestinian Magistrate courts

The Civil Commission for the Independence of the Judiciary and the Rule of Law - ISTIQLAL

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Introduction

This report is the second of its kind to be issued in the Palestinian Territories and monitors arrest procedures in the Magistrates' Courts of the West Bank and Gaza Strip. The report examines a set of indicators related to detention procedures and extension of detention; especially the physical appearance of the accused before the judge to consider requests for detention, the attachment of the investigative file to the request to extend the detention, the standards of the Public Prosecution when submitting requests for detention, the attendance of the Public Prosecution in the detention sessions, the extent to which the magistrate judges respond to the requests of the Public Prosecution in the arrest, the classifications of the crimes subject to the detention requests according to their degree of seriousness, the reasons for extending the detention by the magistrate judges, the type of crimes on the basis of which the accused is arrested, the role of magistrates' courts in combating the crime of torture during the consideration of arrest requests, the testimonies of researchers about dealing with allegations of torture when considering requests for arrest, the presence of specialized judges in the consideration of requests for extension of detention, the lack of professional cadres, the consideration of release requests, and the basic guarantees for the accused when the conciliation judge considers the arrest request. This report is a product of Istiqlal under the framework of the civil coalition to reform and protection of judiciary, the monitoring procedure was conducted within a period of 5 months. This period was sufficient to extract important results that reflect the reality of arrest in the courts of magistrate, and reveal that some formal procedures were not adhered to in some courts.

As for monitoring the arrest guarantees, its results also came disappointing in most of the arrest requests sessions. The majority of judges respond in many sessions to the prosecution's requests for arrest and extension of detention in an automatic manner without a request of investigative files with arrest requests, and without distinguishing between charges when issuing arrest decisions, and without seriously dealing with allegations of torture. In most cases, the prosecution requests a maximum detention period, and judges respond to that, and thus the presumption of innocence principal is violated, which is considered one of the most important guarantees of arrest and pretrial detention, thus an absence of judicial control over the arrest requests submitted by the Public Prosecution.

This report is the second of its kind in the framework of monitoring trials, as Istiqlal issued a report on monitoring criminal trials in the West Bank and Gaza Strip, in partnership with the Civil Coalition for Judicial Reform and Protection, thus enhancing community oversight over the work of courts.

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Project Background and Methodology.

- This report monitors the extent to which Palestinian courts apply legal procedures in the Magistrates Courts of the West Bank and Gaza Strip, while examining arrest requests, provided by the Public Prosecutor's Office. Court monitoring team consisted of 8 researchers (3 males and 5 Females), distributed by region in the West Bank and Gaza Strip.

- The report is the second of its kind in the field of monitoring arrest and pre-trial detention procedures in the Magistrates' Courts. Therefore, the team was selected from specialized lawyers. The process of monitoring court sessions has been implemented in the period between 06/12/2022 – 27/03/2023, during which 1,916 hearings were monitored, including 900 sessions in the Magistrate Courts of the West Bank and 1,016 sessions in the Magistrate Courts of the Gaza Strip.
- This chapter includes a presentation of the study methodology, the study population, the sample, the study tool, the conduct of the study, from the selection of the research team, conducting training on data collection and the data collection stage, which includes (time reference for field work, field follow-up mechanisms), in addition to the stage of data entry and data analysis.
- The aim of this report to examine the extent to which Palestinian courts apply legal procedures and respect the rights of detainees. The descriptive and quantitative approach to the course of court sessions was conducted through a comprehensive survey of court sessions, and field monitoring to collect data from the study population (magistrates' courts) in a number of governorates in the West Bank and Gaza Strip, in order to identify the characteristics of indicators of arrest procedures in the magistrate courts. This method is suitable for the purposes of the study, and a methodology was built to measure the extent to which the magistrate courts applied the guarantees of the arrest procedures as stipulated in the Code of Criminal Procedures.
- For the purposes of preparing the report, a number of magistrates' court sessions were monitored regarding arrest and pretrial detention. The monitoring included 15 magistrate courts, distributed to 10 in the West Bank (Jenin, Tulkarem, Nablus, Qalqilya, Ramallah and Al-Bireh, Jericho, Bethlehem, Hebron, Dura, Yatta). And 5 magistrate courts in Gaza Strip (North Gaza, Gaza, Deir al-Balah, Khan Yunis, and Rafah).
- Tools were developed to collect data related to the report on the monitoring of detention extension sessions in the Magistrates' courts in both the West Bank and the Gaza Strip. The research team reviewed studies and reports in many countries, then prepared a draft framework for indicators and sent to many bodies related to monitoring the judiciary and human rights institutions. The study tool and measurement indicators were developed according to the main axes of the detention procedures, in addition to monitoring observations by researchers about the course of the detention extension sessions. Then, tools and indicators of measurement were developed according to the main axes (effectiveness of proceeding with trial procedures, quantitative productivity of courts in case files and time rates for holding them, gender of detainees, age and charge, time spent considering a request to extend detention, extension of detention, reasons behind delaying extension of detention, the investigation file, guarantees of extension procedures and torture or ill-treatment.

Study procedures:

The study was carried out by a team of researchers, both male and female, who monitored the detention extension sessions that fall under the category targeted by the study, which is the magistrate court. The study was conducted according to the following steps:

- Training workshops were held for court monitors and legal analysts (project researchers) in the West Bank and Gaza Strip before starting the process of monitoring the courts. The training included all topics related to field work and filling out the forms, the mechanism used in conducting the interview and completing the forms, the objectives of implementing the study, its

importance and the skills needed to ensure the success of the project, in addition to forming a joint working group for the team in the West Bank and Gaza Strip using WhatsApp Application. This gave them the opportunity to exchange daily information on any problems or difficulties in field work.

- The field work was carried out between 06/12/2022 – 27/03/2023, during which 1,916 sessions were monitored, including 900 sessions in the Magistrate Courts of the West Bank and 1,016 sessions in the Magistrate Courts of the Gaza Strip. With 259 monitoring days, divided into 173 days in the West Bank and 86 days in the Gaza Strip.
- During this stage, input programs were prepared using computerized forms on the tablet (*Tablet*), and work on setting entry rules in a way that ensures the forms are entered well, as well as setting cleaning rules to examine the data after entering it, as these rules work to examine the variables at the level of the form.
- After completing the collection of information from the court sessions, the information was sorted out, analyzed, and then used to draft this report. The draft report was presented it to specialists and members of the Civil Coalition for the Reform and Protection of the Judiciary to include their feedback.

Chapter one

General data on arrest procedures and the extent of the court's consideration of

Gender sensitivity in the magistrate courts

Detention is the most dangerous investigation procedure, as it affects the personal freedom of the accused, and constitutes a restriction on his freedom, before a court conviction. Detention, from this perspective, completely contradicts a well-established legal principle that all criminal legislations were keen to emphasize, namely: "The accused is innocent until proven guilty by a final court ruling."¹

As a rule, a person is presumed innocence, and his freedom may not be taken away, violated, or restricted except by virtue of a judgment issued by the competent court ruling his/her conviction. Therefore, international covenants and state constitutions have been keen to emphasize the previous meaning, and this is clearly understood from the text of Article (9) of the International Covenant on Civil and Political Rights, as it stipulates in its first paragraph that: "1- Everyone has the right to liberty and security of his person, and no one may be detained or arbitrarily arrested, and no one may be deprived of his liberty except for reasons stipulated by the law and in accordance with the procedure established therein."²

Detention has a distasteful past, as it has been widely used in authoritarian states, and it contradicts the principle of innocence. However, its legitimacy can be justified in view of the justifications that prompt its initiation, and because it casts a shadow of doubt on the accused, brings him closer to the convicted person, harms him in his person, interests, honor, and family, and hinders him from building his defense. It was necessary to have real justifications for issuing the order. Its disadvantages can be mitigated

¹Dr. Abdel Qader Saber Jarada, Encyclopedia of Criminal Procedures in Palestinian Legislation, Volume Three, Afaq Library, 2014, p. 137.

²Dr. Salem Ahmed Al-Kurd, Detention Controls and Guarantees in the Palestinian Penal Legislation, a Comparative Study, p. 234.

by providing adequate guarantees that it will not be misused, and by replacing it in non-serious crimes with the judicial controlled system³.

In the light of the absence of a legislative definition of detention, criminal jurisprudence strived to define it, as some went on to define it as: “the deprivation of freedom of the accused for a period of time determined by the requirements of the investigation and his interest, according to certain controls established by the law.” Others defined it as Detention is one of the investigation procedures whereby the accused is deposited by order of the judicial authority for a specific period in the place of legal custody to indicate the extent of his relationship to the incident and to preserve its evidence and interest according to the controls decided by the legislator.⁴ It is a procedure issued against the accused during the initial investigation with him by the investigating judge or the detective before a ruling is issued on the merits of the case requiring him to be placed for a specified period of time in the Rehabilitation and Correction Center in accordance with what is required by law.⁵

During the period of field monitoring of the sessions of the Magistrates’ Courts (detention), the following data were monitored:

1. Taking into account the privacy of women and juveniles when examining arrest requests.

1.1 Arrest of women.

Table No. (1) shows the gender of the defendants whose requests to extend their detention for the year 2023 are presented

Gaza strip		West Bank		The sex of the arrested
%	number	%	number	
99.2%	1008	97.9%	881	male
0.8%	8	2.1%	19	feminine
100.0%	1016	100.0%	900	the total

The monitoring team found that the number of females who were arrested during the sessions it monitored amounted to (19) females in the courts of the West Bank, at a rate of 2.1% of the total number of persons brought before the court to request their arrest, and it reached (8) females in the courts of the Gaza Strip, at a rate of 0.8%. The total number of persons brought before the court. According to the reports of the oversight team, the judges followed with the women the same method and procedures as with the male defendants, in terms of bringing them into the dock, charging them, hearing their statements, and deciding on their arrest requests.

Among the cases monitored was that the arrested woman was not informed of the procedures taken against her and the privacy of the case was not taken into account. In one of the sessions which were held in the Khan Yunis Magistrate Court, the judge informed the woman of the charge against her, which is illegal intercourse. The aforementioned woman admitted to the charge,

3Dr.. Abdel Qader Saber Jarada, Encyclopedia of Criminal Procedures in Palestinian Legislation, previous source, p. 144.

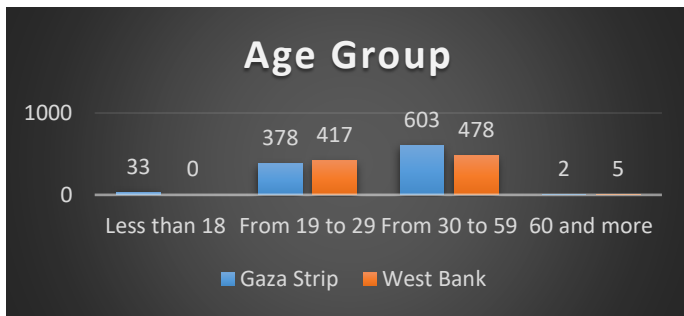
4Dr.. Abdel Qader Saber Jarada, Encyclopedia of Criminal Procedures in Palestinian Legislation, previous source, p. 141.

5Previous reference, d. Salem Ahmed Al-Kurd, Detention Controls and Guarantees in the Palestinian Penal Legislation, a Comparative Study, p. 236.

and this was done in a public session in which the woman’s privacy was not taken into account. After that, the judge took a decision without informing the accused of the procedure he had decided, but it became clear later to the researcher, after reviewing the arrest warrant, that the procedure that was taken was to detain her for a period of 15 days.⁶

In other cases, the judges seemed more sympathetic to the humanitarian needs of the arrested women. In a case that was monitored in the Jericho Court of an accused woman, the accused asked the judge to embrace her aunt who was in the hall, so he allowed her and dealt with her with great kindness after he explained to her all the measures taken against her.⁷

1.2: The age groups of the defendants whose arrest requests are submitted.



By observing the ages of the defendants for whom the Public Prosecution submitted requests for extension of detention in the Magistrate Courts of the West Bank, it was found that 45.9% of the defendants are in the age group from 18 to 29 years, while the percentage of this category in the Magistrate Courts of the Gaza Strip was 37.2. %.

The percentage of those between 30 and 59 years old was 53.1% in the Magistrates Courts of the West Bank, while the percentage of this group in the Gaza Strip was 59.4%. The percentage of those aged 60 years and over was 0.6% in the West Bank and 0.2% in the Gaza Strip. Among the observed cases, 33 cases of juveniles under the age of 18 were presented to the judges of the Magistrate Courts in the Gaza Strip, while no cases under the age of 18 were monitored in the West Bank, as all cases were presented to the juvenile judge. In this context, it is mentioned that Decree-Law No. (4) Of 2016 regarding the protection of juveniles is applied in practice only in the West Bank, while the Decree-Law is not applied to the Gaza Strip. However, there is a kind of practical specialization in dealing with juvenile cases, who are mostly brought before the judges of the Juvenile Protection Center.

1.3: Taking into account the privacy of juveniles when bringing them before the arresting judge.

Some of the cases that were monitored in the courts of the Gaza Strip constituted a violation of the laws that is in force in the Strip, especially the Juvenile Offenders Law No. 2 of 1937, Article 6, which prohibits the mixing of juveniles with adults, and Article 7, which stipulates that the juvenile shall be transferred to the detainee designated for him upon his arrest or trial.

The monitoring team noticed procedures contrary to what was stipulated in the law when considering detention requests for juveniles. In the Gaza Court, during the consideration of a request for the arrest of one of the juveniles, and when the judge asked him about the place of his arrest, he replied that it was in the reformatory, and there was

⁶Observer report field, Fadi Ghneima, Khan Yunis Magistrate Court, in Application No. 191/2022 dated 5/1/2023

⁷Observer report field, Lina Al-Tal, Jericho 3/9/2023.

no discussion by the judge of the detainee regarding the charge ascribed to him, only assured the title of the charge and signed the request of detention. The researcher was unable to view the arrest request because it was not available in the department.⁸

In another case, in the Khan Yunis court, the judge considered an arrest request for a 17-year-old defendant, who was brought with the adult detainees, and the charge was read out to the accused by the judge, and then the judge signed the request without reciting the decision or causing it (justifying it), and without informing the accused of the procedures taken against him and without referring the juvenile to the place of detention for juveniles, where he was detained for 15 days.⁹

In the Deir al-Balah Magistrate Court, and during our review of the arrest requests, the researchers noticed that there was a request for the arrest of a minor accused while he was detained in Nuseirat police station. The judge's decision regarding the arrest request was that to be duly placed at the competent institution in accordance with the rules and arrest request No. 3/2023.¹⁰

In the Gaza Magistrate Court, while monitoring application No. 332/2022, a 15-year-old child accused was arrested, and the accused was entered into the dock with two arrested adults. It is noted that the application (order) of arrest was signed by the prosecutor of Sheikh Radwan, although there is a juvenile prosecutor who is specialized for arresting juveniles.¹¹

During monitoring the Gaza Magistrate Court on 01/02/2023, the detention of a 15-year-old child accused was extended on the pages of arrest request No. 1383/2022, where the accused was entered into the dock with two adults detained at Al-Shujaia Police Station, and after reviewing the arrest warrant, it was found that the request was signed by the prosecutor of Al-Shujaia, despite the presence of a prosecutor specialized in juveniles, as the charge was recited to the accused, which is theft. His detention was extended and the judge did not explain the action taken against him.

In the same session, another 16-year-old defendant was arrested on the same request. He is also detained at Al-Shujaia Police Station and accused of the same charge of theft. The arrested person, along with two adult suspects, was brought into the dock and his detention was extended.¹²

During monitoring the Gaza Magistrate Court, the detainees were brought into the dock before the judge, and it was noticed that there was a small child inside the cage, who was being held at Al-Remal Police Station. During the arrest of the accused by the judge, the judge did not pay any attention to the presence of a small child inside the cage, but only questioned the accused when the arrest request was presented to him by the deportation police, which holds the number 20/2023 on the charge against him, which is begging and carrying a harmful instrument. The accused answered it is correct. Here, the judge decided to extend the detention of the accused. After examining the arrest request, it was found that the arrested person is an 11-year-old child, and

⁸ Report of the field observer, Faten Loulou, during the monitoring the Gaza Magistrate Court on 11/12/2022.

⁹ Observer report Field, Faten Lulu while supervising the Khan Yunis Magistrate Court in Arrest Request No. 1053/2022 On 29/12/2022.

¹⁰ Observer report Field, Faten Lulu Magistrate Court Deir al-Balah in Arrest request No. 3/2023 dated 4/1/2023).

¹¹ Observer report field, Fadi Ghanima during supervision of the Gaza Magistrate Court in Application No. 1332/2022 dated 13/12/2022

¹² Report of the field observer, Fadi Ghanima, during the supervision of the Gaza Magistrate Court in Application No. 1938/2022 dated 1/2/2022

that the arrest request was signed by the prosecutor of Al-Rimal Prosecution, despite the presence of a public prosecutor specialized juvenile detention.¹³

While monitoring the Gaza Magistrate Court on application No. 64/2023, the accused was presented before the judge to extend his detention, where the accused was entered into the dock accompanied by the adult defendants, and the accused was detained at Al-Shujaiya Police Station. When the judge asked him about the charge against him, which is assault, the accused answered it is correct. After examining the detention request, it was found that the accused is 15 years old and that the arrest request is signed by the Prosecutor of Al-Shujaia.¹⁴

While monitoring the Deir Al-Balah Magistrate Court, the detainees were brought into the courtroom, in which there was no detention cage for the arrest or trial of the accused. A 17-year-old detainee was entered, as he is detained at the Nuseirat Police Station. The accused was brought to the courtroom accompanied by other adult defendants. When the judge asked the accused about the charge against him, which is possession of stolen money, the accused answered correctly, and the detention was extended to the accused by the judge, despite the existence of a competent judge for juvenile suspects.¹⁵

On the same day, other two 17-year-old defendants were also arrested, applications No. 1130/2022 and application No. 1129/2022 on charges of theft for the first defendant, and burglary for the second defendant; where the defendants were brought into the judge's room to extend their detention, accompanied by members of the Nuseirat police.¹⁶

Also, during monitoring the Deir al-Balah Magistrate Court, in application No. 979/2022, the accused was brought into the judge's room to detain the accused or extend his detention. When the accused entered, the judge asked the accused about the charge, which was carrying a harmful instrument. Here, the accused's father answered, "It is incorrect." The judge asked the accused's father to remain silent. He repeated the question to the accused, and he answered incorrectly. It was noted that on the same day there was a bail request submitted by the accused, so the bail request was considered in the presence of the accused, and the accused's father pleaded the request, and the prosecutor present in the court pleaded the court to reject the bail request, and the judge decided to reject the request. After that, the judge reopened the arrest request submitted by the deportation police affiliated to the Nuseirat Police Station, and decided to extend the detention of the accused for a period of 15 days.¹⁷

While monitoring the Khan Yunis Magistrate Court, two adult detainees were admitted before the judge and it was noticed that there was a 14-year-old child inside the detention cage, which was extended based on the arrest request No. 5/2023.

During the proceedings of examining the application submitted by the deportation police affiliated to Ma'an police station, the judge asked the accused about the charge against him, which is entering the property of others. The accused answered it is true, and then the judge decided to place the accused in detention without informing him of the procedure. After reviewing the arrest request, it became clear that the judge took the measure of detaining the accused for a period of 15 days and placing the accused with the Al-Rabee Institution for Juvenile Welfare, since the accused is a juvenile, the decision is not aligned with applicable laws

¹³Field Observer report, FadiGhanima during supervision of the Gaza Magistrate Court in Application No. 20/2023 dated 8/1/2022

¹⁴Field Observer report, FadiGhanima during supervision of the Gaza Magistrate Court in Application No. 64/2023 dated 30/1/2023

¹⁵Field Observer report, FadiGhanima during supervision of the Deir al-Balah Magistrate Court in Application No. 1131/2022 dated 11/1/2023

¹⁶Field Observer report, FadiGhanima during supervision of the Deir al-Balah Magistrate Court in Application No. 1130/2022 dated 11/1/2023

¹⁷Field Observer report, FadiGhanima during supervision of the Deir al-Balah Magistrate Court in Application No. 979/2022 dated 21/12/2022

since there is a specialized juvenile judge to issue detention or extension orders, in addition, the arrest warrant is signed by the Ma'an Police Prosecutor, although there is a Prosecutor specialized in juvenile suspects.¹⁸

While monitoring the Khan Yunis Magistrate Court, the detainees were entered into the detention cage to extend their detention. During the consideration of the detention request No. 770/2022, it was noted that the defendants on the application of the request are 3 defendants, including a 16-year-old defendant. When the judge asked the defendants about the charge, they answered negatively, and the defendants' detention was extended for a period of 15 days without informing the accused, including the child, of the action taken against them. On the same day, another accused was arrested on the application of the arrest request No. 627/2022 for a 17-year-old child and without informing him of the procedures taken against him.¹⁹

During the monitoring of the Khan Yunis Magistrate Court, the arrest request of the accused (XY-Z), who is 16 years old and accused of theft and entering third-party property with the intention of committing a crime, was considered. The accused was brought by the police to the courtroom inside the dock with the detainees, and the arrest request was brought by the police accompanying the detainee to the judge, without attaching the investigation file. Then the judge signed the application without reciting the decision and its reasoning, and without informing the accused of the procedures taken against him.²⁰

2. The physical appearance of the accused before the magistrate judge to consider arrest requests.

2.1: Verifying the identity of the arrested / accused person.

When arresting a suspect, it is necessary to verify their identity before arresting them, by looking at their identity cards or asking them about their full name so that there is no mistake in the arrest of the accused, or that there is an impersonation of the arrested person by another person. During the monitoring process, it was observed that some magistrates' judges, when considering arrest requests, do not take full measures to verify the identity of the arrested persons, so they only look at part of the name, the first name or the last name, without mentioning the full name of the arrested person, and without verifying his identity.

It is noted that in some criminal courts, especially the Bethlehem Court, the police do not provide the identity cards of the detainees to the Public Prosecution and the Court. This practice is based on an old instruction by the Police Director several years ago, due to the loss of some of the identities of the detainees, and the identities are not brought when the suspects are summoned.

The team observed that the Magistrate's Courts in the Gaza Strip do not deal with the matter of ascertaining the identity of the accused at the same pace and in all cases. Rather, the procedures differ from one court to another, and even differ from one judge to another within the same court. In one of the monitored cases, it was noticed that the judge called the accused to mention his first name only without mentioning his last name, and in similar cases the judge called the accused to mention his family name

¹⁸Field Observer report, FadiGhanima during supervision of the Khan Yunis Magistrate Court in Application No. 5/2023 and 627/2022 dated 5/1/2023

¹⁹Field Observer report, Faten Lulu Khan Yunis Magistrate Court 2/16/2023

²⁰ Report of the field observer, Faten Lulu, Khan Yunis Magistrate Court, 2/16/2023

without mentioning his first name.²¹ While it was observed in other cases that the judge called the defendants by their full names to verify their identities.²²

2.2. The defendant’s physical appearance before the judges.

Table number (2) compares the percentage of detainees appearing before the magistrate courts in year 2021 and 2023

Gaza strip		West Bank		Appearance of the arrested person before the court
2023	2021	2023	2021	
99.9%	12.8%	99.8%	98.3%	Yes
0.1%	27.6%	0.2%	0.2%	no
-	59.6%	-	1.5%	Failure to attend the detainee due to the Corona pandemic
1016	2,486	900	1,303	Number of sessions monitored

Article (119) of the Criminal Procedures Law No. (3) of 2001, states that “if the investigation procedures require the continuation of the detention of the arrested person for more than twenty-four hours, the deputy prosecutor may request the magistrate judge to extend the detention for a period not exceeding fifteen days.” Article (120) stipulates that “the magistrate judge, after hearing the statements of the representative of the prosecution and the arrested person, may release him, or detain him for a period not exceeding fifteen days, and he may renew his detention for other periods that do not exceed, in total, forty-five days.” Article (121) stated that, “a warrant may not be issued for the arrest of any suspect in his absence, unless the judge is convinced, on the basis of medical evidence, that it is impossible to bring him before the court, due to his illness.”

Based on what has been mentioned, the issuance of a decision to extend the detention is in line with the Palestinian Criminal Procedures Law and international standards of human rights, and what is included in the International Covenant on Civil and Political Rights, and in particular the guarantees of a fair trial, which stipulated that the accused appear before the judge and that the judge hear the accused’s statements, with one exclusion which is stated in article (121) from the aforementioned law, which gave the extension judge the power to extend the detention of the accused without his presence, provided that medical evidence is presented stating that he could not appear before the judge due to his illness.²³

²¹ Such cases are reported in Field observer report , Faten Lulu during the oversight of the Gaza Magistrate Court in Arrest request No. 1277/2022 dated 27/12/2022 Gaza Magistrate Court in Arrest Request No. 1277/2022 dated 27/12/2022 Gaza Magistrate Court in Arrest Request No. 1043/2021 dated 12/27/2022, MNorthern Gaza wisdom in Application No. 1655/2022 dated 12/12/2022, North Gaza Court 1015/2022 dated 12/18/2022, North Gaza Court in the arrest request 1766/2022 dated 12/26/2022. Also in the observer reports field, FadiGhanima during the supervision of the Deir Al-Balah Magistrate Court in Arrest Request No. 1061/2022 dated 12/21/2022. And Deir al-Balah Magistrate Court, in the application that bears the numbers 987/2022-728/2022-720/2022.

²² Observer report field, Fadi Ghanima during the supervision of the North Gaza Magistrate Court in the requests bearing the numbers 1936/2022-1935/2022-1933/2022-1938/2022 on 9/1/2023.

²³ The Court of Appeal has concluded that the extension of the accused's detention took place in his absence, but it justified the extension of the detention in his absence to compelling security measures and the procedures and closures that the country is subjected to, in addition to the seriousness of the charge attributed to him, and that his representative has attended the procedures of detention Extension. And since Article 121 of the Code of Criminal Procedures stipulates that “no arrest warrant may be issued for any suspect in his absence, unless the judge is convinced on the basis of medical evidence that it is not

The monitoring team continued to attend and monitor a total of 1916 detention extension sessions, including 900 detention extension sessions before the conciliation courts in the West Bank, and 1016 detention extension sessions before the magistrate courts in the Gaza Strip. It was noted that the number of defendants who appeared before the magistrate judge in the West Bank reached 898 defendants, i.e., 99.8% of the total cases that were brought before the courts. While the number of defendants who were brought before the magistrate judges to consider the prosecution's requests to extend their detention in the Gaza Strip reached 1015, i.e., 99.9% of the number of defendants who were arrested.

In the course of its monitoring of detention in the southern governorates (Gaza Strip), the team noted that the security officer (policeman) came with the arrest request of the arrested person: "Since this detainee is the same one who was arrested in application No. 995/2022, his bail application No. 944/2022 was considered, but in this application related to him, he did not appear and did not appear before the judge, and the policeman asked the judge, shall I bring the detainee? The judge replied, "No problem" and signed the application without the presence of the accused and his appearance before the court.²⁴"

In the Deir al-Balah court, a case of arrest in absentia was monitored, and by reviewing the arrest request, it was found that the judge had arrested the accused without bringing him to the courtroom. The judge reasoned this by stating that the accompanying officer said the accused did not appear due to his psychological conditions, and his detention was extended for 15 days. We point out that this detainee was arrested on 12/14/2022 and during his arrest by the judge, insulted the court panel and challenged it, and he was sentenced to 6 months in prison.²⁵"

It was found during the monitoring of detention in the northern governorates (West Bank), that two of the defendants were not summoned in the Jericho court from their place of detention, and they are from the city of Bethlehem, and the prosecution pleaded, reasoning that they did not appear before the judge, that one of the defendants was infected with Corona virus and the other was in contact with him, and the prosecutor presented the health report confirming the validity of her claim, and pursuant to the provisions of Article 121 of the Palestinian Code of Criminal Procedure. The medical report was included in the request submitted to extend their

possible to bring him before the court because of his illness), so what was disclosed by the will of the legislator and the explicit text of Article 121 of the Code of Criminal Procedure no suspect shall be arrested in his absence or inattentiveness, while the exception to this rule is that detention is permitted if the judge is convinced, based on medical evidence, that it is impossible to bring him because of his illness, and the aforementioned exception came exclusively and restricted to one single case, and it is known that it is not permissible to expand the interpretation of the exception. As for what was included in the appealed decision, that the extension of the accused's detention took place in the presence of his attorney, we do not find an origin for it in the case papers, and it contradicts reality. Therefore, since the appealed decision was based on reasons that could not be supported, and that the extension of the appellant's detention took place in his absence and in his inattention without justification from the law, the appeal becomes, and this case is appropriate, and that the appealed decision was defective and necessitates cassation." The ruling of the Palestinian Court of Cassation held in Ramallah in Criminal Case No. 48 of 2005, dated 04/03/2006.

²⁴Observer reportField, FatenLulu during supervision of the North Gaza Magistrate Court in Application Number of detention file 1204/2022On 2/1/2022, unpublished.

²⁵Field Observer report, Faten Lulu Magistrate Court Deir al-Balah in Arrest Request No. 712/2022On 12/28/2022, unpublished.

detention, as the court responded positively to the prosecution’s request for detention in the absence of the two defendants.²⁶

2.3 The defendants appear handcuffed before the judges.

Table No. (3): The accused appeared handcuffed before the court

Total		Gaza strip		West Bank		The accused appeared before the court handcuffed
%	number	%	number	%	number	
0.1%	2	0.0%	0	0.2%	2	Yes
99.9%	1914	100.0%	1016	99.8%	898	No ²⁷
100.0%	1916	100.0%	1016	100.0%	900	the total

The international covenants on human rights varied in their position on ensuring the presence of the accused in the trial procedures, as the Universal Declaration of Human Rights of 1948 and the European Convention on Human Rights of 1950 did not explicitly stipulate the necessity of the presence of the accused in the trial, but the text of Article (11) of the Universal Declaration can be interpreted and Article (6) of the European Convention, which referred to the publicity of the trial procedures, and that one of the manifestations of publicity is the presence of the litigants and their agents, and the International Covenant on Civil and Political Rights of 1966 affirmed this guarantee.

The Palestinian Code of Criminal Procedure followed the approach of the statutes of international criminal courts, as it considered the right of the accused to attend trial sessions to be an inherent right, and considered it a criterion of a fair trial, and did not consider trials in absentia, as Article (243) stipulates: “The accused shall attend the session without handcuffs or shackles.”

²⁶Report of the field observer, Lina Al-Tal, Jericho Court, 5/1/2023, it stated: At the same time, and with reference to the reasons given by the Public Prosecution, the court found the request was based on not completing the investigation procedures, and as it appears to the court, the defendants, on 12/21/2022 and 12/20/2022, and based on the investigations received from the General Investigation on 12/26/2022 in the Doha region, which stated that the aforementioned defendants are in possession of unlicensed firearms, and they fired bullets at the complainant and caused damage to the shop. In order for the court, with its powers to supervise the investigation, the judge decided to assign the Public Prosecution to present the investigation file of the accused and to adjourn the session for an hour so that the prosecution could It was brought from the Prosecution Office of Bethlehem. Also, the defense attorney for the accused stated that the highlighted report has no data of the last examination of the defendants and whether they recovered from the disease or not, but it is based on the injury 8 days ago, and this means they have recovered from the disease, since the incubation period for the disease is seven days, according to the Ministry of Health, and a medical report was requested from the Public Prosecution office stating their recent health status with a new date. Also stated that one of the defendants is a heart patient and has a complete blockage in the main artery of the heart, and has an urgent need for a catheterization, and he had submitted the health reports that state this at the Bethlehem Prosecution Office, and he is the one who asked the court to oblige the Prosecution to bring the investigation file and present it to court. At the time, the prosecutor stated that the original investigation file is with the Bethlehem Prosecution Office, and that we will work to bring a copy of it if the court so desires, in order to see it. Therefore, the judge adjourned the session for an hour as a grace period for the Public Prosecution to bring the investigation file, and after the end of the hour period, the session was reopened, and after the court decided to show a copy of the investigation file, and the court found that the charge is of a serious nature, and the last procedure was taken in the file dates back to 28/12/2022. Which convinced the court that the Public Prosecution is working non-stop on the investigation. According to what was stated by the Public Prosecution and the defense attorney, the court decides to extend the detention of the accused for a period of fifteen days.

²⁷Example: Extension case (30/2023), Jenin Magistrate Court, report by researcher Adnan Mahamid.

However, the necessary observation is conducted on the accused, and he/she may not be removed from the session during the examination of the case, unless she/he causes a disturbance that requires that. In this case, the procedures continue until they can be taken in her/his presence, and the court must inform her/him of all the procedures that took place in her/his absence.

Istiqlal monitoring team noted in the courts of the West Bank and the courts of the Gaza Strip, that the presence of the accused / detainee before the Magistrate Court in the request to extend the detention submitted by the Public Prosecution of the court is brought and represented before the court without handcuffs.

3. Classifications of the crimes subject of the arrest.

Crime is generally divided into three categories according to its gravity and seriousness, which are "felony, misdemeanor, and infraction". Conditioning the lawsuit as a felony, misdemeanor, or violation is defined by the law, specifically, the Penal Code. Felony is the most severe and cruel types of crimes, and therefore its punishment can reach the death penalty. The Palestinian legislator has stipulated that the penalty for felony²⁸ starts from 3 years and above, and there are some crimes that are punishable by death, and the judgments are appealed before a court of appeal, then the cassation court.

While a misdemeanor is defined as a "lesser" criminal act compared to felony. Misdemeanors are usually punished with lighter penalties. Misdemeanors may include crimes such as: simple theft, simple assault, disorderly conduct (such as disturbance or quarrels), minor damage to the property of others, and reckless driving. The Palestinian legislator stated that misdemeanors are punishable with imprisonment from 24 hours to 3 years.²⁹

Infractions: The lowest crime is considered the least serious in view of the amount of damage resulting from it. Most of these acts are in violation of the legislature's orders with regard to organizing public facilities and performing their functions in an orderly manner, the law stipulates penalties for these acts, which are: a fine or imprisonment.

According to this division, in the southern governorates (Gaza Strip), the crime is considered a felony, if the penalty prescribed for her by law is death or imprisonment for a period exceeding three years, and it is a misdemeanor; if the penalty is imprisonment for more than one week and less than three years, or a fine in exceeds five pounds.³⁰The criteria are always the penalty prescribed in the legal text applied by the judge, not the penalty actually issued.

By looking at the data of the monitoring team on the sessions monitored in the Magistrates' Courts in the West Bank (Northern Governorates), it is clear that 51% of the charges of arrest requests submitted to the courts were classified as misdemeanors, and 48.3% of the charges were classified as felonies, while the charge was not mentioned by 0.7%. As for the Gaza Strip Magistrate Courts, 71.3% of the charges were classified as misdemeanor, and 28.7% of the charges were classified as felonies. Which indicates a strict scrutiny when deciding on detention procedures, without taking into consideration the severity of the crime; meaning that detention was used as a punishment instead of being a legal procedure as stated by the law.

²⁸Article (14) of the Jordanian Penal Code, The criminal offenses are: 1- Death penalty. 2- Permanent hard labor. 3- Life imprisonment. 4- Temporary hard labor. 5- Temporary detention.

²⁹Article (15) of the Jordanian Penal Code, misdemeanors are 1- Imprisonment. 2- A fine. 3- Bonding with bail.

³⁰ Article (5) of the Palestinian (Southern) Penal Code No. (74) of 1936, amended for the year 2014.

The law specified the maximum period for magistrate judges to issue an order to detain each time at 15 days, and did not say that they should be detained for 15 days, and set the maximum period of detention for 45 days, and did not specify the number of times that the accused must appear before the judge. According to the data of the monitoring team, 70% of the defendants, they are presented only once to the magistrate judge to arrest them before they are released or their files are transferred to the competent court.

About 22% are brought before the judge twice, 8% are brought before the judge three times to extend their detention, and less than 1% are presented four times and more than that, regardless of the number of days they are detained, which in all cases does not exceed 45 days. It is true that the Palestinian Criminal Procedures Law did not specify the crimes for which arrest may be made.³¹ And left the discretion to the competent judicial authorities in all types of crimes, noting that specifying a minimum penalty for which the accused may be arrested is consistent with the fact that this measure is a precautionary measure and not a punishment. Yet, the results of the monitoring process concluded that the competent authorities are largely extravagant in arrest without proper justification, and the majority of prosecutors and judges do not treat an arrest warrant as a matter of legality. Accordingly, it has become necessary to address the authority of judges to arrest, the conditions of the crime and the degree of its seriousness as a criterion to be adhered to, when resorting to the detention procedure or its extension. Detention should not exceed the period of the penalty prescribed for it in the law, and it is not permissible to detain someone for crimes punishable by a fine only.³²

³¹Most of the legislation agrees on the permissibility of arrest and Precautionary confinement in felonies due to the severity and seriousness of the crime, as agreed in the prohibition of precautionary detention in articles of infractions due to their simplicity. As for misdemeanors, precautionary detention may be subject to conditions. Example that article (114/1) of the Jordanian Code of Criminal Procedure, the public prosecutor may issue an arrest warrant against the defendant if the act ascribed to him is punishable by imprisonment for a period exceeding two years or a temporary criminal penalty, as stated in the second paragraph of Article (114) of the same law Notwithstanding the provisions of Paragraph (1), the Public Prosecutor may issue an arrest warrant against the defendant in the following cases:

- a- If the act ascribed to him is a crime of Assault, unintentional Assault, or theft.
- b- If he does not have a fixed and known place of residence in the Kingdom.

³² Crimes are divided in terms of their nature, that is, in terms of the nature of the infringed right, into (political crimes). POLYMIQUES and ordinary (ET DELITS DE DROIT COMMUN).

What is meant by political crimes in general are those crimes that involve the meaning of assaulting the political system of the state, whether from the outside, i.e. the infringement of the independence and sovereignty of the state, that is, from the inside, i.e. the infringement of the form of the government or the system of authorities in it, or the assault on the political rights of individuals.

And what is meant by ordinary crimes are those crimes that do not contain this meaning, there is no difference in that whether the attack is directed against individuals or even against the state as long as the subject of assault is stripped of the political character in its aforementioned meaning, political crimes must not be confused with crimes harmful to the public interest. Because if it is true that political crimes are among the crimes harmful to the public interest, then it is not true that all crimes harmful to the public interest are considered political crimes. The crime of an employee exceeding the limits of his position and the crime of bribery, although they are among the crimes harmful to the public interest, but they are not among the political crimes, and the first thing that is noticed about the crimes in terms of their infringement of the state, they are extremely serious crimes, because it is assumed that they involve an assault on rights related to the safety of the state, either from the outside or from the inside, and this is the consideration on the basis of which the policy of severity is based in the treatment of political criminals, and it is a policy that prevailed in criminal laws. In the past, one of the manifestations of this policy in those laws was subjecting the political criminal with the most severe types of penalties, which were sometimes not limited to the person of the latter or his money, but rather exceeded him to his heirs as well, and political criminals were subject to the extradition system. Rather, this system was in fact made for these categories of criminals, and this plan was not limited to treating the political criminal, and I mean treating them in terms of severity according to the old laws, but also appeared in the laws of some modern countries, and that is according to the rise of the need to protect the state from any kind of

By looking at the table below, it is clear that the indictments that were submitted before the Magistrates' Courts in the West Bank (Northern Governorates) were the highest, with approximately 38.6% of the charges that the Public Prosecution requested to extend the detention of the accused were related to crimes committed against persons, while the financial crimes committed came 25.1%, while drug abuse and trafficking crimes amounted to approximately 8.6%.

Table number (4): The crimes against which the defendants were presented for arrest in 2023

total		Gaza strip		West Bank		charge
%	number	%	number	%	number	
2.4%	46	3.8%	39	0.8%	7	Electronic crimes
40.4%	775	54.0%	549	25.1%	226	Money crimes
0.4%	8	0.4%	4	0.4%	4	Offenses committed against the public sector
27.3%	524	17.4%	177	38.6%	347	Crimes committed against persons
0.4%	8	0.0%	0	0.9%	8	State Security crimes ³³
0.5%	9	0.4%	4	0.6%	5	Economic crimes
0.7%	13	0.0%	0	1.4%	13	Traffic crimes
12.8%	246	16.6%	169	8.6%	77	Trafficking/possession of drugs
1.0%	19	1.0%	10	1.0%	9	Rape and/or indecent assault
5.0%	96	0.3%	3	10.3%	93	The charge was not mentioned at the hearing
9.0%	172	6.0%	61	12.3%	111	Other crimes
100.0%	1916	100.0%	1016	100.0%	900	the total

As for the indictments that were submitted before the Magistrates' Courts in the Gaza Strip (southern governorates), the highest percentage came, with approximately 54% of the charges that the Public Prosecution demanded to extend the detention of the accused were related to crimes involving money, while crimes against persons came with approximately 17.4%. Crimes of drug abuse and trafficking came at approximately 16.6%. The percentage of crimes related to state security in the West Bank was 0.9%,

threats. However, the prevailing trend in modern legislation had enhanced in dealing with political crime, on bases of good treatment of the political criminal, and this has been shown for the first time in legislations after the French Revolution and then entered the laws of other countries. However, these last laws had differed in the extent to which they were adopted, because the system that is usually placed for political crime in the internal law of the state must adapt according to its political system. The criterion for distinguishing between political crimes and ordinary crimes. Ali Hussein behind, Sultan Abdul Qadir Al-Shawi, General Principles of Penal Code, pp. 297-307.

³³ Crimes against the security of the state are among the most serious crimes that the state and its individuals may be exposed to, as they affect its international personality, rights, basic interests, and the interests of its individuals, whether at the internal or external level of the state. A group of cases were classified as a state security crime, the cases are: Case No. (80/2023), Case No. (11/2023), Case No. (38/2023), Case No. (88/2023), Case No. (15/2023), Case No. (403/2023). In the same context, crimes against state security are mentioned in Articles (107) through Article (153) of the applicable Penal Code in the West Bank.

while in the Gaza Strip it was 0%. The reason for the zero value in the Gaza Strip is that the regular courts (first instance and magistrate) do not consider cases related to state security crimes, but rather these cases are considered before the military courts. It is a judicial body that follows (the Military Judicial Council) and follows the Ministry of Interior and National Security.³⁴

Chapter II

The effectiveness of judges in monitoring investigation procedures and combating torture

1. The investigation file before the magistrates

Based on the Criminal Procedures Law of 2001, if the investigation procedures require the continuation of the detention of the accused, the deputy prosecutor may request the magistrate judge to extend the detention for a period not exceeding fifteen days. That is, the prosecution can request detention for a maximum period of 15 days, provided that the total of these periods before the magistrate judge does not exceed 45 days. The Public Prosecution may request an extension for a period of less than 15 days in each request, and the court may decide to grant or reject the request or extend the detention for a period of less than 15 days.

The Palestinian legislator has taken into account the requirements of the investigation, which mean, among other things, the existence of evidence that the accused has been charged, and the presence of evidence of the danger of the accused remaining free based on the evidence such as the testimony of witnesses or the possibility of fleeing as a justification for the purposes of accepting the extension request without the other justifications put forth by the jurists of law.

Detention is an exceptional measure and a departure from the rule and the principle is that the accused remains free until a final judgment is issued convicting him and sentencing him with a penalty depriving him of his freedom, and the restriction of his freedom after that is a penalty for the criminal acts, he committed. Detention is an exception to the principle of innocence, as various legislations do not allow resorting to it except in the narrowest scope when the public interest prevails over individual freedom. It is also a temporary procedure with a period that may not be exceeded; otherwise it will be considered an unjustified penalty. In addition, the legislator aimed to specify the maximum periods of detention to motivate the Public Prosecution to expedite it so that it does not find itself freely stripped of one of its means in it, bearing in mind that the accused can remain for a period of 6 months without an indictment according to Article 120 of the Code of Criminal Procedure.

It is noted that some magistrates extend the detention period for a period of 15 days, without the Public Prosecution having exhausted the period of detention granted to it by the law, as the detention periods are hierarchical, so it is not permissible to extend the detention of the accused for a period of 15 days except after the Public Prosecution has exhausted the period granted to it by law for detention. The 24-hour detention period is sufficient to ensure proper investigation procedures, and there is no need to detain the accused for 15 days immediately after interrogation. This is a violation of the provisions of Article 119 of the Code of Criminal Procedure in force.

1.1 The Public Prosecution's presentation of the investigation file before the competent court.

Istiqlal monitoring team noted in Gaza and West Bank that when a request to extend the detention is sent by the Public Prosecution to the court, the investigation file is not brought or attached to the request for the extension of the detention to be presented to the court panel, for the purposes of examining it and studying the justifications calling for the extension of the

³⁴Report by researcher Fadi Ghanima, researcher and observer at Istiqlal, unpublished.

detention, in order to issue the decision that is aligned with the law. From the legal point of view, there is no explicit provision in the Palestinian Criminal Procedures Law that requires the cause of the arrest warrant, noting that Article (12) of the Palestinian Basic Law stipulates that any person who is arrested or detained must be informed of the reasons for his arrest or detention. The existence of realistic and legal reasons that justify the issuance of this decision, and these reasons must be included in the decision. The Sixth International Conference on Penal Law, which was held in Rome on 9/27/1953, recommended adding the reasoning for the arrest decision and the decision to extend its term.

Of course, the investigative file is considered the body and components of the request for extension of detention and an integral part of it. The investigation file includes the minutes of the accused's interrogation, the testimony of the complaining witness, testimonies of witnesses, attorneys' agency and their readings, records of evidence collection and all the evidence and highlights that were made during the Public Prosecution's investigation of the file, which in turn constitute the most important thing of the file and its founding basis. Based on the investigation file, the Public Prosecution can decide whether there is a need to keep the accused detained, which prompts it to submit a request for extension of detention, as the judge who considers the request to extend the detention without the presence of the investigation file in front of him is not fully aware of the file, and therefore his ability to understand its content and all its details is incomplete.

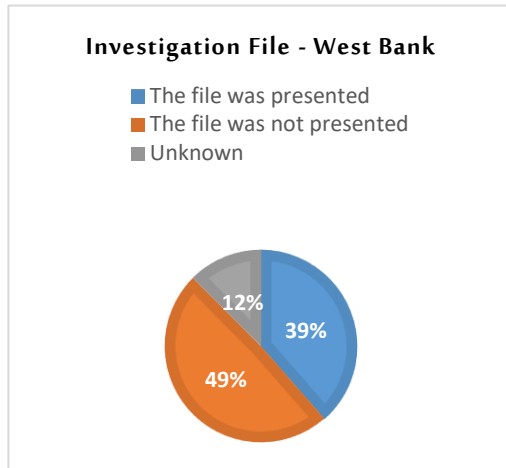
By monitoring the detention sessions and the extension of the detention before the Courts of First Instance in the West Bank, it was found that the investigation file was shown at a rate of 20.1% of all the sessions that were monitored, and the majority of requests submitted for extension of detention were devoid of the investigation file.

By monitoring the detention sessions and extension of the detention of the West Bank Magistrate Courts, it was found that the investigation file was presented at a rate of 38.6% of the total sessions that were monitored, and the majority of the requests were submitted during the detention extension sessions.

As for the Magistrate Courts of the Gaza Strip, 3.8% of the sessions in which the defendants appeared physically were presented before the judge, while the investigation file was not presented in (972) requests for extension of detention, and this percentage corresponds to 95.7%.

Attaching or showing the judge the investigation file makes him able to see the seriousness of the Public Prosecution in the investigation and the availability of the requirements for arrest or not. When the judge sees the investigation file, he can know whether the Public Prosecution is right to request an extension and needs time and measures to be taken, such as calling witnesses and hearing evidence, and that the investigation procedures are ongoing and have not been interrupted and require keeping the accused under arrest, or is the request for extension a result only of the negligence of the Public Prosecution in proceeding according to the procedures and rules and desires to exhaust the periods of detention and treats the request for extension as a routine procedure.

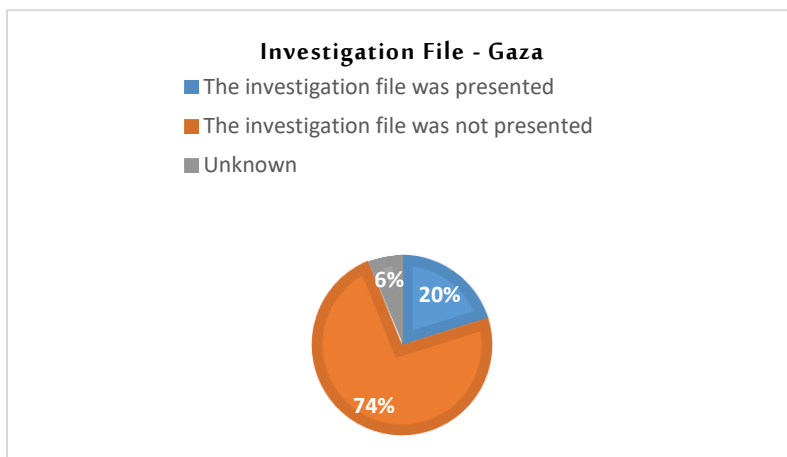
only and its purpose is to gain time, and at other times the request to extend the detention is dealt with as a penalty on account whose purpose is to keep the accused detained and not as a precautionary legal measure.



The absence of presenting the investigation file or presenting it based on a decision by the judge raised the monitoring team attention to question on what basis does the judge decide the seriousness of the charge or that the requirements of the investigation necessitate keeping the accused in detention while he did not see the investigation records, the details of the incident and the charge attributed in the papers? And where did the investigation reach? Does the Public Prosecution office really need time to complete the investigation or not? This is because the arrest and pretrial detention of the accused is a dangerous

procedure, so the accused must be interrogated before his arrest, and this gives the accused an opportunity to refute the accusation. As the law requires the Public Prosecution to inform the magistrate on judge not only of the charge imputed, but also, and this is most important, of the facts of the charge and the evidence presented. If the accused is not questioned, the arrest warrant is invalid, and an unjustified assault on personal freedom necessitates accountability.

A closer look at what is happening in the majority of magistrates' courts when examining requests for extension of detention indicates that the majority of initial requests for extension of detention are not accompanied by the investigation file for the first time, and yet the accused are arrested.



In the course of its monitoring of detention in the southern governorates (Gaza Strip), the team monitored in the Deir al-Balah Magistrate Court a request for the arrest of the accused, and when it was discussed by the judge of the charge attributed to him, it was found that he was accused of stealing a box of cheese worth 20 Shekels. Therefore, the judge ordered the file to be brought from the prosecution during 3 days.³⁵ While monitoring the North Gaza Magistrate Court

in the arrest request No. 1170/2022, the detainee was brought to the North Gaza Magistrate Court Hall, which does not have a sell to bring the detainees into it. When the judge asked the accused about the charge against him by the Public Prosecution,

³⁵Report of the field observer, Faten Lulu, Deir al-Balah Magistrate Court Arrest request No. 1061/2022 on 10/1/2023. Unpublished.

which is theft, the judge told the accused, "You are accused of stealing a mobile type Samsung Is this true? The accused replied that it is correct, and at these moments the judge was looking at the investigation file attached to the arrest request to issue a decision, and here the judge decided to detain the accused for a period of 15 days without informing the accused of the action taken against him. The same was repeated for other requests³⁶".

During monitoring the Khan Yunis Magistrate Court, in Application No. 687/2022, the detainees were entered into a sell. Arrest requests were submitted by the police present with the detainee. When the judge asked the accused about the charge against him by the Public Prosecution, which is insulting religious beliefs, but the accused replied that it was true at the time, I was in a difficult situation, as my son fell into a coma and I did not know what to do, and this was done against my will, and here the judge decided to detain the accused till Monday, corresponding to 9/1/2023, meaning that he was detained for 4 days and the judge asked the police accompanying the detainee to bring the investigation file to view it.³⁷

In Application No. 846/2022, of the Khan Yunis Magistrate Court, the detainee was entered into the detention sell to extend his detention by the judge. When the detention request was presented to the judge by the deportation police of the Khan Yunis police station, the judge asked the accused about his response to the charge against him by the Public Prosecution and he said to him that you are accused of theft, and here the defendant's responded that it is incorrect, and he stated that the one who stole was my sister and I took the responsibility on her behalf. The judge decided to extend the detention of the accused for a period of 24 hours to present the accused once again along with the investigation file with him.³⁸ .

During the supervision of the Rafah Magistrate Court while reviewing the arrest request no. 8/2023 the judge decided to place the defendant in detention for two days, to be presented before the court again along with his investigation file attached. ³⁹In Detention Request No. 660/2022, the judge decided to detain the accused for one day and to present the accused again with the investigation file attached.⁴⁰

It was found during the field monitoring during the northern governorates (West Bank), during monitoring the Nablus Magistrate Court and during the proceedings of the session, the judge decided to assign the Public Prosecution to bring the investigation file for review.⁴¹ In the same court and in another session, the Public Prosecution was assigned to bring the investigation file to the next session in order to consider the request to release the accused and to look at the investigation procedures.⁴²

It was noted that several times the Public Prosecution did not comply with submitting the investigation file, despite the court's order to do so. It is noted that at the stage of submitting the investigation file by the Deputy Public Prosecutor to the Public

³⁶Field Observer report, FadiGhanima during the supervision of the North Gaza Magistrate Court in the heart No. 1170/2022 on 7/12/2022. The judge considered other requests. The following numbers are working: 802/2022 - 806/2022 - 804/2022 - 860/2022, unpublished.

³⁷Report of the field observer, Fadi Ghanima, during the supervision of the Khan Yunis Magistrate Court, in Application No. 687/2022 dated 5/1/2023, unpublished.

³⁸Field Observer report, Fadi Ghanima during supervision of the Khan Yunis Magistrate Court in Application No. 846/2022 dated 17/1/2023. Unpublished.

³⁹Field Observer report, Fadi Ghanima, during supervision of the Rafah Magistrate Court in Application No. 8/2023 dated 12/1/2023, unpublished.

⁴⁰Field Observer report, Fadi Ghanima, during supervision of the Rafah Magistrate Court in Application No. 660/2022 dated 12/1/2023, unpublished.

⁴¹Field observer report, Diana Gul - Nablus Court - 11/12/2022, unpublished.

⁴² Field observer report, Diana Gul - Nablus Court - 12/29/2022, unpublished.

Prosecutor for approval of the decision to file or the indictment decision, a copy of the investigation file was not presented to the extension judge upon his request, under the pretext that it was with the Public Prosecutor.

During monitoring the Ramallah and Al-Bireh Court and during the proceedings of the session, the judge decided to detain the accused for 24 hours, provided that the accused stay in detention until the investigation file is presented by the Public Prosecution to the court panel.⁴³ In the same court, in another detention request, the judge requested during the proceedings of the session, to attach the investigation file⁴⁴

And it became clear during the monitoring of the Ramallah and Al-Bireh court, that the arrested accused was presented to the court in two criminal files, one of which was on charges of breaking the ATM, and the extension of his detention for a period of 15 days was accepted, and for the second file No. 739/22, his detention was extended for a period of 15 days, as the prosecution did not present the investigation file.⁴⁵

During the monitoring of detention sessions in the West Bank courts during the year 2023, compared to the monitoring process that took place in 2021, it was found that a slight improvement was carried out by the Public Prosecution by presenting the investigation file to the conciliation judges, as the percentage in 2021 reached 37.4% of the session, compared to 38.6% for the current year (2023). The percentage in 2021 was 71.2%, while it reached 3.8% for the current year, which constitutes a significant decrease in the submission of investigation files to magistrate court judges in the Gaza Strip.

1.2 The extent to which judges are aware of the contents of the investigation file.

Impartiality is considered a basic principle upon which the judge relies on his/her consideration of the dispute, yet the need of her/his intervention emerges in all branches of criminal justice, with the degree of intervention varying according to the nature of each case, its severity and its danger to individuals and societies. The proof in this court is based on the principle of presuming innocence, and the judge has wide freedom to be convinced of any evidence, and Article (11) of the Palestinian Basic Law indicated: "No one may be arrested, searched, imprisoned, or his freedom restricted in any way, or his movement prevented except by a judicial order in accordance with the provisions of the law, and the law specifies the period of precautionary detention, and it is not permissible to detain or imprison in places other than those subject to the laws issued to regulate prisons." Article (14) of the same law indicated: "The accused is innocent until proven guilty in a legal trial in which he/she is guaranteed the right to defend him/her self, and all accused of a felony shall have a lawyer to defend them."

It is noted that many of the judges, after reviewing the investigation file and despite the lack of strong grounds for arrest, continue to detain the accused for long periods, despite the absence of suspicions, indications, signs, or evidence that necessitate the continuation of the detention, as the detention necessitates the preservation of evidence and the proper conduct of the investigation procedures, and the principle is that it should not continue if there are at least no indications necessitating the continuation of the detention and the seriousness of the Public Prosecution in the investigation.

⁴³ Report of the field observer, Sabreen Abu Libdeh - Ramallah and Al-Bireh Court - 8/12/2022, unpublished.

⁴⁴ Report of the field observer, Sabreen Abu Libdeh - Ramallah and Al-Bireh Court - 18/12/2022, unpublished

⁴⁵ Report of the field observer, Sabreen Abu Libdeh - Ramallah and Al-Bireh Court - 13/12/2022, unpublished.

1.3 Judges' assigning Public Prosecution to bring the investigation file

Through field monitoring of the courts of the northern governorates (West Bank), it was found that the judges assigned the Public Prosecution to submit the investigation file in 8.9% of the cases in which the Public Prosecution did not submit the file. In the same context, Istiqlal found that the courts of the southern governorates (Gaza Strip) assigned the prosecution to bring the investigation file at a rate of 1.1%. This is considered to be a negative indicator that is reflected in the course of the investigation file, and the allows the Public Prosecution's the green light to arrest the accused without the presence of legal reasons and justifications that justify the arrest.

Table No. (5) Assigning the Public Prosecution office to present the investigation file

Gaza strip		West Bank		Did the judge ask the prosecution to present the investigation file?
%	number	%	number	
1.1%	11	8.9%	49	Yes
98.9%	966	91.1%	504	No
100.0%	977	100.0%	553	Total

1.4 The defense lawyer raised the need for the investigation file

By analyzing 553 detention sessions in the Magistrates Courts in the West Bank, it was found that the defense attorney raised the argument that the investigation file did not exist in only (73) cases, representing 13.2% of the total monitored sessions. At the level of the Magistrates' Courts in the Gaza Strip, it was found, based on the analysis of 977 detention sessions, that the defense attorney was not present in most of the sessions.

Table No. (6): The defense lawyer raised the need for the investigation file

Total		Gaza strip		West Bank		Did the defense lawyer raise the need for an investigation file in the case?
%	Number	%	number	%	number	
4.8%	73	0.0%	0	13.2%	73	Yes
9.3%	142	0.1%	1	25.5%	141	No
85.9%	1315	99.9%	976	61.3%	339	There is no lawyer
100.0%	1530	100.0%	977	100.0%	553	Total

Article (119) of the Criminal Procedures Code stipulates that if the investigation procedures require the continuation of the detention of the arrested person for more than twenty-four hours, the deputy prosecutor may request the magistrate judge to extend the detention for a period not exceeding fifteen days. Article (120) of the same law states: "The magistrate judge, after

hearing the statements of the representative of the prosecution and the arrested person, may release him, or detain him for a period not exceeding fifteen days.” He may also renew his detention for other periods not exceeding forty-five days in total. Thus, the law clearly stated that one of the conditions for the validity of arrest procedures in the magistrate courts is that the request for arrest be submitted by the public prosecutor. The law stipulated that the representative of the prosecution attend the detention session so that the judge can hear his statements. The criminal trial is not held without the representative of the Public Prosecution, otherwise it would be invalid.

2. The role of judges in combating torture.

The Convention Against Torture provides a clear definition of torture, as it states in its definition: “Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person with the intent of obtaining from that person, or from a third person, information or a confession, or punish him for an act he/she or a third person has committed or is suspected of having committed, or intimidate or coerce him or any third person, or when such pain or suffering is inflicted for any reason based on discrimination whatsoever of its kind, or at the instigation of, or with the consent or acquiescence of, a public official or any other person acting in an official capacity”.

Also, Article 7 of the Rome Statute of the International Criminal Court regarding crimes against humanity has defined what is meant by torture in its second paragraph, clause e, where it stipulates that torture means (intentionally inflicting severe pain or suffering, whether physical or mental, on a person who is under the supervision or control of the accused, but torture does not include any pain or suffering arising solely from, part of, or a consequence of legal penalties).⁴⁶

Torture as a war crime means subjecting a person to physical or psychological pain with the intent of obtaining confessions or information about his army or information that falls within the secrets that his country is keen on.⁴⁷

Freedom from torture or inhuman or degrading treatment or punishment is one of the most basic 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, which 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 experiment.”⁴⁸

Looking at the Palestinian national legislation, we find that a number of them included some procedural provisions or general rights related to torture. However, it did not criminalize torture as an independent, self-contained crime that is separate from other acts that harm the integrity of the body. The basic penal laws in force in the territories of the National Authority are from the Penal Code in force in the West Bank.⁴⁹

⁴⁶Adopted by the General Assembly and opened for signature, ratification and accession in resolution 46/39 of 10 December 1984. Date of entry into force: 26 June 1987.

⁴⁷See: Article (8/2/a/2) of the Statute of the International Criminal Court.

⁴⁸Published 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>

⁴⁹Article No. 208 of the Penal Code No. (16) of 1960: Extracting confession and information 1- Whoever subjects a person with any kind of violence or force that is not permitted by law with the intention of obtaining a confession of a crime or information about it, he shall be punished with imprisonment

Moreover, the legislator did not mention a special characteristic of whom the acts of physical abuse occurred. Rather, the texts that used the term “torture” were limited to using it as an illegal procedure, as the procedures that may be issued as a result of it are illegal procedures, without laying down a legal basis that criminalizes torture. The act of “torture” is a crime independent of other crimes that may affect the human body.

Law No. 74 of 1936 in force in the Gaza Strip defines torture as: “subjugating or ordering the subjection of any person by force or violence in order to extract from him or from a person he cares about, a confession of a crime or any information related to a crime, or to threaten any person or to order him to threaten him with harm, whether it’s physical harm, or to his money, or any person or the money of any person he cares about in order to extract from him a confession of a crime or any information related to a crime.”⁵⁰ It also stipulates that: “Any public official who endangers another person by the use of force or violence against him, or orders the use of force and violence against him in order to extract from him or from any member of his family a confession of a crime or information related to a crime, he is considered to have committed a misdemeanor.”⁵¹

Moreover, the Palestinian Child Law stipulated that: “No child shall be subjected to physical or mental torture or to any form of punishment or cruel, humiliating or degrading treatment”.⁵² The Juvenile Protection Law of 2016 stated that: “1- Every juvenile has the right to treatment proportionate with his age, protects his honor and dignity, and facilitates his integration into society. It is prohibited to subject the juvenile to physical or moral torture, punishment, or cruel, humiliating, or degrading treatment of human dignity.”

The Basic Law of the National Authority stipulates that no one may be subjected to any coercion or torture. It also stipulated that any statement or confession made under the influence of acts of coercion or torture is considered invalid. The Reform and Rehabilitation Law also stipulated that the detention center administration is prohibited from practicing any acts of torture or the use of acts of force on the inmate.⁵³ The Code of Criminal Procedures stipulated in the conditions for the validity of the confession to be legal, that it be issued voluntarily and by choice, without physical or moral pressure or coercion, but despite all that, it did not use the term “torture”.

Article (29) of the Palestinian Criminal Procedures Law No. 3 of 2001 stipulates that “no one may be subjected to any coercion or torture, and the accused and all others deprived of their liberty shall be treated appropriately.” And if any procedures that cause physical harm to the accused are used, in various contexts of criminal investigations, to obtain information or evidence, this leads to the inadmissibility of the evidence in the trial. This is explicitly stated in Article 13 of the Palestinian Basic Law, the second

from three months to three years. 2- If these acts of violence and severity lead to illness or injury, the penalty shall be from six months to three years, unless such acts require a more severe penalty.

⁵⁰ See: Article (109) bis (B) From the Palestinian Penal Code No. (74) Of 1936 that amended the previous law in 2014.

⁵¹ See: Article (108) of the Palestinian Penal Code No. (74) Of 1936 that amended the previous law in 2014.

⁵² See: Article (68) of the Palestinian Child Law No. (7) Of 2004.

⁵³ Article (37) Paragraph (2), Law No. (6) Of 1998 regarding correction and rehabilitation centers “prisons”: “It is forbidden to torture inmates or use force against them.”

paragraph of which states that "every statement or confession made in violation of the provisions of the first paragraph of this article is null and void."

Because of the seriousness of any allegation of torture, courts must treat any admission of torture with the utmost care, ensuring that a proper investigation is conducted and that perpetrators are held accountable for their actions. The Palestinian legislator did not stipulate a certain degree of gravity for torture, and the matter in that is left to the discretion of the trial court, which it deduces from the circumstances of the case and under the supervision of the Court of Appeal.⁵⁴

2.1. The accused/detainee alleges that he was tortured during the consideration of their arrest requests.

Through the monitoring process carried out by the "Istiqlal" team, it was found that a group of accused/arrested persons declared before the Magistrates' Courts in the West Bank (Northern Governorates) that they had been subjected to violence, torture and/or ill-treatment, and this percentage was approximately 3% of all the cases that were monitored. Moreover, 0.9% of the defendants declared before the Magistrates Courts in the Gaza Strip (southern governorates) that they had been subjected to torture. It is noted that despite the presence of clear traces of torture on the detainee in some cases, he continues to be detained by the court without regard to torture, despite the absence of any evidence except for the confession obtained under threat.

Table No. (7) The accused's allegation of torture

Gaza strip		West Bank		The accused declared before the court that he had been subjected to violence, torture or ill-treatment
0.9%	9	3.0%	27	Yes ^{55,56}
99.1%	1007	97.0%	873	No ⁵⁷
100.0%	1016	100.0%	900	the total

Based on the cases that were monitored in the West Bank Magistrate Courts, it was found at Jenin Magistrate Court in an arrest request that the General Investigation Service arrested both (A.D.) and her husband (R.D) on charges of having a weapon in the house. According to their claim before the court judge, the General Investigation Department threatened the husband with her children and also threatened the husband with his wife; this harmed the detainees and forced them to sign statements that they didn't make, and they were subsequently detained.⁵⁸

During the supervision of the Ramallah and Al-Bireh Magistrate Court, 4 detainees appeared before the judge on a political charge (Birzeit University students). One defendant was accompanied by a defense lawyer, and there was no defense lawyer present

⁵⁴Dr. Abdul Qadir Saber Jarada, Personal Crimes, Alexandria Library, 2022 AD, 324.

⁵⁵Example: Case No. (826) pending before Ramallah Magistrate Court, Case No. (2784) Hebron Magistrate Court, Case No. (19) Jericho Magistrate Court, Case No. (149) Yatta Magistrate Court, and Case No. (23) Jericho Magistrate Court.

⁵⁶Example of case No. (2066/2022), (265/2022) and (102/2022), which is pending before Gaza Magistrate Court.

⁵⁷Among the cases that did not declare that they were subjected to torture, the monitoring team noted that there are 4 cases in the West Bank and 3 cases in the Gaza Strip that showed signs of torture that were not declared before the court, and thus the number of people who declared that or showed traces of torture is 31 in the West Bank and 12 people in the Gaza Strip.

⁵⁸ Field observer report, Adnan Mahamid, Jenin Magistrate Court, 12/15/2022, unpublished.

with the other three defendants. During the proceedings of the session, the charge was not mentioned. Regarding the place of their arrest, the fourth defendant replied that he is being held by the Preventive Security Forces. During the proceedings of the session, the representative of the first accused pleaded and opposed the request of the Public Prosecution to extend the detention of the accused on the grounds that he had been detained for 7 days and that he had been subjected to torture and beating during the interrogation, and he demanded that the court panel release him. The judge asked the accused about who did this to him, and the accused answered that they were members of the Preventive Security Forces. A discussion went on between the judge and the defendant regarding the state of torture and the forms of torture to which the accused was subjected. The judge discussed with the accused about informing the Public Prosecution that he had been subjected to torture, and the accused replied that he declared this before the Public Prosecutor, but without giving any details.⁵⁹

While monitoring the Gaza Magistrate Court in Application No. 718/2022, the monitoring team noticed that the accused has bruises on the face, apparent redness, exhaustion on the accused because he could not stand, and the presence of a gauze roll covering the head area. The judge did not ask about that, and the accused did not declare that he was subjected to torture during his arrest. On the same day, a request for the arrest of the same accused was considered. The judge proceeded with the case number 707/2022 on the charge of theft.⁶⁰ Despite the presence of bruises and redness clearly visible on the accused, the judge did not ask about it, and the accused did not declare that he was subjected to torture during his arrest⁶¹.

During monitoring the extension request, number 2066/2022, the accused was admitted to the detention cell by the deportation police affiliated to Al-Remal Police Station. When the judge asked the accused about the charge against him by the Public Prosecution, which is theft, the accused stated that this is not true and that the confession was taken from him under torture by members of the General Investigations of the Al-Remal Police. It was clearly observed on the accused that there was redness and bruises, and the accused told the judge that he remained in Shabih -unpleasant position where the detainee is positioned tied from his hands to his back while he is leaning on a chair in the bathroom - for several days at the Investigation Department in order for them to obtain a confession, but the judge did not record anything of the accused's statements during the consideration of the arrest request, and he did not take any action in this regard, and the judge decided to detain the accused for a period of 15 days without informing the accused of the action taken against him.⁶²

While monitoring the Deir al-Balah Magistrate Court in Application No. 27/2023, the detainee was brought, accompanied by members of the deportation police of the Nusseirat Center, and when the request was considered by the judge, the judge asked the accused about his response to the charge, which he denied and stated that he was tortured by members of the Anti-Narcotics Agency of the Nuseirat Police Station, and his left hand was broken during interrogation as a result of the torture, and his right eardrum was pierced as a result of being hit with the bottom of the gun by the Anti-Narcotics police. He further stated that he was presented to a doctor for inspection and the doctor said that the defendant needs constant care and special treatment for the ear because he cannot hear from it as a result of the beating. In addition to being brutally beaten by the police in the head and back area, and all the time the defendant did not feel his head as a result of the beating, and all of this was clearly visible from the appearance of the accused, and here the judge decided to detain the accused for 15 days, and referring the accused to a doctor

⁵⁹ Report by Field Observer Sabreen Abu Libdeh, Ramallah and Al-Bireh Court - 12/22/2022, unpublished.

⁶⁰ Report of the field observer, Fadi Ghanima, Gaza Magistrate Court, in applications No. 718/2022 - 707/2022 dated 8/12/2022, unpublished.

⁶¹ Report of the field observer Fadibooty, Gaza Magistrate court. Application No. 2277/2022 dated 8/12/2022, unpublished.

⁶² Report of the field observer, Fadi Ghanima, Gaza Magistrate Court, in Application No. 2066/2022 dated 8/12/2022, unpublished.

immediately and preparing a medical report on the case. The judge justified this by writing on the arrest warrant by looking at the apparent condition of the detainee, showing a fracture in the left hand, and the need to be presented to a doctor, so he can prepare a report in that regard.⁶³

2.2: Evidence of torture/ill-treatment in the hearing record.

Article (253) of the Criminal Procedure code states that: "The court clerk shall record all trial facts in the session minutes and sign it with the court panel." Accordingly, it has become necessary for magistrate judges to write down any statements made during the consideration of arrest requests, in the records of trial sessions, including allegations of torture that are raised by persons whose arrest requests are presented to the court.

Table No. (8) Recording allegations of torture in the hearing record

Gaza strip		West Bank		The judge recorded in the hearing record that the accused had been tortured
33.3%	4	51.6%	16	
66.7%	8	48.4%	15	No
100.0%	12	100.0%	31	Total

Through the monitoring process carried out by the "Istiqlal" team, it was noticed that the Magistrates' court judges in the West Bank (the northern governorates) recorded the defendants' statements regarding the ill-treatment by approximately 51.6%. As for the Magistrates' court judges in the Gaza Strip (southern governorates), records of the statements of those accused of being subjected to torture and ill-treatment was approximately 33.3%.

2.3: Virtual detection of the arrested.

The law requires that the deputy prosecutor must examine the body of the accused before interrogating him and prove all the apparent injuries he sees and the reason for their occurrence. And the deputy prosecutor orders on his own initiative to conduct medical and psychological examinations of the accused by the competent authorities if he deems it necessary or at the request of the lawyer.⁶⁴ Medical practitioners have a professional and ethical responsibility to document and prevent torture and ill-treatment. In 2004, the Office of the United Nations High Commissioner for Human Rights adopted the Manual on the Effective Investigation and Documentation of Torture and other cruel ill-treatment, or harsh punishment, or inhuman or degrading treatment, known as the Istanbul Protocol. This document recalls the international norms relating to the prohibition of torture and the duty of states to prevent and suppress such practices (paragraphs 1-47). It develops concrete elements related to the obligation of states to investigate such situations in an effective and impartial manner. It includes practical guidance regarding the

⁶³Report of the field observer, Fadi Ghanima, Deir al-Balah Magistrate Court, in Application No. 27/2023 dated 18/1/2023, unpublished.

⁶⁴Articles 99 and 100 of the Criminal Procedures Law No. 3 of 2001

collection of testimonies and other forensic and medical evidence to document torture. It also sets out the ethical obligations of the legal (paras. 49-50) and medical professions (paras. 51-56) in their work with victims of torture⁶⁵.

Table No. (9) Referral to a medical committee

Gaza strip		West Bank		The judge decided to transfer the accused to the medical committee to conduct an examination and prepare a medical report	
8.3%	1	12.9%	4	Yes	
91.7%	11	87.1%	27	No	
100.0%	12	100.0%	31	Total	

Through the monitoring process, it became clear that the judges of the Magistrates' Courts in the West Bank, and during the monitoring process that included 31 cases, in which the defendants declared that they had been subjected to violence and/or ill-treatment, or showed traces of physical violence, the judge referred (4) cases to the medical committee to conduct a medical examination and prove exposure to violence and/or ill-treatment. That is, equivalent to 12.9% of the total cases, and (27) cases, or 87.1%, were ignored. The courts did not decide to submit it to the medical examination. In the Jericho court, it was observed that the accused stated that he was being tortured. The judge asked the defendants to show him the torture marks; and the defendant stated that the torture was psychological. The judge refused to register it in the case file and refused to transfer the defendant to a medical committee.⁶⁶

As it turned out, the magistrates in the magistrate courts in the Gaza Strip have referred only one case to the medical examination, while (11) cases amounting to 91.7%, were ignored and courts did not refer it to the medical examination.

During the process of monitoring at the Nablus court, it was found that the court decided to detain the accused for a period of 7 days on the charge ascribed to him in the indictment and decided to refer the defendant to medical services, provide him with appropriate treatment, and provide the court with a medical report on the condition of the accused.⁶⁷

4.2: Referring the files of perpetrators of torture to the criminal investigation.

According to the law, the Public Prosecutor shall supervise the judicial officers (authorized to investigate and interrogate) in the Palestinian police and security agencies, who are subject to his legal supervision in relation to their job duties, and he may request the competent authorities to take disciplinary measures against anyone who commits a violation of his duties or defaults in his work. This does not prevent him from being held accountable in criminal charges.⁶⁸

However, the prohibition of criminal accountability exists realistically, as the military judiciary is the one concerned with criminal accountability for all military personnel, including those who enjoy the status of judicial officers and whom the Public Prosecutor

⁶⁵Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), published at: <https://ar.guide-humanitarian-law.org/content/article/5/t-dhyb-wdrwb-lm-ml-ll-nsny-w-lmhyn/>

⁶⁶The report of the field observer, Lina Al-Tal, Jericho Court, 19/1/2023, unpublished.

⁶⁷Field observer report, Diana Gul, Nablus Court - 5/12/2022, unpublished.

⁶⁸Article 20 of the Criminal Procedures Law No. 3 of 2001.

supervises, as they are subject to his supervision in relation to their job duties related to investigation and interrogation, but at the same time he does not have the power to hold them accountable criminally.

The Constitutional Court reaffirmed (Explanatory Decision No. 2/2018 issued on 9/12/2018) that the Military courts are competent to consider crimes committed by those charged with law enforcement, including crimes of torture and emphasized this jurisdiction based on the personal criterion when it interpreted the concept of the military that the Palestinian Constitutional Court went to in answering the question put before it about the competent judicial authority to consider cases related to the military.

Thus, the constitutional court left the issue of referring cases of torture from the regular judiciary, which was exposed before it as the competent authority to look into cases of civilians deprived of their liberty, to the military judiciary specialized in holding law enforcement officials accountable, without legal texts, specifying the nature of the referral, its conditions, its timing, and its ceiling, which, if not specified, exposes the evidence to be lost over time, as well as the value of legal evidence before referral, and stipulating the criminalization of law enforcement officials from the judiciary and its agents and stipulating a specific penalty in the event that the case is not referred to the competent authority in a short time, its criterion is to ensure that the signs of torture do not disappear on the victim's body, and also guarantees that the crime of torture will not be repeated against the same victim after her return to the detention center.

Chapter Three

The effectiveness of magistrate judges in achieving fair trial guarantees when considering arrest requests.

Defendants are given the opportunity to present their case to a judge for the first time upon arrest, which is why it is critical that due process is not compromised. Where the principle of "equal parties"; guarantees the defendants the ability to present evidence on an equal basis with the prosecution. If the accused/detainees see that the judge is harsh in dealing with them and not allowing them to speak except to answer questions; they may not be able to present their versions of events, which contradicts of achieving justice; where fair trials require the presumption of innocence of the accused until proven guilty, in line with Article 11 of the Universal Declaration of Human Rights and Article 14.2 of the International Covenant on Civil and Political Rights, which grants everyone accused of a crime the right "to be presumed innocent until proven guilty according to law."

On the other hand, it is the duty of judges to promote the basic values of judicial behavior, namely independence, impartiality, decency, equality, competence and diligence. They also have a responsibility to improve the capacity of the criminal justice system to respond to gender-sensitively, to respect, protect and support human rights and gender equality, and to make decisions about diversion and alternative punitive measures.

Article (9) of the Palestinian basic law states that: "Palestinians are equal before the law and the judiciary, without discrimination on the grounds of race, sex, color, religion, political opinion, or disability." During the period of field monitoring of the courts in the northern and southern governorates, it was found that some judges dealt with the accused/detainee, with unjustified severity, as there was one case in the West Bank, and three cases in the Gaza Strip.

1. Extension in open session

The European Convention on Human Rights guaranteed,⁶⁹ the right of individuals to a trial within a reasonable period of time, and it stipulated that: "The right of the individual when deciding on his civil rights and obligations, or on a criminal accusation against him, to a fair and public trial within a reasonable period of time before an independent, impartial court formed in accordance with the law."

Table No. (10): Extension in plenary session

the total		Gaza strip		West Bank		Was the detention extended in a public session?
%	Number	%	Number	%	Number	
99.2%	1901	99.9%	1015	98.4%	886	Yes
0.8%	15	0.1%	0	1.6%	7	No ⁷⁰
100.0%	1916	100.0%	1016	100.0%	900	Total

Of the total number of hearings that were monitored, it was found that there were 14 cases, constituting 1.6%, in the courts of the northern governorates (West Bank), which were held to extend the detention of the accused in secret. At the level of the courts in the southern governorates (Gaza Strip), the court was held once to extend the detention of the accused.

The convening of the court to extend the detention of the accused in secret constitutes an explicit violation of the provisions of Article (105) of the Basic Law, which states: "Court sessions are public, unless the court decides that they be secret in consideration of public order or morals. In all cases, the verdict is pronounced in an open session."

2. Judges informing the accused/arrested, of the measures taken against him.

Table No. (11): 2. Judges informing the accused/arrested, of the measures taken against him.

the total		Gaza strip		West Bank		The court informs the detainee and his representative of the measures taken against him.
%	Number	%	Number	%	Number	
47.0%	901	4.0%	41	95.6%	860	Yes
53.0%	1015	96.0%	975	4.4%	40	No
100.0%	1916	100.0%	1016	100.0%	900	Total

During the field monitoring period, it was found that the judges informed the defendants of the measures taken against them, as it was found that the courts of the West Bank informed the accused of the measures taken against him, in approximately 95.6% of the total sessions that were monitored. The percentage in the Gaza Strip reached to 47% of the total sessions monitored. This constitutes an explicit violation of the provisions of Article (12) of the Palestinian Basic Law, which states: "Anyone who is arrested

⁶⁹ Convention for the Protection of Human Rights within the scope of the Council of Europe Rome of November 4, 1950, published on the website: <http://hrlibrary.umn.edu/arab/euhrcom.html>

⁷⁰Such as Case No. (826/2022) before the Ramallah Magistrate Court, Case No. (2224/2022) before the Qalqilya Magistrate Court, and Case No. (60/2023) before the Jenin Magistrate Court.

or detained shall be informed of the reasons for his arrest or detention, and he shall be promptly informed, in a language he understands, of the accusation against him, and he shall be enabled to contact a lawyer, and he shall be brought to trial, without delay.”

3. The period length of consideration of the request for extension by the judges.

Table number (12): Comparing the time spent by judges to decide on detention requests during the years 2021/2023

Gaza strip		West Bank		Time period
2023	2021	2023	2021	
98.4%	78.5%	41.1%	33.0%	Less than 5 minutes
1.4%	20.3%	37.1%	34.0%	5 to 10 minutes
0.2%	0.9%	12.9%	29.7%	10 to 15 minutes
0.0%	0.3%	8.9%	3.3%	more than 15 minutes
1,016	2,486	900	1,303	The number of sessions

The rate of consideration of an extension request by judges before the Magistrate Courts in the West Bank for the year 2023 amounted to less than five minutes, in approximately 41.1% of the total sessions that were monitored. In contrast, the time spent by the magistrate judge ranged from (5 to 10) minutes at 37.1%. On the other hand, the rate of consideration of the extension request by judges before the magistrate courts in the Gaza Strip for the year 2023 amounted to less than five minutes in approximately 98.4% of the total sessions that were monitored. In contrast, the times spent by the magistrate judge came from (5 to 10 minutes) at 1.4% of the total sessions that were monitored.

4. Adjourning the session for deliberation before taking a decision on arrest.

The Basic Law as well as international conventions promotes considering human freedom at the forefront of priorities, and it called for the right to freedom, as the basis for any person is to live freely. Yet, the legislator gave society the right to hold the perpetrator and the aggressor accountable. However, the legislator did not make this without regulation, but rather set out texts that protect the individual, even if he is accused of violating laws and regulations and assaulting society, from injustice and arbitrariness in his arrest. Therefore, the report explains the periods that the Public Prosecution and the court may detain an accused without bringing him to court by referring his file for trial.

Table No. 13 Adjourning the session for deliberation

Total		Gaza strip		West Bank		The session was adjourned for deliberation before issuing the arrest decision
%	Number	%	Number	%	Number	
2.5%	48	0.4%	4	4.9%	44	Yes
97.5%	1868	99.6%	1012	95.1%	856	No

100.0%	1916	100.0%	1016	100.0%	900	Total
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By analyzing 900 detention hearings in the Magistrates Courts in the West Bank, it was found that the session was adjourned to deliberate and give the decision in (44) cases only, representing 4.9% of the total sessions that were monitored. At the level of the Magistrates' Courts in the Gaza Strip, it was found through an analysis of 1016 criminal cases that adjourning the session for a deliberation was in (4) cases only, which corresponds to 0.4% of the total sessions.

5. Legal representation for the accused/arrested in the detention sessions.

The Covenant on Civil and Political Rights, and regional human rights conventions stipulated the right to defense, including the right for the accused to have a defense lawyer of his choice. Depriving the accused of choosing a defense lawyer, or of having access to a lawyer at all, was one of the grounds for a violation of the right to a fair trial. This basic right is enshrined in Article 14 of the Palestinian Basic Law, which states that "everyone accused of a crime must have a lawyer to defend him." This includes guaranteeing the accused the right to choose counsel and the right to free legal aid for indigent defendants.

In this regard, the report refers to the decision of the Palestinian Court of Cassation in Criminal Appeal No. (27/2016) issued on September 1, 2016: which states that: "Since the right of the accused to seek the assistance of a representative lawyer is considered one of the basic guarantees in the defense that the court may not ignore (initially)⁷¹".

It is noted that in many cases the defendant's representative is not called, or the court refuses to wait for the lawyer to appear under the pretext of judicial work pressure.

Table No. (14): Legal representation for detainees

Gaza strip		West Bank		Presence of a defense attorney
%	Number	%	Number	
0.2%	2	46.6%	419	Yes
99.8%	1014	53.4%	481	No
100.0%	1016	100.0%	900	Total

Through court monitoring, it was found that 78.3% of the accused/arrested persons in the courts of the West Bank sought to appoint a lawyer, while 7.4% resorted to obtaining legal assistance from the relevant institution. While the court's assignment of lawyers, came to the lowest rate amounting to 0.2%. During the monitoring of the courts of the Gaza Strip, it was found that there are only two defendants who have appointed lawyers.

Table No. (15): Appointment of a legal representative

Gaza strip		West Bank		Defense counsel has been appointed by
%	Number	%	Number	
100.0%	2	78.3%	328	Accused.

⁷¹Criminal Appeal No. (27) of 2016, Chapter Date September 1, 2016, published on the Encyclopedia of Palestinian Laws, Judgments, and Court Rulings "Maqam", for more see: <https://maqam.najah.edu/judgments/2488/>

0.0%	0	7.4%	31	Legal Aid Foundation. ⁷²
0.0%	0	0.2%	0	Court
0.0%	0	14.1%	59	Other
100.0%	2	100.0%	419	Total

6. Public Prosecution’s attendance to the detention extension sessions

Article (119) Of the Criminal Procedure Code stated that, if the investigation procedures require the continuation of the detention of the arrested person for more than twenty-four hours, the deputy prosecutor may request the conciliation judge to extend the detention for a period not exceeding fifteen days. Article (120) of the same law states, “The magistrate judge, after hearing the statements of the representative of the prosecution and the arrested person, may release him, or detain him for a period not exceeding fifteen days”. He may also renew his detention for other periods not exceeding forty-five days in total. Thus, the law clearly stated that one of the conditions for the validity of arrest procedures in the magistrate courts is that the request for arrest be submitted by the public prosecutor. The law stipulated that the representative of the prosecution attend the detention session so that the judge can hear his statements. The criminal trial is not held without the representative of the Public Prosecution, otherwise it would be invalid.

Table number (16) Attending the Public Prosecution for the 2021 extension sessions and 2023

Gaza strip		West Bank		Attendance
2023		2023		
2.6%		100.0%		Yes
97.4%		0.0%		No
1,016		900		The number of monitored sessions

The process of monitoring the detention sessions proved that the prosecution’s attendance at the detention sessions in the West Bank Magistrate Courts was complete, however, at the Magistrate Courts of the Gaza Strip, the absence of the Public Prosecutor from the court sessions reached to 97.4% of total cases that were monitored in the Magistrate Courts of the Gaza Strip. Gaza judges explain that hearing arrest requests in the absence of members of the prosecution and the presence of security officers from the judicial police, is based on the text of Article (55) of the Code of Criminal Procedures, which came under the investigation section and states that the Public Prosecutor or the competent Public Prosecutor may delegate one of the competent judicial

⁷² The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2012, for the first time established a positive duty for states to provide legal aid in criminal justice systems (United Nations, 2012), in which UN General Assembly Resolution 67/187 called on states to provide legal aid to all persons detained, arrested, imprisoned, suspected of or accused of a crime, and to ensure the right to legal aid in their national systems at the highest level.

officers to carry out any of the investigation work in a specific case, with the exception of the interrogation of the accused in criminal matters. The delegation has to be on a specific act/procedure and can't be on all procedures.⁷³

Detention procedures in the Magistrate Courts of the Gaza Strip, which take place without the presence of the representative of the Public Prosecution, are in violation of the law and leads to make the arrest procedure and the court session invalid, since the arrest requests must be submitted only by the deputy prosecutor, and the law stipulates that the prosecution attend the arrest sessions. The two conditions mentioned are mentioned in the section on detention and pretrial detention that regulate the arrest process, unlike Article (55) related to delegation, which was stated under the investigation section and therefore cannot be applied on the arrest proceedings.

By looking at Table No. (21) Above, it appears that the presence of the Public Prosecution in the detention sessions in the northern governorates (West Bank) was positive, consistent and legal, as the percentage was nearly 100% in the years 2021 and 2023. In the same comparison in the southern governorates (Gaza Strip), it was noted a sharp decrease in the attendance of the Public Prosecution in detention sessions, as it reached 5.7% in the comparative year, while it reached 2.6% in the current year, which constitutes a clear violation of the provisions of the Palestinian Criminal Procedures Law.

During the field monitoring period, it was found that the Public Prosecutor pleaded the extension request before the courts of the West Bank at a rate of 82%, while the Public Prosecutor did not plead before the courts of the Gaza Strip at all, as the percentage of the Public Prosecution's pleading reached 0%, which is a serious indicator that reflects negatively on the conduct of the detention sessions. The pleading is all statements submitted by the litigants or those acting on their behalf in order to clarify the facts of the dispute and to state the evidence and legal grounds on which they rely in support of their position. Accordingly, pleading plays an essential role in litigation before the judiciary as a system whose basis is the principle of equality between the litigants and its purpose is to exercise the rights of defense in order to achieve justice between the litigants before the judiciary. The second paragraph of Article (252) states:⁷⁴ The court may assign the deputy prosecutor and the defense attorney to present a written pleading within a specific period as it deems appropriate and on the specified date, the pleadings are recited and added to the minutes after being signed by the court panel.

7. Representatives of the security services attend the trial sessions.

Article (98) of the Palestinian Basic Law states that: Judges are independent, and there is no authority over them in their rulings other than the law, and no authority may interfere in the judiciary or in the affairs of justice". The opponent in the criminal / investigation case is the Public Prosecution that has the power to direct the criminal case before the judiciary, according to what is stipulated in Article (1) of the Code of Criminal Procedures, which states that: "The Public Prosecution is exclusively competent to institute and initiate criminal proceedings, and it is not instituted by others except in the cases indicated in the law." As for Article (2) of the same law, it stipulates that: "The Public Prosecutor shall conduct the criminal lawsuit by itself or through one of the deputies, while Article (302) of the same law stated that: "Sessions of the magistrate courts in misdemeanor cases are held in the presence of the Deputy Public Prosecutor and the clerk."

⁷³The extent to which the accused's guarantees are respected during arrest and pre-trial detention procedures in the Magistrates' Courts, The Civil Commission for the Independence of the Judiciary and the Rule of Law "Istiqlal", 2020.

⁷⁴Article (252), Criminal Procedures Law No. (3) Of 2001.

While the basic principles regarding the independence of the judiciary came in Article (4) in the context of the independence of the judiciary, as follows: "It is not permissible for any improper or unjustified interference to occur in judicial procedures, and judicial rulings issued by courts are not subject to reconsideration. This principle does not prejudice judicial review or the competent authorities to mitigate or amend sentences issued by the judicial authority."⁷⁵

Table No. (17): Representatives of the security services attendance the trial sessions 2021/2023

Gaza strip		West Bank		The presence of any member of the judicial police / representative of the security services in the detention extension session.
2023	2021	2023	2021	
89.4%	82.2%	21.7%	46.3%	Yes
10.6%	17.8%	78.3%	53.7%	No
1016	2,486	900	1,303	The number of monitored sessions

By looking at the table shown above, it was found that the presence of representatives of the security services for trial/detention sessions in the northern governorates (West Bank) was approximately 21.7%, and with the same comparison in the southern governorates (Gaza Strip), we find that the security services are heavily present in the hearings; the trial rate reached 89.4%, which constitutes a violation of the rules of the independence of the judiciary.

It was found that the attendance of representatives of the security services for trial sessions / detention sessions in the northern governorates (West Bank) was approximately 46.3% for the year 2021. Compared to the current year, this percentage has decreased positively, which reinforces the principle of the independence of the judiciary, as this percentage reached to 21.7%.

In the same comparison in the southern governorates (Gaza Strip), the monitoring revealed that the attendance of representatives of the security services to trial sessions / detention sessions came at a higher rate than in 2021, as the percentage in the aforementioned year reached 82.2%, while it reached 89.4% in the current year, and this constitutes a violation of the principle of the independence of the judiciary as shown above.

The Public Prosecution in the Gaza Strip does not attend the procedures for the arrest of the accused before the court, whatever the degree of the crime. The work of the Public Prosecutor in the Gaza Strip is limited to issuing an extension request only. Thus the Public Prosecution in the Gaza Strip violates the text of Articles (19 and 120) of the Palestinian Criminal Procedure Code.⁷⁶

8. The periods requested by the Public Prosecution for detention.

According to the results revealed by the monitoring process, the Public Prosecution Office in the West Bank went to the maximum length of detention in the requests it submitted. The Public Prosecution demanded detention for a period of 15 days in about 67.1% of the requests it submitted to the Magistrate Courts of the West Bank. As for the cases in which the prosecution requested

⁷⁵Basic Principles on the Independence of the Judiciary, adopted by the United Nations Conference on the Prevention of Crime and the Treatment of Offenders held in Milan on August 26, 1985, adopted by resolutions of the United Nations General Assembly on November 40, 1985, for more see:<http://dftp.gov.ps/uploads/1624859313.pdf>

⁷⁶Researcher Fadi Ghanima's report, researcher and observer in the Gaza Strip, unpublished.

detention for a period of 1-7 days, it amounted to 1.7% in the West Bank and 0.3% in the Gaza Strip. From 8-14 days, the percentage in the Magistrates' Courts in the West Bank was 0.2% compared to 0% in Gaza Strip courts.

The table below shows that 31% of the requests submitted to the Magistrate Courts of the West Bank and 95.5% of the requests to the Magistrate Courts of the Gaza Strip were submitted to the judge in writing, and the period of detention requested by the Public Prosecution was not mentioned in the session. Although the Public Prosecution submits these requests according to a form in which it always requests an extension of 15 days.

Table number (18): Distribution of the periods requested by the Public Prosecution for detention

Total		Gaza strip		West Bank		Durations
%	Number	%	Number	%	Number	
0.9%	18	0.3%	3	1.7%	15	From 1 - 7 days
0.1%	2	0.0%	0	0.2%	2	From 8-14 days
33.8%	647	4.2%	43	67.1%	604	15 full days
65.2%	1249	95.5%	970	31.0%	279	Submission of the application in writing and did not mention the period in court
100.0%	1916	100.0%	1016	100.0%	900	Total

9. Submitting an extension request by the Public Prosecution more than once.

Detention in the Code of Criminal Procedures is permissible and is subject to the discretion of the investigator and the court. The Palestinian legislator did not stipulate that arrest is obligatory in serious felonies, and that must be the reason for the arrest until the investigation authority can fully carry out its duty. The legislator has limited the crimes for which arrest may be made to crimes punishable by a penalty of deprivation of liberty for a period of no less than six months, and although there is no explicit text in this regard. The fact that arrest is not permissible except in felonies and misdemeanors whose punishment exceeds imprisonment for a period of six months. Therefore, it is not permissible to arrest except in such crimes, given that arrest is a more severe measure than detention. If analogy is not permissible in the provisions of the Penal Code related to criminalization and punishment, then analogy is permissible in the provisions of the Code of Criminal Procedure, as long as it is in the interest of the accused, and the justifications for arrest is available, ensuring integrity of investigation procedures, ensuring that the accused does not commit other crimes, preserving the public order and spreading reassurance in the hearts of citizens that it will bring to justice anyone who breaches the security of society, or for fear of the accused himself from the revenge of the victim or his family.⁷⁷.

The Palestinian Code of Criminal Procedure indicated in the text of Article (120) thereof: "Detention periods 1- The magistrate judge, after hearing the statements of the representative of the prosecution and the arrested person, may release him, or detain him for a period not exceeding fifteen days. The judge may also renew his detention for other periods not exceeding a total of forty-five days. 2- It is not permissible to detain any person for a period that exceeds what is mentioned in Paragraph (1) above, unless a request for the arrest is submitted by the Public Prosecutor or one of his assistants to the Court of First Instance, and in this case the period of detention may not exceed 45 days. 3- The Public Prosecution shall present the accused before the end of

⁷⁷Explanation of the Palestinian Criminal Procedures Law, Dr. Mustafa Abdel-Baqi, 2015, p. 277.

the three-month period, to the competent court to put him on trial, in order to extend his detention for additional periods until the end of the trial. 4- In Detention period shall not exceed six months in any case, otherwise the accused shall be released immediately unless he is referred to the competent court for trial. 5- The detention of the arrested suspect may not, in all cases, continue for more than the period of the penalty prescribed for the crime for which he is arrested for.

Table No. (19): The Public Prosecution submitted requests to extend the detention

Total		Gaza strip		West Bank		The number of times the prosecution submitted a request to extend the detention
%	Number	%	Number	%	Number	
34.1%	653	10.6%	108	60.6%	545	First time
14.7%	281	12.0%	122	17.7%	159	For the second time
7.8%	150	10.6%	108	4.7%	42	for the third time
0.4%	7	0.2%	2	0.6%	5	For the fourth time
0.4%	8	0.8%	8	0.0%	0	Fifth time
0.4%	7	0.7%	7	0.0%	0	More than 5 times
42.3%	810	65.1%	661	16.6%	149	It was not mentioned in the session
100.0%	1916	100.0%	1016	100.0%	900	Total

According to the results monitored by the monitoring team, it was found that the Public Prosecution Office in the West Bank (Northern Governorates) submitted a request to extend the detention for the first time, 60.6%, while for the second time the percentage reached 17.7%, and for the third time it reached 4.7%, while for the fourth or fifth time it reached 0%. While the Public Prosecution in the Gaza Strip (southern governorates) went to submit an extension request for the first time with approximately 10.6%, while for the second time it reached 12%, while the percentage of requests submitted for the third time reached 10.6%, while for the fourth time it reached 0.2%, while it reached for the fifth time. 0.8%.

10. The court's response to the Public Prosecution's requests.

The Istiqlal monitoring team attended a total of 1916 detention extension sessions, including 900 detention extension sessions before the Magistrate Courts in the West Bank, and 1016 detention extension sessions before the Magistrate Courts in the Gaza Strip. The team noticed that the Magistrates' Courts in the West Bank decided to accept requests for the arrest of the accused for a period of 15 days, with approximately 51.2% of the requests submitted by the Public Prosecution, while the percentage of "until the completion of the court proceedings" represented 12.8% to requests for arrest.

At the level of the Magistrates' Courts in the Gaza Strip, the court decided to respond to requests for detention for a period of 15 days, approximately 13.3%, while the court's decisions to respond to requests submitted in writing without mentioning the period reached to 82.6%.

The Code of Criminal Procedure is defined in jurisprudence, as the law of public freedoms, because it represents a basic guarantee for personal rights and freedoms and ensures a balance between rights and the public interest. Since the relationship between freedom and the law is very close, the law is initially a restriction on freedom, but it is 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

strike a balance between personal freedom and the public interest, in other words, a balance between the state's right to punishment and the right of the individuals to defend themselves against a charge that may be false. One of the basic principles of this law is that "the accused is innocent until proven guilty".

Table number (20): Court response to the prosecution's request to arrest 2021/2023

Gaza strip		West Bank		Response
2023	2021	2023	2021	
2.4%	2.1%	11.0%	3.4%	The release of the detainee at the request of the defense attorney.
0.0%	0.0%	0.4%	9.8%	The prosecution's request was rejected
1.6%	0.4%	10.7%	13.4%	From 1 - 7 days
0.2%	0.2%	5.6%	3.5%	From 8-14 days
13.3%	80.1%	51.2%	59.6%	Accepting the extension of detention before the court for 15 days
82.6%	17.1%	12.8%	10.3%	The court's response to the request submitted in writing did not mention the period
0.0%	-	8.3%	-	Other/specify
1,016	2,486	900	1,303	The number of control sessions

Analysis of the figures above reveals that the Magistrates' Courts in the West Bank (Northern Governorates) decided to accept requests for the detention of the accused for a period of 15 days, with approximately 51.2% of the requests submitted by the Public Prosecution for the year 2023, while the percentage for 2021 was 59.6%. Through comparison, it is clear that there is a decrease in the court's response to the requests submitted from the Public Prosecution, while the percentage of "until the completion of the trial procedures" was 12.8% for the year 2023, and it came to 10.3% for 2021.

It is noted that the percentage of acceptance of extension requests submitted for the first time is almost 100%, and this is a serious indication that the magistrate judges do not appreciate the seriousness of the Public Prosecution's requests and its entitlement to the first extension request.

By looking at Figure No. (19) Below, it appears that the Magistrates' Courts in the Gaza Strip (southern governorates) decided to accept requests for the detention of the accused for a period of 15 days, with approximately 13.3% of the requests submitted by the Public Prosecution for the year 2023, while the percentage for 2021 was 80.1%. In comparison, there is a decrease in the court's response to the requests submitted by the Public Prosecution, while the percentage of the court's response to the request submitted in writing without mentioning the period was 82.6% for the year 2023, and for 2021 it was 17.1%.

11. Court reasoning its decision for extension of the detention requests

The principle of the rule of law is considered the cornerstone of governance in Palestine, and all authorities, agencies, institutions and persons shall respect that, according to Article 6 of the Basic Law, which says, "the principle of the rule of law is the basis of governance in Palestine, and all authorities, agencies, institutions and persons are subject to the law".

The reasoning of judgments is a tool that reveals the court's commitment to observing the guarantees guaranteed by the legislator in a fair trial. The reasoning of the arrest order issued against the accused constitutes a strong guarantee for the latter in the face of any abuse or abuse that the competent authority may practice in the event that it initiates this procedure against the accused.

Despite the great importance of the guarantee, it is noted that the Palestinian Criminal Procedures Law, fails to clearly states that the law requires the cause of the arrest warrant. However, Article (12) of the amended Palestinian Basic Law of 2003, which stipulates that: "Whoever is arrested or detained shall be informed of the reasons for his arrest or detention". That it constitutes an order to the authorities concerned with the arrest that the arrest warrant issued against the accused must be justified. In fact, it merely represents informing the arrested or detained suspect of the reasons for the arrest. In addition, the legislator did not indicate in the previous text the mechanism of notification in writing or spoken.

Table No. (21): The court's reasoning for the arrest decision

Total		Gaza strip		West Bank		Reasons
%	Number	%	Number	%	Number	
2.2%	39	0.0%	0	4.9%	39	Non-payment of bail
19.8%	354	0.4%	4	43.9%	350	Needs to Complete the investigation procedures
7.2%	128	0.0%	0	16.1%	128	Seriousness of the charge
1.1%	20	1.6%	16	0.5%	4	Assigning the Public Prosecution to bring the case file
0.8%	14	0.2%	2	1.5%	12	There is no reconciliation
8.2%	146	1.8%	18	16.1%	128	Until the end of the trial proceedings
57.7%	1033	95.9%	951	10.3%	82	The judge did not mention the reason
3.1%	55	0.1%	1	6.8%	54	Otherwise
100.0%	1789	100.0%	992	100.0%	797	Total

The monitoring team noted that the Magistrate's Court in the West Bank (Northern Governorates) caused its decision to extend the detention as follows: 43.9% did not complete the investigation procedures, while the decision issued by it was due to the seriousness of the charge by approximately 16.1%, while the decision to extend the detention until the end of court procedures reached 16.1%. While the courts in the Gaza Strip (southern governorates) did not justify the decision to extend the detention in approximately 95.9% of all the cases that were monitored, in an explicit violation.

12. Release ratings

The International Covenant on Civil and Political Rights states: "Anyone arrested or detained on a criminal charge shall be promptly brought before a judge or other official authorized by law to exercise judicial power, and shall be entitled to trial within a reasonable time or to be release. Detention of persons shall not be the general rule, and their release may be conditional on guarantees to ensure their attendance at trial at any other stage of the judicial proceedings, and to ensure the execution of the

sentence when necessary.⁷⁸ The European Convention on Human Rights stated that: "Any person who is arrested or detained,⁷⁹ in accordance with the provisions of Paragraph 1/C of this Article, he shall immediately be brought before a judge or any other official authorized by law to exercise judicial power, and brought to trial within a reasonable period of time, or released while the trial continues. Release may be conditional on guarantees to attend trial⁸⁰".

Release is defined as the release of a defendant who is detained under criminal prosecution, and it is a matter of restoring the situation to what it was before the arrest, or as a way of returning things to normal, i.e., restoring the right to freedom to its owner. Freedom is a natural right confirmed by modern constitutions, including the Palestinian Basic Law, which states that: "Personal freedom is a natural right, and it is guaranteed and should be untouched" (Article 11, Paragraph A). Therefore, it is not permissible to withhold this right unless it is proved that it has been misused in society by committing a criminal act that is punishable by law with one of the liberty-depriving penalties such as such as hard labor, arrest, or imprisonment, or a penalty restricting freedom, whether principal or subsidiary, such as house arrest or ban on residence, or one of the precautionary measures such as detention, isolation, or supervised release.

The principle is that "the accused is innocent until proven guilty in a legal trial in which he is guaranteed the right to defense, and every accused of a felony must have a lawyer to defend him". This is a basic constitutional rule stipulated in Article 14 of the Basic Law, and therefore it is not permissible to deprive freedom or restrict it, except with a penalty, and the punishment is not permissible except after the trial and the issuance of a final judgment adjudicating it. Prior to that, and during the period between the occurrence of a crime and the issuance of a final judgment against the perpetrator, the defendant is supposed to remain free. However, every rule has an exception imposed by the requirements of an interest that prevails over other interest protected under the general rule.

⁷⁸International Covenant on Civil and Political Rights,<https://www.ohchr.org/ar/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁷⁹ Detention centers are in the West Bank, in terms of the period of detention and in terms of affiliation to three sections, they are as follows: The first: permanent detention centers: they are the ones where people are placed in accordance with the Correction and Rehabilitation Centers Law. These Centers are governed by the Public Administration of Correction and Rehabilitation Centers, and are subject in terms of conditions and living conditions, to the Correction and Rehabilitation Centers Law. Second Class: Temporary detention Centers (Usually at Police Stations), which is where the detention is for a period not exceeding 24 hours, and is subject to the supervision of the Police Directorate in which that center is located, and the arrest of persons in it is subject to the provisions of the Palestinian Criminal Procedures Law. The third category: centers of detention of the security services, which are governed by the security services in the West Bank, namely the Preventive Security and the General Intelligence, and intelligence of the Military. Correction and Rehabilitation Centers Law No. (6) Of 1998 provides for the establishment of six centers, five in the West Bank: Jenin, Nablus, Al-Dhahiriya, Ramallah, Jericho, and one in the Gaza Strip, the Gaza Correction and Rehabilitation Center (Central Prison).). At the beginning of September 2008, the Tulkarem police headquarters was approved as a correction and rehabilitation center. In addition to converting the (Dar Amr) center in Bethlehem into a correction and rehabilitation center in February 2008, bringing the total number of correction and rehabilitation centers in the West Bank to (7) centers and one in the Gaza Strip.

⁸⁰Paragraph (3) Article No. (5), European Convention on Human Rights, Convention for the Protection of Human Rights within the scope of the Council of Europe Rome of November 4, 1950,<http://hrlibrary.umn.edu/arab/euhrcom.html>

Detention is not a punishment, and detention takes place before the punishment or before the verdict, and it is a precautionary measure, so it is a temporary measure, and it must expire sooner or later in one of the following forms: retrieving the arrest warrant, which is a matter falls under the jurisdiction of the investigating judge, whatever the type of crime, provided the approval of the Public Prosecution, and it differs from release decision and is not subject to any method of review. Or release the detainee, whether with the decision to prevent his trial by the investigating judge, or by the referral judge, or with his acquittal by the court. Or release him during the investigation stage, or during the trial stage, or before the Court of Cassation. However, release during investigation or trial differs from release after a decision to prevent the trial and after a verdict of innocence or non-responsibility. This is final, while the released defendant remains under the possibility of being arrested again.

Table No. (22): Classification of release decision

Gaza strip		West Bank		Classification of release decision
%	Number	%	Number	
0.0%	0	17.1%	13	Release on bail
79.2%	19	68.4%	52	Personal bail release
20.8%	5	14.5%	11	Cash bail release
100.0%	24	100.0%	76	Total

Istiqlal monitoring team was able to monitor a total of 176 releases, of which 76 were before the Magistrates Courts in the West Bank and 100 before the Magistrates Courts in the Gaza Strip. The classifications were as shown in the table above.

It is noted that many judges justify the refusal to release the accused on the pretext of the seriousness of the charge only, despite the transfer of the file to the competent court and the end of the investigation work, and despite the lack of evidence linking the accused to what was attributed to him in the investigation file, and the detention continues for months or years after the file is referred to the court. Some of the judges who are looking into the file claim that they did not see the file when they reviewed it, despite their rejection of dozens of release requests.

Chapter Four

Conclusions and recommendations

First: Conclusions

Analysis of indicators and court monitoring revealed the following:

1. Istiqlal court monitoring and analysis of indicators targeted 1916 detention sessions of the Magistrates Courts in the northern governorates (West Bank) and the southern governorates (Gaza Strip). These sessions were distributed by 900 sessions in first instance courts, in the northern governorates (West Bank) and 1016 sessions in the courts of first instance in the

southern governorates (Gaza Strip). It was found that the number of females who were arrested reached to 19 females in the courts of the northern governorates, and the percentage of females out of the total number of detainees for the year is (2023) was 2.1%, while the number of females in the courts of the southern governorates reached 27 females, and this number corresponds to 0.8% of the total number of persons arrested before the courts of the southern governorates.

2. It was found that the age categories of the defendants for whom the Public Prosecution submitted requests for extension of detention in the Magistrate Courts of the West Bank, is that 45.9% of the defendants are in the age group from 18 to 29 years, while the percentage of this category in the Magistrate Courts of the Gaza Strip reached 37.2%. The percentage of those between 30 and 59 years old is 53.1% in the Magistrates Courts of the West Bank, while the percentage of this group in the Gaza Strip is 59.4%, and with regard to the age of 60 years and more, it reached 0.6% in the West Bank and 0.2% in the Gaza Strip.
3. The number of defendants who appeared before the magistrate judge in the West Bank amounted to 898 defendants, i.e., 99.8% of the total cases that were brought before the courts, while the number of defendants who were brought before the magistrate judges for consideration of the prosecution requests to extend their detention in the Gaza Strip: 1,015 male and female defendants, or 99.9 percent% of the number of suspects who have been arrested.
4. In the courts of the West Bank and the courts of the Gaza Strip, the defendant appeared before the Magistrate Court in the request to extend the detention submitted by the public prosecution of the court, while not handcuffed.
5. The arrest and detention extension sessions in the West Bank Magistrate Courts showed that the investigation file was presented at a rate of 38.6% of the total sessions that were monitored, and the majority of requests were submitted during the detention extension sessions, while in the Gaza Strip Magistrate Courts it was 3.8% of the sessions in which the accused appeared physically before the judge were presented, while the investigation file was not presented in (972) requests for extension of detention, and this percentage corresponds to 95.7%. While it was found that the judge specialized in extending the detention in the northern governorates (West Bank), and compared between the year 2021 and the year 2023, that there is a decrease in the percentage of “the judge not seeing the file at all”, as the percentage in the year 2021 reached approximately 9.3%, while it reached 7.2% for 2023. It is an improvement that should be commended in the northern governorates (West Bank). On the other hand, we find that the percentage of the category “the Judge looked very carefully at the investigation file”, at a negative decrease from 70.2% for the year 2021 compared to 69.5% for the year 2023. With the same comparison in the southern governorates (Gaza Strip), we find that there is a development. It is very positive, as the extension judge reviewed the investigation file with approximately 20.5% for the year 2023 compared to 0% for the year 2021, and this is an indicator that should be commended because of its direct impact on the course of the case and restrict the Public Prosecution’s practice in extending the detention of the accused without the presence of any legal justifications and without the presence of a clear and explicit investigative file. However, there is a decrease in “the judge’s review of the file very carefully”, as the percentage decreased from 100% for the year 2021 to 41% for the year 2023.
6. The judges in the courts of the northern governorates (West Bank) assigned the Public Prosecution to present the investigation file by a rate of 8.9%. In the same manner, judges of the courts of the southern governorates (Gaza Strip) have assigned the prosecution to present the investigation file, accounted for 1.1%, while the total for the two parts of the country was 3.9%. This is a negative indicator that is reflected in the course of the case, and releases the hands of the Public Prosecution’s in arresting the accused without the existence of legal reasons and justifications that justify the arrest.

7. Only 14 cases, constituting 1.6%, of the sessions monitored in the courts of the northern governorates (West Bank), reconvened to extend the arrest in secret manner (closed session) and at the level of the courts in the southern governorates (Gaza Strip), the court convened in secret for once, to extend the accused.
8. While reviewing 900 arrest sessions in the Magistrates Courts in the West Bank, the judge adjourned the sessions to examine the investigation file in 44 cases, which represent 4.9% of the total sessions that were monitored. At the level of the Magistrates' Courts in the Gaza Strip, it was found through an analysis of 1016 sessions that the judge adjourned the sessions to examine the investigation file in 4 cases only, which corresponds to 0.4% of the total sessions.
9. The defendants in the courts of the West Bank sought to assign a lawyer at a rate of 78.3%, while 7.4% resorted to obtaining legal assistance from the relevant institution, while the court's assignment of lawyers came at the lowest rate, amounting to 0.2%, and in the Gaza Strip, only two defendants have retained lawyers.
10. During the analysis of 347 detention sessions in the Magistrates' Courts in the West Bank, the defense attorney obtained a copy of the investigative file in 109 cases only, representing 31.4% of the total sessions that were monitored. At the level of the Magistrates Courts in the Gaza Strip, in 39 detention sessions, that the defense attorney did not obtain any photos, or documents related to the investigation file from the Public Prosecution.
11. By analyzing 553 detention sessions in the Magistrates' Courts in the West Bank, it was found that the defense attorney raised the argument that the investigation file did not exist in 73 cases, representing 13.2% of the total sessions that were monitored, and at the level of the Magistrates' Courts in the Gaza Strip, an analysis of 977 detention sessions shows that the defense attorney did not raise the issue of the investigative file before the reconciliation judge.
12. The prosecution's attendance at arrest sessions in the West Bank Magistrate Courts was almost complete, at a rate of 99.6%, and only a few cases of the prosecutor's absence were observed. As for the Gaza Strip Magistrate Courts, the absence of the Public Prosecutor from the trial sessions amounted to approximately 48.1% of the total cases that were monitored.
13. The presence of representatives of the security services for trial sessions / detention sessions in the northern governorates (West Bank) was 21.7%, and in the southern governorates (Gaza Strip), the presence of representatives of the security services were at 89.4%.
14. The Public Prosecutor pleading in the extension request before the courts of the West Bank at a rate of 82%, while the Public Prosecutor did not plead before the courts of the Gaza Strip, as the percentage of the Public Prosecution pleadings was 0%.
15. The Public Prosecution Office in the West Bank has the maximum length of detention in the requests it has submitted. The Public Prosecution requested detention for a period of 15 days in about 67.1% of the requests it submitted to the Magistrate Courts of the West Bank. As for the cases in which the Public Prosecution requested detention for a period of 1-7 days, it amounted to 1.7% in the West Bank and 0.3% in the Gaza Strip, and from 8-14 days, the percentage in the Magistrates' Courts in the West Bank was 0.2%, compared to 0% in the courts of the Gaza Strip.
16. The Magistrate Court in the West Bank (Northern Governorates) caused its decision to extend the detention as follows: 43.9% "did not complete the investigation procedures", while the decision issued by it caused "the seriousness of the charge" by 16.1%, while the decision to extend the detention "until the end of the court procedures", and was 16.1%. While the courts in the Gaza Strip (southern governorates) did not give reasons for the decision to extend the detention in approximately 95.9% of the total cases that were monitored, in an explicit violation.
17. By analyzing 900 detention extension sessions before the magistrate courts in the West Bank and 1916 detention extension sessions before the conciliation courts in the Gaza Strip, it was noted that the Magistrate Courts in the West Bank decided to

accept requests for the detention of the accused for a period of 15 days, with approximately 51.2% of the requests submitted by the Public Prosecution, while the percentage came “until the completion of the trial procedures” to 12.8% to the requests for arrest. At the level of the Magistrate Courts in the Gaza Strip, the court decided to respond to requests for detention for a period of 15 days, by 13.3%, while court decisions responding to a request submitted in writing without mentioning the period was 82.6%.

18. There was no arrest case that exceeded the legal period granted by law. It turns out that the Magistrates Courts in the West Bank and Gaza Strip respected its obligation regarding the legal periods stipulated in the Palestinian Criminal Procedures Law related to the arrest of the accused.
19. In the Magistrates Courts in the West Bank (Northern Governorates), 51% of the charges of arrest requests submitted to the courts were classified as misdemeanors, and 48.3% of the charges were classified as felonies, while the charge was not mentioned by 0.7%. In the Gaza Strip Magistrates' Courts, 71.3% of the charges were classified as misdemeanors, and 28.7% of the charges were classified as felonies.
20. The indictments that were submitted before the Magistrates' Courts in the West Bank (Northern Governorates) were the highest, with approximately 38.6% of the charges that the Public Prosecution's requests to extend the detention of the accused were related to crimes committed against persons, while financial crimes came at 25.1%. Drug abuse and trafficking amounted to 8.6%, while the indictments that were submitted before the Magistrates' Courts in the Gaza Strip (southern governorates) came with the highest percentage, with approximately 54% of the charges that the Public Prosecution's requests to extend the detention of the accused, were related to crimes involving money, while the charges against persons amounted to approximately 17.4%, while crimes of drug abuse and trafficking amounted to 16.6%. Crimes related to state security in the West Bank amounted to 0.9%, while in the Gaza Strip it was 0%.
21. A group of defendants/detainees made declarations before the Magistrates' Courts in the West Bank (Northern Governorates) that they were subjected to violence, torture and/or ill-treatment. This percentage reached approximately 3% of the total cases that were monitored, while 0.9% of the defendants stated before the Magistrates Courts in the Gaza Strip (Northern Governorates) they were subjected to torture.
22. The judges in the Magistrates' Courts in the West Bank (Northern Governorates) recorded the statements of those accused of being subjected to torture or ill-treatment by approximately 51.6%, as it was found that Judges in the Magistrates' Courts in the Gaza Strip (southern governorates) recorded the statements of those accused of being subjected to torture or ill-treatment, with a rate of approximately 33.3%.
23. During the process of monitoring the Magistrates' Courts in the West Bank, which included 31 cases that declared that they had been subjected to violence and/or ill-treatment, the judges of the Magistrates' Courts referred 4 cases to the Medical Committee to conduct a medical examination and prove exposure to violence and/or ill-treatment, which is equivalent to 12.9% of the total cases; 27 cases were ignored, and amounted to 87.1%. As it turned out, the judges in the magistrate courts in the Gaza Strip referred only one case to a medical examination, while they ignored 11 cases, which amounted to 91.7%, and did not decide to submit it to a medical examination.

Recommendations

First: On the level of legislations

1. There is a need to create a specialized judicial position “to be called (the arrest judge) to be appointed in every court with a mandate to: arrest, extend detention, consider bail requests, and inspect prisons.
2. Introducing a system of placing under electronic surveillance (detention at home/home arrest), which is one of the innovative methods as an alternative to detention.
3. Substituting detention by placing the accused under police supervision and obligating him to reside in a specific place, so that he presents himself to the police station specified by the court in the release order, taking into account his special circumstances.
4. The need to prohibit arrest for specific crimes: such as publishing crimes.
5. There is a need to amend the Code of Criminal Procedures to obligate the court concerned with the arrest, to cause the extension of the detention with objective conditions that are intended to show the determinants of detention.
6. The need to amend the penal procedures code so that the victims or their families are allowed to attend the detention sessions and it to hear their position on the case.
7. There is a need for the Code of Criminal Procedure to specify the crimes for which arrest may be made and the prohibition of arrest for minor misdemeanors and minor violations. This is due to the seriousness of this procedure and its violation of personal freedoms.
8. There is a need to include special provisions in the Code of Criminal Procedures for compensation of arbitrary arrest or illegal detention.
9. The Code of Criminal Procedures should stipulate that a defense lawyer must be present with the accused during the examination of requests for arrest and extend it, and a free legal aid is available for the defendants who are unable to appoint a lawyer to defend themselves.
10. Harmonizing national laws with international human rights agreements to which the State of Palestine has acceded, especially those related to the crime of torture.

Second: Recommendations to the Supreme Judicial Council (Northern Governorates):

1. Preparing and implementing plans and programs that raise the capacity and professional development of the justice sector, in relation to international human rights standards.
2. The Supreme Judicial Council and its departments, especially the judicial inspection and heads of courts, must refrain from reviewing judges’ decisions in the event that they release some of the accused, as this is a discretionary matter subject to

judicial review, as it is not permissible to talk about it by the council and its departments, and delving into it causes the judges to hesitate to release the accused and fear of accountability.

3. The need to activate the Judicial Inspection Department to monitor the judges and members of the Public Prosecution regarding requests and decisions for arrest and extension of detention, in a manner that guarantees the application of the principles of transparency, objectivity integrity, impartiality, mechanisms of oversight and follow-up, and evaluation.
4. There is a need to activate accountability mechanisms for security personnel, the public prosecution and judges regarding their responsibility for arbitrary and unlawful detention, including criminal and civil accountability in the face of perpetrators of the crime of illegally detaining liberty.
5. There is a need to ban the presence of any person from the security services, except for the judicial police in charge of guarding the courts, from attending the detention sessions, because their presence leaves a moral pressure on the judges and prevents the accused/accused from speaking freely before the judge.

Third: Recommendations to the Supreme Judicial Council (Southern Governorates):

1. There is a necessity for the Public Prosecution in the Gaza Strip to be present, and or represented by assistant of the Public Prosecution, to attend the detention sessions, according to the text of Article 120 of the Code of Criminal Procedures, which stipulates (after hearing the statements of the representative of the Public Prosecution and the arrested person, the magistrate judge may release him or extend his detention for a period not exceeding 15 days). The text of the article here stresses the necessity of the presence of the Public Prosecution representative in the detention session in order to ensure a fair trial.
2. There is a need to stop bringing juveniles under the age of eighteen before the magistrate judges, and to apply all the rules guaranteeing the rights of juveniles contained in the Juvenile Delinquent Protection Law to juveniles in the West Bank and Gaza Strip in accordance with juvenile justice and international standards.
3. The need for the Magistrates Courts to be prepared when considering arrest requests in a manner that suits the needs of the gender, and to take into account the needs of women in the event of considering their arrest requests.
4. There is a need to ban the presence of any person from the security services, except for the judicial police in charge of guarding the courts, from attending the detention sessions, because their presence leaves a moral pressure on the judges and prevents the accused/accused from speaking freely before the judge.
5. There is a need to allocate specialized judges to hear arrest requests so that the judiciary can study the investigation file and allow time for the accused to defend themselves. This is not achieved in light of the large number of files in view.

Fourth: Recommendations to the Public Prosecution:

1. There is a need for the Public Prosecution to include the investigation file with the arrest requests that it submits to the judges of the magistrate courts so that the judges can decide on the arrest based on the investigation procedures and the need for the arrest, and that the judges refrain from arresting any suspect whose investigation file is not attached to the arrest request.
2. There is a need to need to organize a personal file for the accused about his profession, academic level, life and other information so that the court becomes clear about his position on the case and takes the appropriate decision.
3. There is a need for the detention periods to be limited by time and not to resort to the maximum period allowed by the law, which is 15 days in most cases, as a fixed procedure that the prosecution demands and the judges respond to.

4. There is a need for the strictness of the prosecution and judges to be linked to the seriousness of the charges according to the facts established at the time of arrest.
5. The presence of the Public Prosecution in Magistrates Courts is necessary for the arrest sessions of the accused.
6. It is not permissible to arrest the accused; except after he has been properly interrogated, and if it is invalid, the arrest is invalid accordingly, because the interrogation may give the defendant an opportunity to refute the existing evidence against him, so the prosecutor does not see a justification for his arrest.
7. There must already be evidence that the prosecution member estimates that if it is submitted to the court, it will issue a ruling of conviction. As for suspicions and evidence, they are not sufficient to issue a ruling of conviction, and therefore it is not permissible for him to issue an arrest warrant based on it.
8. The juvenile or child at risk of delinquency must be presented, immediately after his arrest or placement, to an accredited medical facility to ensure the provision of preventive and curative health care required by his physical or mental condition.
9. The arrest warrant must include: the name of the prosecution member, the division in which he works, the name and position of the director of the detention centre, the name of the detainee, his surname, his place of residence, the case number, the charge attributed to him, the date of its issuance, the period of detention, the signature of the prosecutor, and the official seal.
10. If the decision to release the accused has been issued by the competent court and new circumstances have emerged that require his re-arrest; in these and other cases, the prosecution submits a request to the court that released him to re-arrest him pending the case, stating the reasons on which it is based, and the court has full authority in this regard.

Fifth: Recommendations for the judges:

1. There is a need for all decisions made by judges on arrest warrants by the Public Prosecution submitted to them are reasoned and not accept a reasoned decision as a formality such as the seriousness of the charge, and or completing the investigation procedures without justifying the danger, the necessity of the investigation, or even the release decision.
2. It is necessary for judges to take all procedures dictated by the law and their conscience in dealing with the crime of torture, especially with regard to documenting allegations of torture in the minutes of court sessions, presenting persons suspected of torture to the forensic doctor, and ordering the opening of a criminal investigation into all allegations of torture.
3. It is necessary that all Magistrates' court judges impose their legal oversight over places of detention while requests for arrest are being processed. The judges' decision to arrest includes determining the place of detention of the accused, and that the detention is in the places of detention specified by the Correction and Rehabilitation Centres identified by law as a legal detention centre.
4. It is necessary to prohibit any person to attend the sessions from the security services, with the exception of the judicial police charged with guarding the courts, may attend the detention sessions, as their presence places moral pressure on the judges and prevents the defendants from speaking freely before the judge.
5. It is necessary for the magistrates to mention all the rights enjoyed by the accused persons during the consideration of requests for their arrest, which are guaranteed by the legal standards for conducting a fair trial.
6. There is no need to expand the decision to hold secret sessions to consider requests for arrest and it should takes place only in necessary cases stipulated by law.

7. Suspended juvenile can enjoy vacation in official holidays and any other specified days as decided by the court at the request of the juvenile prosecution, the juvenile himself, the child protection counsellor or his representative.

Sixth: Recommendations for civil society organizations:

1. There is a need for civil society organizations and human rights organizations to disseminate the legal culture related to citizens/affected persons requesting civil compensation for “arbitrary and illegal detention” and for the damages that may be caused to persons who are arrested based on an unfair detention decision.
2. Enhancing the capacities of lawyers in following up on arrest procedures, checking its validity and challenging it, in addition to training lawyers on cases of torture accusations and compensation.

Seventh: Recommendations for the Palestinian media:

1. There is a need for the media to cover the detention sessions, especially with regard to political cases, and cases of public opinion, and submit reports on it without any restrictions or censorship on what is published.
2. There is a need to strengthen the media to be able to conduct investigations and submit their media reports related to the arrest sessions
3. There is a need not to intimidate the media in cases of public opinion, which causes the continuation of detention despite the lack of justification, and the continuation of detention under the influence of public opinion.