



## Monitoring report

### Criminal Trials before the Serious Crimes Court and First Instance Courts

in the West Bank and and Gaza Strip

November 2020

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

The Coalition is an umbrella under which its members work to participate and contribute to building an independent and effective Palestinian judiciary per the relevant international standards and best practices of democratic systems, providing a professional opinion, visions and constructive positions regarding any issues related to the independence of the judiciary, ensuring its functioning without prejudice, presenting constructive, useful and feasible proposals aiming at strengthening the independence of the judiciary, offering the best mechanisms and ways to face the challenges within this context, and in general providing popular protection as being a pillar of the constitutional and legal protection of the independence of the judiciary and rule of law.

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

الاتحاد الألهلي لإصلاح  
القضاء وحمائته



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We wish to express our gratitude for the support by the Attorney General, the Palestinian Bar Association and the Judges Club Association, who contributed to the success of this report. Our thanks are extended as well to the coalition members of civil society organizations for their assistance and facilitation to the team to complete this report.

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We hope that this study will inaugurate a tradition to strengthen community oversight over the courts, so as to enhance the effectiveness of the courts and their role in respecting fair trial guarantees.

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

**and**

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## Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>8</b>
<b>PROJECT BACKGROUND AND MONITORING METHODOLOGY.....</b>	<b>11</b>
<b>CHAPTER ONE. CASES AND DEFENDANTS .....</b>	<b>14</b>
1. TYPES OF CRIMES TRIED .....	14
2. NUMBER OF DEFENDANTS AND THEIR GENDER.....	15
3. JUDGMENTS .....	16
4. PRISON SENTENCES.....	17
a) <i>Length of prison sentences</i> .....	17
b) <i>Severity of prison sentences</i> .....	18
c) <i>Severity of sentencing by crime type</i> .....	19
5. JUDGMENTS BASED ON ISRAELI MILITARY ORDERS .....	20
<b>CHAPTER TWO. COURTS' INFRASTRUCTURE AND ORGANIZATION .....</b>	<b>22</b>
1. ORGANIZATIONAL CAPABILITIES .....	22
a) <i>Timeliness of court hearings start</i> .....	22
b) <i>Compliance with daily case schedule</i> .....	23
2. COURTS' INFRASTRUCTURE.....	24
a) <i>Police protection</i> .....	24
b) <i>Presence of court recorders and bailiffs</i> .....	25
c) <i>Courtroom acoustics and size</i> .....	25
<b>CHAPTER THREE. COURTS' EFFICIENCY IN ADJUDICATING CRIMINAL CASES .....</b>	<b>27</b>
1. COURTS' CASE PROCESSING CAPACITY .....	27
2. CASE POSTPONEMENTS.....	29
3. REASONS FOR POSTPONEMENTS .....	31
4. LENGTH OF TRIAL POSTPONEMENTS.....	32
5. MEASURES TO ADDRESS REASONS FOR POSTPONEMENTS.....	33
6. CHANGES IN TRIAL PANELS .....	33
7. DURATION OF PROCEEDINGS.....	35
<b>CHAPTER FOUR: FAIR TRIAL RIGHTS.....</b>	<b>37</b>
1. RIGHT TO A TRIAL BY A TRIBUNAL ESTABLISHED BY LAW .....	37
2. RIGHT TO A TRIAL BEFORE AN IMPARTIAL COURT .....	38
3. EQUALITY BEFORE THE LAW (WITH A FOCUS ON GENDER) .....	38
4. RIGHT TO PERSONAL FREEDOM.....	40
a) <i>Maximum duration of detention</i> .....	40
b) <i>Establishing adequate grounds for deprivation of personal liberty</i> .....	41
c) <i>Detention vs other measures to ensure integrity of criminal proceedings</i> .....	42
5. RIGHT TO BE TRIED IN ONE'S PRESENCE .....	43
6. RIGHT TO BE REPRESENTED BY A LAWYER.....	43
7. RIGHT TO A PUBLIC TRIAL (FOCUS ON SEXUAL OFFENCES) .....	44
8. RIGHT TO BE INFORMED OF THE CHARGES AGAINST ONSELF .....	45
9. RIGHT TO BE TRIED IN A LANGUAGE ONE UNDERSTANDS .....	46
10. RIGHT TO CROSS-EXAMINE PROSECUTION WITNESSES AND TO CALL WITNESSES IN OWN DEFENCE.....	46
11. RIGHT NOT TO BE SUBJECTED TO TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT .....	47
a) <i>Physical violence to ensure orderly conduct of proceedings</i> .....	47
b) <i>Allegations of torture during the investigation</i> .....	48
12. INFORMATION TO THE DEFENDANTS ABOUT THEIR RIGHTS.....	49
<b>RECOMMENDATIONS .....</b>	<b>50</b>

## Executive Summary

The present report is based on monitoring of trials before the Serious Crimes Court and First Instance Courts in the governorates of the West Bank and the Gaza Strip.

Through a team composed of 11 lawyers, ISTIQLAL observed a total 12.180 court hearings over 855 court days, 266 of which in First Instance Courts in the Gaza Strip, 506 in First Instance Courts in the West Bank, and 83 days in various Serious Crimes Court branches in West Bank governorates.

The data gathered, both qualitative and quantitative, allowed to draw some preliminary conclusions on the Palestinian justice system in terms of its efficiency and its compliance with human rights.

The data showed a number of concerns related to the monitored courts' capacity to process cases efficiently and timely.

The present report starts by presenting some quantitative data about the monitored courts' work (**Chapter 1**). It analyses the types of cases tried by the Serious Crimes Court and First Instance Courts; the number of defendants tried in the reporting period and their gender; the number of judgments issued; the trial outcomes; the sentences imposed; and the severity of such sentences. Data showed, among other things, that the vast majority of trials result in convictions, imprisonment is by far the most common punishment imposed, prison terms were in general of modest length, and that the Serious Crimes Court tended to be more lenient in determining sentencing than First Instance Courts.

The report then moves on to analyse the monitored courts' organizational and infrastructural preparedness (**Chapter 2**). First, ISTIQLAL examined organizational indicators such as the Courts' ability to start hearings on time and hear cases in accordance with the court schedule. Much improvement appears to be needed in this field, since the overwhelming majority of hearings did not start accordance with the prescribed time and most courts did not follow the court schedule, thus paving the way for arbitrariness and vulnerability to undue pressure by certain lawyers. Concerning infrastructural preparedness, ISTIQLAL found that in almost all cases the assistance of security staff, court recorders and ushers was ensured. However, courts seemed to lack an adequate number of administrative staff, so that the available human resources are strained, and delays occur when someone is absent, as no replacements are available. Another indicator considered was the adequacy of courtrooms in terms of size and acoustics: while ISTIQLAL did not observe any critical situation in this regard, it did note that in some courts the available space and sound clarity are insufficient, so that the court's workflow is often slowed down.

ISTIQLAL then carried out a preliminary assessment of the courts' efficiency in processing cases, by considering a number of indicators (**Chapter 3**).

- A striking feature in this regard is that the vast majority of hearings, on average, resulted in a postponement, without leading to any progress in the criminal proceedings. In some courts, 9 out of 10 hearings are postponed. A number of reasons were identified for this practice, including failure of properly summoned witnesses or lawyers to appear, and failure of the court to ensure that defendants held in pre-trial detention are escorted to

the hearing. ISTIQLAL also examined the measures that courts took to address these issues, which in many cases were insufficiently effective.

- Another effectiveness indicator was the length of trial postponements, which varied among courts, but mostly ranged between one and two months. On average, postponements by Serious Crimes Court were much shorter than those by First Instance Courts.
- The amount of time that Courts devoted to trial activities also varied among courts, ranging from an average of under two to five hours daily. On average, Serious Crimes Court branches devoted longer daily hours to hearings than First Instance Courts.
- The Serious Crimes Court and First Instance Courts also differed substantively when considering the overall duration of criminal proceedings. While the Serious Crimes Court concluded over 80% of cases before it in under a year, First Instance Courts achieved the same result in less than 50% of cases. Almost 20% of cases before First Instance Courts have been pending for 5 years or more.
- An issue that adversely impacted the overall effectiveness of criminal trials in the reporting period was the replacement of a number of judges, which led to changes in the composition of a considerable number of trial panels (over one third of monitored cases), thus leading to considerable delays.

In a last section of this report, ISTIQLAL considered a number of indicators of the compliance of monitored trials with fundamental rights (**Chapter 4**). ISTIQLAL found no apparent violations of the right to a tribunal established by law, the right to an impartial tribunal, or the right of equality (including gender equality) before the law. Problematic areas included the right to personal liberty: ISTIQLAL observed a frequent use of pre-trial detention, also for petty offences such as theft or attempted theft, and sporadic cases where pre-trial detention exceeded the maximum terms foreseen by law; also, court monitors noted that Courts did not always properly assess grounds for detention, often relying on Prosecution arguments which, in turn, are based on information received from security agencies. ISTIQLAL also expresses concerns regarding the use of physical coercion in criminal investigations and inside the courtroom. A number of defendants claimed before the court that they had been subjected to violence while being questioned by the police, but Courts not always included these remarks in the minutes and defendants were subjected to medical examination in a low percentage of cases. Courts also allowed law enforcement staff to use physical force against detained defendants while taking them inside or outside the courtroom, or to discipline them for disturbing the proceedings.

Based on the above observations, ISTIQLAL recommends, among other things (**Chapter 5**):

**To the legislature:**

- Establish by law an overall maximum duration (e.g. two years) for pre-trial detention of a defendant without a conviction.
- Give First Instance Courts the power to impose penalties on witnesses who fail to appear at the scheduled hearing,

### **To the High Judicial Council**

- Create additional court sections in particularly overloaded courts;
- Encourage productivity of judges and court officials by ensuring adequate working conditions and salaries, while at the same time demanding a minimum of daily working hours; ensure that overtime work is adequately remunerated;
- Establish a clear binding system for establishing court schedules, with case sequence and exact timing;
- Ensure that all courtrooms have adequate space and sound clarity;
- Replace the current system of servicing court documents with an electronic system, already successfully implemented in other Arab countries.

### **To First Instance Court judges**

- Optimize court working hours by starting trial hearings on time;
- Increase the daily time devoted to trial hearings to no less than five hours per day;
- Ensure the timely transfer of detainees to court, including by reinforcing cooperation mechanisms between the court registry and the prison administration;
- Avoid postponing trials for periods longer than three weeks;
- Set up a shared electronic court calendar with lawyers so as to avoid overlapping events and so that lawyers receive reminders prior to the hearings;
- Take all torture and ill-treatment claims with utmost seriousness. Ensure that complaints are duly recorded in the trial minutes and refer the case file for further investigation and prosecution.
- Demand that the prosecution provides verifiable evidence when requesting the detention of the defendant; reject arrest requests that are not backed with an investigation file.

## **Project background and monitoring methodology**

The present report is based on monitoring of trials before the Serious Crimes Court and First Instance Courts in the governorates of the West Bank and the Gaza Strip.

The report is part of a project aimed at supporting the Palestinian judiciary's preparedness and accountability, through increasing civil society's capacities to monitor and evaluate the work of Palestinian courts. The project is supported and funded by UNDP/UNWomen/UNICEF joint program: Promoting the Rule of law in the State of Palestine "Sawasya II" programme. It is managed by the United Nations Development Programme (UNDP).

### **Project Steering committee**

A Steering Committee to supervise the trial monitoring program. The steering committee included (the Civil Commission for the Independence of the Judiciary and the Rule of Law (ISTIQLAL), the Independent Commission for Human Rights, the Coalition for Integrity and Accountability (AMAN), the Jerusalem Center for Legal Aid, Mada - the Palestinian Center for Development and Media Freedoms and Addameer Institute for Human Rights-Gaza. The Committee held a series of meetings to follow up on the progress of the monitoring project, approval of the required action plans needed for the implementation of the project.

### **Project implementation steps**

A first step consisted in recruiting a sufficient number of court monitors to cover all the courts. The recruitment of the project staff through a competitive selection procedure advertised on ISTIQLAL's the National Coalition for Judiciary Reform's respective websites. In total the court monitoring team was comprised of 11 experienced lawyers (6 women and 5 men).

After developing the trial monitoring forms and methodology, a series of preliminary meetings were held with official authorities in the West Bank to introduce them to the project, including the High Judicial Council's chairman and the Courts presidents.

The trial monitoring program was officially launched on April 15, 2019, at ISTIQLAL's headquarters in Ramallah and Gaza, in the presence of representatives of the institutions involved within the framework of the National Coalition for Judicial Reform and Protection, the Judges Club Association, the Attorney General's Office, and Sawasya II team .

That same day, a preliminary meeting was held with court monitors in order to agree on a common view of the project goals and fine-tune the methodology by going through the monitoring forms.

An evaluation meeting was held for the work stage after two weeks of fieldwork in which the performance was discussed and evaluated and forms were developed based on the results of the practical field work experience and the way to deal with the response options.

Monitors had further regular meetings throughout the project implementation period to discuss and agree on work ethics and receive specialized training on court monitoring techniques. A group was also created on social media among project staff, making it possible for them to exchange information in real time and consult others on issues and difficulties encountered in their work.

With the help of a statistician, an electronic software was created enabling court monitors to enter data collected each day directly into a database. Dedicated software was developed using electronic forms on a tablet, ensuring that the forms are entered correctly. A comprehensive automated cleaning data rules were developed between questions at the level of the form to ensure consistency of questions and answers.

While most data contained in the report is based on direct observation of cases by ISTIQLAL monitors during the reporting period, some quantitative data was obtained directly from the court system. Data was extracted through the “Al-Mizan” software accredited by the Higher Judicial Council.

### **Monitoring methodology**

Prior to starting the monitoring activities, the project team devised a number of indicators relevant to the monitoring goals. The indicators were then shared and discussed with relevant counterparts, including judiciary representatives, human rights organizations and all ISTIQLAL members.

In order to collect data in a streamlined fashion, ISTIQLAL developed five questionnaires that were used by court monitors to collect data and input it into the database.

Both quantitative and qualitative approaches were used to collect data.

### **Monitored courts**

The Courts that were the object of monitoring are all First Instance Courts in the Gaza Strip (Gaza City and Khan Yunis), all First Instance Courts in the West Bank (Hebron, Bethlehem, Ramallah, Jericho, Nablus, Jenin, Tulkarm and Qalqilya), and the Serious Crimes Court branches in the same West Bank governorates.

The team also monitored cases pending before the Corruption Crimes Court, the study community was limited to the Corruption Crimes Court and a conducted a pilot monitoring of the juvenile courts in Ramallah, Al Bireh, Bethlehem, Nablus and Gaza. These courts are not included in the present report and will be the object of separate thematic reports.

### **Timeframe and number of hearings monitored**

Monitoring of trials before the **Serious Crimes Court** took place between 1 April and 19 June 2019, when Presidential Decree no. 14 of 2019 repealed the Decree Law no. 9 of 2018 that had created the Serious Crimes Court. The team monitored 1.348 hearings spanning over 83 court days

Monitoring of trials before First Instance Courts in the West Bank took place between 19 June 2019 and 15 February 2020. The team monitored 7.846 hearings spanning over 506

court days.

Monitoring of trials before **First Instance Courts in the Gaza Strip** took place between 1 April 2019 and 15 February 2020. The team monitored 2.986 hearings spanning over 266 court days.

Overall, the Court monitoring team monitored 12.180 court hearings held over 855 court days.

## CHAPTER ONE. Cases and defendants

The present chapter will illustrate the type of cases dealt with by First Instance Courts and Serious Crimes Court branches during the monitoring period.

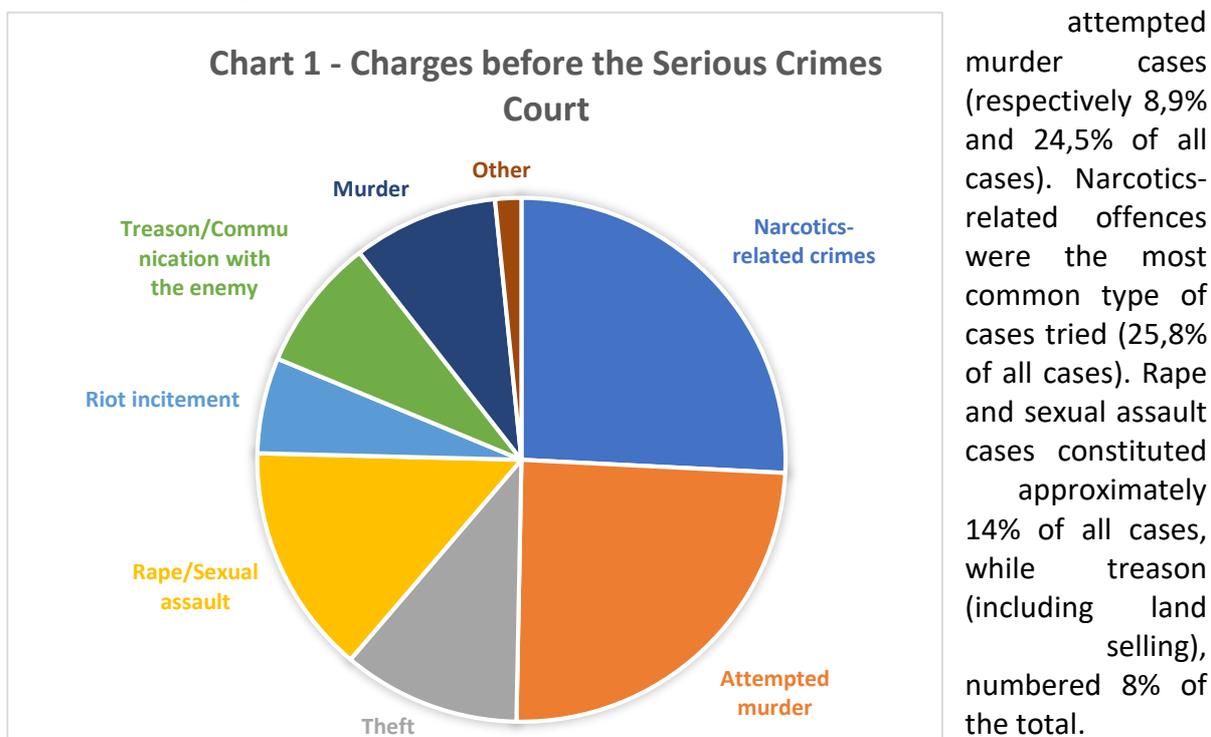
A number of indicators are taken into account, including types of crimes tried, judgments issued, defendants and their gender, and sentencing.

### 1. Types of crimes tried

According to Decree-Law No. (9) of 2018, the Serious Crimes Court has jurisdiction over five categories of grave criminal offences: 1) murder; 2) Rape, indecent assault and criminal kidnapping; 3) Crimes against internal and external security of the State; 4) Narcotics-related crimes; 5) Selling or renting any part of the Palestinian territories to enemy states or their citizens. The Court has also jurisdiction to prosecute individuals who attempted or incited others to commit the above crimes, as well as perpetrators of crimes committed in close connection with the crimes above.

The Court was dissolved by presidential Decree Law on June 19, 2019; cases pending before the Serious Crimes Court at the date were transferred to First Instance Courts.

Data that ISTIQLAL obtained through the High Judicial Council shows that over one third of the cases tried by the **Serious Crimes Court branches** in the West Bank are murder and

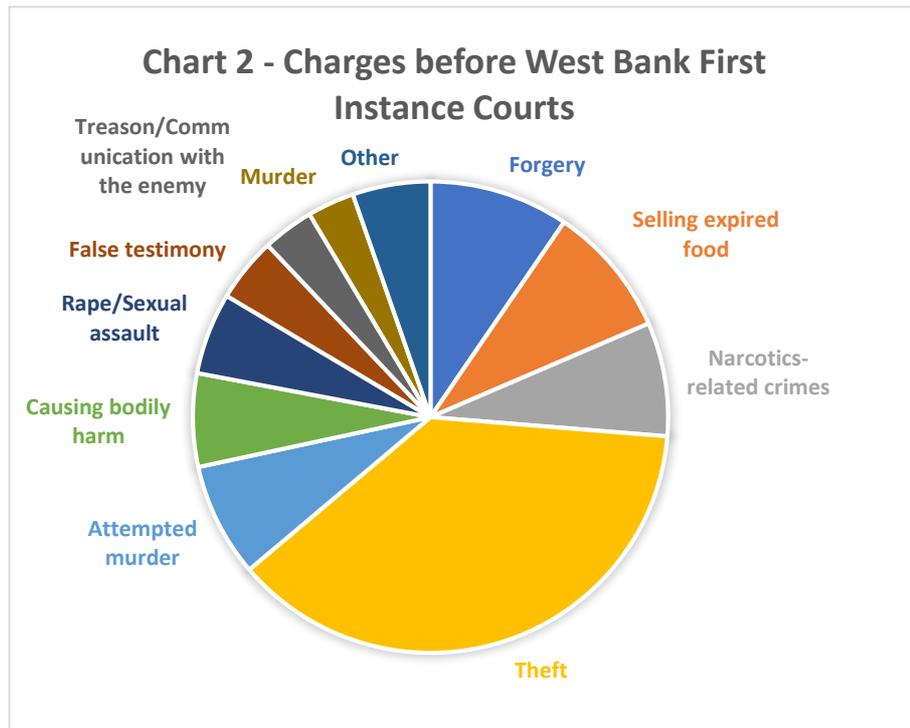


Serious Crimes Court branches were also seized with a large number of theft cases (11% of the total), a crime which in principle does not fall within the jurisdiction of the Court and may

explain why a number of proceedings before this court resulted in judgments declining jurisdiction.

First Instance Courts are courts of general jurisdiction, which have the power to try individuals for felonies and crimes that do not fall within the jurisdiction of a higher or specialized court, or a misdemeanour court.

Theft was by far the most common offence tried before **First Instance Courts in the West Bank** (37,5% of all cases). Forgery cases were the second most recurring type of case (9,5%), followed by selling expired food (9%). After the dissolution of the Serious Crimes Court, during the monitoring period, First Instance Courts in the West Bank also dealt with crimes which fell within the jurisdiction of that Court, such as murder (3,3% of all cases), attempted murder (7,8%), narcotics-related crimes (7,8%), rape and sexual assault (6%), and collaboration with the enemy, including land sale or rental (2%). Other crimes included causing bodily harm, false testimony and arson, among others.



## 2. Number of defendants and their gender

According to official court data, in the reporting period Serious Crimes Court and First Instance Courts in the West Bank tried 3,065 individuals. 1,379 defendants were tried before the Serious Crimes Court branches and 1,686 defendants before First Instance Courts.

Courts in Ramallah had by far the largest number of defendants (36% of all defendants tried by the Serious Crimes Court and 38% of defendants tried by First Instance Courts). Hebron and Nablus also tried a substantive number of defendants.

Women represented a small percentage of all defendants before both first instance Courts (less than 3%) and Serious Crimes Court branches (less than 2%).

Table 1 NUMBER OF DEFENDANTS	Serious Crimes Court branches			West Bank First Instance Courts		
	Men	Women	Total	Men	Women	Total
<b>Ramallah</b>	492	4	<b>496</b>	621	23	<b>644</b>
<b>Bethlehem</b>	114	0	<b>114</b>	123	4	<b>127</b>
<b>Hebron</b>	272	5	<b>277</b>	310	6	<b>316</b>
<b>Nablus</b>	247	5	<b>252</b>	195	3	<b>198</b>
<b>Tulkarm</b>	75	2	<b>77</b>	76	0	<b>76</b>
<b>Jenin</b>	73	3	<b>76</b>	79	0	<b>79</b>
<b>Qalqilya</b>	62	2	<b>64</b>	85	4	<b>89</b>
<b>Jericho</b>	22	1	<b>23</b>	153	4	<b>157</b>
<b>Total</b>	<b>1.357</b>	<b>22</b>	<b>1.379</b>	<b>1.642</b>	<b>44</b>	<b>1.686</b>

### 3. Judgments

According to official data obtained through the High Judicial Council, during the monitoring period Courts in the West Bank issued a total of 1.413 judgments. Serious Crimes Court branches issued 632 while First Instance Courts passed 781 judgments.

The data is displayed in **Table 2**.

Table 2 NUMBER OF JUDGMENTS	Serious Crimes Court	First Instance Courts
Ramallah	201	281
Bethlehem	65	57
Hebron	123	144
Nablus	126	123
Tulkarm	31	45
Jenin	41	51
Qalqilya	30	39
Jericho	15	41
<b>Total</b>	<b>632</b>	<b>781</b>

As displayed in **Table 3** below, most cases in both First Instance and Serious Crimes Courts ended with convictions. The acquittal rate in trials by First Instance Courts was 15,5%, against an acquittal rate of 18,2% in judgments by Serious Crimes Court branches.

The Serious Crimes Court concluded 22,6% of the total number of proceedings with a judgment declaring their incompetence, as a consequence of lawsuits erroneously brought to the Serious Crimes Court for crimes falling outside its jurisdiction *ratione materiae*, including, as already mentioned, theft cases which fall under the competence of First Instance Court.

Diverging interpretations of legal provisions amongst parties to the proceedings also contributed to this problem.

Where defendants were convicted, detention was by far the most common sentence imposed, with fines imposed as the only penalty in a marginal number of cases (2.8% of cases before the Serious Crimes Court and 7.3 before the First Instance Courts).

Table 3 TRIAL OUTCOME (%)	Serious Crimes Court	First Instance Courts
Detention	53,0	69,5
Fine	2,8	7,3
Acquittal	18,2	15,5
Lack of Jurisdiction	22,6	2,0
Statute of limitations	0,9	0,3
Immunity from prosecution	-	2,7
Case terminated by Court <sup>1</sup>	1,3	-
Other	1,1	2,7

#### 4. Prison sentences

The present paragraph will focus on prison sentences imposed by First Instance Courts and will examine their length in absolute values (number of years of imprisonment imposed, regardless of the statutory penalty provided by the law) and their severity (whether courts imposed sentences equal to the statutory minimum, maximum, or in between).

##### a) Length of prison sentences

Almost all prison sentences imposed by Serious Crimes Court and First Instance Courts in the West Bank were below 15 years of imprisonment (97% and 99,5%, respectively).

Sentences imposed by Serious Crimes Court branches on average were higher, as a likely result of the more serious types of cases falling under its jurisdiction. Over 50% of the sentences imposed by Serious Crimes Court branches exceeded 3 years of imprisonment, against just 34% of those imposed by First Instance Courts. Overall, sentencing by these courts was low, with almost two-thirds of sentences imposed by First Instance Courts below 3 years. Less than 10% of all sentences imposed by First Instance Courts exceeded 7,5 years of imprisonment, versus almost 30% of sentences imposed by Serious Crimes Courts branches.

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<sup>1</sup> The CPC Article establishes that the court may, on its own initiative, terminate criminal proceedings in certain specific circumstances, for instance when proceedings were initiated upon the injured party's complaint and the injured party did not attend two consecutive sessions to which they were regularly summoned.

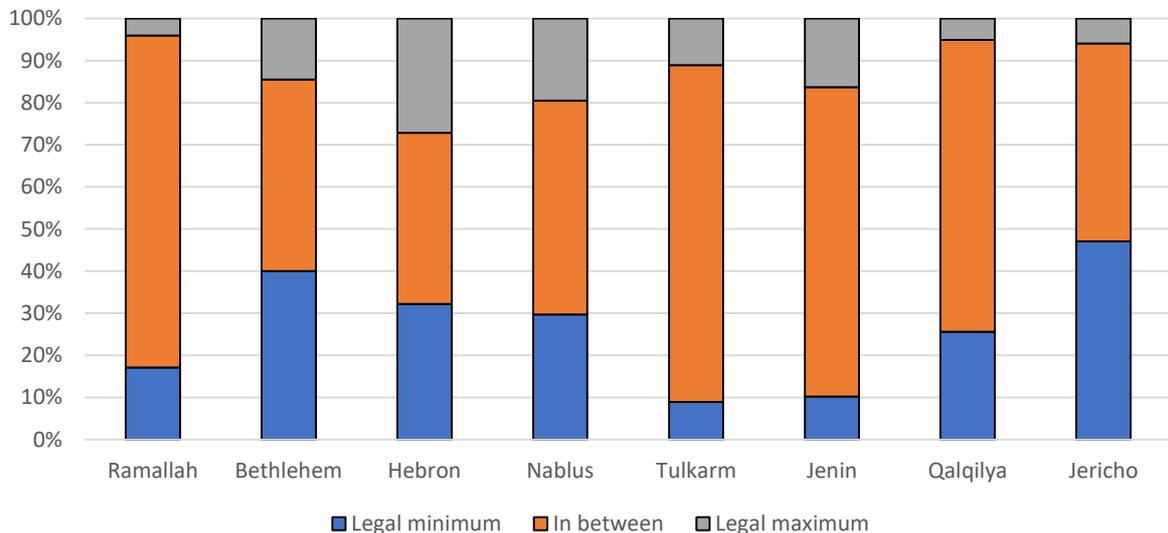
Chart 3 - Length of prison sentences imposed



b) Severity of prison sentences

Another indicator considered by ISTIQLAL, based on data provided by the High Judicial Council, was their severity by West Bank Courts in determining prison sentences. To assess this, ISTIQLAL considered whether such Courts, in determining the sentencing within the parameters set by statutory range foreseen by law for each criminal offence, imposed sentences equal to the legal minimum, equal to the legal maximum, or a prison sentence

Chart 5 - Severity of prison sentences - West Bank First instance Courts



falling in between the two. The results are displayed in **Chart 4** (Serious Crimes Court branches) and **Chart 5** (First Instance Courts).

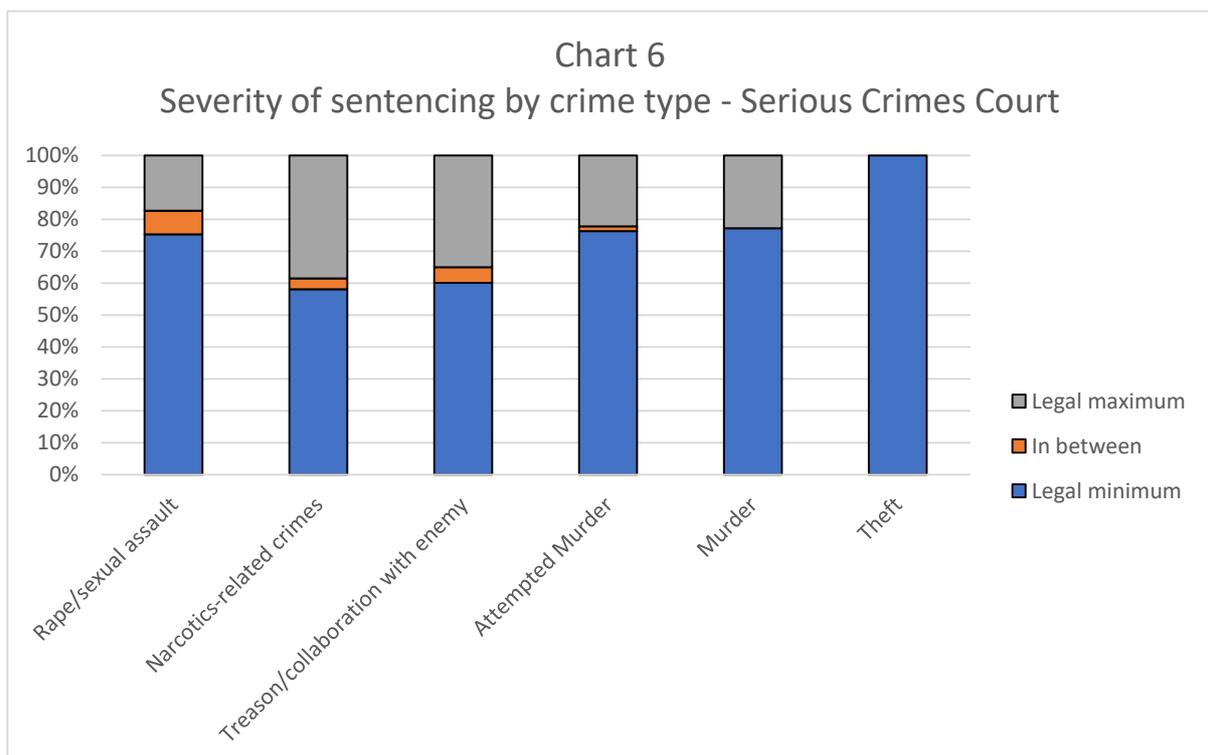
Generally, there appears to be a stark difference in severity of prison sentences imposed by the Serious Crimes Court and First Instance Courts. The former imposed sentences equal to the legal minimum in a the majority of cases: this tendency was more evident in branches such as Tulkarm, Hebron, Jenin and Jericho, where minimal prison sentences were around 80% of the total, while the Ramallah branch imposed sentences equal to the minimum in just above 50% of cases. On the other hand, First Instance Courts imposed minimal prison sentences in a much lower percentage of cases: no court imposed minimum sentences in more than 50% of cases, and some courts such as Tulkarm and Jenin did so in less than 10% of cases.

Both in Serious Crimes Court and First Instance Court trials, maximum prison sentences represented a minority. By far, the strictest Court was the Serious Crimes Court branch in Ramallah, which imposed maximum prison sentences in almost 40% of all convictions.

First Instance Courts tended to impose sentences falling within the minimum and maximum statutory ranges, a likely sign that such courts put an effort in tailoring the sentencing to the gravity of the offence and the accused: on the contrary, Serious Crimes Court branches appeared to lack such approach, always imposing, with rare exceptions, sentences equal either to the minimum or the maximum.

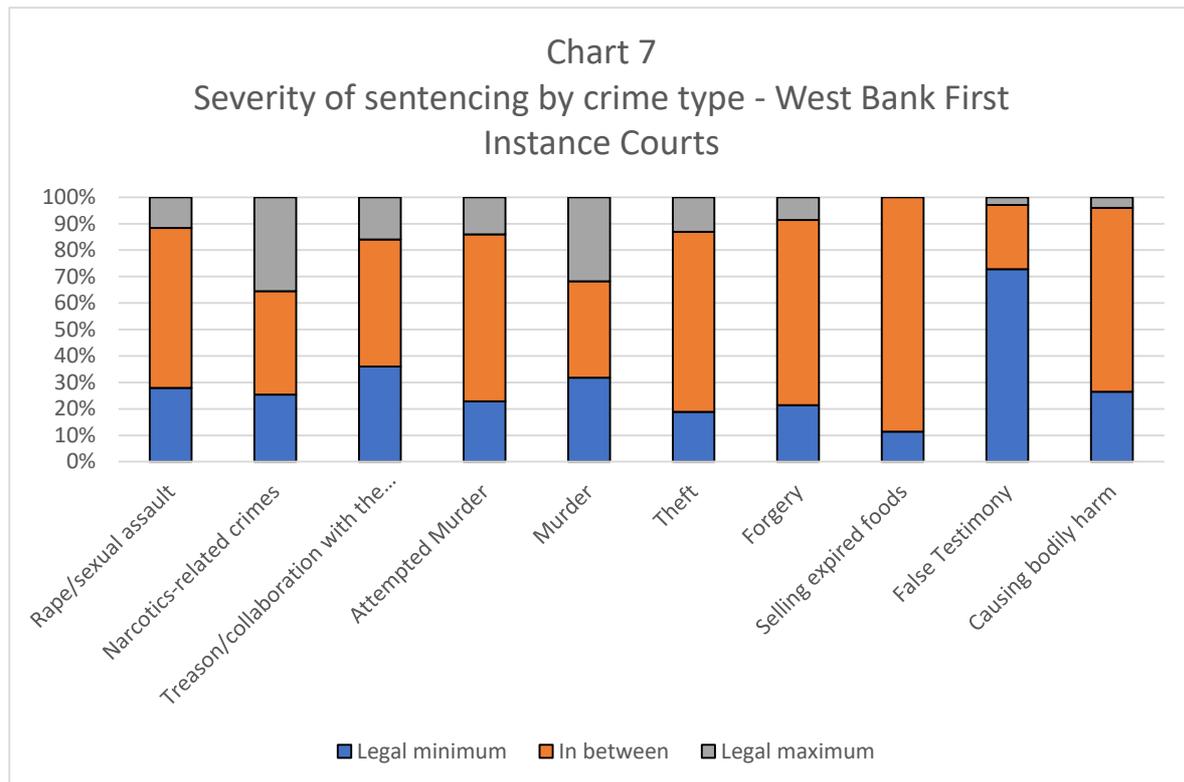
c) Severity of sentencing by crime type

In Serious Crimes Court judgments, narcotics-related crimes and treason/collaboration with the enemy were the two crime categories where sentences equal to the legal maximum were more often imposed, compared to crimes such rape/sexual assault crimes where maximum



penalties were imposed in less than 20% of cases and, conversely, perpetrators were sentenced with minimum sentences in over 70% of cases.

As already noted, sentencing by First Instance Courts was comparatively stricter, especially for crimes such as murder and narcotics-related offences where maximum penalties were imposed in over 30% of cases. Conversely, some crimes were treated in a comparatively more lenient fashion, such as rape/sexual assault, theft, forgery. It is concerning that false testimony was by far the crime that received the most lenient penalties, considering that it is a crime that constitutes a serious threat to the administration of justice as a whole.



## 5. Judgments based on Israeli military orders

The Palestinian Courts of First Instance in the West Bank and the courts in Gaza Strip base their provisions on a mixture of legislation in force; such as the Jordanian Penal Code of 1960 that applies in the West Bank, the Egyptian Penal Code of 1936 that applies in the Gaza Strip, in addition to Palestinian legislation approved by the Palestinian Legislative Council established in 1996 and active until 2007, when the political division between the West Bank and the Gaza Strip occurred. Additionally, some criminal cases before Palestinian courts are still based on Israeli military orders that are still part of the applicable law.

During the reporting period, First Instance Courts issued only twelve judgments based on Israeli Military Orders. All were narcotics-related cases, based on Military Order No. 558 of 1975 on dangerous drugs (Articles 6, 7, 8, 13 and 32).

In nine cases the defendants were charged with possession, use of and trafficking of drugs or narcotic substances; two cases involved charges of cultivating dangerous drugs; one case of

inciting the use of narcotic drugs and one case of providing an underage person with dangerous drugs.

Courts entered convictions in nine cases, acquittals in one and a mix of convictions and acquittals in two more. Most sentences imposed were under one year or less, but in one case the defendants were sentenced to ten years of imprisonment.

Courts were particularly expeditious in dealing with these cases, since no case lasted more than seven months to complete and some lasted as short as one month.

## CHAPTER TWO. Courts' infrastructure and organization

The present chapter will examine the preparedness of Palestinian Courts concerning their organizational and infrastructural ability to adequately perform their judicial functions.

### 1. Organizational capabilities

A first aspect that ISTIQLAL considered was the Court's ability to organize their own work, the monitoring team considered two indicators: the court's compliance with the hearings starting time; and the court's adherence to the Court docket (i.e. the order in which cases are supposed to be heard on a given day). The table below summarizes the main findings.

#### a) Timeliness of court hearings start

The official working hours in all Courts in the West Bank and Gaza Strip are eight in the morning to three in the afternoon, with hearings supposed to start from nine in the morning. However, on most monitored court days, the vast majority of hearings did not start on time, in many cases not before ten the morning. The reasons for delays are indicated in **Table 4**.

TABLE 4 NUMBER OF DELAYED HEARINGS AND REASONS THEREOF (%)	Serious Crimes Court	First Instance Courts West Bank	First Instance Courts Gaza Strip
No delay in hearing start	2,4	9,7	2,3
Delay by the judge	61,4	67,6	93,6
Delay by defence attorney	10,8	1,6	-
Delay by court clerk	-	0,8	0,4
Delay by Public prosecution	22,9	11,1	2,6
Delay by the accused	2,4	1,0	0,8
Other reasons	-	8,3	0,4

The data contained in Table 4 clearly shows that the overwhelming majority of trial hearings did not start on time, especially in Serious Crimes Courts and First Instance Courts in Gaza. In most cases, especially in Gaza first Instance Courts, this was due to a delay by judges to timely start court hearings. A significant delaying factor in Serious Crimes Courts is also Public Prosecution delays.

It appears that in most courts there exists a vicious circle by which parties show up late at hearings because of the court's practice to delay the hearing start. This leads Courts to justifying their own instances of belatedness with other parties' delays.

ISTIQLAL believes that if the judges were to start a practice of commencing hearings on time (e.g. at nine in the morning sharp) all these parties will be accustomed to being present on time as well. In any case, ISTIQLAL recalls that the judge is the authority responsible for managing the trial and ensuring that hearings start in a timely fashion. Judges should lead by example and, where appropriate, resort to available legal provisions to ensure that other parties adhere to the court timetables as well.

b) Compliance with daily case schedule

Respecting the order and sequence of files and cases in First Instance Courts varied greatly, from very high-compliance courts such as Tulkarm, Bethlehem and Hebron, where in over 85% of cases Courts adhered to the schedule, to courts in Jenin and Qalqilya, where the

TABLE 5 - COURTS' COMPLIANCE RATE WITH DAILY CASE SCHEDULE (%)	
Ramallah First instance Court	67,5
Bethlehem First instance Court	85,3
Hebron First instance Court	86,3
Nablus First instance Court	33,3
Tulkarm First instance Court	94,3
Jenin First instance Court	10,5
Qalqilya First instance Court	10,5
Jericho First instance Court	37,5
<b>First instance Courts West Bank</b>	<b>65,7</b>
Gaza First instance Court	27,4
Khan Yunis First instance Court	33,2
<b>First Instance Courts Gaza Strip</b>	<b>30,5</b>
<b>First Instance Courts combined</b>	<b>55,0</b>
<b>Serious Crimes Court</b>	<b>75,2</b>

compliance rate was a mere 10,5%. On average, first instance courts in Gaza performed much worse than those in the West Bank (30,5% vs. 65.7% compliance rate).

The way courts draw up their daily schedule varied from court to court.

The Jenin First Instance Court was among those who performed the worst in this regard: this court often failed to hear cases at the scheduled time and to hear them according to the predefined order.

In the Gaza First Instance Court, ISTIQLAL observed that files and criminal cases are often heard in this court without a predefined sequence: it appeared that judges heard cases in accordance with the requests of

defence attorneys; this meant in certain cases judges favoured lawyers who were known to them. This prevented an orderly examination of the hearings due to take place on a given day and gave the impression that the Court favoured certain lawyers over others.

Similar concerning practices were observed in the Jericho Court of First Instance: in this court, the order of the hearing was often changed and/or disregarded; judges mostly gave priority to cases involving detainees and decided the order in which to hear the remaining cases according to the requests by the defence attorneys.

On average, the Serious Crimes Court performed better than First Instance Courts, adhering to the case sequence in 75% of monitored hearings.

## 2. Courts' infrastructure

Another aspect that ISTIQLAL considered as revealing of Palestinian Courts' overall preparedness pertains to their infrastructural capabilities. Table 6 shows the indicators ISTIQLAL considered when monitoring hearings before First Instance Courts and the Serious Crimes Court: i) adequate police protection; ii) presence of a court recorder; iii) presence of an usher; iv) courtroom acoustics.

Table 6 COURTS' INFRASTRUCTURAL PREPAREDNESS (% OF HEARINGS)	Police protection provided	Court Clerk present	Bailiff present	Voices heard clearly
Ramallah First instance Court	97,5	99,4	100,0	46,0
Bethlehem First instance Court	100,0	97,3	100,0	100,0
Hebron First instance Court	99,3	99,6	100,0	100,0
Nablus First instance Court	73,3	100,0	100,0	100,0
Tulkarm First instance Court	100,0	99,0	99,3	100,0
Jenin First instance Court	94,7	100,0	100,0	97,1
Qalqilya First instance Court	97,1	100,0	100,0	100,0
Jericho First instance Court	100,0	100,0	92,3	38,5
<b>First instance Courts West Bank</b>	<b>96,6</b>	<b>99,3</b>	<b>99,4</b>	<b>92,2</b>
Gaza First instance Court	90,4	100,0	100,0	75,4
Khan Yunis First instance Court	66,1	100,0	100,0	99,5
<b>First Instance Courts Gaza Strip</b>	<b>77,6</b>	<b>100,0</b>	<b>100,0</b>	<b>86,8</b>
<b>First Instance Courts average</b>	<b>90,8</b>	<b>99,5</b>	<b>99,6</b>	<b>90,0</b>
<b>Serious Crimes Court</b>	<b>91,7</b>	<b>99,5</b>	<b>100,0</b>	<b>76,7</b>

On average, in the vast majority of all monitored hearings courts complied with minimum guarantees in terms of security, presence of court support staff, and courtroom acoustics. The following paragraphs contain more detailed observations and point out cases where courts did not reach a satisfactory performance in terms of infrastructures.

### a) Police protection

In order to operate safely, courts need to be provided with adequate security measures. Trials in some cases involve defendants charged with serious criminal offences or with affiliation to criminal groups. The presence of security staff not only enables judges to carry out their work without fearing for their own safety, but also allows them to manage situations where peace and order needs to be restored inside the courtroom.

In most monitoring hearings, ISTIQLAL observed the presence of law enforcement staff. While in courts such as Betlehem, Tulkarm and Jericho security staff was always present, in two courts, namely Khan Yunis and Nablus, no security was provided in a significant number of cases (respectively one third and one quarter of the monitored hearings).

Security was not provided also in almost 10% of hearings before the Serious Crimes Court.

#### b) Presence of court recorders and bailiffs

**Court recorders** are essential component of the court staff, who are in charge of drafting hearing minutes. Hearings are not valid without the presence of the clerk, as what is said in the courtroom would not be recorded. **Bailiffs** on the other hand ensure that parties and witnesses enter the courtroom when required, thus ensuring the smooth conduct of criminal proceedings.

With rare exceptions, court recorders and bailiffs were present at all monitored hearings, and effectively assisted judges carry out their work during the hearing.

This is not to mean that court staff was always adequate.

For instance, in the Ramallah First Instance Court a severe shortage of staff was observed: the number of registry employees is very limited (only one recorder and one bailiff are available). This means that when one of them is absent, another registry employee had to discharge functions as a court recorder or bailiff: as a result, sometimes the start of the hearings was delayed or the replacements had trouble managing the case files or type the minutes at an acceptable speed.

In the Gaza First Instance Court, ISTIQLAL monitors noticed an insufficient number of administrative staff to move case files from one office to another.

There also appeared to be no sign language translators in any of the monitored courts.

ISTIQLAL stresses that a number of administrative staff commensurate to the court's workload is essential to ensuring that Courts can carry out their work efficiently.

#### c) Courtroom acoustics and size

Adequate courtroom acoustics appeared to be a recurring problem in Palestinian courts. Sound clarity is an essential courtroom feature to allow parties to follow and participate in criminal proceedings. It also ensures not only that the court's work is carried out smoothly and effectively, but also that the public can meaningfully exercise their right to attend court sessions and observe the trial. However, many monitored hearings were characterized by a difficulty by monitors to follow criminal proceedings because of poor acoustics. Courthouses in Ramallah, Jericho and Gaza were the worst in terms of sound quality.

In the Ramallah First Instance Court, for instance, part of the problem is that there is no waiting area for parties who are outside of the courtroom. Parties have to wait while standing in a narrow corridor, which often becomes overcrowded and noisy, thus disturbing also the activities being carried out in the nearby courtroom.

In the Jericho First Instance Court, sound quality inside the courthouse was so poor that parties had difficulties even hearing their case being called, which led to unnecessary delays in the proceedings.

Courtroom size was also sometimes a matter of concern. While some court premises appeared adequate, such as those of the Jericho Court of First Instance, others did not seem fit to accommodate larger numbers of detainees. This was the case for instance in Khan Yunis,

where there is not enough courtroom space for cases involving more than ten defendants, or Betlehem, where the cell where defendants had to wait for their case to be called was in need for urgent maintenance.

The premises of the Ramallah First Instance Court are particularly problematic: the courtroom is small and overcrowded. Defendants are seated next to the public, by the entrance. The elevator by which they are brought to the floor where the courtroom is located is tiny, and this often caused delays, especially in cases involving multiple defendants. There is no dedicated place to keep voluminous case files, which are sometimes placed on the floor.

Court insufficient size and overcrowding are issues that will likely be exacerbated in the near future due to public health concerns related to the COVID-19 infection.

ISTIQLAL believes that more efforts are needed by the Palestinian government to ensure that courts are provided with adequate resources and premises to operate efficiently and safely.

## CHAPTER THREE. Courts' efficiency in adjudicating criminal cases

The present chapter aims to measure the effectiveness of the First Instance Courts and the Serious Crimes Court in deciding the cases presented before them.

Trials should always be conducted in an efficient and expeditious fashion: according to Art. 12 of the Palestinian Constitution, everyone has a right to be tried "without delay". The defendant's right to a trial within reasonable time is also enshrined in Art. 9(3) of the ICCPR.

Delays adversely impact on other parties to the proceedings as well, such as the victims' right to know the truth and seek monetary compensation, and the prosecution's ability to devote its time to investigating and prosecuting other criminal offences.

However, during the monitoring timeframe, ISTIQLAL observed a number of trials that were characterized by unnecessary, considerable delays.

While it would be overly simplistic to try and pinpoint one single reason responsible for delays in criminal proceedings before Palestinian courts, ISTIQLAL tried to identify some key recurring factors that contributed to delaying adjudication of cases before High Crimes and First instance courts.

First, the team considered each court's overall case-processing capacity, in terms of working hours, hearings held, and average time devoted to each hearing. The team then turned to examine the effectiveness of the court's work, by considering the number of hearings that resulted in some progress in the case and analysing the reasons for lack thereof. It also considered what measures, if any, court took in response to parties' behaviours obstructing proceedings. Moreover, the report also analyses the length of trial postponements. Lastly, it analyses the adverse impact generated by the replacement of members of the judiciary occurred during the reporting period.

### 1. Courts' case processing capacity

A first series of indicators considered to assess courts' efficiency pertain to their overall workload and case processing capacity. More detailed indicators included the average number of hearings held per day, the average duration of a hearing, and the total daily time devoted to hearing cases. The data is shown in **Tables 7 and 8** below.

<b>TABLE 7</b> FIRST INSTANCE COURTS CASE PROCESSING CAPACITY	Number of court days monitored	Number of hearings held	Average number of hearings per day	Average daily working time (hrs:min)	Average duration of a hearing (minutes)	Average daily time dedicated to hearings
Ramallah	62	1.820	29	3:04	6	174
Bethlehem	114	2.217	20	3:13	10	200
Hebron	66	1.942	29	2:44	6	174
Nablus	77	933	12	1:56	10	120
Tukarm	67	799	12	2:23	12	144
Jenin	46	571	12	2:05	10	120
Qalqilya	36	485	13	1:52	8	104
Jericho	38	728	20	2:10	7	140
<b>West Bank combined</b>	<b>506</b>	<b>9.495</b>	<b>19</b>	<b>2:33</b>	<b>8</b>	<b>152</b>
Gaza	92	1.665	18	1:58	7	126
Khan Younes	174	9.057	53	3:01	3	159
<b>Gaza Strip combined</b>	<b>266</b>	<b>10.722</b>	<b>41</b>	<b>2:39</b>	<b>4</b>	<b>164</b>
<b>First Instance Courts combined</b>	<b>772</b>	<b>20.217</b>	<b>26</b>	<b>2:35</b>	<b>6</b>	<b>156</b>

<b>TABLE 8</b> SERIOUS CRIMES COURTS CASE PROCESSING CAPACITY	Number of court days monitored	Overall number of hearings held during monitored days	Average number of hearings per day	Average duration of a hearing (minutes)	Average daily time dedicated to hearings
Ramallah	21	288	14	12	168
Bethlehem	14	183	18	14	252
Hebron	15	399	29	5	145
Nablus	19	407	23	7	161
Tukarm	5	78	16	8	128
Jenin	4	105	26	7	182
Qalqilya	2	60	30	10	300
Jericho	1	14	14	21	294
<b>Serious Crimes Court Combined</b>	<b>83</b>	<b>1,534</b>	<b>21</b>	<b>9</b>	<b>189</b>

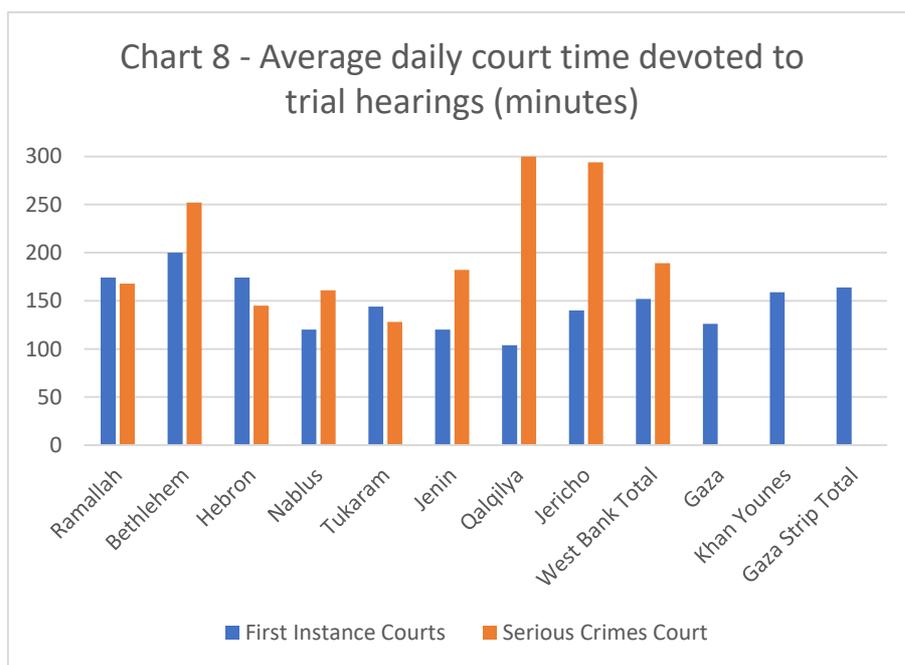
On average, First Instance Courts and Serious Crimes Court branches held a comparable **number of hearings per day** (respectively, 26 and 21). Some West Bank First Instance Courts, such as Nablus, Tukaram, Jenin and Qalqilya, appeared to hold a much lower number of hearings per day than the average. First Instance Courts in the Gaza Strip held, on average, twice as many hearings per day as Courts in the West Bank (41 vs. 19). The First Instance Court

in Khan Younes is responsible for this difference, since it held, on average, as many as 53 hearings per day. This Court is divided into two panels, due to its heavy workload, since it covers three governorates (Khan Yunis, Rafah and Deir Al-Balah).

The high number of hearings held by the Khan Younes court came at the expense of **hearings average duration**, which lasted much shorter than in the average West Bank First Instance Court (3 minutes against 8 minutes). On average, a hearing in a Gaza Strip First Instance Court lasted half as long as a hearing in the West Bank one. West Bank First Instance Courts such as Tulkarm, Betlehem, Jenin or Nablus on average devoted 8 to 10 minutes to each hearing, longer than the average West Bank First Instance Court but in line with the average duration of hearings in the Serious Crimes Court (9 minutes). The Jericho Serious Crimes Court branch appeared to be the Court devoting, on average, the longest time to trial hearings (21 minutes).

As an indicator of the courts' overall commitment to processing cases in a timely fashion, ISTIQLAL considered the overall **average daily time devoted to trial hearings**.

As shown in **Chart 8**, this indicator varied among courts. On average, First Instance Courts in the West Bank devoted approximately two hours and thirty minutes daily to court hearings, against a daily average by Serious Crimes Court branches of approximately three hours and ten minutes. On an average day, some First Instance Courts such as Nablus, Jenin and Qalqilya devoted two hours or less to court hearings. This is in stark contrast with the commitment



shown by some branches of the Serious Crimes Court, such as Betlehem, Jericho and Qalqilya, which dedicated four to five hours daily to court sessions. Interestingly, while the Qalqilya Serious Crimes Court branch seemed to be the hardest-working court of all (five hours daily average), its First Instance Court devoted to

hearings the least time of all courts (one hour and 45 minutes). The longer time devoted to court hearings also enabled Serious Crimes Courts to hear, on average, a higher number of witnesses (5,1 per case) compared to First Instance Courts (4,3 per case).

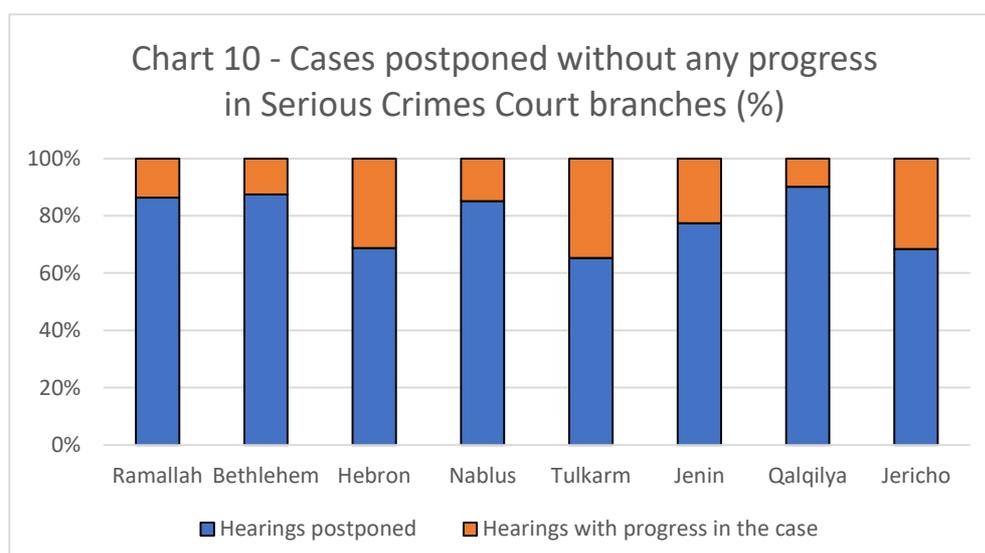
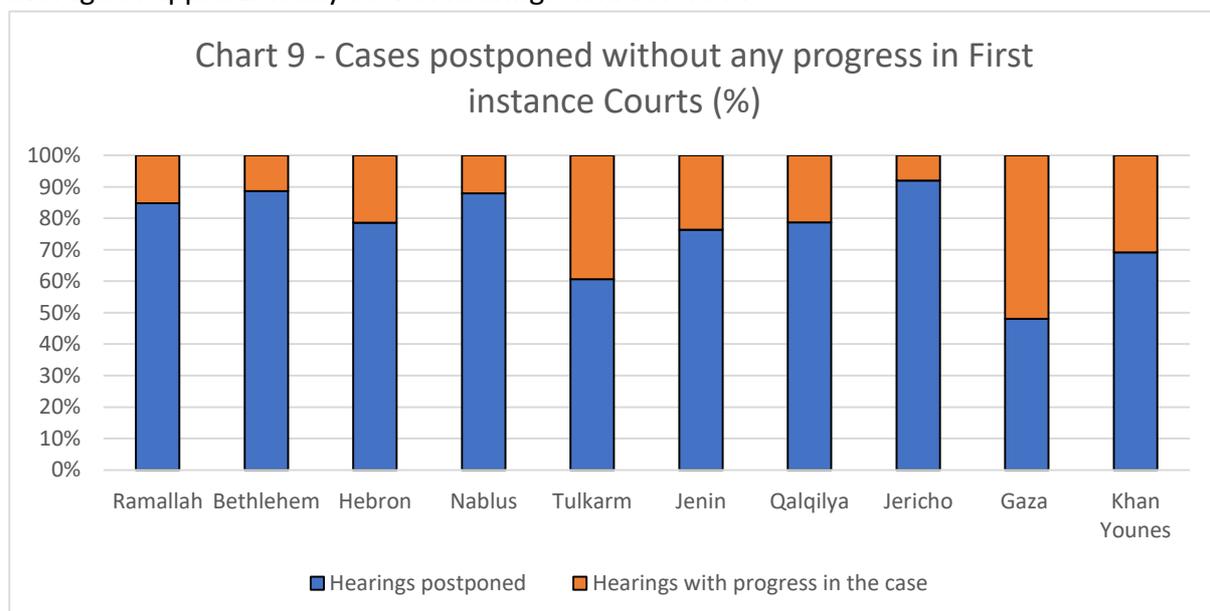
## 2. Case postponements

ISTIQLAL also observed that a considerable number of monitored hearings did not result in any actual progress in the case. In the vast majority of hearings monitored Courts simply

postponed the session without taking any procedural action, such as, for instance, reading the indictment, discussing the admissibility of evidence, or hearing witnesses or expert witnesses. The breakdown of these findings per each court is displayed in **Charts 9 and 10**.

No significant difference was observed between First Instance Courts and Serious Crimes Court branches: in trials before First Instance Courts in the West Bank and the Gaza Strip, the Court took some procedural actions only in 23.5% of the monitored hearings. This means that in 76.5% of cases hearings were adjourned to a new date without any procedural step being taken and no tangible progress being made. More precisely, First Instance Courts in the West Bank took some procedural step in a mere 18% of monitored hearings. The Tulkarm Court was the most efficient, with some progress made in 40% of hearings, while as many as 90% of hearings held in Courts in Bethlehem, Nablus and Jericho First Instance Courts were simply postponed without any progress being made.

First Instance Courts in the Gaza Strip performed comparatively better, with some procedural action occurring, on average, in 37% of monitored hearings. The First Instance Court in Gaza city performed better than the Khan Yunis court in this regard, “merely” postponing an average of approximately 50% of hearings held before it.

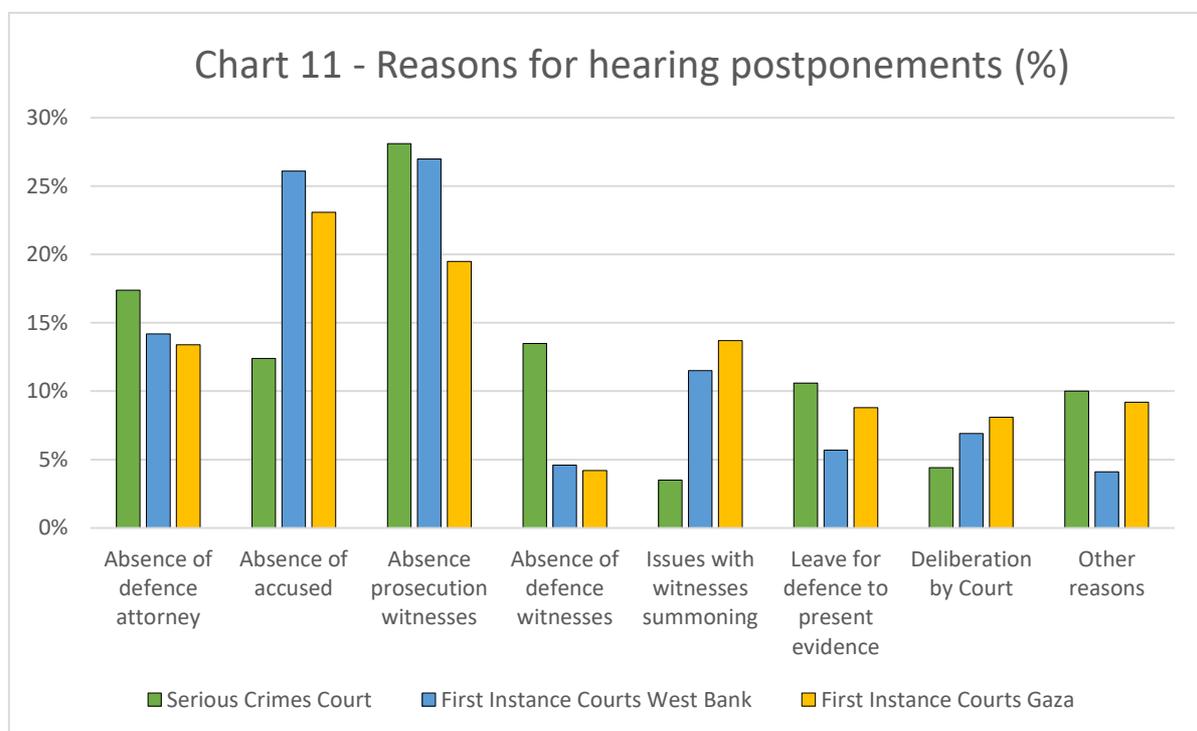


When it comes to the Serious Crimes Court, judges took measures which contributed to the case progress, on average, in less than 20% of all hearings. only in 263 hearings. As many as 1,085 hearings were postponed without taking any measures other than setting a new hearing date. resulted in some progress towards the case’s adjudication. Again, the Tulkarm branch was the most efficient, followed by those in Hebron and Jericho. As many 90% of the hearings before the Qalqilya Serious Crimes Court branch were simply postponed.

The reasons for these frequent postponements will be discussed in the following paragraph.

### 3. Reasons for postponements

The most commonly observed reasons for postponing hearings in First Instance Courts were the failure of prosecution witnesses to appear and the Court’s failure to ensure the presence of defendants held in pre-trial detention. As shown in **Chart 11**, These two factors combined accounted for over 50% of postponements in the West Bank and 40% in the Gaza strip.



Another problematic factor, causing postponements in over 10% of all hearings in First Instance Courts, was failure to properly summon witnesses. Coupled with failure of defence attorneys and defence witnesses to appear, these factors account for the overwhelming majority of reasons why hearings in West Bank and Gaza First Instance Courts (85% and 74%, respectively) were unnecessarily adjourned.

The same factors also affected trial hearings before the Serious Crimes Court, where absence of regularly summoned defence witnesses had a much more severe impact than in First instance courts.

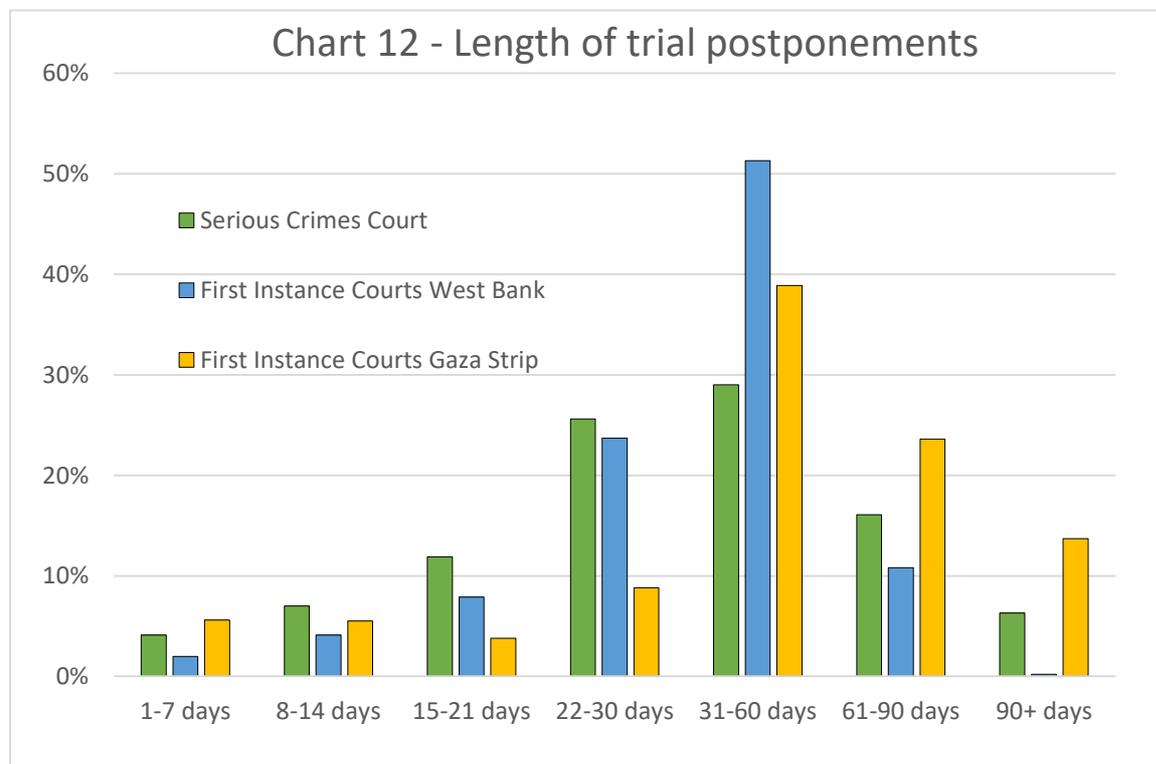
On the other hand, Serious Crimes Court branches were much more effective in ensuring the presence at the hearing of defendants held in pre-trial detention. First Instance Courts often

failed in this seemingly uncomplicated task mostly due to the court clerk’s omission to mention the name of the arrested person in the letters and correspondence issued by the court to the prison in order to send the arrested person to the court to attend the hearing on the date mentioned in the letter. Such an omission results in adjourning the hearing and sending a new letter to ensure bringing the prisoner to the following hearing. In addition, the failure to bring the arrested person is sometimes due to the lack of police capabilities, such as the lack of fuel for vehicles in which prisoners are transported to and from the court and detention centres. The problem appeared to be particularly acute in Gaza First Instance Courts, where detainees are not timely taken to Court to attend hearings almost 40% of the time.

ISTIQLAL believes that by focusing on more efficient case witness summoning systems and ensuring that accused are brought to court timely, courts could dramatically increase their effectiveness and performance in terms of case clearance capabilities.

#### 4. Length of trial postponements

Another concerning aspect of frequent trial postponements is related to the length of the postponement itself. According to data gathered by ISTIQLAL, shown in **Chart 12**, a small percentage of postponements in all Courts were short (i.e. one week or less), ranging from 2% of instances in the First instance Courts in Gaza to 5,6% of instances in first Instance Courts in the West Bank. Most postponements in all monitored courts lasted over three weeks, and the majority over a month. The situation appears particularly concerning in Gaza, where over 75% of postponements lasted over a month and over 13% over three months.

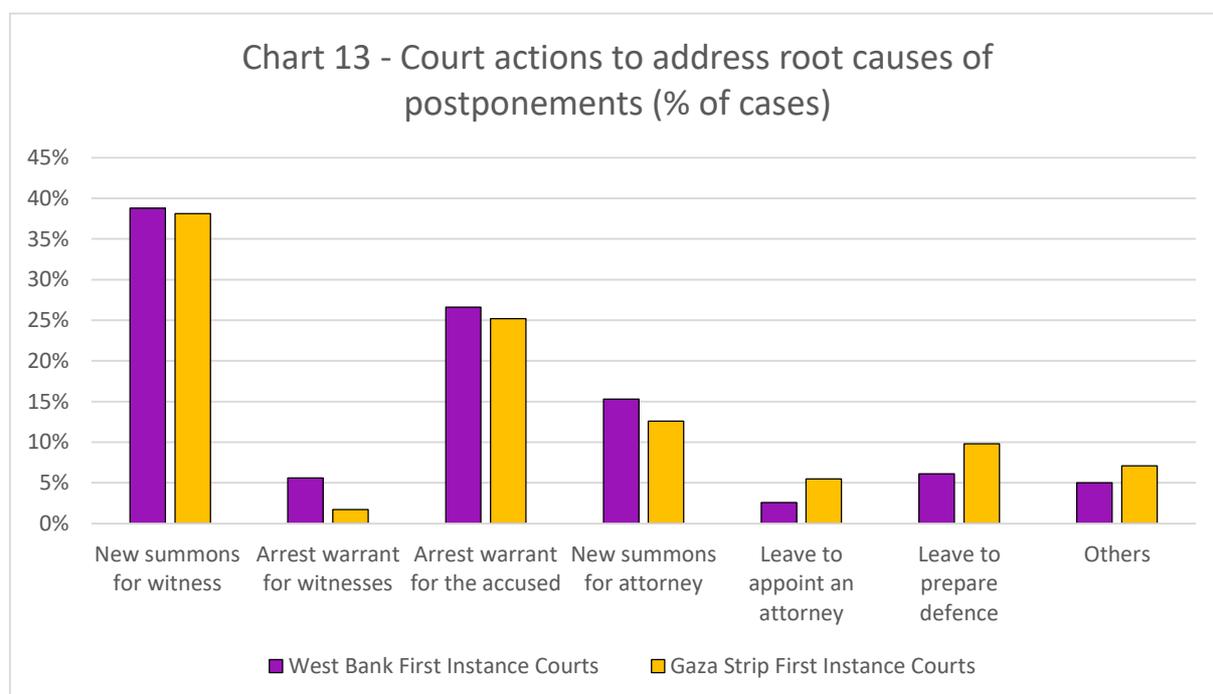


## 5. Measures to address reasons for postponements

ISTIQLAL also considered measures that First Instance Courts took to address the reasons for trial postponements.

As shown in **Chart 13**, the most common measure both in the West Bank and Gaza Strip was to re-notify the witnesses who failed to appear; subpoenas or fines for witnesses were issued in a marginal number of cases. The second measure these Courts most frequently resorted to was issuing a subpoena or an arrest warrant for the defendant at liberty who failed to appear, in accordance with Article 247 of the CPC, which states that “If the accused does not appear in court on the date and at the time designated in the writ of summons, he is re-notified and, if he again fails to appear, an arrest warrant is issued against him.”

Re-summoning absent attorneys was also frequently observed. In these cases, however, Courts hesitated to refer the issue for follow-up disciplinary measures to the Palestinian Bar Association, a measure that was taken in a marginal number of cases.



No substantive differences were observed between Courts in the West Bank and in the Gaza Strip. These measures appeared to be equally ineffective to produce a substantive increase in the percentage of hearings that resulted in some progress in the case.

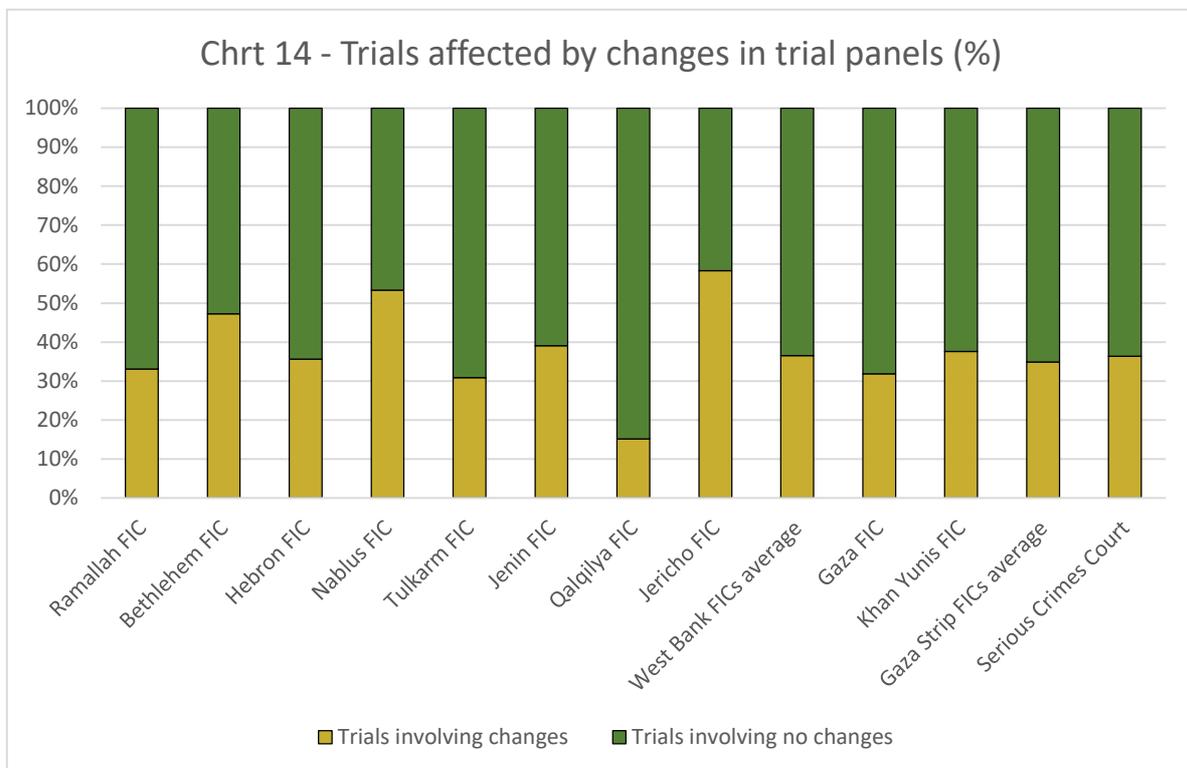
## 6. Changes in trial panels

ISTIQLAL observed that in a large number of monitored cases the trial panel changed in the course of the proceedings. This was largely due to the changes in the judiciary brought about by the Transitional High Judicial Council, created by Law No. 17 of 2019. In addition to the previous High Judicial Council’s functions, this body received the mandate to reform the existing judiciary, by restructuring the court bodies of all degrees and types, recommending to Court Presidents to dismiss individual judges, reassign judges to other judicial positions, or

refer a judge to early retirement. The Council, to date, has referred about 20 judges to retirement, appointed a large number of new judges, and promoted other judges to higher positions. As already mentioned, this had an inevitable impact on the composition of court panels, especially in First Instance Courts of the West Bank.

This had a clear adverse impact on the effectiveness and productivity of the courts, because when trial panels changed, the new panels needed time to review the case files and become acquainted with the case. **Evidentiary proceedings also had to start from the beginning.**

The team observed that trial panels changed in over one third of all monitored cases. The issue impacted in a particularly severe manner the First Instance Courts in Nablus and Jericho, with trial panels changing in over half of the monitored cases. The First Instance Court in Qalqilya appeared to be the least affected, with just over 15% of cases involving changes in trial panels. On average, the issue affected Serious Crimes Court branches and First Instance Courts in the West Bank and Gaza at an almost identical rate.



Such widespread changes in trial panels may have led to a loss of trust by accused and injured parties in the justice system, as it may have given a feeling that the newly-appointed panel will not attain adequate knowledge of the case and will be in a worse position to make informed and well-grounded decisions in the case.

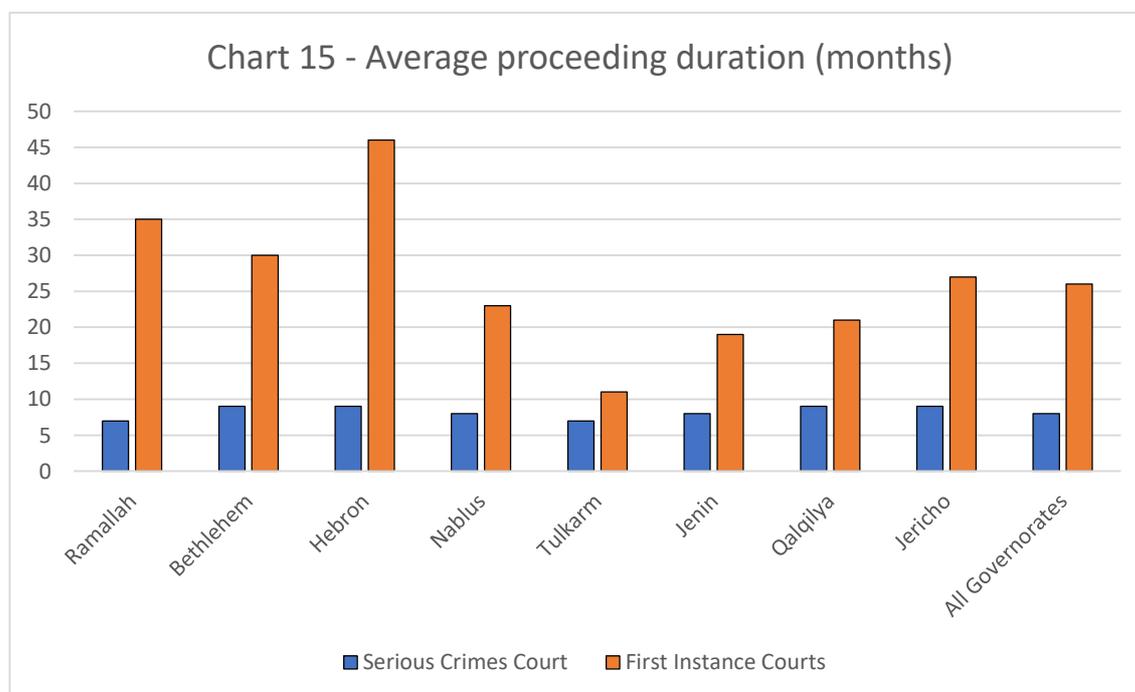
## 7. Duration of proceedings

A last indicator ISTIQLAL considered in order to assess the efficiency of Courts was the overall duration of proceedings.

Both before Serious Crimes Court branches and First Instance Courts, most monitored cases lasted less than one year from the referral of the case to the Court to the issuance of the first instance judgment.

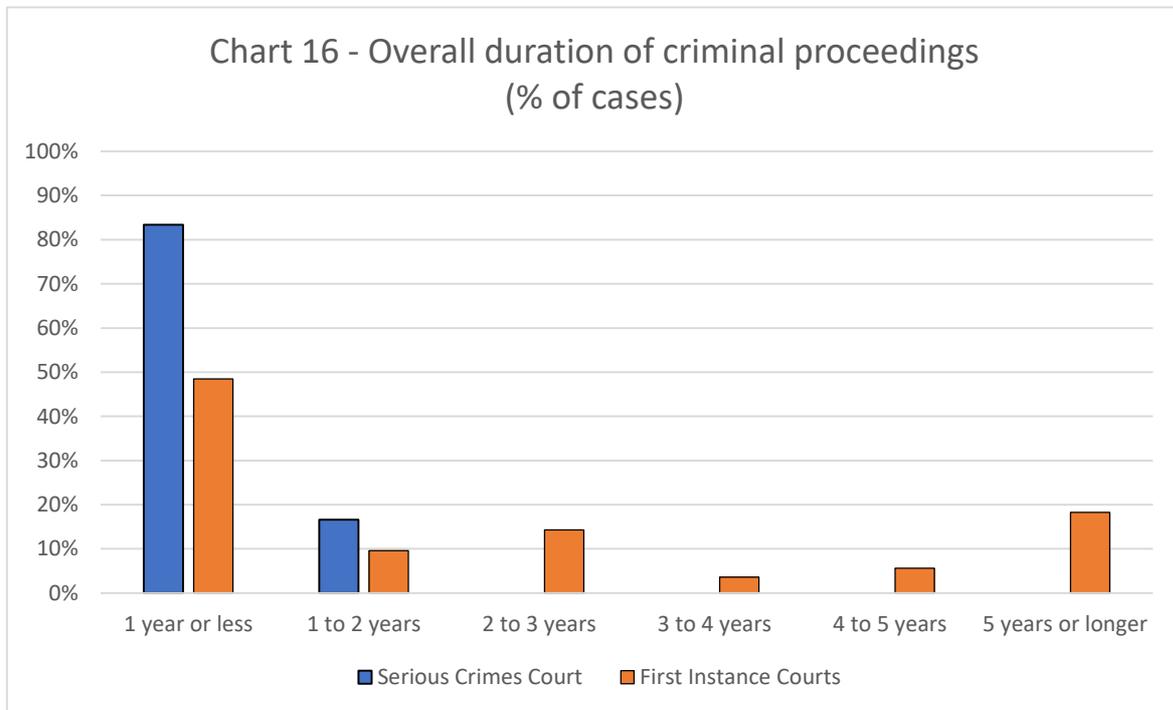
As shown in **Chart 15** The Serious Crimes Court was on average much more efficient than First Instance Courts, since 83.4% of the total number of cases were decided in under one year, compared to 48,5% in First Instance Courts. Another remarkable difference is that all monitored cases before Serious Crimes Court branches were completed within 17 months, while over 40% of cases before First Instance Courts lasted two years or longer. Almost 20% of cases before these Courts have been pending for over five years. As a result, the average duration of a criminal proceeding before a Serious Crimes Court branch is less than one third than that before a First Instance Court (8 months vs. 26 months). The First Instance Courts in Hebron appear to be the worst-performing in this regard, while the First Instance Court in Tulkarm appear to be the most efficient.

While this might appear surprising, considering that cases processed by the High Court are on average more complex, the apparent difference in performance can be explained, at least in part, with the fact that Article 12 of the Decree Law creating the Serious Crimes Court included provisions allowing trials in absentia, which removed a procedural impediment (the unavailability of the accused to the prosecuting authorities) which hindered proceedings in a large number of cases tried before First Instance Courts.



As shown in **Chart 16**, some cases before First Instance Courts took an unreasonably long time to complete. ISTIQLAL monitored a case before the Hebron Court which has been pending for more than 18 years; a case before the Ramallah Court has been pending for 15 and a half

years. Some cases have been pending before the Qalqilya, Jenin and Bethlehem First Instance Courts for approximately 14 years. Such length in proceedings not only violates the defendant's fundamental right to a trial within a reasonable time, but also risks to erode the public's confidence in the administration of justice, thus weakening the entire rule of law system in Palestine.



## CHAPTER FOUR: Fair trial rights

The present chapter will focus on the compliance by Palestinian criminal courts with basic fair trial rights.

Fair trial standards are at the core of the rule of law and are enshrined in a number of international instruments. Article 10 of the Universal Declaration of Human Rights speaks of the right of everyone to a fair and public hearing in full equality. The International Covenant on Civil and Political Rights (ICCPR) contains provisions on fair trials in its Article 14. Fair trial rights are guaranteed in the Palestinian Constitution Articles 11 to 15.

The *procedural* guarantees afforded by such provisions often play an important role in the implementation of *substantive* guarantees pertaining to other fundamental rights. Fair trial standards are also relevant to the exercise of the right to an effective remedy, such Article 2(3) of the ICCPR.

The following paragraphs will present observations by ISTIQLAL monitors in relation to the main fair trial guarantees that are enshrined in the above-mentioned international human rights tools and Palestinian domestic law.

### 1. Right to a trial by a tribunal established by law

A first fundamental guarantee in criminal proceedings is the right to be tried by a tribunal established by law.

A legal framework under which the judicial organization is sufficiently regulated by law emanating from Parliament is needed in order to ensure that the organization of the judiciary in a democratic society does not depend on the discretion of the executive powers.

A body that has not been set up through the law would necessarily lack the legitimacy that is needed in a democratic society for such a body to try and sentence individuals belonging to a given society.

The requirement that a tribunal be established by law is to create legal certainty and ensure independence of the judiciary.

ISTIQLAL noted no particular concerns related to the right to a trial by a tribunal established by law. All judicial bodies whose hearings were monitored in the courts of the West Bank and Gaza Strip were formed correctly and in accordance with law.

Courts' jurisdiction and functions in Palestine are regulated by the Law on Courts, which vests the High Judicial Council with the authority to regulate the organization of Courts throughout the Palestinian territory. Since the division between the West Bank and Gaza Strip in 2007, a High Judicial Council was formed in the Gaza Strip, which exercises the same powers on the organization of First Instance Courts in the Gaza Strip.

## 2. Right to a trial before an impartial court

Impartiality is a guarantee that is linked to the principle of equality before the law (see following paragraph) and involves the idea that everyone should be treated the same. It requires that judicial officers exercise their function without personal bias or prejudice and in a manner that offers sufficient guarantees to exclude any legitimate doubt of their impartiality.

Impartiality consists both in the guarantee that judges do not allow their judgment to be influenced by personal bias, prejudice toward any parties or any preconceptions about the case before them. Equally important is that the judiciary *appears* to be impartial, since it is of fundamental importance in a democratic society that the courts inspire confidence in the public.

Although ISTIQLAL observed no obvious cases of lack of court impartiality, it did observe some case where judges granted requests for adjournment of a hearing to a specific date because they had personal knowledge of a particular lawyer. Although this led to no obvious infringement of the overall fairness of the trials against the accused involved, it may have undermined the appearance that the court did not act in compliance with the principle of impartiality towards all parties.

A corollary of the principle of impartiality is that judges may base their own decision only on evidence administered during the trial, subjected to scrutiny by the parties. Article 205 of the Palestinian CPC states that “In passing judgment, the judge may not rely on his personal knowledge”; moreover, Article 207 establishes that “The judgment shall not be predicated except on the evidence presented during the trial and openly discussed at the session in the presence of the parties.”

During the monitoring period, ISTIQLAL observed at least one instance where these principles were not respected. In a case before the Khan Yunis First Instance Court, a defendant charged with issuing a bad check submitted a request for release on bail after having been arrested. The judge assigned to the case obviously had prior knowledge of the defendant and his activity as owner of a bankrupted company, so that he engaged in a discussion with the defendant, countering some of his assertions with arguments that had no grounds in the criminal file or any relation to the charge.

Although this appears to have been an isolated incident during the reporting period, it nevertheless may have had a negative impact on the reputation of Palestinian court system’s impartiality.

## 3. Equality before the law (with a focus on gender)

Equality in the administration of justice lies at the heart of the rule of law. It demands that all persons have equal rights of access to the courts and that justice is administered in a way that achieves fairness for all, regardless of the identity of the parties to the proceedings or the nature of the proceedings themselves.

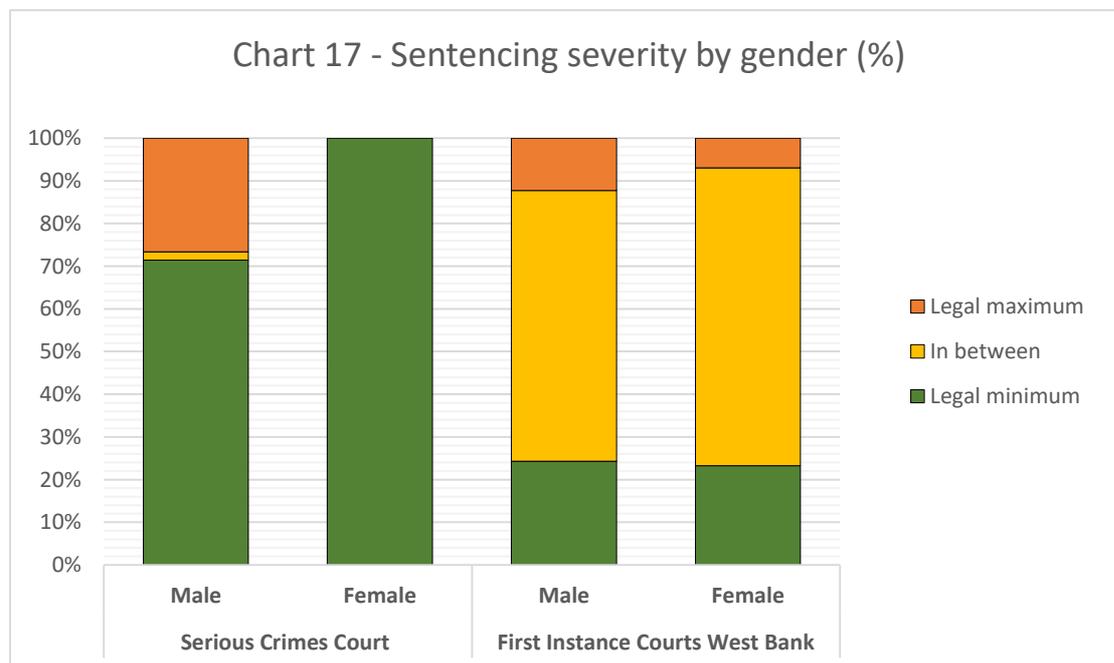
Article 9 of the Palestinian Constitution foresees that “Palestinians shall be equal before the law *and the judiciary*, without distinction based upon race, sex, color, religion, political views or disability.”

The right to equality before the court is also enshrined in Article 14(1) of the ICCPR, which states that “All persons shall be equal before the courts and tribunals [...]”. The Human Rights Committee has referred to the right to equality before courts and tribunals, including equal access, as a “key element” of human rights protection and as a procedural means to safeguard the rule of law.

Equal treatment is broader in its application and engages the principles of equality before the law and non-discrimination. In its most simple sense, equality before courts and tribunals involves the idea that everyone should be treated the same.

Gender equality is a particularly important aspect of this broader principle. Although measuring the overall system’s respect for gender equality would require a much more comprehensive exercise and dedicated efforts, for the purpose of this report ISTIQLAL considered as a first indicator of this the severity of sentencing in relation to the gender of the accused.

Data collected in West Bank courts shows that there are no significant differences in the distinction between male and female defendants in sentencing by the Serious Crimes Court and First Instance Courts. On average, sentences imposed against women were more lenient than those against men in the Serious Crimes Court; in fact, all 13 women sentenced during the reporting period received a sentence equal to the legal minimum foreseen by the law for the crime they were found guilty of.



Gender equality in sentencing was more evident in judgments by West Bank First Instance Courts. An equal percentage of men and women were sentenced to the legal minimum. Most men and women received a sentence falling between the legal minimum and maximum, with a slightly higher percentage of men sentenced to the legal maximum than women.

These indicators constitute a first indicator that before Palestinian Courts gender does not influence the issuance of rulings in favour of either sex, or that courts discriminate on a gender basis.

#### 4. Right to personal freedom

Personal liberty is a fundamental right of each individual, enshrined in Article 11, paragraph 1, of the Palestinian Constitution: “Personal freedom is a natural right, shall be guaranteed and may not be violated.”

Freedom is not an absolute right: according to ICCPR Article 9, “No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

Similarly, Article 29 of the Palestinian CPC states that “No person may be arrested or imprisoned except by order of the competent authority as designated by law.” Both legal systems therefore make the lawfulness of deprivation of personal liberty directly dependent on the compliance with procedures established in domestic law, which must regulate the cases when a person can be deprived of liberty, and the maximum duration of such deprivation.

##### a) Maximum duration of detention

Under the CPC Article 119, a defendant can be detained by the police for a maximum of 24 hours or up to 48 hours based on a Prosecutor’s order. Prior to the expiry of this term, the prosecutor may request the conciliation judge to extend the detention for a maximum of fifteen days. Pursuant to Article 120 of the CPC, the conciliation judge may impose detention against the defendant for a period of not more than fifteen days.”

Pursuant to Article 120 of the CPC, the Conciliation Judge may extend an order detention for other periods to an aggregate maximum of forty-five days. Prior to the expiry of this term, the defendant must be released, unless an application for detention is submitted by the Attorney General to the Court of First Instance, which can further extend detention for a period not exceeding forty-five days. Article 120 further states that pre-trial detention cannot exceed six months in total. Upon expiry of this maximum term, if the accused has not been formally referred to the competent court for prosecution, s/he is to be released “immediately”.

In any case, pursuant to paragraph 4 of the same article, “an arrestee's detention may not continue for longer than the period of the penalty prescribed for the crime by reason of which he is detained.”

Despite these clear legal provisions, ISTIQLAL has monitored cases where defendants have been in pre-trial detention for over six months, without their trial having started. In one case monitored by ISTIQLAL, during the first trial hearing held on 16.12.2019, the defendant stated that he had been arrested three years before on suspicion of having committed a very lenient offence (attempted theft in a place of worship). The trial was completed during that very same first hearing and ended with the conviction of the defendant.

ISTIQLAL also observed cases and cases where pre-trial detention exceeded the maximum statutory term foreseen for the crime alleged.

Despite these concerning cases, ISTIQLAL observed that generally Public Prosecutors in the West Bank and Gaza Strip submitted case files to the competent Court for trial within the

maximum time foreseen by the law (6 months of the arrest). Where this does not occur, the defendants were released immediately.

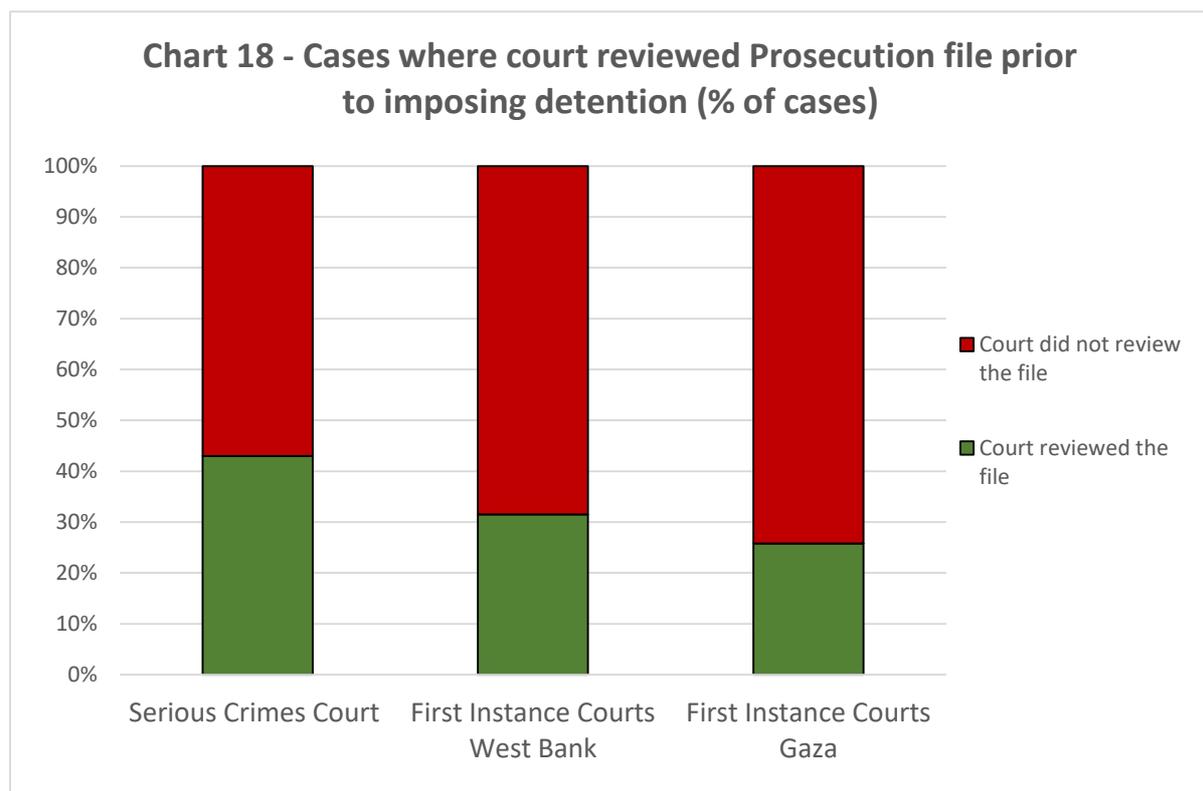
b) Establishing adequate grounds for deprivation of personal liberty

Article 120 of the CPC states that the Court can impose detention “after hearing the statements of the representative of the Public Prosecution and the defendant”, in compliance with the principle of equality of arms.

However, ISTIQLAL also observed a concerning general tendency of Courts to impose detention relying exclusively on Prosecution arguments.

As a first indicator of this tendency to lean in favour of the Prosecution’s requests, ISTIQLAL noted that in the vast majority of monitored cases Prosecutors did not submit the case file to the court when they requested the detention of the defendant. The Court did not request the Prosecution to supplement its oral pleadings with the case file, and it did not review the investigative materials contained therein.

As shown in **Chart 18**, such instances were observed on average in 27% of all First Instance Courts cases, especially in the West Bank, where as many as 31.5% of Serious Crimes Court branches on average performed slightly better, with case files submitted to the Court in over 43% of cases.



Second, ISTIQLAL observed that Prosecutors sometimes relied in their submissions on recommendations by security agencies, claiming dangerousness of the accused, without substantiating these allegations with evidence that the Court could assess. It is concerning is that also in these cases courts often imposed pre-trial detention: defendants were therefore

deprived of their liberty based on allegations by security agencies which neither prosecutors nor courts could review.

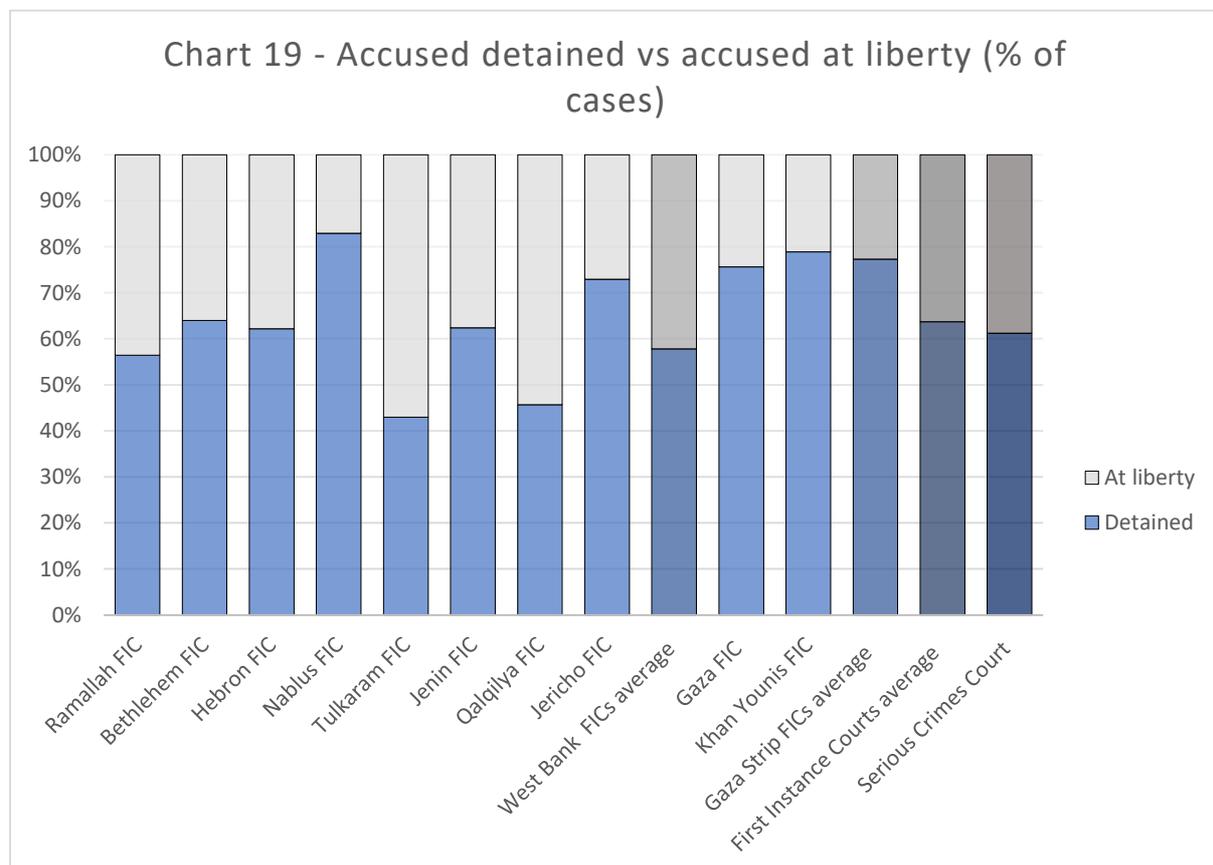
A third concern relates to the release of detainees on bail. Prior to or during the trial, First Instance Courts may decide to release a defendant on bail. This often happens in cases where the charges against the persons are not dangerous, or reconciliation between the family of the victim and the accused has occurred. ISTIQLAL observed that, in cases where defence attorneys submitted applications to the Court to order the release of a defendant, the Court often dismissed such motions with a summary decision, without even convening a hearing in the presence of the parties.

ISTIQLAL believes that such behaviour by the Courts may have seriously impaired the defence’s ability to challenge the grounds for detention, thus creating a risk that the defendant’s right to personal liberty is violated.

c) Detention vs other measures to ensure integrity of criminal proceedings

Courts in Palestine often resorted to the arrest of the defendant, also in cases involving lenient criminal offences. In fact, law enforcement authorities arrested defendants almost by default when they discovered the perpetration of a criminal offence. For instance, ISTLQAL monitored a case where defendants were arrested for crimes such as stealing two cans of milk or, as already mentioned, attempted theft in a place of worship.

As shown in **Chart 19**, on average, over 50% of defendants tried by First Instance Courts in the West Bank and over 75% of those tried in the Gaza strip were in pre-trial detention, and so were over 60% of defendants tried by the High Crimes Court.



It is important to bear in mind that, since a defendant is deemed innocent until proven guilty, detention can never be used as an anticipation of criminal punishment, but merely as a measure to ensure the successful conduct of criminal proceedings (ensuring the defendant's presence at the trial and the proper collection and administration of evidence). Article 7 of the law on the Serious Crimes Court clearly establishes five procedural grounds on which the defendant may be deprived of liberty prior to a conviction.

However, ISTIQLAL monitors however were under the impression that in some cases defendants were kept in detention as a form of deterrence, since in their decisions to detain and then release the defendants, judges did not make reference to any needs to ensure their presence at the trial; decisions to detain or release, on the contrary, seemed to be grounded on the judge's conviction that the defendant had spent a time in detention that was a sufficient deterrent for the crime committed.

ISTIQLAL monitors observed some instances involving pre-trial detention where defendants charged with lenient offences decided to plead guilty at the trial just to be released: after pleading guilty, defendants received pecuniary sentences or suspended prison sentences, as a further proof that detention may have been a disproportionate, unnecessary measure in the first place.

ISTIQLAL believes that Courts should carefully assess when pre-trial detention is necessary, since resorting to it as a default pre-trial measure may constitute an undue limitation of individuals' right to personal liberty.

## **5. Right to be tried in one's presence**

One of the most prominent guarantees of the rights of the accused is their presence at the trial. According to Article 243 of the CPC, the accused may not be excluded from the session unless s/he creates a disturbance to the Court's activities. The CPC also establishes clear provisions regarding the cases when a Court may proceed against a defendant *in absentia*.

As already mentioned above (chapter 3) ISTIQLAL observed many hearings where defendants held in pre-trial detention were not brought to the hearing. However, in no such case did the Court proceed with the hearing in the absence of the defendant; rather, the Court adjourned the hearing in order to ensure the presence of the defendant at the next hearing. While this caused delays in criminal proceedings, by doing so the Courts upheld the defendants' right to be tried in their presence.

## **6. Right to be represented by a lawyer**

Every person charged with a criminal offence is entitled to appoint a lawyer. This fundamental right is enshrined in Article 14 of the Constitution, which states "Any person accused in a criminal case shall be represented by a lawyer."

This guarantee includes the right of the defendant to choose an attorney of his/her choice, and the right to free legal aid for indigent defendants.

As already observed (see above, chapter 3) defence attorneys occasionally did fail to appear at trial hearings, but in such instances the court either postponed the session or appointed a replacement *ex officio*. When a defence attorney is not present, the court may request the Palestinian Bar Association to assign an attorney or, if there is insufficient time, appoint an attorney directly. In a number of monitored hearings before both First Instance Courts and the Serious Crimes Court, due to the delay by Bar Association to responding to the courts request, the judge simply asked a lawyer who was already present in the courthouse to represent the accused. In other cases, the Court adjourned the hearing to allow time for the defendant to appoint a counsel of his/her own choice. Occasionally, the First Instance Courts, including the one in Nablus, appointed lawyers from free legal aid institutions in the event that the accused was unable to appoint a defence attorney for financial inability, after the consent of the defendant.

ISTIQLAL also observed cases where attorneys were present at the start of the hearing but had to leave before the end of the session because of other court commitments; in such instances, generally courts adjourned the hearing to a later time during the same day.

ISTIQLAL cannot exclude that occasionally the right to legal representation was violated in proceedings before Palestinian Courts, since it observed at least one case, before the Ramallah First Instance Court, where the judge imposed detention against a defendant who was not assisted by a lawyer, adding that: *“A storm is coming and prison is warmer for you!”*. Although this was an isolated case during the monitoring period, it represented grave violation of the defendant’s right to be assisted by a lawyer and had an impact on the legality of his deprivation of liberty.

Injured parties in criminal proceedings also have the right to appoint a lawyer, if they wish to participate in criminal proceedings in order to seek compensation. The percentage of cases where this happened varied greatly and is shown in the table below.

Percentage of cases where victims are represented by an attorney – Table 9	
First Instance Court West Bank	42,8%
First Instance Court Gaza Strip	14,1%
First Instance Courts average	32,9%
Serious Crimes Court	56,3%

## 7. Right to a public trial (focus on sexual offences)

Article 105 of the Palestinian Constitution foresees that “Court hearings shall be public, unless a court decides to make them in camera due to considerations related to public order or public morals. In all cases, the sentence shall be pronounced in a public hearing.” Article 237 of the CPC contains an equivalent provision. This also enabled ISTIQLAL monitors to attend hearings and collect data for the present report.

The publicity rate in the hearings reached 99,5% in the First Instance Courts in the West Bank and Gaza Strip in the hearings that were monitored, and the percentage of publicity in the hearings that were monitored in the trials of the High Crimes Court’s reached 100%.

While in principle all criminal cases before the First Instance Courts in the West Bank and in the Gaza Strip should be open to the public, courts must take utmost care in balancing this right with considerations related to protection of vulnerable victims, such as minors, or victims of sexual crimes. Where these cases are not tried behind closed doors, the court should resort to protective measures in order to safeguard the victims' safety, privacy and dignity, and avoid secondary victimization.

Although rape and sexual assault cases represented 14% of cases before the Serious Crimes Court and 6% of cases before the First Instance Courts (see above, chapter 1), courts limited the publicity of these trials in a marginal number of cases. ISTIQLAL observed that in very rare cases of did one party request that the hearing be conducted confidentially; however, in most such cases the court rejected such requests, and the trial was held in public. However, some other bodies accept the confidentiality of the hearing as some cases require privacy. ISTIQLAL noticed, for example, in the Gaza First Instance Court that four confidential hearings were held at the request of the defence attorney, most of which concerning women, among which were "rape" cases, "attempted murder", "adultery".

## **8. Right to be informed of the charges against oneself**

One of the fundamental trial rights is to be informed of the reasons for arrest and, generally, of the charges raised against oneself. This right is essential in order for the defendant to prepare his/her defence.

ISTIQLAL observed no violations of this particular right.

Trial monitors observed that at the beginning of all monitored trials, the indictment was read to the accused, who was sometimes also informed in an easy and simple language of the charges against him/her. Sometimes, especially when a case was transferred from a court to another, First Instance Courts and the High Crimes Court wanted to make sure that the defendant was aware of the charges and thus proceeded to read them once again.

The accused was also always given the floor in order to plead guilty or not guilty to the charges. In this latter case, a date was set for a new hearing for the start of evidentiary proceedings. When the accused pleaded guilty, ISTIQLAL monitors observed cases where Courts, such as the Khan Yunis and Gaza First Instance Courts, proceeded directly to sentencing the accused, without hearing any other evidence. This occurred also in some cases, already noted above, where defendants pleaded guilty just in order to be released from pre-trial detention, even though they stated that they did not commit the crime.

This appears to be a clear violation of the law, as according to the Palestinian CPC, Article 214 para. 3, for a confession to be valid "It must be an express and conclusive acknowledgment by the accused that he committed the crime."

ISTIQLAL believes that courts should exercise utmost care when assessing whether a defendant's confession is made freely and in full knowledge of the legal consequences and corresponds to an admission of guilt.

## 9. Right to be tried in a language one understands

Another fundamental right is for defendants to be able to understand and follow proceedings conducted against them. Article 12 of the Palestinian Constitution states that arrested or detained persons “[...] shall be promptly informed, in a language they understand, of the nature of the charges brought against them.”

According to Article 264 of the CPC, when a defendant does not speak the Arabic language, the president of the court appoints a licensed interpreter who takes an oath to translate the statements conscientiously and honestly. The same article states that non-compliance with the provisions of the preceding paragraph entails the nullity of the procedure.

ISTIQLAL monitored few cases where defendants did not speak Arabic. In the few cases, where an interpreter was needed, the hearing had to be adjourned in order to summon an interpreter, who was not readily available. This led to an unnecessary prolonging of proceedings.

ISTIQLAL observed no cases where the right to an interpreter was violated.

## 10. Right to cross-examine prosecution witnesses and to call witnesses in own defence

Evidentiary proceedings lie at the heart of criminal trials. Examination of witnesses is the single most important evidentiary action in criminal proceedings before Palestinian Courts.

In general, witnesses are heard separately one from another; if multiple witnesses are summoned for the same day, they need to wait for their turn outside of the courtroom, so that their testimony is not influenced by other witnesses. In some cases, though, ISTIQLAL monitors noticed that some witnesses were present while other witnesses delivered their testimony.

Prosecution witnesses are first questioned by the public prosecutor, then the defence attorney and lastly by the court. In the vast majority of cases monitored, the defence made use of their right to cross-examine prosecution witnesses. The prosecution very often exercised its right to cross-examine witnesses called by the defence. First Instance Courts almost always had questions for the witnesses, while Serious Crimes Court panels made use of this right in a lower number of cases (71,7% vs 94,6% of cases).

Courts almost always ensured that witnesses had sufficient time to answer questions in detail and recount their knowledge of the events. Normally, courts did not influence them or prevent them from speaking. ISTIQLAL’s findings are displayed in **Table 10**.

TABLE 10 Examination of witnesses by parties (% of cases)	Witnesses examined by Prosecution	Witnesses examined by defence	Witnesses examined by the Court	Witnesses given sufficient time
Ramallah First Instance Court	98.0	98.0	96.0	98.0
Bethlehem First Instance Court	99.1	98.2	99.1	99.1
Hebron First Instance Court	78.5	85.9	87.2	96.0
Nablus First Instance Court	73.8	90.5	95.2	100.0

Tulkarm First Instance Court	100.0	100.0	100.0	100.0
Jenin First Instance Court	100.0	100.0	100.0	100.0
Qalqilya First Instance Court	97.9	100.0	100.0	100.0
Jericho First Instance Court	100.0	95.0	75.0	95.0
<b>West Bank First Instance Courts</b>	90.6	94.5	94.7	98.4
Gaza First Instance Court	96.0	96.0	96.0	96.0
Khan Younis First Instance Court	97.3	97.3	93.2	94.7
<b>Gaza Strip First Instance Courts</b>	97.0	97.0	93.9	95.0
<b>First Instance Courts average</b>	91.5	94.8	94.6	97.9
<b>Serious Crimes Court</b>	94.2	86.7	71.7	82.5

ISTIQLAL monitors observed cases before the Nablus and Gaza First Instance Courts where witnesses contradicted their testimony previously given to the prosecution; in such cases, courts ordered police to arrest the witnesses in question, and referred the case to the Prosecution to initiate an investigation for false testimony.

As already observed (see above, chapter 3) ISTIQLAL observed a number of cases where prosecution witnesses failed to appear at the prescribe hearing, thus causing disruption and delays in criminal proceedings. ISTIQLAL also observed a small percentage of instances (1,3% of witnesses in the West Bank and 5,8% of witnesses in the Gaza Strip) where the Court had to re-summon witnesses who had come to court to testify, due to the lack of sufficient time to hear their testimony at the prescribed hearing. Some of these cases involved witnesses who had to take time off their jobs or who were ill or disabled. Such instances might erode the public’s confidence in the Courts’ ability to carry out their work appropriately.

## **11. Right not to be subjected to torture, inhuman or degrading treatment or punishment**

Freedom from torture, inhuman or degrading treatment or punishment is one of the most fundamental human rights, guaranteed by a large number of international law provisions, such as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ICCPR Article 7, which states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Similarly, Article 13 of the Palestinian Constitution foresees that “No person shall be subject to any duress or torture.”

The right not to be tortured is not, per se, a fair trial right; it is nevertheless in the context of criminal proceedings that some individuals might experience treatments amounting to torture, inhuman or degrading treatment at the hands of law enforcement authorities.

### **a. Physical violence to ensure orderly conduct of proceedings**

ICCPR Article 10 states “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” According to Article 13 of the Palestinian Constitution “Indictees and all persons deprived of their freedom shall receive proper treatment.” Article (29) of the Palestinian CPC states that a defendant “must be

treated in a manner that will preserve his dignity and may not be physically or morally harmed.”

Despite these clear legal provisions, ISTIQLAL observed that in a number of monitored hearings before First Instance Courts (4,7% of hearings in the West Bank and 3,8% of hearings in the Gaza Strip), the defendant was subjected to some degree of physical violence by law enforcement officers when brought in or out of the courtroom. These instances largely occur in connection to the defendant’s behaviour in court: when defendants create a disturbance inside the courtroom, they are reprimanded by the police either verbally or physically. Police also used physical force in order to take handcuffed accused to the holding cell inside the courtroom. In most cases, it appeared that these goals could be achieved without resorting to physical violence.

When such instances occurred, monitors did not observe that the Court undertook any action to follow-up or reprimand the authors.

While judges have to ensure that the accused do not interfere with the orderly conduct of criminal proceedings, they should resort to means available to them (e.g. reprimanding verbally the accused, as they did in a number of monitored hearings, or excluding the defendant from the courtroom). The Court also has a duty to ensure that no individuals are subjected to violence any time while inside the court premises, unless absolutely necessary and as a measure of last resort.

#### b. Allegations of torture during the investigation

If measures involving physical harm are used in the context of criminal investigations to obtain information or evidence from an individual, this should lead to the inadmissibility of the evidence at the trial. This is stated expressly in the Palestinian Constitution Article 13, whose second paragraph states “All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.”

In light of the gravity of this conduct, Courts should treat any allegations of torture with the utmost attention, making sure that any incidents are adequately investigated, and any perpetrators are held accountable for their actions.

ISTIQLAL observed a number of cases before Palestinian Courts where defendants alleged having experienced treatments that may amount to torture. As shown in **Table 11**, this occurred much more frequently in West Bank First Instance Courts (16,4% of all cases monitored) than in the Gaza Courts (1,9% of cases).

First Instance Courts in the Gaza Strip were much more reactive to allegations of defendants having been tortured, recording such statements in the record in over half of the cases (56,3%) against a mere 20,5% of cases in West Bank First Instance Courts. Courts ordered defendants to undergo physical examination procedures in 11% of cases in the West Bank and just 2% of cases in the Gaza Strip First Instance Courts.

<b>TABLE 11</b> Claims of ill-treatment and follow up actions by First Instance Courts	Defendant alleged having been exposed to violence, torture or ill-treatment	Defendant's claim recorded in the hearing minutes	Accused medically examined
West Bank First Instance Courts	16.4	20.5	<b>11.0</b>
Gaza Strip First Instance Courts	1.9	56.3	<b>2.0</b>

## 12. Information to the defendants about their rights

ISTIQLAL also observed that some Courts informed defendants of their rights at the outset of the trial. While this is not a fundamental right per se, it is a welcome practice, whose recurrence is however not homogeneous among courts and judges within the same courts.

The percentage of cases where such practice was observed is displayed in **Table 12**.

<b>TABLE 12 - Cases where Courts informed defendants of their rights (%)</b>	
Ramallah First Instance Court	65,1
Bethlehem First Instance Court	57,5
Hebron First Instance Court	33,3
Nablus First Instance Court	78,9
Tulkarm First Instance Court	97,8
Jenin First Instance Court	13,0
Qalqilya First Instance Court	5,3
Jericho First Instance Court	46,2
<b>West Bank First Instance Courts</b>	<b>61,0</b>
Gaza First Instance Court	100,0
Khan Younis First Instance Court	67,0
<b>Gaza Strip First Instance Courts</b>	<b>86,2</b>
<b>First Instance Courts average</b>	<b>70,7</b>
<b>Serious Crimes Court</b>	<b>51,2</b>

## Recommendations

Based on the findings contained in the above chapters, ISTIQLAL makes the following recommendations:

### **To the legislature:**

- Establish by law an overall maximum duration (e.g. two years) for pre-trial detention of a defendant without a conviction;
- Give First Instance Courts the power to impose penalties on witnesses who fail to appear at the scheduled hearing, including individuals working in the security services. Measures could include imposing fines and freezing the amount in their bank account until they give testimony;
- Provide a legal framework allowing defendants and witnesses to appear in court through a video-link where needed;
- Enact legislation allowing for trials in absentia, provided that sufficient guarantees for the defendant are ensured, including for re-trial in the event the accused is apprehended and arrested.

### **To the High Judicial Council**

- Replace the current system of servicing court documents with an electronic system, already successfully implemented in other Arab countries; consider outsourcing the servicing of documents to private companies, so as to ensure maximum efficiency;
- Encourage productivity of judges and court officials by remunerating adequately overtime work, so that judges can reduce postponements and cope with the increased workload by working extra hours as needed;
- Ensure continuity in court staff by appointing judges to a specific court for a term of no less than three years; avoiding making changes in court staffing on a yearly basis, unless strictly necessary to replace judges who were promoted;
- Ensure that all courtrooms have adequate sound clarity and space for parties and the public, in order to preserve the dignity of the court and ensure fair trial guarantees.
- Create additional court sections in particularly overloaded courts;
- Establish a clear binding system for establishing court schedules, with case sequence and exact timing;
- Ensure that translators, including sign language interpreters, are readily available when needed, so as to avoid unnecessary delays;
- Consider reducing the number of court official holidays and bring judges' annual leave days in line with other workers in the public and private sector;

- Ensure that new court presidents are chosen among judges of that same court, so as to avoid changes in trial panels and dispersal of case knowledge;
- Activate inspections by the Judicial Inspection Department in flagrant cases of discrimination by the court among lawyers, such as in scheduling court hearings.

### **To First Instance Court judges**

- Put efforts in optimizing court working hours by starting trial hearings on time;
- Increase the daily time devoted to trial hearings to no less than five hours per day;
- Divide court schedules into a morning shift (e.g. nine until noon) and an afternoon shift (one until three), so as to ensure lack of conflicting court commitments by lawyers;
- Ensure that all organizational efforts are put in place for the timely transfer of detainees to court, including by reinforcing cooperation mechanisms between the court registry and the prison administration;
- Avoid postponing trials for periods longer than three weeks;
- Set up a shared electronic court calendar with lawyers so as to avoid overlapping events and so that lawyers receive reminders prior to the hearings;
- Sanction lawyers who do not attend hearings without a valid reason, by imposing fines and reporting them to the Bar association;
- Take all torture and ill-treatment claims with utmost seriousness. Ensure that complaints are duly recorded in the trial minutes and refer the case file for further investigation and prosecution;
- Demand that the prosecution provides verifiable evidence when requesting the detention of the defendant; reject arrest requests that are not backed with an investigation file.



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