

Israel's Other Justice System Has Rules of Its Own

12-year-olds can be jailed, four days can pass until a suspect sees a judge, hearings are held in a foreign language and laws change constantly. Inside Israel's military courts in the West Bank



Hagar Shezaf and Maya Horodniceanu

Apr 25, 2022

The entrance looks like a prison, and feels like one too. The journey begins on a narrow path, with a wall on one side and a high fence on the other. After passing through a turnstile gate, you arrive at a yard where visitors can rent a locker.

You're asked to place all your belongings inside, including your phone – everything but the clothes you're wearing. Soon your clothes will be searched too. An employee of the Israel Prison Service lets you into the next stop, where you leave your ID card. Now you stand in front of a steel door behind which the security check awaits.

From there, you continue down a long, fenced passageway and turn left. Welcome to [the Ofer military prison](#) in the West Bank, where Palestinians encounter the special law that Israel has crafted for them.

The yard you reach in the center of a compound of prefab structures, which house courtrooms, is sad, and so are the rows of chairs and the faces of the people sitting in them.

Among them is Mohammed. He's in his late 50s, his hair and beard graying, his eyes mournful and frustrated. At 10 A.M. on this first Tuesday of April, his 15-year-old son will be brought over to one of the [courtrooms](#) and he's waiting. Someone snitched that he threw stones, says the father, who lives in the Jalazun refugee camp. His son says that this never happened.

The father knows that the case will very likely end with his son's confession in a plea deal. According to Israeli army figures obtained by Haaretz, between 2018 and April 2021, 99.6 percent of the sentences at military courts ended this way. This figure, provided after a request by the Human Rights Defenders Fund through the Movement for Freedom of Information, doesn't seem to surprise the Palestinians who are sure of their innocence or that of their relatives. After all, go prove you didn't throw a stone.

Mohammed's other son, who is 25, has been jailed now for more than a year after he drove his car into an Israeli car from behind; he says it was unintentional. For the 15-year-old, Mohammed is expecting the best of a bad lot.

"Better for him to get a plea deal; that way it will be over," the father says in broken Hebrew. "That's the reality. A plea deal is no good, but it's all we have." In fact, it's a pretty simple outlook, because most Palestinians arrested in the West Bank are held until the end of the proceedings against them.

"The confession is what gets them out of jail and to a visible conclusion," says attorney Smadar Ben-Natan, who also has a Ph.D. in law and researches the military courts. "People can be in pretrial detention for longer than the sentence they would receive."

This is a core issue: In the West Bank, arrest until the end of the proceedings is the default. "In Israel, it's much easier to get out," says attorney Riham Nassra, who represents Palestinians in Israeli military courts.

"In Israel, there's an ankle monitor, let's say, or hostels that can be used as an alternative to jail under certain conditions, especially in the case of a minor or someone with psychological problems or difficult personal circumstances. In the territories, this doesn't exist."

There's another reason why the military courts often strike down any alternative to incarceration: The suspects live in Area A of the West Bank; that is, in a Palestinian city. Because of all of these factors, Nassra says, "it's easier to agree

to a plea deal, because they've already been jailed for the months that the prosecution would demand as their sentence.”

One more thing distinguishes between indictments against Palestinians in the West Bank and those against Jews on both sides of the Green Line. “In Israel there's a difference between security offenses and other offenses, while in the territories, most of the offenses are defined as security offenses,” Ben-Natan says. According to figures supplied by the army after a freedom-of-information request – and which social activist Guy Zomer helped analyze – from 2018 to 2021, more than 65 percent of cases (excluding traffic violations) heard in military courts were security offenses.

But such cases aren't only a question of something like a terror attack, they cover a wide spectrum that includes membership in a banned organization or “rioting” by, for example, taking part in a demonstration. “The prosecution and the courts rely on reasons of ‘a complex security situation’ to base their claims of danger,” Nasra says, explaining why so many detentions last until the end of the proceedings.

“The Palestinian detainee pays a personal price for the whole security situation. The reason of ‘difficulty in locating or monitoring’ is also given because of alleged concerns about an escape or interference with the investigation. So the courts are more easily persuaded to leave Palestinians behind bars.”

From here the road for Palestinians to much harsher treatment is short. Most investigations in the West Bank, Ben-Natan says, are by the Shin Bet security service or the Israeli police in the West Bank, who work closely with the Shin Bet. According to Ben-Natan, evidence is often based on information provided by informants, regardless of the informants' motives.

These cases come to two military courts where all the accused are Palestinians. One is Salem in the northern West Bank, while the better-known one is at the Ofer military prison near the settlement of Givat Ze'ev. It's there that Mohammed was waiting for hours that Tuesday.

At 10 A.M. he was sitting out in the burning sun, and at 1 P.M. he was still waiting to enter the crowded prefab structure, but his son's turn before the judge still hadn't come. He sometimes sat and sometimes stood, sometimes walking from the chairs to the cafeteria, which was closed. This year Ramadan lasts all April – so in the cafeteria you don't eat, you pray. At least there's shade near the cafeteria.

Deal with no plea

Plea deals are also common in Israeli courts, but they're rarer than in military courts. According to the state prosecution, in 2020, 83 percent of convictions were plea bargains. With security offenses, the figure is now similar to that in the West Bank, at 93 percent.

But the differences between the courts in the West Bank and Israel are seen from the moment of the arrest, followed by hearings at various phases. They're seen in the laws, the people in the law enforcement system and the conditions that defense attorneys face.

One key difference is the period between arrest and appearance before a judge. Suspects in Israel see a judge within 24 hours; a terror suspect might wait 48 hours. In the West Bank, if it's a Palestinian and a security charge, the suspect can wait 96 hours.

Another example involves a minor's right to have a parent present during interrogation. In Israel, that's basic. In the West Bank, it doesn't exist. And in theory, Palestinians also have the right to consult a lawyer, but Mohammed says his son wasn't allowed to see an attorney before his interrogation.

Mohammed says he has doubts about everything that has happened, even before interrogation. He said he was approached by a man from the Shin Bet. "He told me that my son was wanted and that I should bring him to Binyamin," Mohammed says, referring to the regional police headquarters.

“I took him there. Now I know that in Israel if you’re under 18 you can go into interrogation with your father and consult a lawyer. They didn’t let me go in and they didn’t give him a lawyer. The lawyer came two hours into the interrogation.”

If Mohammed is looking for some optimism, figures for 2014 to 2018 – provided after a freedom-of information request by Prof. Neta Ziv and attorney Nery Ramati – aren’t the place to find it. In each of those years, between 4,390 and 5,500 cases were opened, with 90 percent of them producing indictments. In Israel, the state prosecution opened some 30,000 cases annually between 2015 and 2018, resulting in about 4,000 indictments each year, around 13 percent. Most of the cases were closed with no action taken.

“The strength of the evidence doesn’t matter. In the military system, it ends with an indictment. There are no filters that throw out weak cases in terms of evidence or public interest,” Ben-Natan says, blaming one main factor: the military prosecution.

As attorney Jamil Khatib (a frequent guest at the Salem military court) puts it: “The evidential threshold is lower in military courts for filing an indictment.”

In the summer of 2019, for example, Mahmoud Qatusa of the Palestinian village of Deir Qadis was arrested on suspicion of raping a 7-year-old girl in a settlement, and was indicted a few weeks later. But it soon turned out that the evidence wasn’t strong enough and the military prosecution had to retract its accusation after Qatusa had been behind bars for 55 days.

‘Young adult’

Courtroom 7 is a particularly small structure in the prefab row at Ofer. It holds hearings conveyor-belt style and in a very crowded room. At any given time, three to five suspects are stuffed there, along with relatives, a clutch of attorneys, prosecutors and soldiers, whose role is not always clear.

This was where Mohammed's son was finally brought. Officially this was a closed-door hearing, because of his age. But because of the constant flow of people in and out, the door is usually open.

The unclosed door opens onto another question: Why was a youth court launched at Ofer 13 years ago if the 15-year-old's privacy isn't protected and the judge hears cases both of juveniles and adults? The answer is that the youth court deals only with cases, not arrests. It's not clear whether the parents of an Israeli minor would be satisfied with this answer, which fortunately they don't get.

In Israel, age 18 distinguishes an adult from a minor, but with West Bank Palestinians it's more complex. A child between 12 and 14 is called a "youth," while one between 14 and 16 is an "adult of a tender age."

The latter category is significant mainly in the extending of a suspect's detention. In Israel, a minor must be brought before a judge within 24 hours. A Palestinian "young adult" can wait 48 hours, and if it's a security charge, it can take 96 hours, as in the case of a non-young adult. And, as opposed to Israeli law, military law allows sentences of up to six months for children 12 to 14.

The detention of Mohammed's son was extended at this hearing and he was indicted – not for throwing stones but for hurling a Molotov cocktail at an army guard tower. The father is still convinced that this didn't happen.

Mohammed learned about the change only after the hearing. During it, he and his son couldn't hear what was being said in the prefab structure; the commotion was too great. And the whole time he and his son tried to communicate with each other from a distance.

Even if they had strained to listen a bit harder, it probably wouldn't have helped. The hearings are conducted in Hebrew. A translator in army uniform is present, but the quality of the translation varies.

“I don’t understand completely what they’re saying inside,” Mohammed says. “The translator translates part, but not everything; 90 percent he doesn’t translate. The lawyer eventually told us that this and that happened.”

Another Mohammed, this one 23, was at Ofer last week. He had already experienced a misunderstanding or two. He and his cousin had come to accompany Mohammed’s brother, who was suspected of stone-throwing. His cousin sat with him in the waiting area, mainly to keep him company.

In keeping with COVID regulations (in force in the military justice system, though they were lifted in Israel), only one first-degree relative is allowed into the court compound. Before the pandemic, two family members were allowed; in Israel there are no such restrictions.

The two cousins, sitting bored in the steamy sun, said they had also been behind bars at Ofer. One had been under administrative detention – detention without trial – for two years, the other had been indicted for throwing stones.

“I didn’t understand anything in the hearing and I didn’t understand anything that was going on,” Mohammed says. Arrested at 19, he was in jail for a year and a half. His case also ended in a plea bargain, though he says he wasn’t guilty.

“I didn’t throw stones. They arrested me in the middle of the night because somebody snitched on me,” he says. His cousin pointed to a soldier standing nearby: “The judge inside wore a uniform like hers; they’re the same.”

Home court advantage

The feeling of “them and us” is palpable at the court. “When a hearing is held at a civilian court, there’s a balance between the people representing the state and the accused,” attorney Nashef Darwish says. “They’re both Israeli.”

At Ofer there is a clear separation. The judges are reservists or career officers, in uniform. Also in uniform are the prosecutors, the court recorders and the

translators. The defense attorneys are civilians; the accused wear uniforms provided by the Israel Prison Service.

In the little room, one sees the emblem of the State of Israel as well as the emblems of the army and the military court system. And according to a new directive, military personnel may not be photographed; that is, anyone who isn't a Palestinian or a civilian.

Also, on top of the fact that military law frequently changes, attorneys, like their clients, often don't speak Hebrew fluently or are familiar enough with Israeli law.

"Some attorneys have a license from the Palestinian Authority, and most of them don't know the language properly," says a defense lawyer who often represents clients in military court. "The picture is very dark there, unfortunately, both in terms of the defense attorneys and the system itself."

That lawyer also described the case of a minor from Abu Dis who was represented by a lawyer from the Palestinian Prisoners Club, who agreed to detention until the end of the proceedings. So the family turned to the lawyer who often represents clients in military court.

"I went there and saw in the file that there was no evidence against him, so I asked for another hearing," he said. "The kid was released and the case was closed."

Another lawyer representing Palestinians at Ofer concedes: "The whole system is careless, unfortunately from our side too."

And sometimes what happens in Ofer stays in Ofer. According to the law, court cases in Israel are held open-door (with exceptions) and anyone can be present, on the principle that hearings must be public.

But in military court, in addition to the fact that detainees are only allowed one relative present, Israeli reporters and activists require approval from the army.

For example, Haaretz applied to the Israel Defense Forces' Spokesperson's Unit for permission to attend the hearings described in this article. The soldier on the other side of the line said: "I have to understand more details to authorize this."

Permission was finally granted, though as usual with close accompaniment from the Spokesperson's Unit. In Israeli courts, meanwhile, no such arrangements are required.

There are also obstacles if you want to learn the result of hearings at Ofer. While minutes and decisions at Israeli courts are published on a website, the military courts provide no such site. To learn a result, you have to file a request with the IDF Spokesperson's Unit.

"Terrorist of words"

Mohammed, the father of the minor ("the adult of a tender age") indicted for throwing a Molotov cocktail, is now at home in Jalazun. He still doesn't know when he'll be able to see his son again.

"There's oppression here. I've worked in the glass industry for many years in Jerusalem, I eat in the homes of Jews, we laugh together, we don't fight. I also educate my children to strive for a good life alongside Jews," he says.

"The Shin Bet is confused. The moment they latch on to my son, they're not doing something good. In [his son's] head, that's bad. He didn't do what they're saying, and because of what they're doing to him, he'll end up hating Jews."

Mohammed is worried about his son's future, and the longer the interview lasts, the more he begins to fear for his own fate.

"I'm afraid that when I talk to you, somebody will come and say, 'Why did you speak to her?'" he says. "I'm afraid that even talking to you will make me a terrorist. They'll say I'm a terrorist of words."

The IDF Spokesperson's Unit responded: "The military courts deal mainly with security offenses and act according to the law that applies in Judea and Samaria

[the West Bank]. In recent years, a few laws have been amended, containing many essential elements of Israeli law in keeping with the suitability required for the security situation. The evidentiary threshold required for indictment and conviction are completely identical to that required in Israel, and the courts' rulings are made based on the same criteria.

“The length of the initial detention of suspects is determined in accordance with the security situation and unique characteristics of law enforcement in security offenses – these are scrutinized by the Supreme Court. After an indictment is filed, the possibility of an alternative to detention is examined by the court on its merits.

“Because of the security situation, there are limited possibilities for releasing suspects in security cases and alternatives to detention. In the courts in Israel as well, the release of security suspects is very exceptional. The claim that all cases end in plea bargains is not correct. The percentage of plea bargains at military courts is no different than in Israel. The hearings are translated in real time into Arabic and the indictments are translated.”

The army added: “Hearings on extending the detention of minors are held behind closed doors, and not as claimed. The restriction on the number of visitors stems from the size of the halls, security considerations, public order and COVID restrictions. Coordination is required because of the courts' location on army bases. Rulings by appeals courts and many of the lower courts are published on the usual legal databases.”

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