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Stone cold justice

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- From: **The Australian**
- November 26, 2011 12:00AM



Four Palestinian youths and their guard in an Israeli courtroom. Picture: Sylvie Le Clezio

Source: The Australian



Family members in the military court. Picture: Sylvie Le Clezio
Source: The Australian



Gerard Horton outside Ofer prison in the West Bank. Picture: Sylvie Le Clezio
Source: The Australian



Mahmoud A and his mother, Rana. Picture: Sylvie Le Clezio
Source: The Australian



The Palestinian boys' feet in shackles. Picture: Sylvie Le Clezio
Source: The Australian

YOU hear them before you see them. The first clue that a new group of children is approaching is a shuffle of shoes and a clinking of handcuffs and shackles. The door to the courtroom bursts open - four boys, all shackled, stare into the room. Four boys looking bewildered.

They wear brown prison overalls and they trail into the room where their fate is to be decided by a female Israeli army officer/judge, who is sitting at the bench, waiting. The look on the face of one of the boys changes to elation when he sees his mother at the back of the court. He blows her a kiss. But his mother begins crying and this upsets the boy. He begins

crying too.

We're sitting in an Israeli military court which is attached to the Ofer prison in the West Bank, 25 minutes from Jerusalem. Mondays and Tuesdays are "children's days". Hundreds of Palestinian children from the age of 12 are brought here each year to be tried under Israeli military law for a range of offences. The majority are accused of throwing stones and, as the court has close to a 100 per cent conviction rate, almost all will be imprisoned for anything from two weeks to 10 months. Some will end up in adult jails.

Today, groups of children in threes and fours shuffle in; some cases last only 60 seconds, just long enough for the child to plead guilty and hear their sentence. Sitting in a room 50m away, more children wait. Despite their confessions, many insist that they did not throw stones or molotov cocktails, and the human rights group Defence for Children International estimates that about a third who pass through the system have either been shown or signed documentation in Hebrew - a language they cannot understand.

Others are said to have confessed under coercion. Since January 2007, DCI has collected and translated into English 385 sworn affidavits from Palestinian children held in Israeli detention who claim to have suffered serious abuse: electric shocks, beatings, threats of rape, being stripped naked, solitary confinement, threats that their families' work permits will be revoked, and "position abuse" - which involves a child being placed in a chair with their feet shackled and hands tied behind their back, sometimes for hours.

This courtroom has become a front line of one of the oldest conflicts in the world, the Israeli-Palestinian conflict. It is Israel's conveyor belt of justice, but it is a world away from Israel: in Israel a child cannot be sent to prison until 14; in Israel there are laws against a child being taken away at night; and in Israel a child cannot be interrogated without a parent.

The Israeli Defence Forces, concerned at the growing debate about Israel's treatment of children, has given The Weekend Australian Magazine rare access to the court. They say too many journalists write about it without visiting it. They are keen for me to spend time with the army prosecutor in charge of the cases who will be my guide during three visits to the court. I have a briefing with him before the trials begin. The main point he wants to emphasise is that, two years ago, the army set up this military juvenile court to take note of children's needs. If a child needs a welfare officer or a psychologist, they are available.

Inside the courtroom, the army's public relations unit wants the IDF guide to sit next to me to explain each case. I'm told I can quote him as "my guide" but not name him and we are allowed to photograph some of the older children but not the younger ones. Nor will they allow us to photograph children handcuffed and shackled trying to walk - "absolutely not," my guide says. The army obviously realises that such a photo would be enormously damaging. After September 11 I'd seen images of alleged terrorists walking like this but I'd never seen children treated this way. It's not surprising that Israel doesn't want this image out there - it would look uncomfortably like a Guantanamo Bay for kids.

Several countries, led by Britain, are turning up the heat on Israel over the treatment of Palestinian children - not only the manner of their arrest and interrogation but also the conditions in which they're kept in custody. MP Sandra Osborne, part of a British delegation that recently visited the military court, said of the visit: "For the children we saw that morning, the only thing that mattered was to see their families, perhaps for the first time in months ... A whole generation is criminalised through this process."

Into this world has walked Gerard Horton, an Australian lawyer. Horton was a Sydney barrister for about eight years and his practice included contract disputes, building insurance cases and employment matters. In 2006, while studying for a masters in international law, he volunteered for three months for an organisation that represented Palestinian prisoners in the West Bank. He has worked there ever since.

During his five years at Defence for Children International Horton says the office has increased its evidence-gathering capacity and will only pursue credible allegations based on sworn affidavits. He takes me through the arrest process: "Once bound and blindfolded, the child will be led to a waiting military vehicle and in about one-third of cases will be

thrown on the metal floor for transfer to an interrogation centre.

"Sometimes the children are kept on the floor face down with the soldiers putting their boots on the back of their necks, and the children are handcuffed, sometimes with plastic handcuffs which cut into their wrists. Many children arrive at the interrogation centres bruised and battered, sleep-deprived and scared." The whole idea, he says, is to get a confession as quickly as possible.

DCI has documented three cases where children were given electric shocks by a hand-held device and Horton claims there is one interrogator working in the settlement Gush Etzion "who specialises in threatening children with rape". Some cases contain horrifying allegations, such as this one from Ahmad, 15, documented by DCI, who was taken from his home at 2am, blindfolded and accused of throwing stones. "I managed to see the dog from under my blindfold," he says. "They brought the dog's food and put it on my head. I think it was a piece of bread, and the dog had to eat it off my head. His saliva started drooling all over my head and that freaked me out. I was so scared my body started shaking ... they saw me shaking and started laughing ... Then they put another piece of bread on my trousers near my genitals, so I tried to move away but he started barking. I was terrified."

In another case, Ezzat H, 10, who was interrogated but not charged, testified: "A soldier pointed his rifle at me. The rifle barrel was a few centimetres from my face. I was so terrified that I started to shiver. He made fun of me and said, 'Shivering? Tell me where the pistol is before I shoot you.'" Another boy, Mahmoud A, was taken by soldiers from his West Bank home in February, aged nine, after apparently playing near a boy who'd thrown stones at soldiers. His mother, Rana, said a soldier told her: "We are capturing him until you bring us the other boy." Now 10, Mahmoud says during the interrogation a soldier hit him "hard" in the face "four or five times" when he said he did not know the names of any stone-throwers. The day we visited his home a soldier shouted his name as we passed a checkpoint. Mahmoud began crying and locals told soldiers he had been doing nothing wrong.

Yahia A, 15, accused of throwing stones, testified that he was tied to a metal pipe and beaten by a soldier, and that an interrogator placed a device against his body and gave him an electric shock, saying, "If you don't confess I'll keep shocking you." The interrogator, he said, gave him another electric shock - at which point he could no longer feel his arms or legs, had a pain in his head, and confessed.

There are many other allegations: a boy kept in solitary confinement for 65 days; other boys kept in solitary confinement with the lights on 24 hours a day; a seven-year-old boy in Jerusalem taken for interrogation who says he was hit during the questioning. The boy's lawyer said that when his mother turned up looking for him, authorities denied he was there - even as he was being questioned inside.

These sorts of reports are fuelling a clamour for change in Israel among groups such as the Association for Civil Rights in Israel, Yesh Din, Defence for Children International, Hamoked, B'Tselem and the Public Committee Against Torture in Israel. DCI says that in 76 per cent of its cases children reported violence.

Stone-throwing is a big problem in the West Bank, with the Israeli Defence Forces reporting 2766 incidents of rock-throwing against them or passing cars this year (up to November 14). Israeli police also say a crash in September that killed a man and his infant son may have occurred after a rock hit their car.

But the central issue here is that Palestinian child prisoners in the West Bank are treated by Israel in a way that would be illegal in Israel itself. In Israel the maximum period of detention without charge is 40 days - for Palestinian children it is 188 days. In Israel the maximum period of detention without access to a lawyer is 48 hours - for Palestinian children it is 90 days. For the past 44 years a Palestinian was regarded as an adult at 16, compared to an Israeli at 18, but Israel recently lifted this to 18. About 83 per cent of Palestinian children before military courts are sent to prison, while 6.5 per cent of Israeli children before regular courts go to prison.

Concern about the treatment of children prompted 60 of Israel's leading psychologists, academics and child experts to go public. They wrote: "Offensive arrests and investigations that ignore the law do not serve to maintain public order and safety. On the contrary, they inflict harm on a particularly weak population and widen the cycle of hostility and violence."

The Israeli Government would not discuss individual cases but did concede changes needed to be made. "There are many things that need to be improved," Israel's international spokesman, Yigal Palmor, said, adding that Israel was engaged in "slow reform and improvement" and was working with human rights groups. "This is a general problem that derives from the fact that the West Bank is under military jurisdiction and military law and there is obviously a discrepancy between the civil code in Israel and the military law in the West Bank. That is the root of the problem. But extending fully Israeli law to the West Bank would be tantamount to annexation."

Israel is under pressure to at least allow filming of interrogations. "We want interrogations of children audiovisually recorded," says Horton. "This would not only provide some protection to the children but would also protect Israeli interrogators from any false allegations of wrongdoing."

Australian diplomats have shown no obvious interest in the military courts despite our Ambassador to Israel, Andrea Faulkner, being told about the treatment of children a year ago. She refused to comment on the situation for this story. Says Horton: "It is disappointing that of all the diplomatic missions in the region, Australia has been conspicuously silent on the issue of the military courts."

It's 10 o'clock on Monday morning and my guide and I take our seats in court. He asks me to report that the reason Israel brings children to court is for security. With us is an army public relations officer who says stones can be dangerous. I agree, telling him there was a case in Sydney some years ago of a truck driver who was killed by rocks.

The judge - army officer Sharon Rivlin-Ahai - walks into the court. I'm shocked when the door opens and the first group of boys appears - wearing prison overalls, handcuffed and with feet shackled. The handcuffs are taken off before they come through the door but the shackles remain. The four are dealt with in minutes and the next batch is brought in. My guide must see me blanch when the door opens - one of the boys looks so young. He leans over to me: "He looks much younger than he is. He's actually 18." I tell him I simply cannot believe this - he looks 12 or 13. My guide examines the charge sheet. "He's actually 15." The boy waves at his mother. She breaks into tears, which makes him cry as well. "Throwing 10 stones," my guide says as one boy stands. How would soldiers in a fortified jeep know it was 10 stones? "They know," he says. Others are brought in. My guide must see my discomfort at how young they seem. He leans across: "They look very young but they're not."

Then enters Moad, 15. "He's pleading guilty," my guide says. The judge quickly hands down her verdict: three and a half months' jail and a 2000 shekel (\$525) fine. As child number 15 stands, something hits me: not a single child has pleaded not guilty.

I tell my guide I've never seen any court where 100 per cent plead guilty. "The thing the indictment is based on is true evidence," he explains. "Usually the evidence is their admission to police."

He seems pleased everything is going so smoothly. "It all moves quickly when there is agreement," he says. And he has high praise for the judge. "She's a very pleasant judge," he says. "Very pleasant." Pleasant judge aside, he senses I'm not convinced all this is fair. "The cases don't take long because there has already been agreement between the two sides," he says.

Israeli human rights group Yesh Din found that in 2006 only 1.42 per cent of cases before the military courts had any evidentiary hearing. They reported: "Attorneys representing suspects and defendants in the military courts believe that conducting a full evidentiary trial, including summoning witnesses and presenting testimony, generally results in a far harsher sentence, as a 'punishment' the court imposes on the defence attorney for not securing a plea bargain."

Another Israeli group, No Legal Frontiers, concluded: "No separation of powers exists within the military regime and thus the army is at the same time the legislature, the judiciary and the executive. These fundamental flaws are irreparable as long as the occupation persists."

Horton says the military courts function as a system of control: "The army has to ensure that the 500,000 Jewish settlers who live in occupied territory go about their daily business without interruption from 2.5 million Palestinians... it is no

coincidence that most children who are arrested live close to a settlement or a road used by settlers or the army."

He says it's an effective system; quite often the children emerge scared and broken. But there is little recourse. From 2001 to 2010, 645 complaints were made against Israeli interrogators; not one resulted in a criminal investigation. "Sometimes if there is a group of children who throw stones and the settlers or soldiers are not clear exactly who has thrown them, the army can go into a village at two or three in the morning and five or 10 kids get roughed up and it scares the hell out of the whole village," says Horton. He adds that when the army arrests children they usually don't say why or where they are taking them.

Former Israeli soldiers have formed Breaking the Silence, a group that has gathered more than 700 testimonies about abuses they committed or witnessed. Former Israeli army commander Yehuda Shaul says the army sets out "to make Palestinians have a feeling of being chased". "The Palestinian guy is arrested and released," Shaul says. "He has no idea why he was arrested and why he was released so quickly. The rest of the village wonders whether he was released because he is a collaborator."

Fadia Saleh, who runs 11 rehabilitation centres in the West Bank dealing with the effects of detention, says: "Usually the children isolate themselves, they become very angry for the simplest reasons, they have nightmares. They have lost trust in others. They don't have friends any more because they think their friends will betray them. There is also a stigma about them - other children and parents say, 'Be careful being seen with him, or the Israeli soldiers will target you too.'"

Back in the children's court, my guide says the judges are independent, "even if they are part of the army". He adds: "We have a couple of acquittals every year." When I say that's not very high, he says: "A couple of dozen or so acquittals."

In comes Mahmoud, 15. "He's going to plead guilty," says my guide. I'm no longer surprised. "He threw one stone and the agreement is 45 days in prison and 1500 shekels [\$400] fine."

One of the last is Mohammed, also 15. He's charged with "attempting to throw 10 stones". I ask how anyone could know he attempted to throw 10 stones if he didn't throw one. "He wasn't able to do it but he attempted to," my guide answers. Mohammed is the closest we come to a not-guilty plea - he rejects the charge. From the back of the court his mother is trying to say something. The boy makes it clear he doesn't want her to speak but the judge rules that she can. The boy stares at the floor as his mother begins. "There are eight people living in our small house," she says. "They are difficult conditions and Mohammed has had a hard life. I ask that a sentence not be given."

The judge thanks the mother then begins her summing up. You can see the mother tensing. The verdict: four months in prison. The mother bursts into tears. The judge adds: "Because of the severe economic situation of the family I have decided not to impose a fine."

The case lasts six minutes - the longest "trial" of the day. Mohammed has been in prison for a month and my guide explains that had he pleaded guilty he would be free now instead of just beginning another three months. He is taken from court. His mother sits at the back of the court, crying.

The judge - still very pleasant - closes the court for the day. The lawyers pack up. My guide had noted earlier that things were going smoothly. In fact, the whole day went extremely smoothly.
