

Political Control and Crime

The Use of Defense (Emergency) Regulations during the Military Government

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The 1948 war and the establishment of the state of Israel radically altered the status of the Palestinians within the state in comparison with their status in Mandate Palestine. Nearly 80% of the Palestinian residents in the territories conquered by the Israeli military forces during the war were uprooted from their homes, while those who remained became a minority in a Jewish state “overnight.” Prior to the war, between 800,000 - 900,000 Palestinians resided in the areas that became the state of Israel. A mere 160,000 of them remained within the state and later received Israeli citizenship.¹ Thousands of Palestinians who remained within the jurisdiction of the state of Israel discovered that they were defined by the new state as “internal refugees” or “present absentees,” their property was confiscated, and they were denied the opportunity to return to their homes - which were at times only a short walk away from their current place of residence.² Military rule was imposed in all areas conquered by the Israeli forces and inhabited by Arabs. Subsequently, military rule in the Arab areas was replaced by a military government system, which was maintained until its official abolition in December 1966.

These changes had far-reaching consequences on the development and definition of crime as applied to the Arabs in Israel. Standard analyses of crime and delinquency rates show that the percentage of Arab offenders of the total number of convicted offenders in Israel steadily rose from the establishment of the state until the beginning of the 1960s. Between 1951 and 1966, an average of 29% of all convicted offenders for “serious offenses” were Arabs; this percentage was three times higher than the ratio of the Arab population during those same years.³ Yet, the rise in crime rates among the Arab minority, as

reflected in the criminal statistics for these years, derived largely from the extensive use of the Defense (Emergency) Regulations - 1945 (hereafter: Defense Regulations); thousands of Arab citizens of Israel were convicted for violating these regulations during the military government. The establishment of the military government system and the use of the Defense Regulations were justified on the grounds of security, yet their main purpose was to control the movement of Arab residents and to prevent them from accessing their confiscated lands.

An analysis of all criminal records of “Israeli Arabs” in the police database reveals that between the years 1948 and 1967, some 33% of the total convictions of Arab citizens were for violations of the Defense Regulations. From the available data, it is obvious that only a very small portion of these offenses were criminally motivated or committed for the purpose of harming national security, offenses that generally result in being handled by the criminal justice system. Most convictions under the Defense Regulations were specific to Arab residents, and were handed down as a result of the political control imposed on most aspects of their lives and the criminalization of previously accepted behaviors – such as accessing land and employment seeking. During these years, some 95% of all convictions for violations of the Defense Regulations were for administrative offenses, such as the failure of Arab residents to possess the proper permits and licenses, or for exceeding travel restrictions imposed by the military government.

Defense (Emergency) Regulations - 1945

The Defense Regulations were instituted by the British High Commissioner in Palestine.⁴ As of

1937, one year after the outbreak of the Arab revolt, emergency legislation was established within the territories of Mandatory Palestine. Despite the extensive criticism these regulations received - not only from Palestinians, but from Jews as well - they remained in effect until the end of the British mandate. After the establishment of the state of Israel, the regulations were absorbed into internal Israeli legislation, pursuant to Article 11 of the Law and Administration Ordinance - 1948, except for those regulations that stood in direct contradiction with "changes arising from the establishment of the state or its institutions."⁵ Harshly criticized by Jewish leaders prior to the establishment of the state, the Defense Regulations were later used by them when they themselves controlled the state apparatus.

The main reason for keeping the Defense Regulations intact during the 1950s was their wide use by the military government system.⁶ Officially, the military government was established in October 1948. Five military governors were appointed to the areas occupied by the Israeli armed forces during the war and which were populated mainly by Arabs. With the end of the fighting and the establishment of a central civil regime, the military government was neither cancelled nor was it legally regularized.⁷ Only in April 1949, following the inauguration of the first Knesset, were the Emergency Regulations (Security Zones) - 1949 published.⁸ These regulations formed one of two legal resources, which, later, served as a legal infrastructure for the military government system. The regulations delineated "protected areas" consisting of zones 10 kilometers wide at the northern border and 25 kilometers wide at the southern border. The Minister of Defense was authorized to decree that a protected area,

or any part thereof, be declared a security zone. The map of the security zones included as many Arab communities as possible and excluded most of the Jewish ones. These regulations facilitated the control of the Arab population residing within the security zones. Permanent residents of these areas were not authorized to leave the zones without a proper permit, and entrance was denied to people who were not permanent residents. The regulations also enabled land expropriation and relocation of permanent residents of the security zones.⁹

Despite the wide powers they granted, the Emergency Regulations (Security Zones) did not enable the control of movement of permanent residents within the zones, or of Arab residents residing in other areas of the country not defined as security zones. Nevertheless, from its initial stages, the military government system restricted the freedom of movement of most Arab residents within the country and required them to carry identification papers and travel permits. This requirement, similar to other restrictions imposed by the military government, had no legal foundation for 18 months.¹⁰ The solution to the absence of a legal foundation was provided only in January 1950, when the military governors in the security zones were appointed as military commanders in accordance with the Defense Regulations from which they drew their authority. From then on, the Defense Regulations became the main legal means employed by the military government system, alongside the Emergency Regulations (Security Zones).

During the first months of the activation of the military government system, it was unclear how to legally base the restrictions imposed on the movement of Arab residents. The regional military government in Jerusalem deliberated the

most appropriate policy framework, until it was decided to employ Regulation 125 of the Defense Regulations. Later, other regional military governments adopted the Jerusalem model. With this development, Regulation 125 became the main legal instrument used by the military government system to restrict the movement of and to control Arab citizens of the state. Indeed, the military government system was subdivided into secondary regions, and a large part of the areas under its control were declared closed military zones under Regulation 125. The regulation empowered the military commander to declare any area or location a closed area, with entrance or exit thereof forbidden for the entire term of the order, unless the military commander issued a written entrance or exit permit. In fact, in order to leave their area of residence for any reason, most Arab residents were obligated to obtain a travel permit, which entailed a lengthy waiting period and numerous bureaucratic encumbrances.

The Rattner Commission and the Alleviation of Travel Restrictions

At the beginning of December 1955, following public criticism of the military government system, the government appointed a special Commission of Inquiry (popularly known as the Rattner Commission). The Commission was directed to assess the “possibility and need for limiting the military government system and the scope of its activity,” and to examine whether military government rule in Nazareth was necessary.¹¹ In February 1956, the Commission submitted its report to the Prime Minister. The report unequivocally determined that the military government system should not be terminated and that its status and authorities

should not be diminished in any way. The report further determined that until a time of true peace between Israel and its neighbors, maintaining the military government system in designated areas was necessary for reasons of national security. The authors of the report recognized that the military government system subjected the Arab population to a certain degree of suffering, and noted that the system’s existence entailed a large degree of discrimination in that it essentially bequeathed a feeling of second-class citizenship to a certain portion of the Arab population in Israel. Bearing in mind these issues, the Commission recommended consideration of the possibility of introducing relief measures, and insuring implementation of the restrictions in a manner that would not emotionally harm or humiliate residents under military government rule.

The Rattner Commission considered many grievances that had been raised regarding the permit regime and the procedures for issuing permits. At a general level, Commission members decided that suspending the permit regime would undermine the entire military government system, and in light of their recommendation not to terminate or diminish military government rule, they did not deem it appropriate to cancel the permit regime. This decision was based on their view that the amount of suffering incurred in relation to the need to be issued a travel permit did not cause serious difficulties “to the law abiding citizen who is not suspected of activities which might be of harm to state security.”¹² The Commission members were convinced that the large number of travel permits issued by the military government provided evidence that the needs of the residents within military government areas were being accommodated. As stated in the report:

“realizing that most of the residents in the affected areas are farmers, that it is not in the nature of the Arab woman, in light of her responsibilities at home, to travel from place to place, and the relatively large number of children and youth who are in no legal or practical need of a permit, it seems to us that (military) government personnel issue the maximum number of permits necessary for the said population throughout its normal day-to-day life.”¹³

The Commission addressed two types of travel restriction complaints: the restriction of access to particular locations and the time restrictions placed upon permit-holders in these same areas. Travel permits detailed the places the permit holder was authorized to visit and the length of time for which the permit was valid. The Commission determined that considering the limited needs of the majority agrarian-sector residents under military rule, “the restrictions on travel destinations are not problematic on a practical level, except for the psychological impact resulting from the actual existence of restrictions.”¹⁴ Concerning complaints pertaining to movement restrictions on Arab laborers requesting travel outside of the military government areas in order to seek employment, the Commission recommended that the military government should retain a certain amount of discretion in decisions to deny such applications, because it was not always easily determined that freedom of movement does not entail some risk to security. It was further concluded that travel restriction complaints were exaggerated, as restrictions were enforced only in specific areas. Yet, the Commission recommended various measures to expedite the permit-issuing process and to be of assistance to the Arab public. Such recommendations included increasing the staff

of military government offices and the number of permit-issuing offices; authorizing the police, the head of the regional municipality or the *mukhtar* (local village leader) to issue permits in urgent cases when an army representative was unavailable; and increasing the length of time for which permits were valid.

Despite the recommendations of the Rattner Commission, no fundamental changes in the control of the movement of Arab residents took place. The requirement to carry a travel permit remained in effect, and issuing permits, which detailed the locations authorized and the length of time allowed for travel, continued to be practiced. For example, at the end of December 1957, physicians from Nazareth typically received a six-month travel permit, specifically detailing the locations they were authorized to visit.¹⁵ In 1958, only one in three Arabs residing within military government areas held a travel permit, and only half of these permits were issued for “long periods of time.” In 1964, the Arab residents of the northern and eastern Galilee still required a permit to leave their villages, and all Arab residents required permits in order to travel from one district (or from a mixed city) to another within the military government.¹⁶ Nevertheless, a significant alleviation in the restrictions on the freedom of movement had been approved as of August 1959, following the recommendations of a committee of ministers who examined the working procedures of the military government.

The committee of ministers linked the necessity of the military government system to the rate of Jewish settlement in the Galilee and Triangle regions and to a solution for the problems of the refugees, evacuees, present absentees, and Bedouin. In order to limit the areas under military control in the future, the

committee of ministers recommended to expedite the Jewish settlement in the Galilee and along the Eron River road; to accelerate the settlement of Arab refugees and evacuees in either their current or other places of residence; to promote the legislation of the Bedouin Settlement Law and the transfer of Bedouin to permanent settlements in the Negev; and to set up the rehabilitation of present absentees.¹⁷

Pending the achievement of these goals, and with the aim of reducing the pressures consequential to the permit regime, the government accepted the committee's recommendations with regard to the implementation of relief measures for movement restrictions imposed on the Arab population in military government areas. On 13 August 1959, two general exit permits were published - one by the northern military governor and the second by the central region military governor. These general exit permits enabled a majority of the Arab residents in the north and in the Triangle to leave their place of residence within the closed military areas without a permit, and they allowed Arab travelers to remain in the cities in the center of Israel: Hadera, Led, Netanya, Petach Tikva, Ramle, and Tel Aviv-Jaffa from 4:00 to 20:00 on the same day. In addition to these cities, residents of the north were allowed to travel to Haifa and Nahariya, and residents of the Triangle were allowed to travel to Akka.

Furthermore, traveling to an area, a city or a regional municipality detailed in the travel permit was now permitted either by car or foot, so long as travel occurred along a road. The travel permit did not enable entrance to security zones or area number 1 (located along the border with Lebanon, Syria and Jordan). In addition, travel permits did not enable residents to move

their place of residence out of the closed military areas without a permit from the regional military governor.¹⁸ In the Negev, Arab Bedouin were able to travel without a permit and to remain in Be'er Sheva for an entire day, two times per week. This followed a 1957 decision enabling Bedouin to remain in Be'er Sheva one day a week without a permit.

Over time, public criticism of military rule and the Defense Regulations increased. The process of easing travel restrictions had drained the military government of many of its essential functions, and was regarded by many as proof that the government's argument for the necessity of the Defense Regulations and the military government was a pretense to camouflage their political character. Two years of political and public activities surrounding this issue proved successful, and in 1962, a series of additional relief measures were enacted. The validity of permits was extended to one year, instead of limited to one day or one month; exit permits were automatically renewed (except in cases in which the permit-holder was found to pose some risk or if s/he was accused of violating the terms of the permit); the curfew was lifted in the Triangle region; Arabs sentenced by a military court were allowed to appeal before a military appeals court and before at least one judge; and a general exit permit was issued to all Druze and Circassians (Druze and Circassian soldiers were already exempted from carrying exit permits in 1959).

In 1963, draft laws calling for the abolition of the military government system failed, but the policy of providing further relief measures continued. Following the resignation of Ben-Gurion and the appointment of Levi Eshkol as Prime Minister, additional changes were made in the legislation that administered the military

government. A general exit permit was issued to all residents under the northern and central region military government, and the areas authorized for day-time travel were now authorized for night-time travel as well.

The most significant relief measures were introduced in January 1966. Entry to Nazareth and the central Galilee without a permit was then made possible, and freedom of travel was granted to and from the Galilee. Arab Bedouin residents of the Negev were allowed to travel within the Negev, and Arab residents of the Triangle were allowed to travel to the Negev and the Galilee without a permit, although entrance to the Triangle region as well as the cities of Safed and Tiberias continued to require a permit.¹⁹

The military government system was abolished on 1 December 1966 following a stormy public debate and a lengthy deliberation process at the Prime Minister's office. Issar Harel, the security adviser to Prime Minister Levi Eshkol, had recommended ending the military government system in February 1966, but the implementation of his recommendation was postponed until the end of the year. On 8 November 1966, the Knesset approved the decision to end the military government system, effective at the beginning of December, and to transfer its powers to civilian authorities.²⁰ Thus, the areas under military government rule were reassigned to the authority of the northern, central and southern regional military command, and the authority to activate the Defense Regulations, which were still in force, was reassigned to the army's regional commanders.

The military governors were appointed as advisors to the army's regional commanders and were placed in charge of contact with the security services and the police. The police were

also authorized to activate the Defense Regulations, and some of the responsibilities of the military government, including authorizing travel within the closed areas, were reassigned to regional special taskforce offices.²¹ Yet, the position of commander of the military government department at army headquarters was not eliminated, and the Israeli army retained the ultimate authority to activate the Emergency Regulations.²²

Despite the abolition of the military government system and the termination, in principle, of the permit regime, many areas remained closed to the Arab population. Security zones along the borders remained under army jurisdiction and were tightly controlled. Access to destroyed Arab villages in the central region of the country, development areas, and areas declared military or military-training zones were restricted and required a special permit.

Along with the relief measures issued to a majority of the population, harsh restrictions were enforced on individuals considered "security risks." Since the general travel restrictions were lifted, military commanders were authorized to enforce tighter restrictions on individuals, even in locations that were not previously under military government rule.

The termination of the military government system reduced the friction with law enforcement agencies and lowered the involvement of the Arab population in crime. As long as their movements remained under control, Arab residents were continually indicted and convicted for offenses against the Defense Regulations, and as the criminal records in the police database have shown, the rate of convictions for these offenses was high throughout the 1950s. Despite the tendency toward easing the permit regime, which began

in August 1959, the highest conviction rate for offenses against the Defense Regulations was recorded in 1960. During that year, some 98% of the 3,127 convictions for offenses against the Defense Regulations were for entering or exiting closed areas without a permit, or for violating a condition of a travel permit; 1.9% of the convictions were for breaking restrictive orders; and less than 0.1% of the convictions were against regulations that defined offenses of harming state security and various public order offenses. Only from the beginning of the 1960s, was there a marked decrease in the conviction rates for offenses against the Defense Regulations. However, in the years following the end of the military government system, most of the people convicted for these offenses continued to be Arab. In 1955, for example, some 94% of all offenders convicted for offenses against the Defense Regulations were Arab (2,714 out of 2,888). These offenders constituted nearly 60% of the total number of Arab offenders convicted during the same year. In 1968, some 99.6% of all offenders convicted for offenses against the Defense Regulations were Arab (827 of 830) but their part in the total number of Arab offenders had decreased to 20.8%.²³

Summary

From the inception of the state of Israel, the Arab population was constructed as a hostile minority constituting, at least potentially, a threat to national security. Beyond the defined actions of enforcing the emergency regulations and issuing entrance and exit permits, the military government served, along with government ministries and ruling authorities, to implement the government's policies toward the

Arab population. These policies, even if not clearly formulated, were justified by the need to defend state security. Yet, these security justifications were extended far beyond the accepted notion of prevention of actions harmful to national security such as espionage, sabotage and contact with the enemy, or even the prevention of politically seditious activity. Indeed, the security considerations that justified the establishment of the military government system, the restrictions it imposed, and its continued existence for 18 years, stemmed from a concept that equated security with the extension of Jewish settlement. Every few years, when the issue of the military government came up for reconsideration, it was reaffirmed as being vital to promote the security interests of strengthening the Jewish settlement in the country. According to this rationale, the very presence of Arabs, and their possession of land and property were, by definition, a threat to Zionist goals.

Examining the content of the convictions for offenses against the Defense Regulations revealed that only a small number of Arabs were convicted of subversive or hostile activities that endangered state security according to the narrow definition. In contrast to this, according to the expanded concept of security, the entire Arab population was acting, by definition, within the security sphere: their movements were suspect, and the whole domain of their links to the land were portrayed as a threat to national security and were handled by the military government and law enforcement agencies. Thousands of Arab residents and citizens were tried in military courts and convicted for "security" offenses when they entered closed areas or exited their place of residence without a permit issued by the military

commander. Due to the penetration of the criminal justice system into more aspects of the lives of Arabs, the meaning of crime changed significantly for Arabs and Jews. While all citizens and residents of the state of Israel could be charged with “conventional” criminal offenses, Arabs were always under greater jeopardy of arrest and conviction for political offenses against regulations and laws activated exclusively against them.

End Notes

- 1 Oren Yiftachel and Alexander Kedar, “Landed Power: The Making of the Israeli Regime,” 16 *Theory and Criticism* 67 (2000) (Hebrew).
- 2 See Charles Keiman, “Following the Disaster: The Arabs in Israel 1948-1950,” 10 *The Research and Criticism Notebooks* 5 (1984) (Hebrew). See also Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National Minority* (Austin: University of Texas Press, 1980).
- 3 According to the official categories, “serious offenses” included public order, national security, bodily harm, sexual and drug offenses, prostitution, fraud and forgery, and general, administrative and fiscal offenses. This category did not include traffic violations and certain types of administrative offenses.
- 4 Palestine Gazette 1442 (27 September 1945), suppl. II, at 1055.
- 5 For a broader discussion of the Defense (Emergency) Regulations – 1945, see Sabri Jiryis, *The Arabs in Israel*, trans. Inea Bushnaq (New York: Monthly Review Press, 1976). See also Menachem Hofnung, *Democracy, Law and National Security in Israel* (Dartmouth: Aldershot, 1996); and David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder: Westview, 1990).
- 6 See S. Jiryis, id. and I. Lustick, *supra* note 2.
- 7 See S. Jiryis and M. Hofnung, *supra* note 5.
- 8 Laws of the State of Israel, vol. 3, 1949, at 56.
- 9 For example, the Emergency Regulations (Security Zones) were activated to expel the residents of the village of Iqrit on 5 November 1948 and the residents of the villages Khisas, Qeitiya and Ja’una on 5 June 1949. See Knesset Debates Volume 2, 1 August 1949 at 1189 (Hebrew).
- 10 See parliamentary questions regarding travel restrictions and permit requirements (Knesset Debates Volume 2, at 1011), referred to by M. Hofnung, *supra* note 5.
- 11 See Prime Minister David Ben-Gurion, letter of appointment of Daniel Oster, 6 December 1955 (Israel State Archives, Prime Minister’s Office Papers, 43-5434/Gimel-1402) (Hebrew). The members of the Commission were Professor Yohanan Rattner of the Technion (Chairperson); Daniel Oster, the mayor of Jerusalem; and Haifa Attorney Ya’acov Salomon.

- 12 Report of the Commission of Inquiry Regarding the Possibility and Need to Limit the Military Government Rule, 24 February 1956, Givat Haviva Archive (Hebrew).
- 13 Id.
- 14 Id.
- 15 On 23 December 1957, the Minister of Health, Israel Barzilai, forwarded a letter to the Prime Minister that he received from the chairperson of the National Medical Union. The letter requested that negotiations be opened with the Ministry of Defense for the purpose of extending the period of the permits of physicians from Nazareth from six months to one year, and for permits to include districts and not specific places (Israel State Archives, Prime Minister's Office Papers, 43-5593/Gimel-4696) (Hebrew).
- 16 See I. Lustick, *supra* note 2.
- 17 Drawn from government decisions of 4 August 1959 regarding the report of the ministerial committee for military government issues (Israel State Archives, Prime Minister's Office Papers, 43-5592/Gimel-4669II) (Hebrew).
- 18 "General Exit Permit (Northern Region) 1959," published on 13 August 1959 by Lieutenant Colonel Yehushua Verbin, military commander of the Northern Region and "General Exit Permit (Central Region) 1959," published on the same date by Lieutenant Colonel Zalman Mert, military commander of the Central Region (Israel State Archives, Police Ministry Papers, 119-6839/Gimel-16/402) (Hebrew).
- 19 See S. Jiryis, *supra* note 5. According to Government Annual Report-5769, a general exit permit was issued to Bedouin in the Negev and a general entrance permit was already issued to area number nine in the north in 1964.
- 20 Knesset Debates, 1966/67, at 136 (Hebrew).
- 21 Referred to by Ariela Shadmi and Eli Hod, *The History of the Israeli Police 1948-1958, The Founding Phase*, Volume A (Jerusalem: Publication Department, Israeli Police, 1996) (Hebrew).
- 22 A few months after its abolishment, during the preparation phase prior to the 1967 war, the military government was reinstated for a short time. The governors were re-appointed, some during their military reserve service, and the regional offices were reopened and re-staffed by the same people who were previously military government personnel.
- 23 See the Israel Central Bureau of Statistics Annual Criminal Statistics for the noted years (Hebrew).