

# The Struggle to Remain

## *Between Politics and the Judiciary*

### UNDER “DEMOCRATIC” MILITARY RULE

Israel was established as a state for the Jews, not as a state for all of its citizens who have lived there since 1948. The tension, if not the outright contradiction, between its claim to democracy and this *raison d'être* is inseparable from its nature, its self-definition, and the general interest of Zionism. The fact that Israel never adopted a constitution, not even a human and citizens' rights document, makes the remaining Palestinians totally dependent on the good behavior of the Jewish majority. While it is true that the Declaration of Independence<sup>1</sup> (which affirms the Jewish character of the state) contains promises of civil equality and suitable representation for the Arab residents if they choose to live peacefully with the Jews, these promises were never translated into action, in 1948 or later. As we saw in previous chapters, the army and other Israeli institutions did what was in their power to reduce the number of Palestinians in Israel as far as possible. Even the surviving Palestinians did not escape acts of maltreatment and repression or the expropriation of their lands and property, which is inconsistent with the promises in the Declaration of Independence.

Several parties played a role in controlling the lives of the Palestinians remaining in Israel. Prime Minister and Defense Minister Ben-Gurion and his advisors were the most prominent among those parties. Others on both the left and right tried to influence the policies and decisions concerning the Palestinians. The two Mapam ministers in the interim government (which conducted the war) and some Mapam party activists in the office of minority affairs minister Bechor Shitrit supported a moderate and fair policy. In Nazareth and elsewhere they tried to back the position and activities of members of the National Liberation League. When the leaders of the ruling Mapai party fought against this alignment, Shitrit coordinated with Moshe Sharett, the second in line in the party after Ben-Gurion.

Despite this coordination, tensions mounted between the office of the minister in charge of minority affairs and those working for the military government in the final months of the war, until this tension manifested itself in open confrontations and contributed to the cancellation of the ministry of minority affairs and the transfer of its responsibilities to the military government and other parts of the government.

Minister Shitrit (b. 1895) was in charge of two ministries that were important for the Arab residents: police and minorities. This minister believed he was a more qualified expert on Arab affairs than anyone else in the government. Not only did he speak Arabic, he had grown up in a family that had come from Morocco to Tiberias in the mid-nineteenth century.<sup>2</sup> These qualifications made him the man to go to with complaints about the actions of the army and the military government. Shitrit usually took these complaints to Ben-Gurion, who was responsible for the army and its conduct, but instead of looking into them Ben-Gurion supported the army and covered up its actions, which weakened the minister's influence. Shitrit defended a lenient policy that took the interests of Arab residents into account, contrary to most leaders of the army and the ruling party who saw the Arabs as a fifth column. Previously, we saw examples of Shitrit's actions regarding the residents of the Galilee in 1948 which contributed to some of them being able to remain.

Shitrit's policy and his willingness to help the Arab residents who came to him annoyed those responsible in HaKeren HaKayemet and other Zionist organizations which were trying to wrest away control of Arab lands. Following the first elections and the formation of the Ben-Gurion government early in 1949 without Herut or Maki and even without Mapam, Mapai acquired a central role in deciding the fate of the Arabs and state policy towards them. Earlier, Shitrit had on more than one occasion opposed the entry of the army into Arab villages and the maltreatment of the residents and arbitrary arrests and expulsions. He also opposed the policy of tearing down houses and the illegal expropriation of land.<sup>3</sup> These positions were not in harmony with Ben-Gurion's policy and the position of his advisors from the Mapai party. So Shitrit's complaints became a burden on the ruling establishment, particularly the military government. The closing down of the ministry of minority affairs in June 1949 was one of the first indications of an iron-fist policy and the growing role of members of the Mapai party who encouraged agents and collaborators with the government and its institutions.<sup>4</sup>

Isolating the Arabs from the rest of the citizens of Israel and imposing military rule over them had abrogated their political rights. The military government resorted to the 1945 defense (emergency) regulations to legitimize the policy of repression, theft, and the expulsion of thousands of those who remained in the Galilee and elsewhere. The government's policy made Arab residents accused of being perpetual violators of those unjust laws. The imposition of permanent curfews at night, limiting the mobility of citizens, and the system of permits which

were granted to those with close connections and denied to the rest, deprived people of a dignified life and basic rights. Even within Arab towns and villages the army declared large tracts of land “military zones” which the owners of the land were prohibited from entering or cultivating. In this way the system of military rule strangled the economy of Arab citizens and prohibited the development of their towns and villages so as to make it easier to control them. Ian Lustick well described and analyzed Israeli policy towards the Palestinian minority, which relied on control through a system of isolation under tight military rule.<sup>5</sup>

The policy of persecuting the remaining Arabs focused on three basic areas: controlling the economy and politics, controlling the movement of the population, and controlling their time. Despite this suffocating policy, those who remained sometimes managed to exploit the multiplicity of institutions that dealt with their issues to their own advantage. For example, they used the desire of several political parties to gain their votes in order to break down the isolation barriers and end their full dependence on the military government system. Some Zionist organizations, such as the labor organization Histadrut, allowed Arab activists room to breathe. Some Palestinians had recourse to Israeli courts in their search for justice and fairness, particularly the Supreme Court. This chapter will provide real-life examples of Arab citizens making use of the opportunities provided by civil organizations, particularly the courts, to overcome some of the actions and policies of the military government.

Against this background, noteworthy is the spirit of refusing to surrender to the policy of repression and rising to the challenge through peaceful means, such as making use of the court system. *Al-Yawm* mentioned in early 1949 that ten Arab lawyers had been permitted to bring cases in Israeli courts.<sup>6</sup> The most prominent and active of these were Hanna Naqqara and Elias Kusa from Haifa and two members of the Zu’bi family from Nazareth. Later a number of those whom Israel permitted to return, as we saw in previous chapters, joined them, but some of the ten original lawyers left the country and moved to neighboring Arab states. Consequently, up to the mid-1950s, there were still fewer than a dozen Arab lawyers in Haifa and the Galilee, and most of the lawyers were not fluent in Hebrew, which made it difficult for them to represent their clients in Israeli courts and other institutions. However, their mastery of the English language and the experience they had gained in the days of the Mandate allowed them to play an important role in the legal profession and in the area of extra-parliamentary public policy.

#### STORIES FROM JAFFA

The disappearance of this Palestinian city and the expulsion of its Arab population led to significant shrinkage in the number of political and cultural elites among those who remained. Apart from Nazareth, a few thousand in ‘Akka and Haifa escaped displacement in northern Palestine. Outside Haifa and the Galilee, the number of Arabs remaining in the cities occupied by Israel in 1948 was limited

indeed. The few thousand Palestinians remaining in Jaffa and Lydda and al-Ramla found themselves isolated and tied to the military government's repressive policy. However, in what came to be known as the "mixed cities" in the early 1950s, the military government was cancelled, but not before the agencies of the military government and state institutions completed their mission to loot the contents of Arab houses. Those remaining in these cities were isolated in a quarter fenced off with barbed wire. This policy of persecution affected rich and poor and no one escaped, not even prominent leaders.

Unlike the case of Haifa, some of whose residents found refuge in Nazareth and other places in upper Galilee and returned to the city later, Jaffa's displaced residents who had sought refuge in Lydda and al-Ramla were expelled, along with tens of thousands of the native population of those two cities. Whereas the Arab population of Haifa increased, the 3,000 who remained in Jaffa did not increase by much after the end of the war; only a few hundred Jaffa residents returned to their homes after the Nakba, while hundreds of others were forced to leave the city. Haifa's Arab population continued to absorb refugees from the Galilee cities and villages, but all of the villages in the region of Jaffa, Lydda, and al-Ramla were destroyed and had their residents expelled. Thus, those who remained in Jaffa found themselves living in a ghetto surrounded by old and new Israeli settlements.<sup>7</sup> Jaffa became the backyard of Tel Aviv, which developed and grew at Jaffa's expense. The following pages provide examples of the experiences of some leaders who tried to challenge and resist these Israeli policies.

Only a few thousand residents remained in the "Bride of the Sea" (Jaffa), which had had a population of seventy thousand Palestinians before the war. The bloody clashes that erupted between the Jews of Tel Aviv and the Arabs of al-Manshiyya and other neighborhoods in Jaffa did not leave many choices besides surrender or migration. Indeed, most details of the story of those who stayed in Jaffa after May 1948 are still unclear and require historical research and documentation. Most of what has been written about the city represents the point of view of the victors and omits the stories of the vanquished and their bitter experiences. However, a number of books published recently in Hebrew and Arabic shed light on the history of this city and its own special Nakba. These books, in addition to the documents and decisions of the Supreme Court and the testimonies of those who remained, enable us to glean a partial picture of the events of the Nakba in Jaffa in 1948 and of the fate of those who survived and continued to live there after the war.

After the fall of Haifa and the expulsion of its Arab population at the end of April 1948, the British feared a repetition of scenes from Haifa and the accusation of conniving with the Jews against the Palestinians. At the end of that month, attacks by the Irgun against al-Manshiyya quarter intensified and terrorizing news about the fate of its inhabitants began to spread. At that point, the British applied pressure on Ben-Gurion and the mayor of Tel Aviv to halt the Irgun attacks on Jaffa, and they followed this up by sending forces to the area and threatening to bomb Tel Aviv if the attacks on Jaffa did not stop. These measures led to a cease-fire

and a respite from the constant bombardment of Jaffa but they did not save the city from falling nor did they prevent the expulsion of the majority of its population. During the truce in early May, Yusif Haykal, the mayor of the city, and some of its other leaders left. However, at least four remained, and under the leadership of Hajj Ahmad Abu-Laban, signed a surrender agreement on 13 May with the leader of the Haganah in Tel Aviv. The following day, 15 May, the British pulled out of Jaffa and the Jews entered in celebratory processions, waving flags and attacking the Palestinians who had remained in their homes.

Israel, which was officially established as a state one day after the surrender agreement was signed between the Jaffa leaders and the Haganah, did not honor the terms of the agreement or commitments it had made. Search operations conducted by the Haganah "were not gentle or polite, much property and furniture was stolen or destroyed by the soldiers and the civilians."<sup>8</sup> Complaints by the residents about ill treatment, theft, and damage of property were futile. One official wrote a report to the minister of minorities and police on 25 May 1948, saying: "I saw soldiers, civilians and policemen as well as military police themselves committing theft and robbery."<sup>9</sup> The savage maltreatment of the remaining Arabs included the rape of a twelve-year-old girl by soldiers and other attempted rapes, and the murder of fifteen Arabs whose bodies were found near the port, apparently at the hands of Haganah troops and its intelligence branch (Shai).<sup>10</sup>

The Jaffa leaders who had signed the surrender agreement, the Emergency Committee, appealed to the Israeli authorities on several occasions to protect citizens and their property, and to allow some residents who had become refugees in Lydda and al-Ramla to return, as specified in the 13 May agreement, quoting the relevant articles.<sup>11</sup> Yitzhak Chizik (subsequently Horfi), the first military governor of Jaffa, passed on the letter and the complaints to Minister Shitrit. The correspondence irritated members of the cabinet and the prime minister, and this was discussed by the ministers.<sup>12</sup> Finally, the cabinet adopted a decision on 16 June not to allow the refugees to return to their homes. The continuing complaints by the signatories of the surrender agreement concerning the refugees and rights of the remaining residents of Jaffa became an irritant for the Israeli side which was dealt with by shrouding it in silence using all means available.

While the Jaffa leaders were trying to defend the remaining Arab residents of the city, Israeli military and political leaders were exchanging ideas on how to expel the remaining Arabs in 'Akka. About four thousand Palestinians, either original residents or refugees from Haifa and other places, were left in the city. In early July, the Northern Command decided to expel the Arabs that remained in 'Akka to either somewhere beyond Israel's borders or to Jaffa. This was resisted by several parties. Yaakov Shimoni, the foreign ministry official who had heard about the army's plans, sent letters to Foreign Minister Sharett and Minister of Minorities Shitrit inquiring about their reactions. The latter hastened to express his opposition to expelling the residents, and made reference to the decision by the

General Staff that “residents should not be expelled from their location without a written order from the minister of defense.” Shitrit added in his response of 19 July that as long as “the minister of defense has not adopted a clear position and issued a written order, the northern army command is prohibited from expelling the population of an entire city and maltreating women, old men, and children.”<sup>13</sup>

The plan to expel the remaining population of ‘Akka was likely indeed foiled due to the opposition of Minister Shitrit and his referencing the need for a written order from Ben-Gurion. It is well known that the latter was careful not to issue written orders to expel the population. The expulsion of forty thousand residents of Lydda and al-Ramla in the same period had caused a commotion which had not yet quieted down at the time. As a reminder, the day after the occupation of Nazareth on 16 July, the Northern Command tried to expel the population, but the insistence of the officer Ben Dunkelman on a written order from Ben-Gurion was a major factor in the ability of the residents of the city to remain in their homes. Those days in mid-July were rife with attempts to uproot Palestinians from the cities occupied by Israel, but some of these plans were never realized. The Palestinian survivors in ‘Akka remained in their city, but Jews were allowed to enter the city to live in some quarters, so it became a “mixed city.”

The military governor of the city of Jaffa, Yitzhak Chizik, tried in vain to respond to the complaints of the residents and their leaders to halt the maltreatment of residents and the abuse of their property. His correspondence with the prime minister and the government achieved nothing, which drove him to submit his resignation (on 25 July 1948) shortly after his appointment. Ben-Gurion appointed the attorney Meir Laniado as his successor, who, a few days after assuming the office of military governor, had all the remaining Arabs moved to al-‘Ajami quarter, which became known as the ghetto. This step caused angry reactions from the Arab residents and their leaders, but the entry of Jewish soldiers and civilians into Arab homes and the eviction of the residents by force was not prevented. This situation of maltreatment of the remaining Palestinians in Jaffa continued for weeks and months without anyone stopping those repeated attacks.

#### THE KAFKAESQUE STORY OF HAJJ AHMAD ABU-LABAN

Ahmad Abu-Laban was born in Jaffa in 1910 and became one of the most prominent political activists in the city during the British Mandate. His family was well-to-do, and sent him to continue his education at the American University of Beirut. Later Hajj Abu-Laban became a successful businessman and a member of the Jaffa municipal council. During 1947–48 he became a leading member of the Arab party led by Hajj Amin al-Husayni and the treasurer of the National Committee in Jaffa.<sup>14</sup> After attacks on the city intensified in late April 1948, an Emergency Committee was established on 3 May to safeguard the lives and property of

the remaining Palestinians in Jaffa. This committee had six members, with Abu-Laban at the head. Abu-Laban received the keys to the public institutions in the city, including the offices in the municipality, from the mayor, Yusuf Haykal.<sup>15</sup> As recounted earlier, Abu-Laban and his colleagues, the members of the Emergency Committee, signed a document with the Haganah leader in Tel Aviv, Michael Ben-Gal, concerning the surrender of Jaffa.

The surrender document included promises to respect the civil rights of the residents of the city, and the orders issued by the Haganah commander on the day the document was signed were consistent with the spirit and letter of the agreement. The document also provided that no one in the city would be arrested or imprisoned, even if they had taken part in the fighting against the Jews,<sup>16</sup> and that those who had been expelled from Jaffa could return to their homes. However, those commitments evaporated in the days that followed. The assaults on the Palestinians turned their lives into a hell, as dozens were killed or wounded due to arbitrary shootings and hundreds were expelled from their homes. Figures on the number of Arab martyrs in Jaffa vary, with some estimates of up to 700 killed, of which 450 were residents of the city.<sup>17</sup> But the details of what happened in the city after its occupation are still scattered and obscure.

Members of the Emergency Committee who signed the surrender agreement of the city, under the leadership of Ahmad Abu-Laban, tried to stop the attacks on the inhabitants who remained, but to no avail. As a result of the large number of complaints Abu-Laban himself became a target of repression and assaults. At first he received letters at the municipality containing implicit threats warning him to “to keep quiet” and to tend to his own affairs.<sup>18</sup> When he continued to complain, the police arrested him, initially putting him under house arrest at his home in Jaffa near the end of July 1948, but then subsequently arresting him on the charge of illegal possession of arms. The police asked the magistrate court to extend his arrest by ten days until 16 August, which the court agreed to do, at the central prison in Jaffa. After ten days, the police asked to extend his detention, and the court agreed to an additional eight days.<sup>19</sup>

After the second extension, the judge said the defendant should be allowed to see his lawyer. This recommendation contributed to the release of Abu-Laban without an indictment at the end of the eight days. But the relief of Abu-Laban and his family was short-lived, as the authorities decided to teach him a lesson in a more effective way. The tale of Abu-Laban’s detention and imprisonment went on in a manner reminiscent of Kafka’s stories. File no. 1860/1950-76 in the Israeli Army and Security Forces Archives in Tel Aviv relates some of the details of the “disappearance” of Hajj Ahmad Abu-Laban. The message of the Abu-Laban affair to the remaining residents of Jaffa was unmistakable, with no ambiguity attached: if the leader of Jaffa was not immune to Israeli repression and maltreatment, the common people among Jaffa’s Arabs were all the more at risk. The fact that Abu-Laban was the leader who signed the agreement with the Haganah and that he had



inherited leadership of the city did not aid him when he tried to stand in the way of the displacement of the surviving Arab population of the Bride of the Sea.

On 12 September 1948, Hajj Abu-Laban was arrested again. When his lawyer, Yitzhak Benyamini, asked to see his client at the central prison in Jaffa, he was told that "the detainee is in the military section so he should see the military police."<sup>20</sup> The lawyer went to the military government offices and returned with a permit to see the detainee. When he presented this document at the military prison in Jaffa, the man in charge told him that the detainee Abu-Laban was not there and added that the order of the military governor was not compulsory. At that point attorney Benyamini sent several letters to Minister of Police Shitrit, who replied that the civil police were not in charge of this detainee. The lawyer did not receive an answer to his letters to the army's judicial counsellor and the military governor.

When the attorney Benyamini found all doors closed to him, he went to the Supreme Court, which issued a writ to the minister of defense asking him to show why Ahmad Abu-Laban had not been released. Attorney Haim Cohen (who later became a famous Supreme Court judge) replied in the name of the ministry of defense acknowledging all the facts and information which had been presented by Benyamini to the court. The long proceedings in the Abu-Laban case before the Supreme Court continued from 1 November to 3 January 1949 when a ruling was issued. It was clear from the first session that Abu-Laban was an administrative detainee under article 111 of the 1945 defense (emergency) regulations. In summary, the Supreme Court ruled that the detention had not been carried out in accordance with the legally required administrative procedures, and ordered that Abu-Laban be released.<sup>21</sup>

Even then, the ruling by the Supreme Court did not lead to the immediate release of Hajj Ahmad Abu-Laban. File no. 298/5 in the Israeli Central State Archives in Jerusalem contains several documents from the office of the minister of minorities dealing with the necessity of releasing him. Several Hebrew newspapers published the court decision and the fact that he had not been released several days later despite the court ruling.<sup>22</sup> When over ten days had passed after the court order and he had still not been released from prison, the people of Jaffa prepared a petition with 1,500 signatures which they sent to the Minister of Police and Minorities Shitrit asking him personally to act quickly to secure the implementation of the order. The minister sent a copy of the petition dated 15 January 1949 to the head of the military government a week later.<sup>23</sup> Another week passed without the minister receiving an answer to his letter, so he sent a second letter directly to the prime minister and defense minister asking him for an answer so that he could reply to the petition and letters from the people of Jaffa.<sup>24</sup>

In the end Hajj Abu-Laban was released several weeks after the court order was issued, but his life, and that of his family, was not easy even when he was outside of prison. The authorities found new ways to exact revenge, and to give people like him a lesson within the limits of "democracy" in Israel. Threats against his life



continued, and there were physical assaults, apparently by men working with the authorities and collaborators.<sup>25</sup> Hajj Abu-Laban understood that his life and the future of his family was in danger, so he decided to emigrate to Jordan shortly after he was released. Information about his migration and the circumstances under which it took place is scanty. *Haaretz* commented at the time that the case would constitute a dangerous precedent if it turned out that “the tension between the rule of law and the administrative authority does not lead to the victory of the law.”<sup>26</sup>

Hajj Abu-Laban and many members of his family joined the tens of thousands of refugees from Jaffa in the Arab countries. Many of those close to him among the remaining Arab population in the city learned a lesson from the calamity that struck their leader. Abu-Laban was not alone in the bitter experience of repression and the silencing of voices raised against Israel seizing most of the property of the residents of Jaffa. Indeed, many of the leaders and well-educated people in Jaffa who remained in 1948 found they could not live in their city because of this persecution, among them merchants, businessmen, and professionals, such as doctors with well-known names.<sup>27</sup> As a result of this Israeli policy of repression in Jaffa (as compared to Haifa), only a very small number of the city’s elite remained.

Salah Ibrahim al-Nadhir was a member of the Emergency Committee that signed the Jaffa surrender agreement on 13 May 1948. Born in Hebron in 1910 and a graduate of Terra Sancta College and then the Arab College in Jerusalem in 1931, he was the director of the Riyadh Construction Company in Jaffa, a building contractor. His story of the fall of the city and the aftermath in Jaffa was published in Amman recently.<sup>28</sup> From his account, he left the city on 14 May 1948, with the last of the withdrawing British forces. He reached al-Ramla and tried in vain to contact his friends, the other members of the Emergency Committee, by telephone. Finally, he joined the many caravans of refugees and went to Amman, and lived there until his death in 1992.<sup>29</sup>

Amin Andrawus, another signatory of the Jaffa surrender agreement, was a merchant and a dealer in imported cars, well known to Arabs and Jews in the city up to 1948. Despite his diverse connections, he decided to send his daughters to a safe place in Jordan before the fall of Jaffa. One of his daughters, Widad, testified that her father refused to leave his house and move to al-Ajami quarter in compliance with the order from the Israeli authorities. Members of the Emergency Committee submitted a letter on 20 August complaining about “concentrating all Arab inhabitants in one region.”<sup>30</sup> Andrawus was able to keep his house due to his bargaining skills and talent in balancing the military government’s policy and his personal interests. He scored another success when he brought his children back from Jordan in early 1950 through the family reunification plan. The semi-official paper *Al Yawm* published an item about the return of 117 Arab Jaffa residents to their homes, followed by an item listing the names of the returnees, which included Andrawus’s three daughters, Laila, Widad, and Su’ad, and their 14-year-old brother, Salim.<sup>31</sup> Andrawus succeeded in securing the return of his

children, but he lost much of the land he owned to state expropriation. He and his family remained in Jaffa after the Nakba and he lived there until his death in 1972.

In the first phase of the history of the Jewish state, the Palestinians who remained had to prove their loyalty to the state, or at least their non-opposition to the policies of the government and its settlement institutions, in order for them to continue to live in peace. Even the basic rights of Arab individuals in Israel were conditional and were granted as an act of charity. Those who believed they could resist the policy of repression and the theft of Arab land and property found themselves in many cases in a similar situation as Hajj Ahmad Abu-Laban.

Ahmad Abd al-Rahim, also a member of the Emergency Committee who signed the 13 May document, was one of Jaffa's well-known wealthy residents. His family, had moved to the city in the early nineteenth century and were owners of citrus orchards and prominent exporters of oranges. Abd al-Rahim built one of the most beautiful houses in the city in al-'Ajami quarter (1 Toulouse Street). The Tel Aviv architect Yitzhak Rappaport had designed the house and oversaw its construction in the mid-1930s.<sup>32</sup> Shortly after the fall of Jaffa, Abd al-Rahim decided to emigrate, but before he did so, he rented the house to the French consul through Rappaport, and later sold the house to the consulate. In this way a wealthy man from Jaffa managed to protect some of his property from being expropriated or stolen, and he went to live in Beirut.

#### THE RETURN OF FAKHRI JADAY

Fakhri Jaday had big dreams when he finished high school at the Collège des Frères in 1943 and travelled to Beirut to study pharmacology at St. Joseph University.<sup>33</sup> His studies at the French university went well despite the tragedies of World War II. Even when the skirmishes began in Palestine, and residents of Jaffa were descending on Beirut in the thousands, he did not think that he ought to stop studying and return to the "Bride of the Sea." Ahmad 'Abd al-Rahim, whose story was just described, was one of the Jaffa residents who came to Beirut.<sup>34</sup> He informed Fakhri and other refugees from Jaffa about conditions in the city. But generally speaking, there were conflicting news reports, including news about his parents. His father said in a letter to Fakhri that he had thought of coming to Beirut, but his mother, who was ill, and his sister strongly objected to the idea. The father asked his son to prepare to return to Jaffa, awaiting approval by the Israeli authorities of a request for family reunification. Indeed, the approval came and Fakhri was able to return to his family and city in 1950.

Fakhri Jaday returned from Beirut on 15 October 1950 by way of Ra's al-Naqura in a Red Cross car. The joy of the family at being reunited eclipsed the bitter reality through which the remaining Palestinians in Jaffa were living. But Fakhri, who had grown accustomed to the fast pace of life in Beirut, found it hard to adapt and became bored and depressed by what he saw each day on his way from the family

home to the pharmacy in al-ʿAjami. A year after his return, he decided to go to Paris to continue his studies and earn a PhD, but his family, who had been overjoyed by the return of their son from Beirut, did not consent to lose him again so that he could continue his studies abroad. The family's second son, Tony, who had gone to Los Angeles to continue his studies, had married an American and had begun a family in the United States. After pleading from his sick mother and his elderly father, Fakhri changed his mind about traveling abroad. Later, he inherited the family pharmacy from his father, where he worked for ten years after his return at the end of 1950.<sup>35</sup>

Despite Fakhri Jaday's decision to stay in Jaffa, he continued to find it extremely difficult to accept the city's new reality, and renewed attempts to convince his parents to accept his idea to continue his studies abroad. But his mother, who "wanted him by her side," remained adamantly opposed. As the years passed Fakhri grew more bitter whenever he compared his own circumstances in al-ʿAjami quarter with the successful life of his brothers, emigrants to London and the United States.<sup>36</sup> His brothers had not been the only ones to leave Jaffa just before or after the Nakba. Most of the sons of the elite who had remained after 1948 left for one reason or the other in the early 1950s. One example was Hasan Barakat, another member of the Emergency Committee. Fakhri mentioned in his testimony that "Barakat owned plantations which he sold, and emigrated because he found great difficulty in staying and participating in rebuilding Jaffa." He added that of the one thousand Armenians who lived in Jaffa up to 1950, all but a very few had departed the city.<sup>37</sup> Fakhri Jaday's testimony is like a eulogy for the Bride of the Sea, which had been one of the most developed Palestinian cities, but which became a hinterland for Tel Aviv. The Jewish city, built in the early twentieth century, "swallowed" its Palestinian neighbor, much as Israel did to Palestine after 1948.

The Jaday family was relatively successful in being able to keep their home and pharmacy in al-ʿAjami quarter, unlike the experience most of the middle class and the wealthy in the city, such as Bassam al-Ayyubi. Bassam was the only son of the well-known merchant Harbi al-Ayyubi, one of the leaders of the Palestinian national movement in mandatory Jaffa. When Fakhri Jaday returned from Beirut he could not find his classmate Bassam and the rest of his family; they had left Jaffa in the spring of 1950. Fakhri heard from his father that the Ayyubi family could not continue living in the city after it fell under Israeli control, like many members of the elite. We know very little about the circumstances of the migration of Bassam and his family. However, the story of his uncle, the attorney Subhi al-Ayyubi, is well known and documented because he took his case to the Supreme Court, as we shall relay in the following pages.

As we saw previously, *al-Ittihad* newspaper persisted in exposing the injustices of military rule in Haifa and the Galilee. Since the beginning of the 1950s, it had uncovered many Israeli plans to expel the remaining Palestinians and force them to emigrate. In one news article, the paper exposed the policy of forcing Arabs

to immigrate to Libya. It mentioned that Muhammad Nimr 'Awda, the former British agent, was a party to this policy, and that 'Awda was living in Libya and encouraging the absorption of Palestinians to work there.<sup>38</sup> The paper gave as an example of the success of this policy the case of the attorney Subhi al-Ayyubi of Jaffa. According to the news item, Subhi al-Ayyubi "recently sold all his belongings in the country and immigrated to Libya." The paper concluded its report by asking who was behind the emigration of Arabs from Israel to Libya.

So, then: who was Muhammad Nimr 'Awda, whom *al-Ittihad* accused of being an Israeli collaborator, and who encouraged Palestinians in the country to immigrate to Libya? And what are the circumstances that led the attorney Subhi al-Ayyubi to leave Jaffa?

Muhammad Nimr 'Awda was a prominent communist activist during the British Mandate. Because of his good relations with the Palestinian nationalist movement, the leaders of the Palestine Communist Party delegated him to gather information on the movement and pass it on to them. But this activity actually brought him closer to the nationalist movement and he apparently began to convey information about the Communist Party to the leaders of the nationalist movement.<sup>39</sup> Furthermore, some of 'Awda's independent initiatives and his nationalist positions caused friction between him and the leaders of the Communist Party, which led to a rupture in relations between them. 'Awda was accused of being an informant to the Arab Higher Committee, and he was thrown out of the leadership of the Communist Party in 1940 under the charge of "nationalist deviation."<sup>40</sup> 'Awda went to Iraq in 1941, where he participated in Rashid 'Ali al-Kaylani's revolt against the British and the Hashemite regime in Iraq. In this connection, Fu'ad Nassar, who became general secretary of the Liberation League, had also gone to Iraq like 'Awda and participated in the al-Kaylani revolt.<sup>41</sup>

The available information on the life and activities of 'Awda following his return from Iraq to Palestine is scarce. It would appear that his participation in the Arab Revolt (1936–39) against Britain and his close relations with the mufti Amin al-Husayni and his followers caused the leaders of the party, particularly the Jews among them, to distance themselves from him. Musa al-Budayri, who studied the history of the Communist Party under the British Mandate, published a book recently that includes interviews he conducted with leaders of the party.<sup>42</sup> One of those interviews was with Nimr 'Awda, in Beirut on 15 March 1974, revolving around his political activities in the 1940s, but without explaining much about the charges levelled against him of being a former collaborator with Britain. At the end of the interview, however, there is specific reference to his dispute with the Communist Party. 'Awda was answering a question about the communists' suspicions concerning his political position and the charge of "nationalist deviation." He mentioned that after his return from Iraq he did not join the Liberation League, whose activists joined the Israeli Communist Party (Maki) in 1948, as we mentioned earlier.<sup>43</sup>

THE TRAGIC AFFAIR OF THE ATTORNEY SUBHI  
AL-AYYUBI AND HIS DEPARTURE FROM JAFFA

Subhi al-Ayyubi was a prominent name in Jaffa on the list of city leaders from the 1920s as an activist in the Islamic-Christian Society.<sup>44</sup> After the establishment of Israel, his name was not included on the list of ten Arab lawyers who were licensed to plead cases in the courts of Jewish state, because he was a resident of the Triangle at the time it was transferred to Israel after the Rhodes Agreement in the spring of 1949. At the end of the year, *al-Yawm* newspaper published a news item about the attorney Subhi al-Ayyubi pleading a case in court "on behalf of his client Muhammad al-Faqir who is accused of killing a wealthy merchant from Jaffa, Michel Fi'ani."<sup>45</sup> The paper which carried this news report was apparently unaware of the big drama unfolding at the Supreme Court in Jerusalem, the center of which was the attorney al-Ayyubi. The decision by the court was among the most important decisions by Judge Shimon Agranat and his colleagues to this day. Below is a summary of the drama, in fact the tragedy, which befell al-Ayyubi.

Al-Ayyubi had brought a case to the Supreme Court, submitted on 30 March 1950, to rescind the order of the military governor of the Jaljuliyya region in the Triangle that he should leave Jaffa and return to live on his plantation in Habla near Jaljuliyya. In the proceedings Judge Agranat wrote, as part of the decision, the facts of this case were simple and clear, but also unique and unusual.<sup>46</sup> The facts are a very important example of the wide authority given to military government officials, and the proceedings constitute an important historical document concerning the circumstances which drove al-Ayyubi in the end to immigrate to Libya.

The information presented to the Supreme Court in Jerusalem indicated that in August 1949 Subhi al-Ayyubi was living on his plantation near the village of Jaljuliyya, 150 meters from the Jordanian border.<sup>47</sup> Al-Ayyubi was an elderly man who had been suffering from asthma for fifteen years and from urologic problems for four years. Near the end of that month, thieves attacked him, hitting him and stealing money and jewelry from his house. After that incident, al-Ayyubi's health deteriorated, and he decided to travel to Jaffa for treatment. To do so he obtained the needed exit permit from the military governor to leave the Triangle according to article 125 of the defense (emergency) regulations of 1945, since the area where he resided had been declared "a closed military area."<sup>48</sup>

Subhi al-Ayyubi went to Jaffa and was treated at the French Hospital in the city. At the beginning of October 1949, he left the hospital after his recovery and decided to stay at his brother's house instead of returning to his plantation. The Supreme Court ruling mentioned that the plaintiff lived in Jaffa "on the basis of permits issued to him from time to time by the military governor general of the administered areas." On 31 October the last permit expired. Al-Ayyubi wanted to continue living at his brother's house, but the military governor objected and on 2 March 1950 (under the authority given to him by article 110 of the defense (emergency)

regulations of 1945), he issued an order compelling him to leave Jaffa and to return to live at his plantation near Jaljuliyya. However, the risks to al-Ayyubi's life represented by his illnesses, and the fears he had that thieves would attack him again should he return to his plantation, induced him to appeal through his lawyer to the Supreme Court to rescind the military governor's order.

The judges concluded their decision by saying that they do not delve into examinations of the security justifications given by the military governors and that their legal role was limited to examining the extent to which the official administrative application of defense (emergency) regulations was correct. Contrary to the case of Abu-Laban discussed above, the Supreme Court said they found no technical administrative error, so they decided to reject al-Ayyubi's request, ruling on 26 May 1950.<sup>49</sup> The case attracted a great deal of attention because of the humanitarian issues involved. MK Moshe Aram from Mapam submitted the following questions to the minister of defense:

1. Why did the military government issue an unjust order to expel a patient who needs treatment according to his doctors?
2. What right does the military government have to issue such a decision on the pretext that Subhi al-Ayyubi exploited his presence in Jaffa to secure a permit to practice law? Is it forbidden "under the law" for a patient to deal with his papers? On what did the military governor base his decision that Subhi al-Ayyubi had violated the law when he brought a case in the central court? Is he forbidden from accepting an invitation to come before a governmental institution?
3. Why does the military governor consider Subhi al-Ayyubi a criminal for accepting membership in the Islamic Council of Jaffa, considering that the prime minister's advisor on Arab affairs did not object to this matter?
4. Can the prime minister and minister of defense rescind the unjust order and end this injustice?

The answers to MK Moshe Aram's questions came on 29 May 1950, three days after the Supreme Court issued its decision. The answer was succinct and official. Ben-Gurion said that al-Ayyubi appealed to the Supreme Court to issue a preventative order, therefore the matter must be left to the judiciary.<sup>50</sup> However, MK Aram's questions exposed the real reasons and circumstances which led to the retaliatory steps taken by the military government. The Israeli authorities did what they could to get rid of the Arab leaders who remained in the city after the majority of the Palestinian population had been expelled. Al-Ayyubi's attempt to rejoin the Islamic Council and to practice law once again became a disturbance to government policies, hence the order of the military government and the security ministry. He achieved nothing by resorting to the Supreme Court in Jerusalem for justice and fairness. The question for which we have no clear answer is: Did the

authorities propose to Subhi al-Ayyubi that he should sell his property and immigrate to Libya after he found all doors closed in his face?

The available sources do not give a clear answer about the circumstances that had a direct bearing on the emigration of al-Ayyubi, or who actually played a role in this matter. However, those sources do indicate that the overwhelming majority of those who chose to immigrate to Libya were educated urban residents. The world of this well-to-do urban community, in cities which became mixed, such as Lydda, al-Ramla, and Jaffa, changed and disappeared altogether in 1948 and later.<sup>51</sup> Those cities in which the elite lived a boisterous, culturally and politically rich life became almost deserted, and were gradually repopulated by Jews who became rulers and masters. From this perspective, the tragedy of the Palestinians who remained in those “mixed cities” was greater than of those who remained in Arab villages in the Triangle and the Galilee. On top of the national and collective Nakba, those urban dwellers felt an alienation in their cities which grew more extreme and bitter with the passage of years. It was no surprise that many professionals such as medical doctors, engineers, and lawyers decided to leave their homes and cities after the Nakba. Their story is worthy of further specialized study and research.<sup>52</sup>

#### THE ATTORNEY ELIAS KUSA: A ONE-MAN INSTITUTION

In the wake of the forced migration of members of the Palestinian urban elite in 1948 and afterward, the few attorneys remaining in the homeland who practiced their profession in Israel played an important role in defending the rights of those who remained. As we mentioned above, prominent among the ten pioneering lawyers who practiced their profession after the Nakba were two from Haifa: Hanna Naqqara and Elias Kusa. The first was not a communist until 1948, when he joined Maki and worked in coordination with the leadership of that party upon his return to Haifa.<sup>53</sup> Elias Kusa was always a “lone wolf” and a one-man institution, as he was described by many of his contemporaries who knew him in the 1950s. This lawyer from Haifa is considered to be a representative of members of the elite who endured and who resisted the policy of repressing the remaining Palestinians in Israel, despite the dangers this entailed. However, researchers into the history of the Arab minority in Israel rarely showed interest in his role.

Elias Kusa (1896–1971) was of Lebanese origin and ended up in Haifa through a tortuous path, but he spent most of his life there, as did many other Lebanese who migrated to “the Bride of Karmil.” Kusa grew up in Tripoli in Lebanon and studied at the American University of Beirut. At the end of 1914 he left teaching and moved from Beirut to Egypt out of fear of being conscripted into the Ottoman army. In Cairo, he made contact with the British and activists of the Arab Revolt under the leadership of Sharif Husayn and his sons. In December 1917 he arrived



in Jerusalem with the British forces under the command of General Edmund Allenby, who had just occupied the Sinai and southern Palestine.

Elias Kusa's legal education and his mastery of the English language enabled him to work in the justice department for over ten years. But he resigned from his job in 1928 at the time of the "disturbances" between Arabs and Jews concerning the Wailing Wall. In the same year, he left Jerusalem and moved to Haifa to work, specializing in civil and criminal cases, and he quickly became engaged in national political activities in the city, becoming one of the prominent activists in national committees and organizations.<sup>54</sup> Kusa remained in Haifa after it fell in late April 1948. But his life was turned upside down and fundamentally changed because of what happened to most of the city's Arab population. Despite the numerous difficulties, he decided to remain in his house in Haifa and not to leave. Only a few months into the Nakba, this home had become a much sought-after destination for the grievances of the population that remained, particularly since Kusa had seen with his own eyes the pillaging of Arab property by the state and its institutions.

Elias Kusa married Emily Khayyat in 1930. When skirmishes between Arabs and Jews intensified in Haifa and its district at the beginning of 1948, Emily left the city with her only son while her husband remained at the family residence.<sup>55</sup> Kusa saw how the Haganah imposed its authority on the Arab quarters in the city after 22 April 1948. Once it gained control over the city, state institutions began to transfer the property and possessions of Arabs in a systematic way to official storage facilities, in spite of the complaints and condemnation of the Arab Emergency Committee, of which Kusa was a member. In early July 1948, the government began selling the furniture and clothing which had been stacked up in storage depots to the incoming Jews at very cheap prices. By the end of the year, the possessions of the Palestinians of Haifa who had become refugees had been sold.<sup>56</sup> This systematic pillaging by the government of absentee property and possessions provoked Kusa's resentment and condemnation.

The Israeli Central State Archives contain much correspondence among employees of governmental offices concerning letters of protest from the attorney Kusa to David Cohen, the Knesset member representing Haifa, and other politicians and cabinet ministers. In one letter Kusa asks what the law had to say about a refugee whom the government had allowed to return and his property which he had not owned prior to his departure. Justice Minister Pinhas Rosen's opinion was that a refugee does not cease to be a refugee unless they obtain a certificate reclassifying their status. As long as they are an absentee (or refugee), then all of their property comes under the Custodian of Absentee Property, regardless of when and how it came into their possession.<sup>57</sup> However, Minister Shitrit disagreed with the minister of justice on this issue. Indeed, after this issue was discussed by the cabinet, the law was changed to enable "present absentees" to own new real estate which they did not have before. But Kusa was not satisfied with this amendment, and he continued to attack the government control of confiscated Arab land and

property. He was particularly scornful of the law for the expropriation of the lands of “present absentees” on the basis of the law of absentee property, issued by the Knesset in March 1950.

Elias Kusa was an uncommon and distinctive personality by any measure. His correspondence and his independent and very daring political positions reflected that personality. He was not afraid to subject the government’s policies toward the Arabs who remained to biting and uncompromising criticism. This lawyer did not have political backing on which he could rely or a newspaper to publish his actions and activities. He sent letters in Arabic and English not only to ministers in the Israeli government but also to international organizations, such as the United Nations. He published many articles in English in the dissident *Nir* biweekly magazine. The fact that Kusa chose a daring independent and critical position although he was not a member of Maki made him a very unusual phenomenon. Kusa was convinced that the monopoly the communists had on representation of the issues and grievances of Arab citizens was harmful to their interests, and he therefore found himself often in a difficult position. Despite this, he did not modify his critical positions, and became prominent in the 1950s as a strong defender of Arab rights and interests.

The basic rights of Arab citizens, such as the right of free speech and movement, and the right to possess land and other property which the government was expropriating, topped the list of Kusa’s priorities. He wrote: “In theory, the Arabs in Israel have equal rights with the Jews, but in fact they are persecuted in almost all areas.”<sup>58</sup> The most striking examples were the military government, the policy of permits, the discrimination in various budgets and appropriations and subsidies, and similar policies. What was worse, according to Kusa, was that the Arabs in Israel lived in a huge prison. Apart from some Christians who were permitted to travel to Rome and to Arab (East) Jerusalem (then under Jordanian control), Arabs did not have the right of movement and travel. Some of Elias Kusa’s articles were published in the international press.<sup>59</sup> This lawyer from Haifa continued his multifaceted activities throughout the 1950s in the press and in attempting to establish an independent political organization for those who remained in Haifa and the Galilee.

Kusa’s activities and articles angered the authorities and its agents, and also, on the other side, his rivals in the Communist party. The latter group was content to attack him—and others like him among the independent political activists—verbally and to accuse him of serving the policies of the government. However, the members of the intelligence services who monitored his activities began thinking of harsher ways to silence him. This able and experienced lawyer who lived outside the scope of the military government presented a “problem,” so they went about looking for a charge that might put him in prison. In view of the difficulty of concocting a charge that could be used for “repression through legal means,” they started talking about a plan “to break his bones.” An anonymous letter (apparently written by an intelligence agent) containing this proposal was sent to Zalman Aran

(Ziama). It was kept in a file in the office of the prime minister's advisor on Arab affairs, and was discussed seriously. The handwritten letter is dated 21 August, and the text asks: "What shall we do with this scoundrel? Give your opinion. I am prepared to cooperate! Why don't we break all his bones one night?"<sup>60</sup>

The threats received by Elias Kusa were known to his friends and his family. One night when no one was at home the family home was broken into and the library ransacked, but only a few files and papers were stolen.<sup>61</sup> Despite the shock and apprehension that something worse might happen, Kusa did not stop his activities or let up on his criticism of government policy. His only son, Nicola, could not put up with the atmosphere and immigrated to Canada. He relates that the family was in constant fear of retaliation by the authorities. Even in the telephone interview I conducted with him in Canada, the effects of that period were apparent from his speech and his hesitation to answer some questions. Nor were the threats against the life of Kusa and members of his family unusual; in fact they were a gentler form of the repression and imprisonment which other political activists who opposed government policy and military rule endured.

One way of applying pressure on the Arab elite who lived in "mixed cities" was to refrain from issuing them passports except for those who wanted to leave and not come back. This form of collective punishment was harmful to businessmen, big merchants and others who had family outside the country. Those individuals found themselves prevented from travelling because they did not have the requisite permits from the ministries concerned.<sup>62</sup> The case of Hanna Naqqara, who tried repeatedly to obtain a passport without success, is one example of that policy. Elias Kusa also suffered the tribulations of being denied permission to travel. This attorney with multifaceted connections told his story (and that of all Arabs in Israel) in English in *Nir* magazine, published by the small radical leftist group, Ihud, which supported a binational state. Kusa revealed in that article the varieties of discrimination from which Arab citizens of Israel suffered. One issue Kusa brought up was the ban on their travel outside the country.<sup>63</sup>

The borders of Israel with the Arab world were closed to legal crossings except for rare and special cases. The few allowed to travel freely across those borders were Christian clergymen; very small numbers of others received permission to cross through Ra's al-Naqura and through the Mandelbaum Gate between the two halves of Jerusalem. Even the travel of Arab citizens inside the country depended on permits from the military government. This was not limited to residents of areas under military rule, but also applied to residents of coastal cities who were prohibited from entering the closed Arab areas. Thus, most of those who remained during the 1950s were under constant siege. Israel facilitated movement, however, for "one-way" travel—those who wanted to emigrate from the Jewish state to Arab or other countries.<sup>64</sup>

Elias Kusa detailed the issue of Arabs being prevented from travelling for an extended period in an article in *Nir*. He noted that even in neighboring Arab

countries, such as Lebanon and Egypt, there was no such prohibition for members of the minority Jewish community; Iraq was the only Arab country to have adopted a policy similar to Israel's at the time. But he added that even there "the limitation applied only to those who wanted to travel to Israel, not for those who wanted to travel for educational or health or other reasons."<sup>65</sup> After the authorities repeatedly rejected the applications for a passport from Kusa himself and his colleague attorney Hanna Naqqara, Naqqara decided to bring a case to the Supreme Court.

On 19 November 1952, Naqqara had submitted an official passport application under article three of the 1952 Citizenship law. This application was rejected on the grounds of the circumstances of his entry to Israel in August 1948. But Naqqara claimed that his name was documented on the list of residents of the country "when he was a detainee on 8 November 1948. On 16 January 1949 he received a civil identity card." Furthermore, he participated in the first elections that month, running as a candidate in the Haifa municipal elections in November 1950. However, when the voter list for the second Knesset was published in June 1951 his name was omitted with the justification that he had entered the country illegally. Naqqara successfully appealed this decision at the central court in Haifa. Subsequently he voted in the second Knesset elections, and was later a candidate on the Maki list.<sup>66</sup> The Supreme Court accepted Naqqara's election on 16 October 1953, on the basis of the decision by the central court.<sup>67</sup>

Unlike Naqqara, whose passport application had been denied due to the claim that he had entered the country illegally, Elias Kusa had never left Haifa at all, and the authorities did not offer a justification for the rejection of his application. Following the rejection, Kusa wrote to the prime minister on 9 May 1957, asking him to intervene in the case. He said in the letter that he applied for a passport in Haifa in March 1957, and he applied two days later for an exit visa and paid 15 liras in fees, but his application was ignored. Seventy days after he had submitted his application, he had not received a reply despite his visits to government offices and his correspondence with officials in Jerusalem. Kusa wrote in conclusion that this treatment was no doubt due to the fact that he was an Arab.<sup>68</sup> Kusa's conjecture concerning this point was true, as documents in the prime minister's office confirm.<sup>69</sup> Not issuing a passport was one of the means employed by the authorities to apply pressure and exact retribution from opponents of its policies.

#### LAW IN THE SERVICE OF THE POLICY OF REPRESSION

In David Kretzmer's valuable book titled *The Legal Status of the Arabs in Israel*, the author exposes the gap between the objectivity and universality of the law in theory and its exploitation in the service of the policy of discrimination and the inequality between Jews and Arabs.<sup>70</sup> This study essentially deals with the existing situation in Israel near the end of the twentieth century and very little about the experience of Arabs with Israeli law in the 1950s. But the legal status of the

remaining Palestinians after the Nakba was determined to a large extent in that period, and became rooted in a number of the laws promulgated at that time. One example of an unjust law is Israel's "citizenship law," which is one of the most important laws in any state.

In July 1950, the proposed "citizenship law," which stirred up controversy and strong opposition from leftist parties, began to be discussed. The discussion continued through the period of the first Knesset, and then after the elections to the second Knesset in 1951. The text of the law was finalized in 1952, as one of the most prominent indicators that Israel was a Jewish state. This law established several paths to citizenship, including: one path for Jews according to the law of return, and another path for non-Jews under article 3 which lays down conditions for non-Jews to prove that they are entitled to citizenship (nationality by residence in Israel). Three conditions need to be satisfied:

1. That [the person in question] was registered on 1 March 1952 as an inhabitant under The Registration of Inhabitants Ordinance of 1949, and
2. The person was an inhabitant of Israel on the day of the coming into force of this law, and
3. The person was in Israel, or in an area that became Israeli territory after the establishment of the state, from the day of the establishment of the state to the day of the coming into force of this law, or entered Israel legally during that period.<sup>71</sup>

This law, in its three conditions combined, excluded a large number of the remaining Palestinians from eligibility for Israeli citizenship. Many of them went to court, and some reached the Supreme Court, seeking to acquire an identity card that would end their classification as infiltrators. The struggle to acquire an identity card and citizenship was part of the struggle to remain. The identity card or Israeli citizenship for Palestinians did not protect those who remained from discrimination or repression under military rule, but it did protect them from being uprooted and expelled, in theory at least. Without an identity card, those who remained were constantly subject to the threat of expulsion.

During the period when the Knesset promulgated the 1950 Law of Return and the 1952 Citizenship Law, it also acted to legitimize the control of the state over the property of refugees and the expropriation of a large portion of the lands of those who remained. This issue of the pillaging of Palestinian lands has been dealt with in a number of studies. This issue remains an open wound, particularly in the case of the "present absentees" who were recognized as citizens but who lost their rights to their lands and property in the village from which they were forced to migrate. The use by the military government of the 1945 defense (emergency) regulations and new Israeli legislation played an important role in shrinking the area of land left to Arab citizens.

The scope of this study does not extend to a comprehensive research of cases of discriminatory laws and the legitimization of the activities of Zionist institutions

in Israel which since 1948 served Jews only and contributed to expanding the gaps between them and Arab citizens. The only area which guaranteed equality between all citizens was that of parliamentary elections which Arabs participated in as of 1949. But even in this area, as we will see in the next chapter, equality was only theoretical under military rule and the policy of repressing independent Arab parties. Against this backdrop, Arab citizens occasionally had recourse to the Supreme Court in the quest for justice, and to prevent illegal policies being implemented by the government and its principal arm (military rule) in Arab cities and villages.<sup>72</sup>

One important work of research on the relationship between the law and the judicial system in Israel and Arab citizens was Alina Korn's doctoral dissertation at Hebrew University which showed clearly how the law and the judicial system were activated by state institutions to serve the system of monitoring and control over Palestinians in Israel.<sup>73</sup> Certain types of breaches of the law were tailor made so that they applied exclusively to Palestinians, and fell under the general category of violation of state security. The author of the study identified three groups of laws of this sort:

1. Controlling the entry of Arabs into the territory of the state under the 1952 law of entry into Israel.
2. The law to combat infiltration, violations, and the judiciary of 1954.
3. The laws for the control and monitoring of Arabs under the 1945 defense (emergency) regulations.<sup>74</sup>

The military government applied these laws to Arab citizens in a way that forcibly transformed them into violators of the law. In the name of security, thousands of Palestinians were expelled from their villages and exiled beyond the borders of the state even after the end of the war, and thousands of others were uprooted and forced to migrate from their lands to other towns and villages inside Israel. The pillaging of Palestinian lands and property was carried out through the implementation of unjust laws, including the 1950 law on "absentee property." Along with this, any attempt by the Palestinians to return to their homes and lands without the approval of the authorities was considered a crime punishable under the law. Thus, the law worked in the service of Zionist policy, and forcibly made most Palestinians who remained in Israel violators of the law in the first years after the Nakba.

Korn found in her study that in the 1950s at least half of the violators of the law were members of the Palestinian minority in the period 1950–52.<sup>75</sup> This situation continued under most years of military government which, as a matter of policy, made members of the Arab minority violators of the law. This was not a true reflection of the behavior of the inhabitants. Most Arab prisoners were "infiltrators" because of the delay—which sometimes went on for years—in listing their names in population records. The policy of using permits, which were handed out only to people who were in the good graces of the authorities, compelled many to violate the law and take risks in order to earn a living. Those who did not have permits

were arrested and put on trial in military courts which automatically imposed prison terms and exorbitant fines. In this manner, judicial agencies drained the energies of the Arab inhabitants and participated in the system of monitoring and control.

Opposition parties criticized the military government and its excessive use of emergency laws for political control and repression. Those categorized as “infiltrators” were pursued for years because of the failure to list them in population records, a practice that infuriated the communists. In 1949 *al-Ittihad* published a large number of news reports on comb-and-search operations by the police and army in Arab villages. MK Tubi brought up this issue and the arrests and expulsion of those who had been accused of infiltration.<sup>76</sup> For several months, the paper listed the names of people who had lost their registration coupons along with the numbers of some of them in a bid to return them to their owners if found.

The military government divided up the Galilee into fifty-four closed regions which one could not enter without a permit. Most of those permits were issued for the purposes of work.<sup>77</sup> The refusal to issue a permit of this kind to a person was tantamount to sentencing that person to unemployment and poverty. Thus, permits became carrots which were given to the well-connected and collaborators, as well as a stick used against protestors and those who were out of favor. The sentiment of injustice and the authoritarian rule of the military governor system led some people to compare Israel unfavorably to government under the Ottomans, that rule by Israel was “worse than the days of the Turks.”<sup>78</sup> Such statements were an expression of the sense of constant persecution and injustice in which all government institutions were complicit. When the Palestinians who remained despaired of getting justice, they would repeat the popular saying: “If your ruler is your oppressor, to whom do you complain?”

Some of those who failed to obtain a permit would travel without one in order to work or to some other reasons. For example, communist activist Philip Shehada went from the village of al-Maghar to Haifa without a permit from the military government.<sup>79</sup> The police arrested him, and he was brought before a military court which sentenced him to three months in jail or a fine of 50 liras. This incident is an example of the life of many whom the authorities drove into breaking the unjust law on a daily basis. Any resistance to the military government was suppressed with an iron fist even if the issue had nothing to do with security. For example, four residents of ‘Arabat al-Battuf village found themselves under administrative detention for an entire month because of their opposition to the imposition of an education tax on the people.<sup>80</sup>

Many of those who remained in Israel were compelled to break the laws and evade the barriers imposed on them in order to earn a living and to try to lead a normal life in their surroundings. The 1945 defense (emergency) regulations were applied to them alone. On the rare occasions when those laws were applied to Jewish citizens, there was an uproar and sharp criticism about their illegitimacy.



In May 1951, for example, a number of people belonging to a terrorist cell were arrested and charged with creating an organization that was hostile to the state and possessing explosives with the intention of attacking the Knesset. Dozens of extremist Jews were imprisoned on the basis of article 111 of the defense (emergency) regulations. Those arrests created a wide media and political storm, which was echoed in the Knesset, the body responsible for extending the applicability of those regulations.

During the discussion about the relevant emergency regulations, Moshe Sharett, the acting prime minister, said that “a law is a law” in the course of his reply to MK Menachem Begin, the leader of the opposition. But Begin protested: “That is not true. There are tyrannical laws, there are immoral laws, there are even Nazi laws.” He added in response to people who interrupted him: “Don’t ask me who decides what is a Nazi law or what is an immoral law. The law you have applied is a Nazi law, it is tyrannical and immoral. An immoral law is an illegal law. Therefore, these arrests are illegal and the order you issued is tyrannical.”<sup>81</sup> Begin concluded his speech by repeating his opposition to the use of the defense (emergency) regulations of 1945: “The existence of these emergency laws is a shame and their application is a crime. Therefore, I propose abrogating these laws and proposing a replacement for them within a week.”<sup>82</sup>

However, those laws were not abrogated, and they continued to be used against Arab citizens during the period of military rule. They enabled agents of the military government to conduct administrative arrests without the use of courts and to expel political activists from place to place. For example, Nadim Musa was expelled from his place of residence in al-Bi’na to the village of Tuba, which is inhabited by al-Hayb Arabs.<sup>83</sup> This punishment was considered to be a deterrent as it led to social alienation, the loss of a workplace, and separation from family. Most communist activists were young, unmarried men, and this contributed to their ability to endure exile and prison. The party also lent support to their families. Often the outcome of exile was the opposite of the goal of the punishment, because those exiled spread the party’s ideology and slogans in new and faraway places. That is what happened with Nadim Musa, who spent four months as the guest of the shaykh of the al-Hayb Arabs; he had all the time in the world to talk to the guests of the shaykh and to convey his views during evening chats and on special occasions.<sup>84</sup>

The goal of the military government in punishing communists and their like was to deter Arabs from supporting the party’s policies or voting for the communists. Indeed, many Arabs who were in need of help and support were afraid to go to the communists and preferred to seek help from those connected to the regime. Bishop Hakim and members of the Knesset from lists connected to the ruling party offered their good offices to solve people’s problems with the government, and were sometimes successful. Supporting the competition to the communists was an important factor in constructing the edifice of control based on the

use of “the carrot and the stick.” Permits, appointments in government jobs, and other rewards were granted to those with connections to the regime or to those who offered *wasta* (middleman) services and were not given to those whom the authorities considered to have “negative attitudes.” Indeed, the numerous arrests and fear of punishment contributed a great deal to the intimidation of people, most of whom were struggling for survival not confrontation.

For example, the people of Iqrit and Kufr Bir'im chose for years to work through the government bureaucracy and avoided cooperating with the communists and supporting their struggle. When they decided two years later to appeal to the Supreme Court they hired attorney Muhammad Nimr al-Hawwari. The Supreme Court's ruling in the Kufr Bir'im case is famous.<sup>85</sup> However, the temporary success of the villagers did not alter their destiny. The priest Yusuf Istfan Susan (1907–87) published the details of the unending struggle of the villagers to return to their homes, and included a number of documents and correspondence with governmental institutions as an attachment to his memoirs.<sup>86</sup> After decades, those expelled from the village learned a lesson from their steadfastness: that the many promises they had received from Israeli leaders were only efforts to procrastinate and gain time to establish alternative facts on the ground.

#### THE SUPREME COURT: ANOTHER BATTLEGROUND FOR THOSE WHO STAYED

The attorney Muhammad Nimr al-Hawwari left the political arena soon after his return in 1949, and moved to the judicial sphere to practice his profession. He became an effective lawyer and activist in cases before the Supreme Court. While Hanna Naqqara represented comrades and people close to the Communist Party, Hawwari argued cases for Palestinians who remained but were in fear of linking their names to the communists. As we said earlier, Naqqara and his colleague Elias Kusa did not hesitate to criticize the authorities and to resist them in court, which was for them an additional realm for fighting for the rights of those who remained. Hawwari had a more conciliatory approach than the two lawyers from Haifa. With fewer than a dozen Arab attorneys in the 1950s, the three divided the burden of pleading cases before the courts.

The Communist Party (Maki) had intensified its critique of population expulsion operations from villages in the Galilee after the first Knesset elections in 1949. MK Tubi raised questions in the Knesset in March 1949 about combing and expulsion operations “which were happening every week.”<sup>87</sup> Due to the large number of complaints about the illegal expulsion of Arab inhabitants, Ben-Gurion announced in the Knesset on 8 April 1949: “We have issued orders to all the authorities concerned not to expel anyone who bears a legal registration coupon. If such a person who has an identity card is expelled, he has the right to return. He can do that himself or through an agent from the military government authorities.”<sup>88</sup> As we

mentioned earlier, Naqqara was a pioneer in resorting to the Supreme Court of Justice with such cases. The publication in *al-Ittihad* newspaper of news of his successes in important cases encouraged others to choose a judicial path to prevent expulsions and obtain permanent identity cards and permanent resident status.

In 1951, thousands of Palestinians in the Galilee were still without identity cards; some had only had papers or coupons showing registration during the census of inhabitants. The military government tried to distribute red temporary residence cards to the inhabitants of the village of al-Bi'na, but the villagers, under the leadership of communist activists, resisted that attempt, and insisted on receiving the normal blue identity cards only. Hanna Naqqara represented dozens of people from that village and neighboring villages in central Galilee before the Supreme Court. He asked on behalf of his clients that the court compel the ministry of interior to distribute blue citizenship identity cards.<sup>89</sup> In November 1950, Naqqara initiated the first such case on behalf of seventy plaintiffs from al-Bi'na. The Supreme Court issued a provisional order compelling the ministry of interior within fifteen days to submit "reasons why it had not delivered identity cards to all those who had been registered in the population survey."<sup>90</sup> This case was followed by similar appeals in 1951, during which the second Knesset elections were to be held. Naqqara's success in a number of these cases encouraged those who had remained in the Galilee to go to court to prove their existence and to acquire citizenship cards.<sup>91</sup>

*Al-Yawm* also published news of the authorities issuing identity cards to people who had "infiltrated" the country on the eve of the second Knesset elections. In one report from Majd al-Krum, for example, it was reported that the census registration employee "came to the village and exchanged permanent citizenship ID cards for red temporary cards." Dozens of people who had resorted to the Supreme Court requesting citizenship cards were told that they could go to the offices of the military government to obtain their cards.<sup>92</sup> Two months after that news item, the same paper published a report that twenty-two villagers from Majd al-Krum, al-Bi'na, and Dayr al-Asad had won cases in the Supreme Court after their expulsion and return to the country earlier.<sup>93</sup> Below are examples of similar court cases which were reported in the press, alongside other cases which had different outcomes which did not secure the plaintiffs' residence in the country.

Al-Hawwari pleaded a case on behalf of twenty-three people from Majd al-Krum against the minister of interior and the military governor of the Galilee and others at the Supreme Court with the judges Heishin, Zilberg, and Zohar presiding. The judges issued an order to the defendants "to explain the reasons for not delivering identity cards to the plaintiffs." After some proceedings the appeal was accepted and the temporary order was changed to a final and permanent decision.<sup>94</sup> So this group from Majd al-Krum joined the others for whom attorney Naqqara had obtained identity cards in 1951. However, another case which Hawwari pleaded on behalf of Muhammad 'Ali al-Husayn and nine others from the same village shortly after the previous case led to different results.<sup>95</sup> The statements

in the decision created a surprising legitimization of the policy of expulsion and refusal to issue identity cards to forced migrants who had succeeded in returning to their homes and had gone to court seeking justice—but did not find it.

The case of Muhammad 'Ali al-Husayn and his nine companions was very similar to previous cases in which the judges decided that the authorities must issue identity cards to the plaintiffs. Due to the special importance of this case as a historical precedent, we shall quote directly from the proceedings. The request submitted to the judges of the Supreme Court was the following:

The plaintiffs are inhabitants of the village of Majd al-Krum, in the Governorate of 'Akka, and all are Palestinian citizens [meaning, at the time of the British Mandate]. On 30 October 1948, Israeli forces occupied the village, and the inhabitants, including the plaintiffs, surrendered to them. On 25 November 1948, a military unit came to the village and arrested the plaintiffs and some other individuals and expelled them to Lebanon. On 5 December 1948, the authorities began registering the inhabitants [of the village] under the defense (emergency) regulations of 1948 (registering the inhabitants.) Although the registration went on for three days in a row, the names of the plaintiffs were not listed on the register of inhabitants because they were absent from the village. They returned to their homes on 25 December 1948. However, in two subsequent expulsion operations, the first on 9 January 1949 and the second on 14 January 1949, a large number of young men from the village were expelled outside the borders of the state, including the plaintiffs in the second operation.<sup>96</sup>

This important court document goes on to relate other events in the village of Majd al-Krum after the end of the war, which reaffirmed the accuracy of verbal accounts of events by the inhabitants.

On 17 January 1949, registration receipts were distributed to the inhabitants of the village who were previously registered. Also, some individuals who had not been registered were registered that day (17 January 1949). However, the plaintiffs were not registered this time either, because they had been expelled, as was mentioned above. Since that expulsion, the authorities have made it impossible for the plaintiffs to live in peace. They return to the country without an entry permit, they are arrested, and expelled beyond the borders. But they return to the village again, and they are arrested and expelled once again. They live in fear that these actions will be repeated with no limit and no end.<sup>97</sup>

The defendants, including representatives of the interior ministry, the military government, and the police denied the account by the plaintiffs. They claimed that the plaintiffs had fought against Israel before and after the establishment of the state, and then “infiltrated” back into the village after the occupation of the Galilee and the end of the war. Hence, their staying in Israel was not legal and they did not deserve to have identity cards.<sup>98</sup> Officer Shmuel Pisetsky tried to convince the court that the narrative by the authorities was the true account, and that the plaintiffs had not been in the village either at the time of its occupation or the days of registering the inhabitants. This testimony revealed that a teacher by the name

of Hasan Yusif Sa'd from the village of al-Birwa was the one who recorded the names of the inhabitants, and that the list of inhabitants included names of persons "who had returned to the country a long time after the battles had ended, and that they had been expelled in the end."<sup>99</sup> This account by the officer from the military government did not convince the judges; they in fact refused to accept the account by the army's representatives and they believed the account of the inhabitants, particularly the account of the mukhtar of the village.

The plaintiffs gave sworn testimony before the judges and submitted the testimonies of two mukhtars of the village: Hajj 'Abd Salim Manna' and Dhiyab Qasim Farhat. The judges commented on the testimony of the second mukhtar, who spoke "without fear" despite the fact that he knew that the first mukhtar, Hajj 'Abd Salim Manna', had been arrested by the police because of what he said in court and testified in this case. Among the things he said which the court thought credible was:

Leaflets were dropped over our village on 28 October 1948 from an Israeli plane. On 30 October the village was occupied. We brought out white flags and walked (westward) to greet the army. We were not afraid because there was confidence and security.<sup>100</sup> The first plaintiff was in the village the day it was occupied; he gave us a rifle which we in turn handed in to the army. So it went with plaintiffs number two to number five. They are inhabitants of Majd al-Krum and they were present when the village was occupied. Plaintiffs number six to number ten are from the village of Sha'b and they were in Majd al-Krum the day it was occupied.<sup>101</sup>

Despite the fact that the judges believed the accounts and testimonies of the plaintiffs and preferred them to the story told by the army, the court case did not help them a great deal in achieving their objective.

The judges referred more than once to the testimony of a representative of the authorities, Officer Pisetsky, expressing doubts about its credibility and accuracy. The court did not accept the army's account of what happened in the village, and the judges stressed that the statements by the inhabitants and the mukhtars were true and acceptable. The two mukhtars added in their testimonies that shortly after the occupation of the village (8 November 1948) a unit of the Israeli army came to the village, and after gathering the inhabitants in al-'Ayn Square, "it tore down some houses and then fired on a number of inhabitants and killed them."<sup>102</sup> The court affirmed more than once that it found credible the testimonies of the two mukhtars who were not intimidated by the threats of the military government, so they told the details of the military operation which the army conducted in the village at the beginning of the month. The judges added that this was no ordinary comb-and-search operation for two "infiltrators" ["two" according to the original text]. They described the operation by the Israeli army unit in the village as "an ordinary military retaliatory operation."<sup>103</sup>

The determination by the judges that the Israeli army unit had carried out a retaliatory operation in November 1948 is an important historical statement,

particularly in the context of the continued and insistent denial by representatives of the authorities. The judges added: "After that operation the army unit left the village, and that operation had nothing to do with expelling the inhabitants."<sup>104</sup> This judicial document is very provocative seeing as it speaks of expelling the inhabitants and killing defenseless civilians a week or more after the occupation of the village, and describes it as "a customary military retaliatory operation," regardless of the fact that it is in violation of the international law of warfare and the Hague Treaty. What is worse is that Judge Heishin said in the decision he issued that he would not give the plaintiffs identity cards although "that would prevent the army from assaulting them."<sup>105</sup>

Despite the above statements, the court levelled very harshly worded criticism at the government and state institutions, and pointed out the inaccurate nature of the testimonies and documents they submitted in support of their position. Clearly, the methods of obfuscation and not telling the truth which the army and the other security agencies had become accustomed to had made their way to the Supreme Court. Those forces, notably the military government apparatus, did not hesitate to use methods of intimidation and retaliation against court witnesses, as the police did with the mukhtar they arrested.<sup>106</sup> The judges added their critique of a document signed by one of the mukhtars of the village: "This document is written and signed by the third mukhtar, Hasan Sarhan. The strange thing is that this mukhtar, who testified that the army had not surrounded the village from the day it was occupied, on 30 October 1948 to 8 January 1949, himself infiltrated and returned to the country in December 1948. Despite the fact that he was not in the village the day it was occupied, the "infiltrator" mukhtar's name is listed in the record of inhabitants of the village who were there when it was occupied."<sup>107</sup>

The judges came to the determination that the plaintiffs had left the village "with good will and without pressure or coercion," in the aftermath of "the customary military retaliation operation" by the army, then they crossed the border and "fled—that is, they were not expelled—to Lebanon." They concluded: "In those stormy days the plaintiffs left the country and moved to the enemy camp. They later returned, claiming they were citizens loyal to the country and demanding equal rights with the rest of the citizens. Not only that, they have come to the Supreme Court of Justice while trying to conceal the truth from the court. Nevertheless, they are asking for justice."<sup>108</sup>

The Supreme Court judges in Jerusalem simplified matters to a great extent when they set up the alternative categories of "forcible expulsion" against "leaving the country voluntarily." In cases where the army expelled inhabitants from Majd al-Krum in January 1949, the court agreed to their request to receive identity cards. But those [the plaintiffs] who left their homes in fear for their lives after the massacre which the court described a "customary military retaliation operation," were labeled as having left the country voluntarily. These classifications ignore the danger and how civilians behave under such circumstances, placing the

responsibility on the victim rather than the executioner who has done his best to strike fear in the hearts of the inhabitants, as we saw in previous chapters. These black and white classifications conceal the wide grey area in between which compelled many inhabitants to leave. Such classifications and analysis by the judges of the Supreme Court enabled them to reject the appeal of Muhammad 'Ali al-Husayn and his nine companions and sentenced them to permanent exile and life in refugee camps. This ruling by the Supreme Court established an informal precedent on which the authorities relied in continuing the policy of expelling thousands of Palestinians who were classified as infiltrators.<sup>109</sup>

Needless to say, the position of the judges of the Supreme Court of Justice and their categories were unacceptable to the Palestinians who had been forced to migrate, and to those who remained after the Nakba. To them, crossing the international borders in 1949 was not "entering Israel," rather it was returning to their homes which they had been forced to leave for various reasons. Since most areas in the Galilee had been allocated to the Palestinian state under the UN partition resolution, Israel's occupation was an illegitimate and illegal act. The borders of Israel which were agreed to in the armistice agreements with Arab states had either not yet been drawn or were signed in early 1949. In this period Israel had not completed a census of the population in the villages of upper Galilee. The decisions of the Supreme Court, a few of which were referred to in this study, lent legitimacy to the government's policy retroactively, based on justifications which contradict international law and the norms of justice sought by the inhabitants when they went to court. In any case, this study relied on court decisions as historical documents, but the topic needs dedicated research by scholars in law, politics, philosophy, and other disciplines to take part.

The inhabitants of Majd al-Krum scored a relative victory in not submitting to the policy of expulsion and resisting it in all ways possible, including going to court. A large number among the hundreds who had been expelled from the village in January 1949 returned to their homes in 1951 and others fought for years after to return. Inhabitants who were pursued by the authorities were labelled "smugglers." Those who obtained residence permits and then citizenship had guaranteed that they would not be expelled again and were secure. However, some were unable to defeat the policy of forced migration, and found no relief through decisions of the Supreme Court. Some looked for other ways to secure their return, for example, bartering the votes of their families to the ruling party and its Arab lists in return for identity cards for an "infiltrator." Some inhabitants of Majd al-Krum continued to return until the mid-1950s, when the 1955 elections provided another opportunity for political barter.<sup>110</sup>

While some sought new ways to secure the return of their children, others continued to resort to the Supreme Court of Justice. In 1953, attorneys Naqqara and Waxman raised a case on behalf of Salam Ahmad Kiwan of Majd al-Krum, appealing for the overturn of an expulsion order against him. The proceedings in this



case took place after the citizenship or nationality law of 1952 was passed. Like the rest of the villagers, Kiwan had been registered as a resident in the village according to the 1948 register of inhabitants, and he was expelled in January 1949 with hundreds of other inhabitants. The proceedings revolved around the place of residence of the plaintiff between the establishment of the state and the date on which the 1952 law came into force, which was 14 July 1952, and whether he had entered legally. Since the plaintiff had admitted that he had lived for a short time outside the country after his expulsion, the focus turned to “whether the plaintiff had been expelled illegally.” The drawing of a distinction between those whom the army had expelled illegally and other expellees became a central issue in determining the fate of many seekers after justice.<sup>111</sup>

It became clear from the court proceedings that Kiwan had been expelled from the country more than once despite his name being on the register of inhabitants and his acquisition of an identity card in the past. When the authorities tried to expel him yet another time, he went to the Supreme Court in 1952.<sup>112</sup> As we saw earlier, this same court had accepted the account of the inhabitants of Majd al-Krum about the expulsion of hundreds of them (including Kiwan) in January 1949. Consequently, at the end of the proceedings the court accepted the plaintiff’s request and the court issued its decision on 29 July 1953.<sup>113</sup> Thus, another person from Majd al-Krum managed to consolidate his residence and to acquire a new identity card with the help of attorney Hanna Naqqara.

The military government did not stop trying to arrest those it called “infiltrators” so as to expel them from the country. On 24 August 1952, for example, a combining operation took place in Majd al-Krum and Dayr al-Asad by units of the army and the police.<sup>114</sup> However, the frequency of these operations decreased after 1952. The number of those who attempted to return to the Galilee also decreased after that date. Still, the army intensified its monitoring of the borders and attempted to close the window through which Palestinians had crossed during their return to their homes and villages in the Galilee and other places. Up to the mid-1950s, the policy of trying to catch and expel the inhabitants, on the one hand, and the return of some men to their families, on the other, became a part of life for those who remained.

#### THE LOYALTY TEST: THE ATTEMPT TO RECRUIT INTO THE ARMY THOSE WHO REMAINED

Beginning in the early 1950s, that remaining Palestinians did not serve in the Israeli army was exploited as an indication that they were not loyal to the state, and was used to discriminate against them in work, housing, and other basic areas. Although most Israeli governments never attempted to recruit Arab citizens into the army, that issue continued to be used against them, the argument being that whoever demands equality of rights should not forget equality of responsibilities.

Most Arabs and Jews were agreed that it was neither logical nor humane to demand that members of the minority serve in an army that was fighting their people. Nevertheless, the Israeli government did try to recruit Arab youth into the army in 1954. The first step was to ask young men of recruitment age to register at offices which were opened specifically for that purpose. The strange thing is that most leaders of the Arab minority, with communists in the lead, supported this move. What was even more strange was that since 1949 the leaders of Maki (both Arabs and Jews) had been the first to demand, in the Knesset and on the pages of their Arabic and Hebrew language newspapers, that the Palestinians who remained be recruited. Hanna Abu Hanna recounted the recruitment of young men from the Liberation League, and its result, in his memoir *The Owl's Dowry*.<sup>115</sup>

The report about the readiness of the leaders of the League to participate in expelling the Arab Rescue Army from upper Galilee could explain the eagerness of Tawfiq Tubi, after he became a member of the Knesset, to ask Ben-Gurion to recruit Arabs in the Israeli army.<sup>116</sup> Ben-Gurion's reply to the proposals of the leaders of Maki in general, and Tubi in particular, was that their position did not represent the opinion of Israeli Arabs.<sup>117</sup> It is puzzling how the leaders of Maki could propose recruiting the remaining Palestinians to serve in the army that was responsible for the Nakba of their people and the destruction of their homeland. Nor should one forget, as we saw in previous chapters, that this army was still busy expelling Palestinians and preventing the return of refugees.

I tried to raise this subject during my interview with Tawfiq Tubi in his last years, but it was difficult to conduct a dialogue with him due to his deteriorating health.<sup>118</sup> Still, the positions of Tubi and his colleagues in the leadership of Maki were not so surprising, if one remembers their extreme eagerness for the establishment of the Jewish state. When it was established, they had faith in total civil equality and Jewish-Arab fraternity. Therefore, they had no objection to Arabs serving in the Israeli army despite all it did to the Palestinians. This class-based position, which prioritized patriotic loyalty to Israel over the [Arab] nationalist view of the conflict, had guided the communists during the war and afterwards. In view of these positions and reasons, it was not strange that the communists should demand the assimilation of the remaining Arabs into the state in 1949, including compulsory military service in the Israeli army.<sup>119</sup>

The question of the remaining Palestinians serving in the army was brought up seriously for the second and last time in 1954. This time the initiative came from the government and the ministry of defense, which issued an order to register all Arab young men as a prelude to their conscription. The official explanation was that this was a step toward "equality in rights and responsibilities for members of all sects in the country," in order to liberate all Arab inhabitants "from the sense of discrimination against them."<sup>120</sup> The conscription order for all Arab youth was published on 9 July 1954, and actual registration began on 25 July. The conscription order and the beginning of registration gave rise to a sharp debate between fathers

and sons and between the political leaders of all parties across the political spectrum. Few expressed their opposition to this step by the government publicly, but some expressed doubts about the wisdom of this new policy and its timing. The supporters of the plan thought that conscription would lead to equality of rights and status for the Arabs in relation to the Jews, and they hoped that service in the army would put an end to the attitude among Jews that the Arabs constituted a fifth column.

As we said above, the leaders of Maki, particularly the Jews among them, supported the conscription of young Arab men and women, without discrimination, with great enthusiasm. This position on the part of the communists did not leave an opportunity for one-upmanship to their rivals who were cooperating with the government. *Al-Rabita* magazine, for instance, devoted several pages to a discussion of the conscription issue.<sup>121</sup> It reported on the registration of young men between the ages of eighteen and twenty, and the debate on the subject in the Hebrew and Arabic language press. The magazine reported on the opinion of the Arab "man in the street," saying that many looked on this step with trepidation and even fear of the consequences. It added that "some of those who are afraid and worried thought of smuggling their children who are of conscription age out of the country."<sup>122</sup> The magazine also published an unsigned opinion piece clearly opposing the conscription of Arab youth in the army.

The author of that article, who was likely the attorney Elias Kusa, maintained that "People are conscripted in the armies of their countries after they gain independence, as happened recently in the Arab countries and in the Jewish state. Service in the army is for the defense of the independent nation and the homeland against its enemies. However, colonial regimes do not conscript the sons of the peoples they have occupied with their armies."<sup>123</sup> The author then asked a question: "The situation of Arabs in Israel since 1948 is special and distinctive because of the policy of discrimination against them. In the past Israel has not recruited Arabs because they are considered not to be loyal to the state. What has changed now after a few years?" He added that their situation today is no better than in the past. Does it make sense, for example, that the state should ask the people of Iqrit and Kufr Bir'im or the village of Sha'b to safeguard its borders? Could the state possibly give arms to young Arab men to protect it while it does not trust them to move freely within the country and imposes a military government on them? He concluded this daring article with a clear deduction in which there was no ambiguity: "Conscription should be rejected because the time is not suitable for it."<sup>124</sup>

After registering thousands of Arab young men, the authorities changed their position and stopped conscripting them without giving a reason. So, what were the government's real reasons for adopting this surprising step of trying to impose conscription on Arab citizens in 1954? Also, what is the secret behind the sudden change and the cancellation of the decision to conscript after several thousand had gone to registration offices and enrolled their names? Amnon Lin, a Mapai

activist in Haifa, offered an explanation several years later. He said that the attempt at conscription was a test of the extent of the loyalty of Arab citizens and their willingness to assimilate into state institutions and agencies.<sup>125</sup> However, the prime minister's advisor on Arab affairs, Yehushua Palmon, said that he expected the effort to conscript young Arab men would cause them to leave the country.<sup>126</sup> At any rate, if the government's intention was to cause Arab citizens to fail a "loyalty test" then the plan failed. If, on the other hand, Palmon's view really reflects a hope on the part of the government that masses of young men of conscription age would leave the country, then those hopes would also have been disappointed.

In the end the government decided in 1956 to conscript members of the Druze sect only.<sup>127</sup> This step encountered partial opposition, but most Druze accepted it eventually and enrolled in military service. In addition to opposition from members of the community itself, the attorney Muhammad Nimr al-Hawwari sided with the opposition and sent a letter to that effect in the name of a number of young men from Shafa 'Amr. But the relatively small number of members of the Druze community and the fact that some of them had been performing voluntary military service in the Israeli army since 1948 made it possible to separate them from the rest of the Arab population. Indeed, the fact that members of this sect serve in the Israeli army contributed to the widening of the rift between them and the Palestinian people. In this way the policy of divide and conquer scored a very important victory since the 1950s.<sup>128</sup>

No Israeli government after 1954 repeated the attempt to conscript Arab youth into the army. However, the fact that they did not serve continued to be used against them to justify discrimination in governmental budgets and services, and other individual and collective civil rights. The pioneering pessoptimists managed in the early 1950s to transcend the calamity of their conscription in the army. However, this issue has two sides: the views that dominated in Israeli leadership circles on one side, and the perspective of the Palestinians who remained on the other. The blatant contradiction between imposing military rule on the Arab population and attempting to conscript Arabs into the army is a perplexing issue needing study in depth. The same could be said of the enthusiasm of the Communist Party, with Tawfiq Tubi at the top, to conscript the Arabs into the Israeli army after 1949.

The Palestinians who remained overcame the ordeal of conscription into the Israeli army, first and foremost because the government and the army command backtracked in 1954. The conscription of thousands of young Arab men would have created a major dilemma for the military government and its policies. Therefore, the government of Moshe Sharett and Pinhas Lavon went back on its decision. However, the readiness of thousands in theory to serve in the military in 1954 reflects the weakness of the minority and its leaders who did not dare oppose that attempt publicly. Members of that minority which was still suffering from the shock of the Nakba and its aftereffects were not in a position to challenge and

engage in a clash. The main thing to which the remaining Palestinians aspired was to remain in the Arab villages and cities and prevent forced migration. This weakened minority managed to achieve its objective, and so today it is a strong community that is capable of defending itself and participating in the struggle of the Palestinian people for freedom and independence.