

## Administrative Detention Law for Arabs Only: Adding Insult to Injury

Since the establishment of the 37th government at the end of 2022, the State of Israel has been undergoing a regime revolution. Under Prime Minister Netanyahu's leadership, the government has been preparing the infrastructure for a shift to a full-fledged dictatorial regime. This infrastructure consists, among other things, of a long series of bills that infringe on democracy, human rights, and equality, and that are waiting for the moment when Netanyahu decides to finalize their legislation by a Knesset that is under his thumb. Where some of these bills are concerned, such a decision spells the transition to an authoritarian regime. In the meantime, these legislative proposals and other steps taken by the government, such as unprofessional appointments, attacks on the civil service, the takeover of the Israel Police, the prolongation of the war, and more, shape the public's consciousness and inure the population to life under a dictatorial regime.

This position paper was written in response to MK Simcha Rotman's bill proposing to amend the Emergency Powers (Detentions) Law-1979, which was discussed in the Constitution, Law, and Justice Committee on 1 January 2025.<sup>1</sup> The bill is intended to anchor in Israeli law a situation where only Israel's Arab citizens may be placed in administrative detention, thereby deepening the racial discrimination at the heart of the policy already practiced in Israel that leads to the mass detention of thousands of Palestinians (most of them residents of the Occupied Territories to whom the amended law would not apply anyway, as they are not Israeli citizens but rather subordinate to military law) but a mere handful of Jews.

Zulat's position is that Israel's use of administrative detention against all citizens/residents under its control should be abolished altogether. Not only does this policy discriminate against Palestinians on the pretext of security needs, but it is draconian and denies the most basic human rights to freedom and a fair trial.

\* English-language reference. All other references in this document are in Hebrew.

<sup>1</sup> [Bill on Emergency Powers \(Detentions\) Law \(Amendment: Administrative Detentions for Membership in Terror Organization-2024\)](#), Knesset National Legislation Repository, 3 April 2024.

The bill proposes to restrict the use of this measure only vis-a-vis Israeli citizens. It would not be possible to place Israeli citizens in administrative detention unless the Defense Minister had "reasonable grounds" to believe that the person was a member of a terrorist group appearing in the official list of organizations seeking to undermine Israel's existence or commit acts of terror against its citizens. The bill also proposes a fast-track process allowing the Defense Minister to add new organizations to the list.

The discussions on the bill come against the backdrop of the announcement by the new defense minister, Yisrael Katz, of his decision to stop issuing administrative detention orders against Jewish residents of the territories.<sup>2</sup> Not only does this shameless edict authorize the use of an abusive and draconian measure depriving a person of their freedom based on their identity, but it reaffirms the government's apartheid policy and its support for the anti-Palestinian crimes committed by the settlers in the Occupied Territories, particularly in light of the fact that it applies exclusively to them. Not only do Palestinians in the West Bank enjoy no protection from the settlers' terror and are placed in administrative detention by the thousands (as of December 2024, there were 3,428 Palestinian detainees),<sup>3</sup> but the decision to stop using this excessive measure is in no way relevant to them or to their rights and affects only the rights of the settlers living alongside them in the same area.

As elaborated further on in this document, the bill also seeks to ensure that this anti-democratic tool is used vis-à-vis Palestinians on a large scale, while almost completely limiting its use against Jews. Therefore, the proposed amendment does not address the fundamental problems of administrative detention, but only changes the restrictions on its use so that it applies differently to different populations.

### **Background: Administrative Detention as Repression Tool in Dictatorial Regimes**

Administrative detention, or the indefinite imprisonment of a person without trial, is an anti-democratic measure that violates the fundamental principles of a free society and denies the most basic human rights, first and foremost the rights to freedom and to a fair trial. Administrative detention is a central tool in dictatorial regimes and is considered one of the most problematic measures in a democratic system, as its use is almost entirely

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<sup>2</sup> Emanuel Fabian, Sam Sokol, and TOI Staff, [\\*Defense Minister Declares End to Administrative Detention Against West Bank Settlers](#), *The Times of Israel*, 22 November 2024.

<sup>3</sup> Unattributed report, [\\*10,221 'Security' Inmates Are Held in Prisons Inside Israel](#), *Hamoked Center for the Defence of the Individual* (data updated to January 2025).

devoid of any judicial oversight. It enables governments to employ severe modes of surveillance and suppression without being required to present suspects with the evidence against them, put them on trial, or allow them to challenge the charges given that the arrest is often based on confidential "intelligence information" that is not disclosed to the detainee's lawyer or legal representatives.

Administrative detention is often used to deter specific populations, especially if they are considered "hostile," oppose the government, criticize its actions, or are involved in protests, and enables their control and repression. This makes it a common tool in dictatorial regimes, where judicial oversight is minimal and the population's civil and political rights are severely violated.

Since 1967, Israel's military rule in the Occupied Territories has involved systematic and continued violations of the human rights of the Palestinian population. In the West Bank (excluding East Jerusalem), Israel regularly uses administrative detention orders issued by the IDF Central Command's chief (the military commander of the area) and routinely approved by military courts, and has over the years detained thousands of Palestinians for extended periods.<sup>4</sup> In contrast, the Emergency Powers (Detentions) Law, which is invoked against Israel's Palestinian citizens/residents (including East Jerusalem) and settlers, is used less frequently. For example, as of September 2024, some 43 Israeli Arab citizens and 26 residents of East Jerusalem were being held in Israeli prisons under administrative detention orders.<sup>5</sup> In contrast, only 10 settlers were placed in administrative detention over a seven-month period, from the start of the war on 7 October 2023 until May 2024.<sup>6</sup>

### **Danger: Discriminatory Use of Administrative Detention Against Palestinians To Be Anchored in Law**

As noted, the bill applies only to Israeli citizens/residents, and therefore does not in any way change the extreme and anti-democratic reality whereby military arrest warrants are used to permanently hold thousands of Palestinians in administrative detention and continuously deny them their freedom. On the contrary, legislation of the proposed bill

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<sup>4</sup> Unattributed article, [\\*Administrative Detention](#), *B'tselem Israeli Information Center for Human Rights in Occupied Territories*, undated.

<sup>5</sup> Hagar Shezaf, Jonathan Lis, and Noa Shpigel, [\\*Israel's Defense Chief: West Bank Settlers No Longer Subject to Detention Without Trial](#), *Haaretz*, 22 November 2024.

<sup>6</sup> Noa Shpigel, [\\*Bill to Bar Detention Without Trial for Jews Passes First Hurdle in Knesset](#), *Haaretz*, 3 July 2024.

would further exacerbate the harm to democracy and equality and deepen the government's apartheid policy, by limiting the use of this draconian tool against Israeli Jewish citizens (and leave it in effect vis-à-vis the occupied population) in order to prevent the administrative detention of settlers and instead pursue and even increase its use against Israeli Arab citizens.

According to the bill, it would not be possible to place in administrative detention or issue administrative restraining orders against any Israeli citizens, unless they belong to a terrorist organization listed in the appendix to the law whose goal is to undermine Israel's existence or commit acts of terror against its citizens. In other words, if the amendment is enacted, Arab citizens of Israel may potentially find themselves in administrative detention, whereas it is hard to imagine a scenario where this tool would be applied to Jewish citizens, whose crimes against Palestinians in the territories are not considered acts of terrorism by the state.

Hence, the proposed legislation does not only preserve the discrimination and repression in the Occupied Territories due to the existence of two separate legal systems, one for the Jewish settlers and another for the Palestinians, but also seeks to deepen and anchor in law the discrimination against Israel's Palestinian citizens/residents versus its Jewish citizens. Using whitewashed language and the pretext of the need to combat terrorism, the proposed law reflects an apartheid policy that would enable the draconian step of depriving a person of their freedom based on their identity. In addition, it signals to the settlers attacking and hounding Palestinians in the territories to force them to leave that their actions are not considered terrorism and need not be combatted.

This is also evident from Defense Minister Katz's decision in November 2024 to stop placing settlers in administrative detention because "in a reality where Jewish settlements in the West Bank face serious Palestinian terror threats and unjust international sanctions are imposed on settlers, it is not appropriate for the State of Israel to take such a severe step against settlers."<sup>7</sup> The decision came at a time when evidence is mounting that entire Palestinian communities are being expelled from the places where they reside and where their livelihood is because of the lack of legal enforcement against settler violence.<sup>8</sup>

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<sup>7</sup> See footnote #5.

<sup>8</sup> Oren Ziv, [Mapping Project: Dozens of Shepherd Communities Expelled During War](#), *Mekomit*, 7 November 2024.

Furthermore, the proposed legislation is likely to increase the use of administrative detention against Palestinian citizens/residents of Israel, as it not only permits their incarceration if the Defense Minister has "reasonable grounds to assume that a citizen of the State of Israel is a member of a terrorist organization" listed in the appendix to the law, but also allows him to add organizations to this list as the need arises. Although the bill notes that such an addition would require the approval of the Justice Minister and the Knesset's Constitution, Law, and Justice Committee, the Defense Minister would be authorized to temporarily add an organization for a period not exceeding 14 days, during which time he would be required to obtain the former's consent.

Finally, it is feared that due to the great weight given to security considerations and the anxiety about terrorist crimes, as well as the inherent discrimination against Palestinians, Israeli courts would approve the discriminatory policy of administrative detention of Israeli Arab citizens, despite the violation of the right to equality, on top of the infringement on other fundamental rights entailed in detaining a person without due process. For example, in two court hearings in the aftermath of Katz's declaration, the attorneys of two administrative detainees (an Israeli Arab citizen and a Palestinian resident of East Jerusalem) argued that their detention was discriminatory and therefore illegal, but the courts rejected this claim after state prosecutors contended that the Defense Minister had no intention of discriminating between Arabs and Jews in issuing administrative detention orders, and that each case would be examined on its own merits. However, the fact remains that Minister Katz brazenly declared the exact opposite, and that he even repeated his decision in public after the state's response was publicized.<sup>9</sup>

### **Zulat's Position: Total Abolition of Administrative Detention in Israel and in Occupied Territories**

Zulat categorically opposes a bill that discriminatorily and selectively applies the draconian tool of administrative detention to Palestinian residents of the West Bank and Palestinian citizens/residents of Israel in a way that deepens and perpetuates the government's racist apartheid policy.

Zulat's position is that administrative detention in Israel must be abolished altogether, as it is an extreme practice that severely violates the most basic human rights,

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<sup>9</sup> Hagar Shezaf, [Katz Announced Jews Would Not Be Placed in Administrative Detention, But Says Otherwise to Courts](#), *Haaretz*, 18 December 2024.

especially the right to freedom and the right to a fair trial, and is incompatible with the fundamental principles of a democratic regime.

Even in a reality where security threats are routine, no law permitting the use of administrative detention be accepted, neither in general nor against specific groups, nor even if defined as an extreme emergency measure, given that the use of emergency powers permitted under Israeli law has become fully normalized under security pretexts and is routinely approved by the Knesset and the courts.

To preserve Israeli democracy and human rights values, it is imperative to abolish the option of arrests not based on evidence and instead focus on law enforcement founded on standard criminal procedures, which protect the rights of suspects and defendants, including the elementary right to be informed of the charges against them and to fight them in court.

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