

A Life Exposed

Military invasions of Palestinian homes in the West Bank

FAQ



The police may enter homes in certain circumstances in Israel as well; what is the difference?

Entry into private homes by law enforcement agencies is normally a rare measure reserved for exceptional cases. The premise is that the home is one's castle, and entering it is a violation of privacy and personal security. For this reason, democracies abstain from intrusion into the private domain by state authorities as much as possible, generally conditioning such intrusion on obtaining a judicial warrant. Such a warrant is meant to serve as a barrier against arbitrary conduct by law enforcement agencies as well as frequent or unnecessary use of this exceptional measure. The grounds for granting an order to enter a person's private home tend to be extremely limited, allowing such entry only when it is necessary and when the purpose sought by it cannot be achieved by other means.

The legal framework that provides for invasions of Palestinian homes in the West Bank does not include any of the self-imposed restrictions democracies use to ensure the protection of individual rights. As a result, the routine practice of military invasions into Palestinian homes constitutes a severe violation of the rights to dignity and privacy, as well as various other human rights.

Under Israeli law, entry into a home by a police officer or other law enforcement agent for the purpose of a search requires the police to seek and obtain a warrant from a court. Searching without a judicial warrant is the exception to the rule and is reserved for exceptional circumstances. Judicial approval for a search is given based on the evidence and concrete information the police presents and in keeping with the grounds enumerated in the law.

Without external oversight, there is no separation between the party that makes the decision to search and the party executing the search. Therefore, the danger that the balance between the public interest in entering the house and the protection of its occupants' privacy would be broken, as well as the risk that power might be used based on extraneous considerations – become certain.

Military law governing the approval and execution of searches of Palestinian homes in the oPt reflects a completely different outlook. According to Section 67 of the Order

regarding Security Provisions, **no judicial warrant is required to authorize security forces to invade a private residence.** In other words, there is effectively no preliminary judicial oversight of the decision to conduct a search and the authorization given for it.

Moreover, military law empowers “any officer or soldier so authorized by an officer” to conduct searches, and the grounds and circumstances listed in Section 67 as justifying home invasions are general, vague and extremely broad. The Section also sets a very low bar of suspicion, meaning almost any act (and not just a criminal offense) can fall within its scope and serve as a justification to enter a home.

This translates into an alarmingly extreme and far-reaching power with no tangible restraints or external oversight, to the point of constituting an absolute power for all intents and purposes. Inevitably, this power is used to disproportionately and arbitrarily infringe on the dignity and privacy of Palestinians whose homes are invaded by military forces.



You argue that home invasions hurt Palestinians, but if the military stops them, how can it prevent terrorist attacks?

Our demand is for the rule to be that home invasions for the purpose of searches would be conducted subject to a judicial warrant, barring well-defined exceptions in which immediate entry is imperative and precludes seeking a court order. Obviously, invading a home to stop a terrorist attack would fall within the scope of these imperative exclusions that would allow security forces to enter a home without a judicial warrant.

The current reality in the West Bank is that security forces abuse the power they are granted, and home invasions are carried out for a variety of reasons and needs, while many of them are not designed to thwart terrorist attacks or avert immediate danger. The military uses the permissive legislation on invading the private domain to conduct searches **in cases in which there is no concrete suspicion regarding the home.** For instance, routine military patrols in Hebron may include random raids on homes, during which soldiers might perform a superficial search of the house.

Mapping invasions are also usually conducted in the homes of individuals who are not suspected of anything. These are operations the military conducts routinely to gather general intelligence rather than address a specific suspicion. Soldiers who gave testimony to Breaking the Silence did not know whether information collected during mapping operations was saved at all, and if it was – how; nor could they recall using such information during home invasions conducted for other purposes. On the other hand, many stated these operations are actually designed to “make the military’s presence felt,” create a threat and a “sense of persecution” among the families and communities whose homes the soldiers invade. In certain cases, mapping is used to deter

Palestinians from participating in events such as protests, stone-throwing or clashes with soldiers, and even to push a community to put pressure on some of its members.

The circumstances in which a home search may be approved are defined in the Order regarding Security Provisions so broadly that they cover nearly every scenario. The Order lists some general, vague grounds but does not necessarily require a suspected offense as grounds for a search. For instance, searches are allowed if a place has been used in a manner harmful to public order, a phrase that covers a wide range of activities and is subject to interpretation. In addition, the Order stipulates no requirement for reasonable suspicion that one of the activities meriting a search has taken place, citing a less onerous requirement that “there may be reason to suspect” or “there is reason to suspect” such activities in order to permit a search.



So what are you actually proposing?

Home invasions are a direct outcome of the Israeli occupation, which means controlling a civilian population of millions. This control effectively relies on a plethora of practices that violate Palestinians’ rights and liberties. There is no doubt that the only way to ensure Israel stops violating Palestinians’ human rights is to end the occupation.

Until the occupation ends, we believe a legal framework that forces the military to reduce home invasions and use this injurious practice only when absolutely necessary and no alternative is available must be put in place.

First and foremost, we believe **military law must be amended** to include judicial review over home invasions and reduce the circumstances in which security forces may invade Palestinian homes. These measures would inherently somewhat reduce the scope of home invasions, if only because commanders who seek to invade a home would have to cite the reasons the act is required and present evidence to a judge.

We also believe that the military must give due regard to the harm inflicted on Palestinian children and adults, men and women, when considering such actions. In cases in which the potential harm outweighs the benefit to be gained by the invasion, there is no justification to proceed with it.



The West Bank is under a regime of military occupation. It is not a democratic country. Therefore, there is no room to make a comparison to the standards of a democracy.

Although the West Bank is under a regime of military occupation, the occupation has now been in place for 53 years and shows no sign of ending any time soon. Millions of

people live under this regime, exposed to harm on a daily basis, which is why military law should, in fact, must be adjusted to protect their rights.

Palestinian residents of the West Bank are born, live and die in a reality in which officers or soldiers empowered by officers, many of them young and nearly all of them lacking any legal education, have the power to enter private homes and conduct searches without any concrete suspicions against members of the household and based on extremely broad and vague grounds.

Even if a legal approach that permits searches without judicial review can be condoned during a short-term occupation, as the occupation continues, the obligations prescribed in international humanitarian law (Art. 43 of the Hague Regulations) mandate that entry into homes be pursued in a manner that fulfills the proportionality requirement and the prohibition on arbitrariness through the inclusion of a basic requirement for judicial search warrants.



If the military entered Palestinian homes with a judicial warrant, would you condone military invasions? Wouldn't that help Israel portray the occupation as benevolent, or as Israelis call it, an enlightened occupation?

The Israeli occupation of the West Bank (or any other military control over another nation) will never be benevolent. A regime of this kind inevitably violates the rights of the occupied and oppresses them, as it cannot sustain itself otherwise. As human rights organizations, our work is dedicated to defending Palestinians' human rights and helping to curb their violation. We believe judicial review meaning the military would have to explain the need for each and every invasion and the considerations it made to a judge, would have a mitigating effect. Commanders would think twice before asking a judge for a warrant, and judges (military judges included) certainly won't approve every request, even if they do approve many. This will reduce the number of arbitrary home invasions and the number of individuals they hurt.

Additionally, presenting a warrant would reduce the uncertainty and anxiety members of a household experience as a result of an invasion and may eliminate some of the potential damage.



Why do you argue the invasions are a violation of international law if there is no explicit prohibition on them?

International law prohibits arbitrary impingement on the rights of individuals living under occupation and establishes that any such violation may be permissible only if it is proportionate, that is, based on concrete suspicion, serves a proper purpose, and has the narrowest possible effect. Reality in the West Bank is a far cry from the standards

established by international legal institutions, and it allows arbitrary and disproportionate violations of the dignity and privacy of Palestinians in the West Bank. As such, this permissive system set up in military law results in the abdication of the duties of the occupying power under international law to ensure public order and safety in the area under its control, a duty that includes preserving normal life for the occupied population and protecting its members' fundamental rights. These legal provisions fail to meet the requirements of the laws that give the military commander the power to legislate and act in the occupied territory in the first place. In other words, this legislation violates norms of a higher order.

In addition, all legal systems have adopted the norm that searches of private premises require obtaining a judicial warrant. According to the statute of the International Court of Justice, the "general principles of law recognized by civilized nations" are a major source of international law.



Why do you refer to soldiers' entering a home as an "invasion"?

An invasion is an intrusion into a specific space by force and without permission. Israel treats such incidents as lawful and legitimate acts, and as such, not as invasions but as entries into homes performed as part of the sovereign's rights and duties. The legal term that appears in military law is "entry." The term invasion has been selected for two reasons: First, it expresses both the fact that military law allows arbitrary intrusion into Palestinian homes in the West Bank (in other words, intrusion that cannot be justified on grounds that it fulfills an imperative, substantiated need), and the reality that the military uses this power. Second, from the occupants' perspective, the forced invasion of their home is a tangible expression of the control the occupation powers have over their lives and another tool of oppression.



You say that the fact that settlers are protected by Israeli law and Palestinians are not is discrimination, but settlers are Israeli citizens and Palestinians are not.

Human rights, like the right to dignity, the right to privacy, the right to health and the right to due process, are, as the name suggests, human rights, meaning everyone is entitled to them regardless of citizenship status. Unlike civil or political rights, which are granted to citizens of the country only, human rights have a broader reach and are designed to protect individuals who do not have citizenship status as well.