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16 November 2015

## **Factsheet: Force-feeding under International Law and Medical Standards**

Palestinian detainees and prisoners have resorted to hunger strikes as early as 1968 in legitimate peaceful protest to Israeli detention policies and cruel detention conditions including the use of solitary confinement, denial of family visits, inadequate medical treatment and torture and other forms of cruel, inhuman or degrading treatment. Through hunger strikes, Palestinians were able to guarantee basic and fundamental rights and to improve their detention conditions. A significant portion of current rights that Palestinian prisoners have in Israeli occupation's prisons were obtained through hunger strikes. Since the 1990s, Palestinian prisoners have resorted to hunger strikes as means to protest Israeli arbitrary use of administrative detention.

In response to the use of hunger strikes by Palestinian prisoners and detainees, Israeli authorities practiced force-feeding during the 1980s. It was subsequently ceased by order from the Israeli High Court following several deaths of Palestinian prisoners resulting from force-feeding. Nevertheless, the legal applicability of force-feeding was reinstated several years later, following a proposal for a legislation in 2012 by the Israeli minister of Public Security Gilad Erdan. The proposal was initiated in response to the mass hunger strike of 2012 with the purpose of putting an end to future hunger-strikes and depriving Palestinian detainees and prisoners from their fundamental right to peaceful protest, and was approved by the Israeli Knesset on the 30<sup>th</sup> of July 2015.<sup>1</sup>

The policy of force-feeding has been practiced in various contexts in geographic scope and history, where hunger strikes became the prominent method to protest ill treatment, injustice and human rights violations in cases where individuals are deprived of liberty.

### **Modern History of Hunger Strikes and Force-feeding**

Hunger strikes have been used by political prisoners around the world to oppose prison policies, and violations to their basic rights, and treatment incompatible with their human dignity in various contexts. Hunger strikes and force-feeding were used as early as 1897 in the context of the British Suffragettes movement, where the British government resorted to force-feeding through the use of a stomach pump, a tube in the stomach, or a nasal tube against hunger-striking British women

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<sup>1</sup> To see the proposed bill follow this link: [http://fs.knesset.gov.il/19/law/19\\_ls2\\_pb\\_306487.pdf](http://fs.knesset.gov.il/19/law/19_ls2_pb_306487.pdf)

imprisoned for political activism demanding women's right to vote.<sup>2</sup> The role of hunger strikes as a form of protest and resistance for political prisoners was further reaffirmed by Irish republicans in Northern Ireland. Irish republican prisoners launched a hunger strike in 1972 which resulted in the introduction of the Special Status Category allowing them to be treated similarly with prisoners of war. Further strikes by the Irish republicans were launched in 1980 and 1981, aiming to regain the Special Status Category of which the British Government had deprived them. Ten prisoners had died as a result to the hunger strike in the summer of 1981, including MP Bobby Sands, who was elected to the membership of Parliament during the strike.<sup>3</sup>

Like recent hunger strikes by Palestinian prisoners and detainees, the strikes in Guantanamo bay mainly protested indefinite detention without charge or trial, which Guantanamo Bay had become notorious for. In April 2002, it was reported that the force-feeding of two prisoners who had been on hunger strike for a month had taken place.<sup>4</sup> This reportedly involved a tube being placed into their noses and through their throats, after which a thick fluid was flown into their stomachs.<sup>5</sup>



Photo credit: Al Jazeera America, 2014, from Chantal Valery / AFP/ Getty Images

In the earliest known cases of force-feeding in Guantanamo Bay however, the victims had been sedated rather than restrained as in the case of the more recent strikes. By September 2005, a reported 200 prisoners in Guantanamo Bay went on hunger strike in protest of being held without

<sup>2</sup> C. N. Trueman, Force-feeding of Suffragettes, August 2009. Available at <http://www.historylearningsite.co.uk/the-role-of-british-women-in-the-twentieth-century/force-feeding-of-suffragettes/>

<sup>3</sup> Hunger Strike of 1981-A chronology of main events, CAIN Web Services: <http://cain.ulst.ac.uk/events/hstrike/chronology.htm>

<sup>4</sup> Carol Rosenberg, 2 held at base prison fed by force; *They refused food 30 days, 1 April 2002. Miami Herald.* Available at <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1958943.html>

<sup>5</sup> Ibid.

trial and of the conditions of their detainment.<sup>6</sup> The force-feeding which followed resulted in the use of special chairs in December 2005 to thwart the detainees from vomiting the force-fed nutrition<sup>7</sup>. For most hunger-strikers, force-feeding occurred multiple times throughout the day to compensate for the meals the prisoner would refrain from receiving. Tubes that had been used were noted by the Special Rapporteur on Torture upon his visit to Guantanamo bay on 27 February 2006 to be thicker than a finger on some occasions. The tube would be inserted through the nose, causing some of the detainees to bleed or to vomit blood.<sup>8</sup> The Special Rapporteur on Torture reminded the authorities that “it is not acceptable to use threats of force feeding or other types of physical or psychological coercion against individuals who have opted for the extreme recourse of a hunger strike.”<sup>9</sup>

According to the records of Addameer’s Research and Documentation Unit, Palestinian detainees and prisoners have resorted to mass and individual hunger strikes to protest the policies applied against them in Israeli prisons since as early as 1968 in order to improve the living conditions inside prisons and detention centers. At the time of earlier hunger strikes, Israel practiced force-feeding of hunger-strikers in order to coerce detainees to end to their hunger strikes without any legislation to regulate this measure. Several Palestinian prisoners have died as a result of being subjected to force-feeding. These include Abdul-Qader Abu al-Fahm who had died on 11 May 1970 during a hunger strike in Ashkelon prison, Rasem Halawah and Ali al-Ja'fari, who died following the insertion of the feeding tubes into their lungs instead of their stomachs in July 1980 during a hunger strike in Nafha prison, and Ishaq Maragha, who died in Beersheba prison in 1983.

Former Palestinian detainee Moussa Sheikh, who participated in a mass hunger strike carried out by Palestinian detainees in 1970, described the procedure in an interview with Middle East Eye as follows:

*“The prisoner enters the room handcuffed and legs shackled.*

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<sup>6</sup> Neil Lewis, Guantánamo Prisoners Go on Hunger Strike, *18 September 2005. New York Times*. Available at <http://www.nytimes.com/2005/09/18/politics/guantanamo-prisoners-go-on-hunger-strike.html>

<sup>7</sup> Eric Schmitt and Tim Golden, Force-Feeding at Guantánamo Is Now Acknowledged, 22 February 2006. Available at <http://www.nytimes.com/2006/02/22/international/middleeast/22gitmo.html>

<sup>8</sup> Jacobs, P., Force-feeding of Prisoners and Detainees on Hunger Strike, Tilburg University, 2012, p.157

<sup>9</sup>Statement of the United Nations Special Rapporteur on torture at the Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay, 3 October 2013:  
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&>

*There are two police officers on either side of the prisoner, who terrorize him physically and mentally. They poke him harshly in the ribs and on the back of the neck, talking the whole time in a way that is meant to break the prisoner's spirit, saying things like 'you are practically dead now.' The prisoner is tied to a chair so that he can't move. The doctor then sticks the tube up the nose of the prisoner in a very harsh way.*

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*When it was done to me, I felt my lungs close as the tube reached my stomach... I almost suffocated. They poured milk down the tube, which felt like fire to me. It was boiling. I could not stay still and danced from the pain.”<sup>10</sup>*

### **The Law to Prevent Harm Caused by Hunger Strikers: an Amendment to the Israeli Prisons Act**

The latest amendment to the Israeli Prisons Act entitled "Law to Prevent Harm Caused by Hunger Strikers" was presented for the first time in June 2014 by Gilad Erdan, who served as the minister of Internal Affairs at the time. The bill was approved by the Israeli Knesset on 30 July 2015. This amendment permits the force feeding of hunger-striking prisoners upon a request submitted by the Israeli Prison Service (hereafter IPS), after seeking the approval of the Attorney General of Israel or a district attorney he authorizes to approve such requests, to the president of an Israeli District Court or his deputy<sup>11</sup>. The legislation was proposed by the Israeli minister of Public Security Gilad Erdan and went through three draft readings since 9 June 2014. It was finally passed by the Knesset with 46 votes in favor and 40 against in the aftermath of numerous individual and collective hunger strikes initiated by Palestinian detainees and prisoners in recent years.

The approved bill authorizes the Israeli District Court to approve and instruct the force-feeding of a hunger-striking prisoner, or to provide the prisoner with forced medical treatment as stated in the law itself, without his or her consent. While the legislation claims the intended purpose of the force-feeding is avoiding life threatening harm or irreversible damage to the prisoner and the IPS's responsibility to protect the life of the prisoner, the legislation allows the District Court to factor in its decision on the force-feeding request the state's security, public safety and the threat the hunger strike poses to a person's life. The legislation further allows for the hearings to decide on the request to be held in closed court sessions in which the discussion can be based on 'secret

<sup>10</sup>Linah al-Saafin, Middle-East Eye. "I was force-fed by in the 70's: This is my story", <http://www.middleeasteye.net/news/former-palestinian-prisoner-recounts-experience-force-feeding-45-years-ago-2078639559>

<sup>11</sup> See article 19 JC (a) of the Law to Prevent Harm Caused by Hunger Strikers, 2015

evidence' that is not accessible by the prisoner and his or her attorney, in accordance with article 19 d (IE). The closed court sessions, during which the court renders its decision, therefore, implement a practice that administrative detainees have protested against in their hunger strikes – **the use of secret evidence**. Administrative detention orders are issued by the military administration in the oPt and are reviewed and approved based on a 'secret file' that neither the detainee nor his or her legal representative have access to, which violates the right to a fair trial as enshrined in articles 14 and 16 of the ICCPR.

The force-feeding bill complements the capacities that are enjoyed by clinicians and clinical facilities in charge of the treatment of hunger striking prisoners as stipulated in the provisions of the Patient's Rights Act of 1996. The Patient's Rights Act states in article 13(A) that "No medical care shall be given unless and until the patient has given his informed consent to it." The act restricted the exceptional medical procedures that can be taken without the informed consent of a patient to a number of conditions. Article 15(1) also affirmed:

*"A clinician may give medical treatment that is not one of the treatments enumerated in the Supplement to this Act without the informed consent of the patient, if all the following conditions are met:*

- (a) The patient's physical or mental state does not permit obtaining his informed consent;*
- (b) The clinician has not been made aware that the patient or his legal guardian objects to his receiving medical treatment;*
- (c) It is impossible to obtain the consent of the patient's representative, should such a representative have been appointed under Clause 16 of this Act, or of the patient's legal guardian, where the patient is a minor or an incapacitated person."<sup>12</sup>*

However, the Patient's Rights Act had provided a capacity for the physicians to proceed in treatment without the informed consent of the patient. Article 15(2) states that:

*"Should the patient be deemed to be in grave danger but reject medical treatment, which in the circumstances must be given soon, the clinician may perform the treatment against the patient's will, if an Ethics Committee has confirmed that all the following conditions obtain:*

- (a) The patient has received information as required to make an informed choice;*
- (b) The treatment is anticipated to significantly improve the patient's*

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<sup>12</sup> Translation by Addameer

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*medical condition;*

*(c) There are reasonable grounds to suppose that, after receiving treatment, the patient will give his retroactive consent.”<sup>13</sup>*

The recent legislation amending the Israeli Prisons Act, amendment 48/2015, broadens the authority of the IPS in relation to medical procedures for prisoners and raises several practical and legal concerns. As mentioned earlier, the legislation went through three draft readings which involved amendments and added sections to the force-feeding bill. One of the main amendments to the first draft of the proposed legislation was banning the application of force-feeding in prison clinics and requesting it to be implemented in a hospital. Another amendment was the allegation that the force-feeding, or “forced treatment” as referred to in the law itself, is implemented to prevent harm or irreversible damage to the prisoner as a result of the hunger-strike. The second draft also included subjecting force-feeding requests to review by an ethics committee in the hospital where the prisoner is held. However, the district court is allowed under the legislation to bypass the ethics committee review in “urgent cases”. Moreover, decisions from ethics committees in previous hunger strikes have proved to be not in favor of the prisoners as they have allowed the forced treatment and forced medical examinations of several hunger strikers both prior to and subsequent of the new legislation.

The Israeli Knesset also made several amendments to the second draft the most important of which was allowing the force-feeding to be administered by a ‘*metapel*’ (Hebrew for therapist) and not only a doctor. In defining who is a therapist that may administer force-feeding, the Israeli Prisons Act referred to the definition of *metapel* as defined under the Patient’s Rights Acts of 1996 which defined a *metapel* as “a person giving treatment including medical analysis, preventative medical treatment, psychological treatment, therapists who provide treatment for persons with disabilities.” The Patient’s Rights Acts then listed the following to be individuals who qualify as *metapel*: doctors, dentists, medical trainees, nurses, midwives, psychologists, physiotherapists, occupational therapists, speech therapists, nutritionists, clinical criminologists, podiatrists or any person authorized by the Israeli Ministry of Health to become a *metapel*. In practice this allows the IPS to get around the Israeli Medical Association’s refusal of force-feeding and thus implement the practice without hindrance.

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<sup>13</sup> Translation by Addameer

Furthermore, the third draft removed limiting the use of force-feeding in “governmental hospitals” and allowing its use in any “hospital”. In practice this means force-feeding can be administered at private hospitals which are subjected to less governmental supervision and are arguably more likely to respond to business demands, with little heed to human rights standards or state-based accountability mechanisms. Administering force-feeding in private hospitals not only subjects the process to limited supervision from the relevant Israeli governmental bodies, but can also place obstacles before holding governmental officials accountable for the process in addition to allowing greater space for abuses to take place. Furthermore, there are no provisions in the final draft approved by the Knesset to prevent hospital administrations from requesting the IPS doctors to administer the force-feeding should the doctors and nurses in the hospital refuse administering the force-feeding. A similar amendment was made whereby any physician can administer the force-feeding and not only “governmental doctors”. Although the legislation barred administering the force-feeding in IPS medical facilities, it never placed any limits on IPS doctors from administering it in private or governmental hospitals upon request.

Moreover, the new legislation grants immunity to physicians and prison security staff who carry out force-feeding or participate in the application of these orders and protects them from criminal and civil liability according to paragraph 19 XVII. As long as the force-feeding has been decided by a district court, the victim cannot even seek compensation for any physical or mental damages which result from it unless a damage was intentionally caused by the person who carries out the procedure. This provision is of a decorative value as it depends on the proof of ill intentions of the physicians in charge of force-feeding hunger striking prisoners, an element that cannot be proven without difficulty in a court of law.

### **The Political Objectives of the Force-feeding Bill**

Overall, the legislation complements a system of systematic discriminatory and abusive laws and regulations applied to Palestinian prisoners and detainees held in Israeli detention centers and prisons. Furthermore, the legislation at hand should be taken in consideration along with other laws and regulations targeting participants in hunger strikes such as the Israeli Internal Prison Regulation (IPR) No. 00/16/04 which was issued specifically for the treatment of hunger-strikers and grants security units in prisons broad authorities in order to put hunger-strikers under control. IPS regulations do not consider the participation in a hunger-strike to be a right and approach such an action as an act of rebellion that requires disciplinary measures, including raids of the prisoner cells and conducting mass search operations of prisoners' rooms, placing hunger strikers in solitary

confinement, banning family members from visiting detainees and, previously, subjecting hunger strikers to fines.

Despite the claim that the latest amendment was issued in order to preserve the lives of hunger striking detainees, the bill was approved by the Knesset because of the political objectives that it serves. The main objective of the legalization of force-feeding is providing the Israeli government with an escape route that allows it to put an end to hunger strikes while avoiding meeting the demands of the hunger striking detainees. Additionally, force-feeding hunger striking prisoners also allows the Israeli state to avoid the deaths of detainees and prisoners which might spark an uprising in the Occupied Palestinian Territories and further instability in Palestine. This motivation was clearly emphasized by attorney Yoel Adar, the legal advisor to the Ministry of Public Security. When asked how hunger strikes can harm the public, Adar answered: **“If he [hunger striker] dies in prison, it causes riots, in prison, in Judea and Samaria [the West Bank], in Palestinian territories. This has a definite implication on Israel”**<sup>14</sup>.

The claim that the force-feeding bill is issued for the purpose of preserving the lives of hunger striking prisoners is a manipulative statement that can be thwarted by reviewing the history of medical negligence in Israeli prisons and detention centers where Palestinians are being held. Palestinian prisoners and detainees who suffer from ailments have become familiar with the institutionalized policy of medical negligence as practiced by Israeli medical staff and medical clinics that treat Palestinian detainees. The IPS medical staff have become notorious for prescribing painkillers to every patient that is treated in IPS clinics. This medical negligence policy has caused the death of at least 53 Palestinian detainees and prisoners since 1967. Additionally, Palestinian prisoners who suffer from extremely dangerous ailments are sometimes released shortly after their medical condition reaches the level of irreversible damage and are often subsequently restricted from leaving the country to pursue medical treatment abroad for ‘security reasons’.<sup>15</sup> The purpose of the force-feeding bill is to eliminate Palestinian prisoners’ sole means of peaceful protest with the aid and approval of the IPS medical staff whose loyalty is preserved for the detaining authorities and its considerations. Considering the history of medical negligence in Israeli prisons and detention centers, the Palestinian Human Rights Organizations Council (PHROC) reaffirms that IPS medical

<sup>14</sup> Interview with Yoel Adar, legal advisor to the Israeli Ministry of Public Security, Israeli Chanel 10, 3 March 2014.

<sup>15</sup> For more information, see: Addameer’s annual report of the violation of the rights of prisoners in Israeli prisons, 2013, Ramallah, Palestine (Arabic source), P.23, 105, 112.



staff and physicians are not doctors or nurses that are chosen by the detainee nor trusted by him/her, nor have they formed relationships based on the respect of medical ethics.

### **Force-feeding in International Human Rights Law**

General United Nations documents and treaties do not explicitly refer to the issue of force-feeding. However, the amount of pain and suffering, as well as the subjection to a medical procedure without the consent of the prisoner or detainee, may deem force-feeding to be an act of torture or cruel, degrading and inhuman treatment and a violation of obligatory international legal instruments such as the **International Covenant for Civil and Political Rights** which prohibits torture and reaffirms that "no one shall be subjected without his free consent to medical or scientific experimentation", as well as the **Convention Against Torture** which states in **Article 2 (2)** that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be revoked as a justification of torture". Additionally, force-feeding is a violation of **article 12** of the **International Covenant of Economic, Social and Cultural Rights**. The Committee on Economic, Social and Cultural Rights (CESCR) has elaborated that consent is an aspect of the right to health in **General Comment 14** which focused on **article 12** of the Covenant. The CESCR explained that:

*"The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."*<sup>16</sup>

### **Force-feeding in International Humanitarian Law**

The Geneva Conventions should be taken in consideration when studying the issue of force-feeding within the Palestinian context. **Common Article 3 (1)** of the Conventions assures that persons who are not taking part in hostilities, including members of armed forces who have let down their weapons and those incapable of participating in combat for any reason –including detention – are

<sup>16</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), OHCHR, August 2000, (E/C.12/2000/4)

to be treated humanely and with dignity. **Article 3(1)** goes on to prohibit the following actions carried out against said persons:

- a) *Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- b) *Taking of hostages;*
- c) *Outrages upon personal dignity, in particular humiliating and degrading treatment;*
- d) *The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as dispensable by civilized peoples.*

**Common Article 3**, as well as the Third Geneva Convention that is specialized in the treatment of prisoners of war, have been cited in the arguments against the force-feeding of hunger striking detainees held in Guantanamo Bay, which served to argue the illegality of the practice.<sup>17</sup> However, the US has evaded accountability for the severe violations taking place in Guantanamo Bay by placing the detention center outside US territory in order to circumvent accountability under the laws applied on the US mainland.

Taking into consideration the amount of pain, and the possibility of death and irreversible physical damage that results from force-feeding, the practice may amount to an act of torture. Thereof, the application of force-feeding against Palestinian hunger strikers poses as a violation to the Geneva Conventions, particularly, article 32 of the Fourth Convention and article 75 (2)(a) of the First Additional Protocol to the Conventions. Within the same context, force-feeding, as an act of torture, fulfills the requirements to being considered as a **Crime Against Humanity and a War Crime** in accordance with articles 7 and 8 of the Rome Statute.

### **Force-feeding from the Perspective of the ICRC and the United Nations**

The International Committee of the Red Cross (ICRC) has traditionally taken a stance in favor of hunger strikers and sought to play the role of mediator between the striking prisoner and the detaining authorities. Furthermore, the ICRC opposes force-feeding and clearly states that:

*“[I]t is essential that the detainees' choices be respected and their human dignity preserved. The ICRC's position on this issue closely corresponds to that expressed by the World Medical*

<sup>17</sup> See articles 17 and 87 of the GCIII

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*Association in the Malta and Tokyo Declarations, both revised 2006. The latter states: 'Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.'*"<sup>18</sup>

The UN issued a joint statement on 8 August 2015 specifically to address the new Israeli legislation aimed at legalising the force-feeding of Palestinian hunger strikers. The statement reads: "The principle of an individual's right to informed and voluntary refusal of medical measures is reiterated in several basic United Nations human rights documents where lack of free and informed consent is considered a clear violation of an individual's right to health."<sup>19</sup> The statement further stated:

*"We emphasize the importance of working towards improving health and human rights conditions of Palestinian prisoners in line with international standards. The practice of administrative detention is incompatible with international human rights law and should be ended. All detainees should be promptly charged or released."*<sup>20</sup>

The joint statement issued by the UN on 8 August is of utmost importance as it recognized the illegitimacy of force-feeding and Administrative Detention under International Human Rights law and called for the release of all detainees or charging them before a court of law. Additionally, the statement reflects the legitimacy of the demands of hunger striking detainees who object to Administrative Detention.

Furthermore, United Nations human rights experts have recognized the amendment to the law as deliberately targeting Palestinian detainees on hunger strike. The **UN Special Rapporteur on Torture** Juan E. Méndez commented that "feeding induced by threats, coercion, force or use of physical restraints of individuals, who have opted for the extreme recourse of a hunger strike to

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<sup>18</sup> Hunger strikes in prisons: The ICRC's position: <https://www.icrc.org/eng/resources/documents/faq/hunger-strike-icrc-position.htm>

<sup>19</sup> UN joint statement on new Israeli law on force-feeding of detainees -OCHA, OHCHR and WHO joint press release, 8 August 2015:  
<http://unispal.un.org/unispal.nsf/47d4e277b48d9d3685256ddc00612265/b41ea3d4f402e0e485257e9d004c41ee?OpenDocument>

<sup>20</sup> Ibid.

protest against their detention, are, even if intended for their benefit, tantamount to cruel, inhuman and degrading treatment.”<sup>21</sup>

The statement went further to quote Mr. Dainius Pûras, the **UN Special Rapporteur on the Right to Health**, as saying: “Under no circumstance will force-feeding of prisoners and detainees on hunger strike comply with human rights standard... Informed consent is an integral part in the realization of the right to health”. The statement was concluded with a request made by UN experts that Israel refrains from force-feeding hunger-strikers and “other coercive measures”. Instead, the statement encouraged alternative methods to resolve the “extreme situations” that had resulted from hunger strikes, including “good faith dialogue”.<sup>22</sup>

### **Relevant Case Law on Force-feeding**

While practicing its judicial capacities, the European Court for Human Rights (ECHR) has reviewed multiple cases that involved hunger striking detainees. A number of these cases involved force-feeding to terminate hunger strikes. Due to the fact that force-feeding was not particularly addressed in international and regional legal instruments, the court based its decisions on article 3 of the European Convention for Human Rights which prohibited the use of torture.

The ECHR approved of the force feeding of a hunger-striking prisoner in the case of ***Nevmerzhitsky v. Ukraine*** in 2005. The court affirmed that “... a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The same can be said about force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food.”<sup>23</sup> In the same case, the court went on to state that the “**manner in which the applicant is subjected to force-feeding during the hunger strike shall not trespass the threshold of a minimum level of severity envisaged by the court's case law**”. According to the court, the minimum level of severity is relative and can vary from one case to another depending on the circumstances. The court's opinion on this matter was further reaffirmed in the case of ***Özgül v. Turkey*** where it stated that “they [the defendant] had then acted in the applicant's interest, with the aim of preventing irreversible damage”.<sup>24</sup> The court decided that for

<sup>21</sup> UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention, 28 July 2015: <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E>

<sup>22</sup> Ibid.

<sup>23</sup> “Hunger Strikes in Detention”, European Court of Human Rights, May 2015, [http://www.echr.coe.int/Documents/FS\\_Hunger\\_strikes\\_detention\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hunger_strikes_detention_ENG.pdf)

<sup>24</sup> [http://hudoc.echr.coe.int/eng/?i=001-79776#{"itemid":\["001-79776"\]}](http://hudoc.echr.coe.int/eng/?i=001-79776#{)

force-feeding to take place without constituting an act of torture, the defendant has to prove the existence of three conditions: 1) medical necessity; 2) the procedural guarantees for the decision to force-feed are complied with and; 3) the feeding is not conducted in a manner that is degrading or inhuman. The inability of the government of Ukraine to prove the existence of any medical necessities to force-feed the detainee and its failure to respect the procedural guarantees led the court to decide that in the case *Nevmerzhitsky v. Ukraine* force-feeding constituted an act of torture.

Moreover, the ECHR examined the case of *Ciorap vs. Moldova*. In the light of the internal regulations of prison authorities in Moldova, which view hunger strikes as a disorderly conduct, the purpose of force-feeding was viewed by the ECHR as “not aimed at protecting his [the applicant’s] life but rather at discouraging him from continuing his protest.”<sup>25</sup> Although the court clarified its stance as being in favor of saving the applicant's life, the court did not deem a state's lack of reaction to the condition of a hunger-striker's health after 115 days on hunger strike as a violation of **Article 3 (Right to Life)** of the European Covenant of Human Rights in the case of *Pandjigidzé and Others v. Georgia*. In this case, the court reportedly stated that “even though his [the applicant's] state of health must have declined, it did not appear from the case file that his life had been exposed to an obvious danger as a result of the authorities’ attitude, and therefore that force-feeding would have been justified by any ‘medical imperative’.”<sup>26</sup>

In light of these court decisions by the ECHR, it could be concluded that the court deems the act of force-feeding of hunger strikers a justifiable action, **only if it meets the conditions explained previously**. On the other hand, there is no obligation on the state to resort to such means to save the lives of hunger strikers. This conclusion can be further reaffirmed by reviewing the case of *Horoz v. Turkey*. In this case, the court stated that the lack of action by the state of Turkey to save the life of the applicant's son, who was on hunger strike, did not amount to a violation of **Article 2 (Right to life)** of the **European Convention of Human Rights** since “it had been impossible to establish a causal link between the refusal to release him and his death”.<sup>27</sup>

<sup>25</sup> ECHR 19 June 2007, *Ciorp vs. Moldova*, App. No. 12066/02

<sup>26</sup> [http://hudoc.echr.coe.int/eng?i=001-76422#{\"itemid\":\[\"001-76422\"\]}](http://hudoc.echr.coe.int/eng?i=001-76422#{\)

<sup>27</sup> For more information the ECHR’s stance towards force-feeding and hunger strikes see: Factsheet- Hunger Strikes in Detention, European Court of Human Rights, May 2015:  
[http://www.echr.coe.int/Documents/FS\\_Hunger\\_strikes\\_detention\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hunger_strikes_detention_ENG.pdf)

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## **Force-Feeding in 'Soft Law' and International Medical Documents**

Other legal instruments that constitute 'soft law' have addressed the role of physicians and medical staff in the treatment of prisoners. Although the **Standard Minimum Rules for the Treatment of Prisoners (SMR)** and the **Principles of Medical Ethics** do not address the issue of force-feeding directly, the said documents are concerned with behaviors of the detaining authority and the concerned medical staff that are of considerable relevance to the force-feeding of hunger-striking prisoners. **Article 33** of the **SMR** states that legitimate restraining tools should not be used as a form of punishment and that other instruments should only be used in exceptional circumstances such as medical necessity. **Article 34** states that such tools should only be applied for as long as necessary.

Furthermore, sections 63 and 64 of the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, emphasizes the importance of informed consent when receiving medical treatment. Section 63 states:

*"An absolutely fundamental precept of modern medical ethics is that patients themselves are the best judge of their own interests. This requires health professionals to give normal precedence to a competent adult patient's wishes rather than to the views of any person in authority about what would be best for that individual... Nurses and doctors are expected to act as an advocate for their patients, and this is made clear in statements such as the World Medical Association's Declaration of Lisbon and the International Council of Nurses' statement on the Nurse's Role in Safeguarding Human Rights ..."*

On the other hand, the Principles of Medical Ethics, in **principle No. 5**, underlines the obligation for doctors and physicians not to partake in restraining prisoners unless it is medically necessary and does not pose a hazard to the prisoner's physical and mental health. Such a principle should not be considered in separation from the criteria of "doctor" and "hospital" as enlisted in the recent amendment to the Prisons Act, as it has removed the limitation of such procedures to governmental medical facilities and staff. Thus, it has added further complexity to the link of human rights violations by the Israeli Ministry of Health. Furthermore, this obligation is of particular relevance in the case of Palestinian hunger strikers. Past force-feeding procedures that were carried out in order to prevent the deaths of Palestinian hunger strikers have caused the death of four Palestinian detainees as has been previously mentioned.

The World Medical Assembly's guidelines in the Declaration of Tokyo (Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment) adopted in October 1975 states that: "Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially."

The World Medical Association addressed the Prime Minister of Israel, stating the following: "**Force-feeding is violent, very painful and absolutely in opposition to the principle of individual autonomy. It is a degrading, inhumane treatment, amounting to torture. But worse, it can be dangerous and is the most unsuitable approach to save lives.**" The statement by WMA echoes article 4 of the 1975 World Medical Association Declaration of Tokyo, which explicitly states: "The physician shall not be present during any procedure during which torture or any other forms of cruel, inhuman or degrading treatment is used or threatened."<sup>28</sup>

The British Medical Association (BMA) issued a statement on 14 August 2015 condemning the newly issued Israeli legislation bill. BMA's committee chair John Chisholm had stated that: "**Force-feeding of competent adults in a voluntary hunger strike is a gross violation of international standards of medical ethics - including the World Medical Association's Declarations of Tokyo and Malta – and is a form of cruel, inhuman and degrading treatment... The primary obligation of all doctors, whether civilian or military, is to ensure the wellbeing of their patients. Medical staff must never become punitive agents of the state.**"<sup>29</sup>

### **Medical Complications Caused by Force-Feeding**

The procedure of force-feeding is usually carried out with the insertion of a rubber or a plastic tube into the stomach through the mouth or nose. Another method involves injecting nutrients into a vein or into the stomach through surgically cutting open into the abdominal wall. Each of these methods are invasive and pose immediate risks of mechanical damage to surrounding tissues – the nasal tissue, throat, esophagus, lungs and tissues in proximity to veins or different layers of the

<sup>28</sup> WMA Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, adopted by the 29th World Medical Assembly, October 1975; revised by the 170th WMA Council Session, France, May 2005; revised in May 2006 at the 173rd WMA Council Session, France, May 2006, <http://www.wma.net/en/30publications/10policies/c18/>

<sup>29</sup> The British Medical Association (BMA), "Doctors condemn new Israeli laws on force-feeding", 14 August 2015, <http://bma.org.uk/news-views-analysis/news/2015/august/doctors-condemn-new-israeli-laws-on-force-feeding>

abdominal wall. Such developments and damages cause extreme pain and bleeding and can lead to infection. The chances of complications increase when force-feeding is repeated many times – and, in some cases, feeding must be repeated every few hours. Complications could be fatal, particularly due to choking or infection. This was evident in the instances in which force-feeding was used during the 1980s against Palestinian hunger striking prisoners, when the tube was injected into the hunger strikers' lungs. This caused them to suffocate and immediately die after the force-fed solution was administered.

Physical resistance by the patient would further increase the risk of the aforementioned complications, especially when it is met by perpetrators who use force to ensure the procedure's success. Furthermore, the procedure of force-feeding may constitute a risk to the detainee's life, particularly after several weeks on hunger strike, as the body would be fragile due to the lack of nutrients for an extended period.<sup>30</sup>

### **Conclusions**

Force-feeding, as regulated under the so called "Law to Prevent Harm Caused by Hunger Strikers" amounts to torture, which is prohibited by the International Human Rights Law. The issuance of the bill itself poses as a violation of article 2(2) of the Convention Against Torture which states: **"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture"**.

Additionally, force-feeding and other measures of ill treatment taken against Palestinian prisoners and detainees in Israeli prisons are classified as violations to International Humanitarian Law. **Force-feeding complements the systematic torture and cruel, degrading and inhumane treatment** Palestinian prisoners and detainees are continuously subjected to, from the earliest stages of their arrest and detention. Such measures shall be addressed as **Crimes Against Humanity and War Crimes** in accordance with articles 7 and 8 of the Rome Statute.

### **Recommendations**

- The Palestinian Human Rights Organizations Council (PHROC) urges high contracting parties and the international community to carry out its responsibilities by applying pressure on the Israeli government **to put an end to the severe violations of international humanitarian law and international human rights law** against Palestinian prisoners and detainees. Additionally, the High Contracting Parties are called upon to identify the responsible individuals and institutions

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<sup>30</sup> For more information on the medical complications caused by force-feeding see: Amany Dayif, Fact sheet: Proposed Legislation to Force-feed Palestinian Hunger Strikers, Physicians for Human Rights-Israel, 2014.



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in the Israeli government who are to be held accountable for the systematic abuse and torture of Palestinian prisoners and detainees and press for international sanctions against such individuals and groups.

- Hereof, PHROC reaffirms the obligations of the international community and international organization to mobilise effective measures in order to terminate the force-feeding legislation and prevent Israeli authorities from carrying out any force-feeding operations.
- PHROC reaffirms that such measures should be investigated and taken in consideration under the process of the preliminary examinations and forthcoming investigations conducted by the International Criminal Court's Office of the Prosecutor.
- PHROC urges the international community to apply further pressure upon Israeli authorities in order to ensure the release of Palestinian detainees held by administrative detention orders in reflection the UN's joint statement which recognized the illegitimacy of this form of detention under the provisions of UN documents and IHRL. The international community is obligated to prevent further human rights abuses from taking place in Israeli prisons and putting an end to the ongoing violations. **The ideal solution to the issue of hunger strikes is to meet the legitimate demands of the prisoners rather than force the end of hunger strikes by committing further atrocities in Israeli prisons and detention centers.**