



The Palestinian Prisoners Hunger Strikes of 2012

Political, Moral, Medical, and Ethical Challenges
Encountered While Treating Palestinian Prisoners on
Hunger Strike in Israeli Prisons

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Staff and attorneys from Addameer Prisoner Support and Human Rights Association worked with us around the clock, starting from Khader Adnan's¹ hunger strike and onward, ensuring that the rights of the hunger-striking prisoners and detainees were protected, their demands supported.

¹ An administrative detainee and the first of the long-term hunger strikers protesting their administrative detention; cf. below for details.

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EXECUTIVE SUMMARY

The Palestinian prisoners Hunger Strikes of 2012, a report issued by Physicians for Human Rights-Israel (PHR-Israel) provides an overview of the hunger strikes carried out by Palestinian prisoners and detainees in 2012. The report includes a detailed description of the conduct of various medical institutions and medical personnel during the strikes and analyses the extent to which these institutions and personnel applied the various professional and ethical norms and guidelines at their disposal to respond to the challenges that arose during the hunger strikes.

Through this report, PHR-Israel seeks to develop and enhance the protections afforded and guaranteed to prisoners and detainees who embark on hunger strikes.

During the hunger strikes, PHR-Israel witnessed various human rights violations, among others, violations of the right to health of hunger-striking prisoners and detainees, and violations of medical ethics and of professional health standards. Measures which amounted to medical, ethical and human rights violations endangered the lives of hunger striking prisoners almost to the point of death and prevented prisoners' access to independent medical advice and consultation. In our view, these violations are but a mere symptom of an overarching system that allows, or simply ignores, violations of prisoners' rights, some of which are even more egregious than those described here. The failure of various institutions to appropriately address violations gives authorities a green light to continue crushing the rights of one of the most vulnerable populations.

Chapter One, The hunger strikes: background and course of event, accounts for the main motivations underlying the hunger strikes and describes how the strikes were conducted, as well as explains how the hunger strikes were undertaken to oppose the use of administrative detention, a mode of collective repression used by Israeli authorities against the Palestinian

population. Moreover, the chapter mentions the various struggles used against administrative detention and other abusive policies used against prisoners and detainees, and the struggle to obtain more humane and appropriate prison conditions. The chapter also provides brief accounts of the hunger strikers whose cases were handled by PHR-Israel, beginning with Khader Adnan, the first administrative detainee to use hunger strikes to protest this detention, and ending with Samer Issawi whose hunger strike continues true to today.

Chapter Two, Israeli Prison Service (IPS) conduct during the hunger strike, discusses, at length, the failure of the IPS health system to adequately care and treat prisoners and detainees on hunger strikers. This failure is reflected in the IPS' refusal to allow independent physicians to monitor and examine hunger strikers; failure to provide adequate and sufficient medical follow-up; failure to transfer medical files and information to independent attending physicians as required under the Israeli Patients' Rights Law; shackling of hunger strikers while hospitalized in public civilian hospitals; the decision of the IPS Ethics Committee to forcibly treat inmates who, with a clear head, unequivocally refused such treatment, the implementation of a sweeping, principle decision to forcibly treat Palestinian hunger striking prisoners in Nafha Prison; refusal to transfer and admit hunger strikers to public, civilian hospitals; and IPS physicians' participation in violations of Cruel Inhuman and Degrading Treatment (CIDT) such as abuse and forced treatment.

The way the IPS medical system handled the issue of the course of the year underscores is the high degree to which it is subordinate to the prison and security services, themselves subordinate to Israel's political leadership. This relationship raises concerns that the IPS medical system acts more in accordance with security and political stipulations and considerations, less with medical considerations and in conflict with the best interests of the hunger-striking patient. This relationship also exacerbates the problem of dual loyalty which already, in many cases, challenges the ethical and moral conduct of prison medical personnel.

Chapter Three, Courts responses to IPS violations, discusses how the Israeli courts handled issues presented to them during the hunger strikes. Cases related particularly to consistent violations carried out on the part of the IPS of the rights of hunger strikers as encapsulated in international law, Israeli law and the IPS procedures.

Chapter Four, Conduct and responsibility of Israel's medical establishments, analyzes the involvement of Israel's medical establishments in the issue. The chapter details actions taken by the Israeli Medical Association (IMA), the Ministry of Health (MoH) and hospitals staff and administrations. In our view, none of these bodies acted sufficiently to prevent harm to hunger strikers, nor to ensure that professional and ethical standards were adhered to and respected while administering needed treatment. We believe the IMA and the MoH must actively form guidelines and policy for treating hunger strikers.

The report concludes by outlining the changes in structure and values that are necessary in order to ensure greater respect for and protection of prisoners' rights. With respect to structural changes, we call for hunger strikes to cease being considered disturbances to prison order subject to punishment; an end to the isolation of hunger strikers; an end to the fining of hunger strikes; an end to the confiscation of their belongings; and an end to the denial of family visits. Contact with family members and family visits should be normalized and regulated for all prisoners and detainees as a right, not a privilege that may be taken away as punishment.

We believe that as long as the IPS medical system is completely subordinate to the prison system and guided by its security and political considerations, dilemmas of dual loyalty will continue to be resolved in a manner that strongly favors the prison system, and the rights of prisoners and detainees in general, and hunger strikers in particular, will continue to be violated. We therefore call for the establishment of a committee that will examine transferring responsibility and management of the medical and health services in the prisons from the Israeli Prison Service to the Ministry of Health. We believe that doing so will ensure that the level, quality and accessibility of prison health services are on par with health services available to the general population.

A number of countries consider prisoners health and medical services to represent entire clinical and ethical discipline that is studied in universities by medical and paramedical students, psychologists and social work students, based on the view that prisoners' health is an inseparable component of public health. Accordingly, we believe that it is necessary to add the topic of prisoner's health to the regular curriculum of all medical and nursing students, and that the curriculum must include the ethical and clinical aspects of treating hunger strikers. In the meantime, we propose the development of a focused training program to be offered to both IPS physicians and hospital physicians, which will include information relating to the clinic and medical ethical and clinical treatment issues that arise when treating patients on hunger strike.

We recommend a number of additional steps that will ensure greater protection of the rights of hunger strikers: the establishment of an independent, external system of monitoring and oversight for the medical treatment of hunger strikers; investigation of all complaints submitted on behalf of hunger strikers by PHR-Israel and other organizations regarding suspected violation carried out by the IPS, its medical services, or other bodies, relating to the treatment and handling of hunger striker cases; investigation of complaints of abuse, violence and other harm to prisoners and detainees on hunger strike caused by prison guards.

Several immediate steps to ensure greater protection of the rights of hunger strikers should be implemented without delay: the adoption of ethical standards regulating the treatment of

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hunger strikers, in line with principles outline in the Malta Declaration; Adherence to the Israeli Patients' Rights Law which guarantees that hunger strikers have the same rights as any other patient; Unrestricted and continued access of independent physicians to monitor, follow-up and treat hunger strikers who request an independent doctor, as frequent as the independent attending physician shall; Guarantees granting unrestricted access of the independent physician to all medical information related to the treatment and health status of hunger strikes, as granted by the patient; Informing and consulting the treating independent physician on all issues relating to the health condition and the administration of treatment of the hunger striker; the transfer of advanced-stage hunger strikers to hospital and ensuring that their hospitalization continues to the end of their hunger strike and throughout the recovery period; refrain from shackling hunger strikers who are admitted and are receiving treatment in civilian hospitals.



INTRODUCTION

Throughout history, there have been many cases in which prisoners have engaged in hunger strikes to protest injustice, repression, and an overall lack of recognition of political and social rights. The most notable examples in recent years have been asylum seekers jailed in western countries, political detainees and prisoners protesting against arbitrary imprisonment and/or torture. Prolonged hunger strikes that have gained media coverage have generated public sympathy and support for the strikers, and some cases, even succeeded in bringing about political and social change. Mahatma Gandhi,² who was jailed by the British government a number of times and undertook a hunger strike for Indian independence and unity, or the deaths of ten prisoners from the underground Irish Republican Army,³ who engaged in a hunger strike and demanded they be recognized as political prisoners, created an intense international uproar and succeeded in raising awareness of British repression in Northern Ireland.

Hunger strikes are not to be taken lightly. They are typically a prisoner's last resort, the last form of protest and opposition to injustice after all other forms of struggle and protest have been exhausted. Some of the prisoners and detainees who engaged in extended hunger strikes had previously conducted shorter, smaller scale strikes. Many had experience and were well aware that this form of struggle involves pronounced physical and psychological suffering and can pose serious danger to one's health and even one's life.

This report provides an overview of the hunger strikes waged by Palestinian prisoners and detainees in 2012, one of the singular most significant struggles carried out by the Palestinian prisoners' movement. Our study looks at the conduct of various Israeli authorities who were

² http://www.historylearningsite.co.uk/mahatma_gandi.htm

³ <http://www.irishhungerstrike.com/background.htm>

challenged – professionally, morally, and politically – by those who felt they had nothing more to lose. As an organization which focuses on the right to health, we offer at the end of this report, recommendations for suitable policy with which to handle the cases of hunger strikers by emphasizing the role of medical personnel who are bound by professional and ethical codes of conduct, as well as by highlighting instances of dual loyalty⁴ which often affected the ability of prison doctors to adhere to professional codes and guidelines.

This report is based on the work and involvement of Physicians for Human Rights (PHR-Israel) in defending the rights of striking Palestinian prisoners and detainees. The information in this report is based on a number of sources: information gathered by PHR-Israel affiliated volunteer physicians during medical examinations of striking prisoners, expert opinions and consultation with local and international physicians and experts, expert opinions issued by PHR-Israel affiliated volunteer physicians and specialists regarding treatment options and analysis of the medical side effects caused by prolonged hunger strike, analysis of the medical files of the prisoners on hunger strike and observations noted by civilian hospital physicians and IPS physicians, information and case-studies received from other NGOs and legal experts who were involved in the cases of the hunger strikers, some of which neither visited, nor represented the prisoners; written correspondences to the IPS and hospital administrators; protocols of court hearings involving complaints lodged by PHR-Israel on behalf of hunger strikers regarding IPS conduct; appeals and requests for assistance made to PHR-Israel by hunger strikers; testimony gathered from hunger strikers and their families; statements issued by hunger striking prisoners and detainees following their release from prison.

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During the time this report was drafted four Palestinian detainees were still on hunger strike, three of which had already entered the advanced stages of their strike.

⁴ A functional contradiction between and uncompromising obligation to the patient and implied, perceived or overt pressure by a third party such as an employer, insurer, company or state to employ professional expertise for the patient's detriment. <http://www.phr.org.il/default.asp?PageID=16&ItemID=127>



CHAPTER ONE

The Hunger Strikes: Background and Sequence of Events

The history of Palestinian Prisoners and detainees jailed in Israeli Prisons is replete with hunger strikes. Some strikes focused on gaining political recognition as prisoners of war or as political prisoners; others as a means of protesting torture⁵, arbitrary arrest, institutionalized repression and cruel and inhuman prison conditions. Some resulted in significant gains, a reinstatement of rights that had been denied, improved conditions of incarceration; others failed. Most were met with violent repression and a refusal on the part of Israeli officials to negotiate over the core issue – political recognition. Five Palestinian hunger strikers have died throughout the years, apparently as a result of medical complications caused by forced feeding. During the 1970 Hunger Strike, Abed Alqader Abu Alfahem died in Shikma prison (A`sqalan), Rassem Halawa and Ali Ja`afari died during the 1980 Hunger Strikes in Nafha Prison, Mahmoud Friatig died during the 1984 Hunger Strikes in Jnied prison, and Hassin Nimr Obaidat, the most recent victim, died during the 1992 Hunger Strikes in Shikma prison.⁶

The hunger strikes that Palestinian prisoners and detainees conducted in Israeli prisons in 2012 focused on two main issues: the struggle against administrative detention and the struggle to end harmful policies and institute appropriate and humane prison conditions.

The struggle against administrative detention

Administrative detention as a means of political repression: In January, 2012, 310 Palestinian administrative detainees were detained in Israeli prisons.⁷ By the end of 2012 the number of administrative detainees decreased. In November 2012, there were 156 administrative detainees.

⁵ The first hunger strike by Palestinian prisoners was in 1968 in Nablus prison, protesting against torture and the cruel conditions of their imprisonment.

⁶ <http://www.wafainfo.ps/atemplate.aspx?id=3796>

⁷ <http://www.addameer.org/etemplate.php?id=433>

Even though there had been a visible and tangible change in the use of administrative detention and a decline in the number of detainees, a significant achievement, the result of the hunger strikers' prolonged struggle, there has been no substantive change in Israeli policy. Israeli authorities still view administrative detention as a legitimate means of control that may be used in wide range of scenarios. To give just two examples, administrative detention terms have been renewed for current detainees; also, additional persons have been arrested and placed in administrative detention.

Administrative detention is based solely on administrative order; there is no judicial decision, no indictment, no trial. According to international law, administrative detention can be considered legal in specific circumstances, but because it violates a person's right to a fair trial, and in view of the obvious risk that it may be misapplied, according to international law, there are severe limitations placed on its use. The flagrant manner in which Israel employs administrative detention exceeds these limitations. In Israel, administrative detention is carried out in secrecy and does not allow detainees to prepare an appropriate defense. Israel holds Palestinians in administrative detention for long periods of time without bringing them to trial, without telling them what they have been accused of and without allowing them or their attorneys access to the evidence brought against them. Administrative detention crushes virtually an entire system of protections put in place by Israeli and international law to ensure the right to liberty and the right to a fair trial, the right to be heard on one's own behalf, and the presumption of innocence.

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Administrative detainees are held in Israeli territory in violation of Section 49 of the Fourth Geneva Convention, which prohibits transferring prisoners out of occupied territory. Because of closures and movement restrictions imposed on residents of the occupied territories, prisoners and detainees' right to family visits and attorneys is severely hindered.

International law does not entirely forbid the use of administrative detention, but it restricts its use to extraordinary circumstances in which an individual represents a clear and present danger and no other means exists to deter this danger.

Israel's use of administrative detention with respect to Palestinians throughout all the years of occupation is by no means exceptional. Administrative detention in Israel presents an alternative to a criminal procedure, it is an unjust legal process during which almost no information is provided regarding the reasons for detention. Detainees are also not given the opportunity to refute allegations brought against them. Detainees and their attorneys do not have access to the evidence against them. Restricting access to evidence based on the claim that it is confidential is the rule rather than the exception; in fundamental violation of the basic principle of a fair trial, there has been no case in which the court determined that the restriction should be removed and the evidence made public.⁸

8 <http://www.addameer.org/files/Reports/administrative-detention-analysis-report-final.pdf>

Israeli law allows keeping persons in administrative detention for long periods, up to six months, and renewing the period of detention for several months each time with no restriction on the number of renewals permitted. Military commanders habitually renew the period of detention, period after period. There is no justification in international law for Israel's abuse of administrative detention for holding Palestinians for prolonged periods of time.

International law prohibits the use of administrative detention for deterrence purposes, general preemptive purposes or against someone who had previously been dangerous but no longer poses a threat. In violation of international law, Israel's use of administrative detention is used to repress political dissidents, criminalize freedom of opinion, freedom of expression, the right to organize, the right to protest, and even the right to self-determination. In the past, mass administrative detentions marked political turning points. For example, following the Oslo agreements, Israel detained a large number of Palestinians who opposed the agreement; during the first and second Intifadas the number of administrative detainees grew significantly. After Hamas won a majority of the seats in the Palestinian Legislative Council in 2006,⁹ Hamas members were administratively detained. Just recently, during the Israeli military attack on Gaza, known in Israel as Operation Pillar of Cloud, a number of Palestinians were placed in administrative detention from mid-November until after the cease-fire agreement between Gaza and Israel.

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Moreover, when one looks at who is placed in administrative detention, it becomes clear that it is used as a tool of political repression, contradicting Israel's claim that it underpins security considerations. In fact, over the years, Israel placed university lecturers, student activists, writers and journalists, thinkers and intellectuals, leaders and members of labor unions (particularly the farmers' union), political and social activists involved in protest activities against normalization, against the fence, activists in favor of an economic and cultural boycott of Israel, members of various international solidarity groups; and many Palestinians active in cultural, social, and political efforts against the Occupation in administrative detention. These detentions demonstrate that administrative detention has very often been used to prevent the development of a cultural, social and political leadership capable of leading a successful struggle against the Occupation. Furthermore,, release from administrative detention is very often conditioned on the forced deportation of detained individuals from the occupied Palestinian territories..

Forced deportation as a condition for the release from administrative detention: deportation constituted a condition of release during this year's hunger strikes. The release of Hanaa' Shalabi, an administrative detainee who waged a prolonged hunger strike during the first half of the year, was conditioned in April 2012 on her banishment to Gaza, as was the release of Samer

⁹ <http://www.ynet.co.il/articles/0,7340,L-3207086,00.html>

Al-Bark, another administrative detainee on a hunger strike, whose release was conditioned on his banishment from the West Bank. Such expulsions are a flagrant violation of Section 49 of the Fourth Geneva Convention which prohibits the forcible transfer or expulsion of protected persons, a prohibition that is part of customary international humanitarian law. According to that convention, illegal expulsion or transfer may even be considered a serious war crime. Given the asymmetry of power between the Palestinians and Israel, as a result of the military occupation, though the possible "agreement" of detainees and the fact that the deals are the result of negotiation with the Palestinian Authority, there is no justification for the person's deportation or banishment.¹⁰

The prisoner release agreement of May 15, 2012: On May 15, 2012, five administrative detainees who were engaged in prolonged hunger strikes – Bilal Diab, Thai`r Halahla, Hassan Safadi, Ja`afar E`zz Adin and Omar Abu Shalal – reached an agreement with representatives of the Israeli authorities to stop their hunger strike, in return for non-renewal of the administrative detention orders issued against them and imminent release to be enforced upon completion of their current detention terms. In violation of that agreement, Hassan Safadi's detention term was extended and he was released only on 30.10.12, after waging a renewed, prolonged hunger strike. Thai`r Halahla was arrested again in November 2012, and released a week later, and Ja`afar E`zz Adin was arrested at his home in Arraba, in the Jenin district, immediately after the attack on Gaza that same month. He was issued an administrative detention order for three months. In response, he began a hunger strike.

The struggle against policies of abuse targeting Palestinian prisoners: promoting appropriate and humane prison conditions

A decision by the political echelon to exacerbate conditions of imprisonment: In recent years, the State of Israel has downgraded prison conditions, resulting in further violations of prisoners' basic rights. The claim used by the State of Israel to justify such deliberate measures was that it was exerting pressure on Palestinian leadership in hopes that it would advance the release of Gilad Shalit, the Israeli soldier held in Gaza by Hamas.¹¹ In September 2011, prior to the prisoner exchange deal, more than 300 Palestinian prisoners began a hunger strike in protest of their conditions of incarceration. However, even after the prisoner swap and Shalit's release, and despite Israel's promise to respond to some of the hunger strikers' demands, conditions did not improve. Rather, they deteriorated.

The Launch of the Mass Hunger Strike: On April 17, 2012, Palestinian Prisoners Day,¹² more than 1,600 Palestinian prisoners and detainees began a mass hunger strike in protest of Israel's abusive policies toward prisoners and detainees. Seven prisoners representing each of the various Palestinian factions, served as the strikers' central committee, and leaders of the struggle. The protest focused on two key demands:

¹⁰ Because expulsion violates the spirit of Sections 7, 8 and 47 of the Fourth Geneva Convention, relating to the obligation to refrain from violating protections granted by virtue of that Convention.

¹¹ Cf., for example, Netanyahu stiffens the policy toward Palestinian prisoners and detainees: "There won't be doctoral students in terror," <http://news.nana10.co.il/Article/?ArticleID=810072>

¹² <http://www.phr.org.il/default.asp?PageID=37&ItemID=1457>

An end to the isolation and solitary confinement of Palestinian prisoners, including members of the Palestinian political leadership of the reinstatement of family visits from Gaza (fully prohibited since 2007), and a renewal of family visits for a few hundred Palestinian prisoners and detainees from the West Bank, who were not permitted to have family visits.

Prisoners also demanded access to medical treatment, higher education, an end to forced strip searches, and end to the violent behavior and disproportionate punishment often against them.

The agreement that ended the mass hunger strike: based on instructions given by the Israeli political leadership led by the General Security Services (GSS - Shabak) in cooperation with the IPS and the Ministry of Internal Security, on May 14, 2012, after 28 days of mass strike, the leaders of the hunger strike reached an agreement with the State of Israel. The agreement was reached with the help of Egyptian mediators, who were in contact with Hamas and Palestinian Authority leadership, as well as with and their intelligence agencies.

The agreement focused on the two main demands made by leaders of the mass hunger strike and was conditional on agreements by the Palestinian prisoners to "refrain from any actions involving practical support of terror including, recruiting persons for terrorist activities, guiding, financing, coordinating, or aiding recruits, etc." According to a text of the agreement published by the GSS,¹³ "actions compromising [Israeli] security conducted from within prisons or the renewal of inmate strikes in Israeli prisons will result in full cancellation by Israel of its obligations to ease conditions, as mentioned in the agreement."¹⁴

Israel also pledged to review the files of all administrative detainees and to limit the use of administrative detention solely to exceptional cases. However, this commitment was not included in the written agreement and it is suspected that the administrative detainees who were among the first to initiate a hunger strike and who paid a very high price, were not included in the agreement. In fact, five of the more "prominent" administrative detainees during that period refused to end their hunger strike without receiving prior commitment that they would be released and their administrative detentions halted. For this reason, the leaders of the strike continued their negotiations. They eventually reached an informal agreement¹⁵ with the help of Egyptian mediators that future administrative detentions would be limited to extraordinary circumstances and that the cases of all current administrative detainees would be re-evaluated.

Implementation and violation of the hunger strike agreements

Many aspects of the signed agreement that ended the mass hunger strikes were not enforced:

¹³ The hunger strike agreement as published by the GSS: http://www.mfa.gov.il/MFA/Government/Communiques/2012/End_hunger_strike_security_prisoners_14-May-2012.htm#understanding

¹⁴ According to the leaders of the striking prisoners the hunger strikes, the agreement they and representatives of various Israeli authorities signed was slightly different from the one published by the GSS; theirs has not been published.

¹⁵ The members of the central committee in charge of the mass hunger strike reported to Addameer that the portion of the agreement referring to administrative detention was not included in the written text of the agreement but was subsequently agreed upon verbally, with Egyptian mediation. <http://www.addameer.org/etemplate.php?id=481>

Isolation and Solitary Confinement: After the agreement was signed, eighteen Palestinian prisoners were transferred from solitary confinement to regular prison wards. Others remained in solitary confinement, among them Dirar Abu Sisi who has been held in isolation since being kidnapped in the Ukraine on February 19, 2011 by the Israeli Mossad. In June 2012, his solitary confinement was extended for an additional six months, based on confidential information. Additional Palestinian prisoners and detainees are still being held in solitary confinement, some have been held in confinement for years. We should note that both Palestinian prisoners and common law prisoners are subject to isolation and solitary confinement as punishment for disciplinary violations and for political and security reasons. A number of prisoners who suffer from mental illness are also held in isolation, based on the claim that they pose a threat to themselves or to others. . After the agreement was signed, the IPS claimed that the hunger strike agreement only mandated them to release prisoners who were placed in solitary confinement by GSS order, not those placed in isolation by the IPS as a means preserving order and security in the prisons.

Family visits from Gaza and the West Bank: Since 2007, Israel has not permitted families from Gaza to visit relatives in Israeli prisons. According to the hunger strike agreement, visits were to have resumed one month after the end of the mass hunger strike, sometime at the end of May, yet in practice, the first family visits to a handful of prisoners from Gaza took place only in July 2012. Under the current arrangement, in which a limited number of visits are permitted, is occurring solely on a trial basis. To date, eleven trips have been made by small groups of families, in coordination with the International Red Cross. Each one brings relatives of 16 to 38 prisoners and detainees in various Israeli prisons. Visits were halted in November and were reinstated one month later, under the same format, on December 10, 2012. Thirty-seven prisoners incarcerated at Ramon prison visited with family members that day. Israel did not agree to issue visitor permits to the prisoner's parents, spouse, siblings and children, even though it was understood in the agreement that first-degree relatives would be granted visitation rights. Family who succeeded in receiving permits reported being subject to harassment and humiliation, were yelled at, forced to remain standing for long periods of time, which was particularly hard on the elderly, and subject to strip searches. As of December 2012, nearly half of the Palestinian prisoners' population from Gaza had not received family visits; visits that did take place were one-time visits, which have not since repeated.

Prior to the agreement, about 300 prisoners and detainees from the West Bank were prohibited from receiving family visits. After the agreement, a limited number of restrictions were eased, and in most cases one-time visitor permits were granted. No information exists on the number of permits granted and the number of permits denied.

A policy of punishment and abuse vis-à-vis Palestinian Prisoners: The agreement did not result in any change in the use of disproportionate punishment or violent, abusive behavior directed at Palestinian prisoners. For example, IPS special units continued carrying out violent nighttime

incursions into prison cells since the agreement came into force; there have been reports of prisoners being attacked during these incursions, or while being strip searched ahead of their transfer to other wards or prisons. The policy of collective punishment continues; entire wards are punished for the actions of a single inmate. Punishment includes substantial fines, solitary confinement and isolation under disgraceful conditions, denied access to the canteen, denied access to family visits, and more. In June 2012 minors in the Sharon prison undertook a hunger strike, which lasted for a few days protesting the harsh conditions of their incarceration.

Appropriate medical treatment: The poor quality of medical treatment afforded to prisoners and detainees is a painful, main issue for Palestinian prisoners and their families. Medical treatment in the IPS medical system for prisoners lags significantly behind professional standards practiced and upheld by Israel's public health system, in terms of availability and quality of care. For example, waiting times to see a specialist is typically much longer than it is in the public health system. Most IPS physicians are internists who lack any specialization. the IPS offers no supplementary professional training courses and physicians' professional competence is typically subpar; some IPS physicians can be quite malicious when examining or treating Palestinian prisoners and detainees.

There has been no improvement in the level of medical treatment provided, not in the way IPS physicians act with their patients, nor in the quality and availability of services. One reason is a general lack of trust on the part of the Palestinian prisoners vis-a-vis medical staff employed by the IPS. In essence, the hunger strike confirmed a thought that was every prisoners mind, that the physicians' primary loyalty is to the prison system and not to the patient. For example, approximately one month after the agreement, all Palestinian female prisoners and detainees in the Sharon prison boycotted the prison infirmary protesting the lack of appropriate medical treatment and unreasonably long waiting times for treatment and tests. In addition, since the previous chief medical officer, Dr. Dini Orkin-Tischler, the announced that she would be leaving her post at the end of July 2012, there have been very few responses to requests for information and complaints on behalf of prisoners and detainees regarding their medical treatment. Several cases involve prisoners and detainees with extremely serious medical conditions.

Public support for the hunger strikers and their struggle

Public support of for the Palestinian prisoners struggle among Palestinians and others abroad began with Khader Adnan's hunger strike and continued to gather momentum throughout the subsequent hunger strikes that were waged by other administrative detainees, as well as by participants in the mass hunger strike. The upsurge in public attention continued until the agreement between the prisoners and Israel was reached in May. Protest solidarity actions in support of prisoners' demands were held throughout the West Bank and Gaza, within Israel, and in various cities around the world. Demonstrations and solidarity rallies held outside of prisons, primarily outside Nitzan and Ofer prisons, were met with violence from the police and the Israeli army. Demonstrations were also held in front of the ICRC office in Ramallah, various UN offices,

and outside consulates in East Jerusalem. Protest and Solidarity tents were erected in Ramallah, Nablus, Jenin, Burkin, Kofor Ra'i, Gaza, Haifa, Shafa 'Amr, Jaffa, Nazareth, Kufur Qana and additional villages and towns. The army threatened to demolish several of the tents even arrested several activists inhabiting them.

Internationally, on the global day of social protests held on May 12, supporters of the Palestinian prisoners struggle made their presence impressively known in many main cities in the world. Similar voices were absent from similar demonstrations organized by Israeli protestors.

Local and international support and pressure played a major role in strengthening and driving the Palestinian prisoners struggle. Ironically enough, since the May agreement, media coverage and public attention on individual hunger strikes declined significantly, despite the fact that the prisoners who waged strikes after the May agreement continued their strike much longer. A decrease in public attention also meant that striking prisoners and their families were left to oppose pressure wielded on them to break their strikes almost on their own.

Hunger Striking Detainees Treated by Physicians for Human Rights- Israel

Khader Adnan: ¹⁶ Adnan, a 34 year old from the village of Arraba in the Jenin district, was arrested at his home in December 2011. Two days after being detained he would launch the longest hunger strike ever waged to date by a Palestinian prisoner. Khader went on hunger strike to protest his administrative detention, and the violent, humiliating and degrading treatment to which he had been subjected during his arrest and interrogation. After waging a 66-day struggle without food, a struggle that was well broadcasted and garnered broad local and international support, an agreement was reached that ended his hunger strike and set his release for April 17, 2012. The effect of Khader Adnan's long struggle, his victory and release, brought to the public's consciousness the arbitrary, outrageous, and unjust conditions of administrative detention. PHR-Israel and Addameer led a focused campaign against administrative detention, followed Khader in his struggle, supported Khader's demands, and ensured - whenever possible - that his medical and legal rights were respected throughout the length of his hunger strike.

The effect of Khader Adnan's long struggle, his victory and release, brought to the public's consciousness the arbitrary, outrageous, and unjust conditions of administrative detention.

According to Israeli media reports, when Khader launched his hunger strike and struggle, Israeli media claimed he was a "terrorist" who was leading a dangerous "terrorist ring" in Jenin that was planning "attacks" against Israelis.¹⁷ Interestingly, as Khader's hunger strike progressed, and as additional information started to become known about the policy of administrative detention and its arbitrary use, Israel abandoned this form of messaging. Media sources began referring to the issue of administrative detention, focusing increasingly on the hunger strikers and less on messaging that involved unverifiable data. In any case, such allegations were eventually dispelled by the fact that Israel later agreed to release Khader on April 17, 2012.

¹⁶ <http://phr.org.il/default.asp?PageID=37&ItemID=1380>

¹⁷ <http://www.shabak.gov.il/publications/publications/Pages/shotef190112.aspx>

Inspired by Khader's struggle, more than thirty Palestinian prisoners and detainees launched hunger strikes also in protest against administrative detention. Eight of them conducted lengthy hunger strikes.

Hanaa' Shalabi:¹⁸ A 29 year old resident of Burkin village in the Jenin district, Hanaa' was released from prison in October 2011 as part of the prisoner exchange deal. She was previously held in administrative detention and was rearrested on February 16, 2012. Hanaa' began a hunger strike on the day of her arrest protesting the violence and humiliation to which was subjected during her arrest and against administrative detention. As a condition of release from administrative detention, Hanaa' was removed from the West Bank and forced to take up residency in the Gaza Strip. Her hunger strike lasted 43 days.

Bilal Diab¹⁹ and Tha'ir Halahla²⁰ were the next to wage prolonged hunger strikes. Bilal, age 27 from Kufur Ra'i in the Jenin district, was arrested on August 17, 2011 when according to Bilal and his family, he and members of his family were attacked as armed soldiers burst into his home in the village. He was issued six-month administrative detention order, which was later extended on February 14, 2012 for an additional six months. Tha'ir, age 34 from Kharsan in the Hebron district, the father of a three-year-old girl, faced repeated arrests prior to his detention, mostly on order of administrative detention. At the beginning of January 2012, his administrative detention order- which had started in June 2012, was extended for a third consecutive six-month term. Bilal and Tha'ir began their hunger strike on February 28, 2012, in protest of the the extension of their administrative detention orders. Their strikes each lasted 77 days. On May 15, 2012, an agreement was reached for their release, which would occur once their current orders were up. The release of Hunger striking detainees Hassan Safadi, Omar Abu Shalal and Ja'afar E`zz Adin, were also guaranteed in the deal.

Hassan Safadi:²¹ Age 33 and a resident of Nablus, Hassan was arrested on June 30, 2011. His administrative detention was twice extended. On November 21, 2011, and again on April 24, 2012, the Israeli military court and the Supreme Court rejected Hassan's appeals for release. Hassan began an open-ended hunger strike on March 5, 2012, protesting against his administrative detention. His strike ended 71 days later, on May 15, 2012, when an agreement was reached for his release and the release of four other prisoners, once their respective terms were up. On June 21, in violation of the agreement, Hassan learned that his administrative detention order had been renewed. After only three weeks had passed since terminating his hunger strike, Hassan renewed his struggle and maintained a hunger strike for an additional 93 days, until he was promised release on October 29, 2012, thanks to a successful appeal submitted to the military court on September 20th. During his hunger strike, Hassan reported being subjected to severe harassment and violence by IPS staff and IPS medical personnel, who, against his will, forcibly

¹⁸ <http://phr.org.il/default.asp?PageID=37&ItemID=1435>

¹⁹ <http://www.phr.org.il/default.asp?PageID=37&ItemID=1465>

²⁰ <http://www.phr.org.il/default.asp?PageID=36&ItemID=1461>

²¹ <http://www.phr.org.il/default.asp?PageID=37&ItemID=1598>

treated the detainee. These reports were confirmed by an IPS physician during the coordinated visit of a PHR-Israel physician to had come to examine the detainee. Hassan was released on October 30th, the day after his scheduled release date.

Omar Abu Shalal: Age 55 and a resident of Ala`een refugee camp in Nablus, Abu Shalal had been arrested a number of times under administrative detention order, the last time, on August 15, 2011. On March 6, 2012, when his administrative detention order was renewed Omar began a hunger strike. His strike continued for 70 days until the agreement ending the mass strike was signed on May 15, 2012. On June 20, 2012, contrary to the agreement, the military court extended Omar's administrative detention four additional months. Omar was finally released on October 28, 2012.

Ja'afar Ezz Adin: Age 41 and a resident of Arraba in the Jenin district, Ja'afar was arrested on March 21, 2012 due to his community work and his role in fostering public support for Khader Adnan's struggle. Ja'afar began his hunger strike on the day of his arrest and maintained it for 55 days until the the May 15, 2012 agreement was signed. Ja'afar was released on July 19, 2012, and was arrested yet again on November 22, 2012, the day many people were arrested for protesting Israel's attack on Gaza. Ja'afar and two of his peers began a hunger strike on November 28, 2012, against the military court's decision to extend his administrative detention for another three months, with the possibility of additional terms.

Hunger strikes that continued or began after the agreements were reached

Some individuals (detainees who sought release as well as convicted prisoners) chose to continue their hunger strikes even after the May 2012 agreements were signed due to the lack of progress in their case.

Mahmoud Sarsak:²² Age 25 and a resident of Gaza, Mahmoud was a member of the Palestinian national soccer team. He was arrested at the Erez crossing on July 22, 2009 while on his way to a match in the West Bank. On August 23, 2009, the Israeli Minister of Defense, signed an order for his continued detention based on the Israeli Law of Illegal Combatants whereby Palestinians from Gaza may be legally detained for unlimited periods of time without or any guarantee of fair trial, similar to the administrative detention procedure applied to Palestinian residents of the West Bank. Mahmoud began a hunger strike on March 19, 2012 after his detention order was extended. On July 10, 2012, Mahmoud was released from detention and returned home to Gaza after serving a three year detention term and waging a 92-day hunger strike.

Samer Al-Bark:²³ Age 34 and a resident of the West Bank village of Jayyous, Al-Bark was transferred from Jordanian authorities to the GSS without a fair trial or proper indictment on July 11, 2010,

²² <http://www.phr.org.il/default.asp?PageID=37&ItemID=1509>

²³ <http://www.phr.org.il/default.asp?PageID=37&ItemID=1598>

After being transferred, he was held under administrative detention order. Samer began a hunger strike protesting the renewal of his detention order and Israel's failure to make good on its pledge to hunger-strike leadership under the mass hunger strike agreement, to refrain from renewing current administrative detention orders, except in exceptional circumstances. Samer ended his hunger strike after 123 days, when a deal was reached securing his deportation to Egypt. The agreement was made on September 20th, 2012 and Samer was to leave several days later, but for reasons that are unclear, the agreement was never implemented.

Akram Rihawi:²⁴ A resident of Gaza, Akram was arrested on June 7, 2004 and sentenced to nine years in prison. Due to chronic illness, including asthma, diabetes, and osteoporosis, Akram served his prison term in the IPS medical center. Akram began his hunger strike on April 12, 2012, against prison authorities' refusal to conduct a fair hearing before a special committee that would consider his health condition as grounds for early release. At the time, Samer had already served eight years of his term.

PHR-Israel affiliated physicians visited Akram during and after his hunger strike, examined him and monitored his condition. During his strike, Akram suffered a dangerous flare up caused by a combination of chronic illness and complications from the hunger strike which required immediate hospitalization. Despite PHR-Israel's independent physician's requests to have him transferred to a civilian hospital, the IPS refused to comply with this and various other recommendations issued by his treating independent doctors, a decision which exposed him to further harm. On July 22, 2012, the 102nd day of his strike, Akram ended his hunger strike when a deal was reached with Israeli authorities whereby he would be released to his home in Gaza on January 25, 2013, six months prior to his original release date.

Muhammad Rafiq Taj: Age 39, a resident of Tubas, Muhammad was arrested in 2003 and sentenced to 16 years in prison. Since November 2011, he was held in solitary confinement, under extremely harsh conditions and suffered from a number of health problems. Muhammad began his hunger strike on March 18, 2012, protesting his solitary confinement, his lack of access to adequate medical treatment, and Israeli's principle refusal to recognize him and his peers as prisoners of war. He ended his hunger strike 66 days later, when a deal was reached with authorities securing his release from solitary confinement, access to medical treatment and transfer to hospital, and an understanding that he would not be required to wear a prison uniform.

After ending his hunger strike, Muhammad reported that the IPS went back on its pledge to allow Muhammad to wear clothes of his choosing. He was forced to wear a uniform and was forcibly strip searched while being transferred to Kishon Prison. He reported that because he refused to comply, he was attacked and injured by a number of prison guards. PHR-Israel also received troubling reports from attorneys who visited Muhammad and said that that in the wake of his long hunger strike and the harassment he had undergone, his medical condition had significantly

²⁴ <http://phr.org.il/default.asp?PageID=37&ItemID=1530>

deteriorated. Over the past two months the IPS has been making it difficult for PHR-Israel to coordinate the entry of independent physicians to examine him.

Ayman Sharawni:²⁵ A resident of the town of Dair Samt, south of Hebron, Ayman was imprisoned in Israel for nine years beginning in 2002 and released in October 2011, as part of the prisoner exchange deal known as the Shalit Deal. Ayman was arrested at the beginning of January 2012, four months after his release, violating the terms of the prisoner exchange agreement.²⁶ He is being held without indictment or trial for an indefinite period of time on the basis of military order No. 11/18627 which authorizes a military committee to cancel early "release" granted to prisoners by the military commander if they have been suspected of violating the conditions of their release "without having been convicted of doing so." Amended in October 2011, less than a month after the implementation of the Shalit Deal, this new order permits the sentencing committee to re-condemn prisoners to their original sentence based on confidential material and without a formal judicial procedure, or the right of appeal. By virtue of this military order, more than 11 prisoners released as part of the Shalit Deal have been arrested and detained yet again.

The State of Israel intends to imprison Ayman for the duration of his original sentence of 38 years. After waging a 174-day hunger strike, Ayman suspended his hunger strike on December 25, 2012.

Samer Issawi:²⁸ Age 33, a resident of Al Issawiya in East Jerusalem, Samer was released on October 2011 as part of the Shalit Deal. He had been arrested in 2004 and was serving a 30-year prison term. Since his release, Samer, like many prisoners released under the Deal, was pursued and harassed by Israeli army and police.²⁹ Samer was arrested again on July 7, 2012 at the Jabaa checkpoint and taken to an interrogation facility at the Russian Compound in Jerusalem, where he was interrogated for 28 days. Samer was detained for an unlimited period of time, without an indictment or trial, on the basis of military order No. 11/186, referenced above. Samer's attorneys filed a formal objection to the military committee to his renewed arrest, yet the committee has not yet ruled or specified a date by which to expect a ruling. Samer began his hunger strike on August 20, 2012, protesting his arrest and demanding immediate release.

²⁵ <http://www.phr.org.il/default.asp?PageID=37&ItemID=1667>

²⁶ Despite claims made by Israeli authorities regarding the prisoner exchange agreement (the Shalit Deal), that upholding certain terms of the agreement was contingent on prisoners' compliance with a series of restrictions, the freed prisoners deny that they were ever informed – nor agreed to – any special terms or restrictions. It would be important to point out that the Palestinian prisoners themselves were not party to the agreement; it was reached by an Egyptian mediator.

²⁷ <http://nolegalfrontiers.org/he/military-orders/mil01/71-security-provisions-chapter5-111-186>

²⁸ <http://www.phr.org.il/default.asp?PageID=37&ItemID=1678>

²⁹ Including nighttime searches of his home; being summoned for interrogation by the GSS; being delayed for hours at internal checkpoints; etc.



CHAPTER TWO

Israeli Prison Service (IPS) Conduct During the Hunger Strikes

Prison authorities throughout the world place a high value on order inside the prison, and the Israeli case is no exception. The IPS characterizes hunger strikes as a disruption of order³⁰ resulting in severe punishment, including the denial of family visits, isolation, confiscation of personal property, the imposition of fines, etc.

Israeli courts, including the Supreme Court, validate this perception by legitimizing violations of the rights of prisoners and detainees who are waging hunger strikes. For example, in an appeal requesting that the court to oblige the IPS to provide salt to striking prisoners and not to confiscate items from their cells,³¹ the justices wrote on September 14, 2004, "in this context, even if we assume that a hunger strike is a legitimate means of expressing an opinion and an exercise of the freedom of expression, participation in such a strike is not one of the rights granted to someone while incarcerated in prison. Both aspects of a hunger strike - refusing to eat and striking - interfere with the orderly administration of the prison."

Various institutions were expected to intervene in such rulings, take a position and/or address the hunger strike and the various issues that arose from it, including suitable medical treatment yet in most cases the Ministry of Health, public hospital administrators, the courts, and the Israeli Medical Association failed in most cases to take a clear, public, ethical or professional stance. Their failure to intervene will be described in detail in chapter 3 of this report.

³⁰ <http://www.ips.gov.il/NR/rdonlyres/AE653F21-9B2B-4C25-BC96-6C9ABC752EF5/0/04160090%D7%A9%D7%91%D7%99%D7%AA%D7%AA%D7%A8%D7%A2%D7%91%D7%A9%D7%9C%D7%90%D7%A1%D7%99%D7%A8%D7%99%D7%9D.pdf>

³¹ <http://elyon1.court.gov.il/files/04/370/078/i04/04078370.i04.pdf>

It is important to note that some of the injustices against which the hunger strikers were protesting were not necessarily the direct result of IPS policy as the incarcerating body, but rather a product of government policy targeted at the Palestinian population in general and at Palestinian prisoners and detainees in particular. As a result, the events of this past year positioned the IPS up against one of its most serious crises to date, without the authority to negotiate agreements alone according to its own terms and priorities. As the hunger strikes continued and intensified, the IPS' fear of losing control grew and was expressed through the implementation of increasingly repressive controls and measures.

Systemic failures of the IPS health and medical system

Health and medical services administered to prisoners and detainees – both to political and to common law prisoners – are not regulated under the National Health Insurance Law, but rather under the "Public Health Order 1940". As a result, the medical staff in prisons is employed by the IPS – whether directly or through manpower companies. Being under the authority of the Security System rather than that of the Ministry of Health, their sense of dual loyalty intensifies, as a result of direct or implied pressures by the security system.

This chapter discusses in detail several prominent failings that stood out during the hunger strike, including: preventing independent physicians from examining and monitoring the medical condition of the hunger strikers; the lack of sufficient medical follow up and supervision; the refusal to transfer medical information as required under the Patient's Rights Law; the involvement of medical personnel in violations of medical ethical conduct, such as abuse and forced treatment, and the shackling of hunger strikers; a decision taken by the IPS Ethics Committee to forcibly treat all Palestinian hunger strikers in the Nafha prison; the failure to transfer and admit hunger-striking prisoners to public hospital for necessary care and supervision.

There is a strong suspicion that by blatantly violating the rights of the striking detainees to access adequate medical care and by flagrantly ignoring medical ethical standards and professional norms, the IPS utilized its medical system to pressure Palestinian prisoners and detainees on hunger strike causing unnecessary and illegitimate danger to their health and lives.

In May 2012, at the height of one of the most critical crises ever experienced by members of the Israeli prison system, the IPS chief medical officer took a one-month holiday, and one month after her return, left her post completely. Though it appeared she left her job because her contract had come to an end, it is suspected, due to her sudden departure, that it is in fact the security establishment that oversees and regulates the functions of the IPS medical system, and not the medical system itself. If during her tenure - despite various challenges - PHR-Israel was able to send independent physicians to monitor the health conditions of striking prisoners, (Khader Adnan and Hana' Shalabi, except towards the final stages of her strike), and prisoners were transferred to civilian hospital relatively rapidly, in the aftermath of her departure, the Service closed its doors as a means of preventing independent physicians from meeting with striking prisoners and blocking the transfer of prisoners on hunger strike to civilian hospitals.

These observations were not only substantiated, they were subsequently explained and elaborated. According to Central District Court protocol³² during a hearing on Tha'ir Halahla's petition against the Israel Prison Service, the Attorney for the respondent Kinneret Zimmerman, argued: "The physician's visit may be intended for the prisoners themselves but they have no medical value; what we are seeing at present is a phenomenon that is becoming widespread. As far as the IPS is concerned, requesting the entry of private physicians to treat administrative detainees on hunger strike is equivocal with an attempt to wrest control from the IPS."

There is a strong suspicion that by blatantly violating the rights of the striking detainees to access adequate medical care and by flagrantly ignoring medical ethical standards and professional norms, the IPS utilized its medical system to pressure Palestinian prisoners and detainees on hunger strike causing unnecessary and illegitimate danger to their health and lives. Indeed, through various means, hunger strikers were isolated from any contact with persons not under IPS authority. They did so by delaying and denying entry to physicians, attorneys, and prisoners' family members, as well as by denying treating physicians' access to their patient's medical information.

Hunger strikes constitute a situation of strong conflict between the strikers and prison authorities. As IPS medical staff conduct grew more hostile and even violated medical ethics and professional standards, the strikers' lack of trust in the medical staff increased, leading to an intensification of their strike. There were cases in which strikers refused to receive medication or intravenous fluids, undergo medical tests or treatment, and sometimes even went so far as refuse water. These refusals endangered their health and their lives.

Independent physicians prevented from entering prisons to examine prisoners and detainees on strike

The significance of having an independent physician examine a prisoner on hunger strike is the critical establishment of trust that must exist between the two. World Medical Association guidelines, drawing upon the 1991 Malta Declaration,³³ emphasize the importance of an examination by an independent, neutral physician not identified with prison authorities:

"Gaining and maintaining trust between physicians and hunger strikers is often the key to resolving the crisis in a manner that respects the rights of the hunger strikers and reduces harm to them. Gaining trust can create opportunities to solve difficult situations. Trust depends on physicians proving accurate advice to strikers and being honest and forthright with them regarding the restrictions they are under with respect to actions that may or may not be able to undertake, including not being able to guarantee confidentiality."

³² <http://www.phr.org.il/default.asp?PageID=37&ItemID=1470>

³³ <http://www.wma.net/en/30publications/10policies/h31/index.html>

The point was reiterated in an expert opinion issued by a PHR-Israel volunteer physician who monitored one of the strikers: "It is extremely important for the hunger striker to be monitored by an independent physician who acquired the trust of his patient; without cooperation during the exam and their agreement to receive essential treatment, the danger of death increases. The involvement of an independent physician can assist the patient as well as the prison system physicians prevent irreversible health damage and even death."

The Israeli Medical Association also affirmed this opinion. According to its website:³⁴ "On an individual level, independent physicians must be allowed to advise hunger strikers for the benefit of all concerned, in order to prevent a potentially fatal outcome. In some countries, this practice was in fact upheld; By virtue of being independent doctors, they were able to serve as acceptable mediators to all parties."

Though having independent physicians whom prisoners trust likely prevents the intensification, and likely even brings to an end a hunger strike and preserves the striker's life, the IPS placed formidable obstacles preventing the involvement and entry of independent physicians. During the 2012 hunger strikes, most visits to hunger strikers by independent physicians took place only once a court order was obtained requiring the IPS to permit the physician's visit. Denying access to independent physicians violates IPS guidelines regulating visits of private physicians to Palestinian prisoners and detainees. Even when an independent physician is finally permitted to visit a patient after obtaining a court order, permission is granted for only a single visit; each subsequent visit requires a return to court. Visits by independent physicians almost always occurred in the presence of IPS staff, violating patient privacy and undermining doctor-patient trust.

During the hunger strikes, PHR-Israel submitted 19 petitions requesting entry permits for independent physicians to visit hunger strikers.

IPS conduct not only violated medical ethics but also ran counter to Israeli law,³⁵ international law,³⁶ IPS regulations³⁷ and various court rulings.³⁸ Even worse, it needlessly endangered the health and lives of the strikers, suggesting that their policy was formulated to demonstrate who was in charge.

During the hunger strikes, PHR-Israel submitted 19 petitions requesting entry permits for independent physicians to visit hunger strikers. In all of the appeals the visits were approved. However, no ruling was given to allow for follow-up visits and continued, except during the strikes of the first two detainees, Khader Adnan and Hanaa' Shalabi.

³⁴ <http://www.ima.org.il/MainSite/ViewCategory.aspx?CategoryId=2841>

³⁵ The Patient's Rights Law – 1996 specifies: "A patient has the right to obtain on their own initiative an additional opinion regarding their treatment; the attending physician and the medical institution will assist the patient in any way necessary to implement this right."

³⁶ The International Convention on Economic, Social and Cultural Rights, 1966. Cf. also Section 25 of UN General Assembly Resolution 43/173, dated 9.XII.88, regarding the principles to protect detained or imprisoned persons: <http://www2.ohchr.org/english/law/bodyprinciples.htm#wp1018764>

³⁷ Prison Commission regulation 04.46.00 regarding medical treatment of prisoners and detainees. Section 12 contains an explicit instruction regarding the right of prisoners and detainees to receive visits from medical and para-medical professionals for medical examinations and treatment, at the inmate's expense.

³⁸ The court has recognized the right of hunger-striking prisoners and detainees to be visited by a physician more frequently than once a month, in view of the special needs of hunger strikers. Cf. Petition 4614-03-12, Hana Shalabi v. IPS; Petition 9537-02-12, Khader Adnan v. IPS.

Inadequate and insufficient medical follow up

Most PHR-Israel affiliated physicians who visited the hunger strikers found that their health condition was not being monitored appropriately. There were cases in which medical tests were not being carried out frequently enough. Complaints raised by the strikers, which could have pointed to critical organ damage were only investigated after long delays, or sometimes not even at all.

Furthermore, during the hunger strike the IPS did not respond or even react, to even one of the dozens of expert opinions or recommendations issued by independent physicians submitted by PHR-Israel. Visits made by attorneys and repeat visits by PHR-Israel physicians to the hunger strikers revealed that most of the recommendations submitted to IPS were not implemented. Those that were, were carried out only after long delays. Such conduct violates Section E of Prison Commission Order No. 04.46.00 regarding visits by private physicians to prisoners and detainees receiving medical treatment. The order notes IPS's obligation to follow the recommendations of the private physician who examine the prisoner or detainee, and if the IPS physician disagrees with those findings and recommendations the prisoner and his physician must be notified of this in detail, including the reasons for not implementing the recommendation: "If at the end of the examination the private physician recommends treatment, every effort should be made to implement the recommendation. If the recommendation is not acceptable to the IPS physician, or cannot be carried out, the chief medical officer must approve its rejection or explain why it is not being implemented; a detailed record must be kept of the decision and the inmate/detainee and their private physician must be notified of the decision."

Preventing the transfer of medical information

In most cases, prison medical staff did not cooperate with PHR-Israel physicians during their visits to hunger strikers. In violation of medical ethical standards, the independent physicians were provided with only partial medical information. For example, following a visit with one particular hunger striker the independent physician asked to see her patient's medical records. In her report of the visit, the doctor commented, "I wish to note that the examination was conducted in the presence of the medical director, Dr. Klutzky. I asked to see Hassan's medical records and my request was denied. I was shown only current lab tests and information relating to the type of medical treatment he was currently receiving. Dr. Klutzky informed me that in order to review the patient's the medical records, including daily follow up records PHR-Israel is advised to make a formal request to the IPS.

PHR-Israel complied and made formal requests, but to no avail. Access to several of the striking prisoners and detainees' medical records was delayed even in instances that were clearly urgent. at Assaf Harofeh Hospital, where a number of prisoners and detainees were briefly transferred, PHR-Israel affiliated Physicians were denied their patients' medical information.

Doctors are obliged to share information for the benefit of their patient, as enshrined in the Patients' Rights Law of 1996:

Paragraph 7: second opinion

The patient is entitled, on their own initiative, to a second opinion regarding their treatment; the attending physician and the medical institution must assist the patient, in whatever way necessary, to fulfill this right.

Paragraph 8: Ensuring appropriate continuity of treatment

If a patient is transferred from one physician to another or from one medical institution to another, they shall be entitled, at their request, to cooperation between the physicians and medical institutions involved in their treatment in order to ensure appropriate continuity of treatment."

Suspected involvement of IPS medical staff in violations of prisoners and detainee rights

Failing to report violence against hunger strikers: During visits of independent PHR-Israel physicians, hunger strikers described several incidents in which they were subjected to abuse and violence by prison guards. A suspicion arises that IPS physicians do not document and/or report accounts having to do with the abuse and violence against hunger strikers. Refraining from doing so constitutes yet another breach of medical ethics (see below). The following are two examples:

In the medical report of her visit with striking prisoner Hassan Safadi on the 64th day of his hunger strike, May 7, 2012, PHR-Israel volunteer physician noted that "Mr. Safadi was transferred to the IPS medical center on April 6, 2012 because of severe dehydration. He said that after an argument with the prison guards at the entrance to the IPS medical center he was attacked by two guards and beaten on all parts of his body. After the incident, he was examined by an on-call physician." According to this account, though the inmate did undergo a medical exam, it appears the incident went undocumented and unreported.

Another visit summary from April 30, 2012, cites that the patients Bilal Diab and Tha'ir Halahla said that a few days prior to the independent physician visit, they had been subjected to verbal and physical abuse by IPS personnel during a search of their cell. In the wake of the incident the two refused medical treatment and tests. We are concerned that this incident was also neither documented, nor reported by IPS physicians.

In violation of ethical standards, IPS physicians commonly fail to document violence they witness first hand, or its consequences, or to report it. It should be noted that after many years of work by PHR-Israel vis-à-vis the Ministry of Health to advance the issue, according to a letter written by Dr. Boaz Lev, Associate Director General of the Israeli ministry of health on July 11, 2011, a "Committee for Medical Personnel to Report on Harm to the Health of Interrogated Persons"

had been established, the need to preserve evidence in cases where a suspected crime has been committed was also stressed.

Suspicious of abuse: During a visit of an independent PHR-Israel physician, the hunger striker Tha'ir Halhala reported that about two days prior to her visit his temperature had risen above 39 degrees and he needed to be transferred to the hospital. He said that he was removed from his wheelchair by the physician on call, put on the floor, and told by the physician that he would remain there until he stopped refusing medical treatment. He was finally taken to hospital.

whenever I want to sit up in bed instead of lying down, the IPS commissioner must authorize the removal of one or two cuffs for half an hour."

Forced treatment: Hassan Safadi was treated forcibly on orders given by the IPS ethics committee. As prison guards overcame his physical and verbal objections, the physician forcibly administered a number of injections. This was done despite explicit prohibition in the Malta Declaration of forced treatment.³⁹ It should be noted that the IPS ethics committee decided on forced treatment prior to exhausting other attempts to convince the patient to accept treatment. For example, an independent physician was not permitted to visit regularly, which would have enabled the physician to gain the patient's trust so that he would listen to their advice and perhaps agree to receive treatment, even partial treatment; no attempts were made to transfer the patient to hospital, a civilian setting which may have increased his willingness to cooperate and accept medical treatment. Family visits, prohibited by the IPS, may also have helped convince the inmate to accept treatment.

IPS Ethics Committee at Nafha Prison adopts policy of forced treatment

On the twentieth day of the mass hunger strike, in violation of IPS procedures specifying that the ethics committee is to be convened only at the request of a prison physician in order to assist in individual cases, the IPS ethics committee at the Nafha prison convened an emergency meeting. As noted, the committee did not convene in response to a physician's request, after visiting different prison wards, but did not speak privately with any hunger striker, as stipulated in its guidelines. The committee took a decision that prisoners would be forcibly treated as necessary. This extensive decision, in an early stage of the hunger strike, is a violation of medical ethics and the law that authorizes it to consider forced treatment on very strict conditions, and only when there is an immediate danger to the hunger striker life and only after meeting with the hunger striker in private. The ethics committee retracted its decision following intervention by the Ministry of Justice.

This case raises yet again concern that some of the actions and decisions taken by the IPS ethics committee during the hunger strikes were motivated by considerations that consciously opposed the interests of the [hunger striking] patient.

³⁹ <http://www.wma.net/en/30publications/10policies/h31/index.html>

The shackling of hunger striking prisoners in civilian hospitals

Most of the hunger striking prisoners and detainees reported being shackled to their bed by two limbs, at least, and even restrained completely by four limbs, while hospitalized or undergoing treatment in hospital. Some prisoners and detainees refused to be hospitalized to avoid humiliation and confinement to a hospital bed by shackles. One striking inmate declared, " whenever I want to sit up in bed instead of lying down, the IPS commissioner must authorize the removal of one or two cuffs for half an hour."

Treating a shackled hunger striker confronts physicians with an irresolvable ethical conflict, and here too extraordinary circumstances are required to justify such a serious departure from ethical norms. It is reasonable to assume that no such circumstances exist among hospitalized prisoners and detainees on prolonged hunger strike. The IPS' argues that in principle, Palestinian prisoners and detainees are shackled out of fear they will flee and/or receive and transmit messages to and from others. It is difficult for us to accept the argument that patients in their condition, most of which have difficulty standing or walking by the time they are taken to hospital and are constantly guarded by multiple wardens, constitute any danger whatsoever.

Shackling hunger strikers is one of many grievous examples of the IPS' disregard for its own guidelines regarding the shackling of prisoners and detainees in hospitals. According to its own procedures,⁴⁰ guidelines that PHR-Israel was instrumental in reforming, the IPS must use its discretion and take into account the medical condition of the hospitalized inmate. Moreover, a hospital that permits a hospitalized prisoner on hunger strike to be shackled to his bed violates medical ethics and Ministry of Health, Israeli Medical Association and international medical guidelines. As far as PHR-Israel is aware, in most cases the IPS never bothered to specify the reasons for which the hunger strikers were shackled while in hospital. We are also concerned that in some hospitals, no one challenged the decision to shackle hunger strikers or even questioned the reasons for doing so.

PHR-Israel contacted the IPS, hospital, Ministry of Health and the Israel Medical Association numerous times demanding adherence to the guidelines that prevent using shackling as a default measure, and asking that hospitals to refrain from shackling hunger strikers. In order to get Khader Adnan released from his shackles, it was necessary to go to court.⁴¹ Hassan Safadi, like the other detainees on strike, was also shackled each time he was transferred to hospital or hospitalized. Once, on May 15, 2012, he was shackled by his legs at Assaf Harofeh hospital on the 85th day of his hunger strike despite the fact that, as the independent physician treating him determined at the time, he "lacked any feeling or sense of orientation in his feet," and was in danger of irreversible harm due to "worrisome signs of peripheral neuropathy."

⁴⁰ <http://www.ips.gov.il/NR/rdonlyres/013CA653-65D5-4D89-B586-3D7AABFE7DD6/0/041501.pdf>

⁴¹ http://www.nevo.co.il/psika_word/mechozi/ME-12-02-16346-669.doc

The IPS prevents the transfer of hunger striking prisoners and detainees to civilian hospitals

As their hunger strikes continued, strikers were transferred from the various prisons in which they were being held to Nitzan prison in Ramle, where the IPS medical center (IPSMC) is located. The IPS claimed that although the IPSMC is not a hospital, the hunger strikers' medical condition could be better monitored and treated there. In response to PHR-Israel's request to transfer the hunger strikers to hospital, Attorney Shelly Sabag, assistant to the IPS legal advisor, noted, "We do not deny that the IPSMC is not a hospital, or that it lacks the resources and capabilities of a hospital. On the contrary, we fully agree. Nevertheless, the IPSMC and other IPS facilities are able to adequately provide liquids, supplementary vitamins and minerals orally and/or intravenously."⁴²

Visits and examinations by independent PHR-Israel physicians of hunger strikers in the IPSMC revealed that the medical follow provided by IPSMC medical staff was faulty and inadequate. In a number of instances, hunger strikers reported being neglected by both guards and physicians, or even physically and verbally attacked by them. In addition, according to various expert opinion submitted to PHR-Israel by independent physicians who visited the hunger strikers in the IPSMC, or who are familiar with the IPSMC and its functioning, determined that the IPSMC is not equipped to carry out appropriate monitoring and follow-up because of the way it is organized and administered, because of a lack of medical equipment, specialists, and immediate services, all of which are readily available in civilian hospitals. Physicians further stated that the IPSMC is not an appropriate facility for patients in advanced-stages of a hunger strike, nor those beginning to eat again after engaging in lengthy strikes,⁴³ and that keeping them there endangers their lives.

The structure and operation of the IPS Medical Center (IPSMC) are inadequate for the provision of appropriate care to hunger strikers: IPSMC cells are effectively prison cells. Opening them requires procedures that take a long time, which may be problematic in cases of medical emergency. Opening a cell at night to transfer an inmate to hospital is even more complicated. In the event of an acute deterioration of the hunger striker's condition, it is not possible to administer treatment in a reasonable amount of time. It can take a long time for medical staff to reach patients requiring immediate assistance, especially at night, when cellblocks are locked. As far as hunger strikers are concerned, this time may be critical.

There are no emergency call buttons at the IPSMRC. Strikers report that if they wish to call for help they must shout, and sometimes there is no one to hear them. These are individuals whose physical functioning is deteriorating, who have difficulty standing and even sitting, and who require assistance in most daily activities.

The IPSMC lacks the medical equipment required to provide appropriate treatment: The IPSMC lacks CT equipment for abdominal and brain scans and ECG equipment necessary for the rapid diagnosis of medical conditions to determine what treatment is needed to prevent irreversible damage.

⁴² A letter from the IPS to PHR-Israel dated 24.04.12

⁴³ Refeeding- Beginning to eat again following a prolonged hunger strike involves the danger of serious health complications and even death, requiring close and careful medical monitoring.

The IPSMC does not administer tests essential and necessary to the supervision and treatment of advanced-stage hunger strike: According to an account issued by a PHR-Israel physician who visited detainees on hunger strikers in the IPSMC, the only tests her patients had undergone were basic blood count and blood chemistry. There were no tests done to determine Coagulation blood test, troponin test, thyroid function, cardiac insufficiency or blood gases. Even though it is possible to carry out simple laboratory tests in the IPSMC, as described above, such tests were only conducted on a weekly basis, despite the need to have them done daily out of persistent concern, so long as the patient is fasting, for the development of life-threatening electrolyte dysfunction – for example, potassium deficiencies that can lead to fatal cardiac arrhythmia; phosphorous deficiencies, which can cause problems in the Respiratory Muscles (muscles weakness) and magnesium deficiency which leads to potassium deficiency.

Moreover, it was found that IPSMC physicians conduct only partial physical examinations. According to the independent physician, blood pressure was not measured after patients changed positions and no anamnesis was taken of daily urinary output, two essential indicators of the patient's hemodynamic stability. Daily tests measuring blood oxygen saturation were not carried out, nor were comprehensive neurological examinations or physical examinations to reveal a possible condition of acute abdomen, and patients were not weighed daily, even though weight is a factor used to determine the prognosis and mortality risk in hunger strikers.

Throughout the hunger strike, PHR-Israel struggled against the IPS' refusal to transfer hunger strikers to civilian hospitals. During the hunger strikes waged by Khader Adnan and Hana' Shalabi, the IPS agreed to hospitalize them. Khader was transferred to hospital on the 40th day of his hunger strike; Hana' Shalabi was transferred on the 34th day of her strike. As the number of hunger strikers increased, the IPS made it increasingly difficult to get the prisoners transferred to hospital and admitted, granting permission only in exceptional cases in which the medical conditions of striking prisoners deteriorated dramatically. Instead, the IPS would transfer them to hospital for specific tests and examinations, limiting as much as possible the frequency of these transfers. As a result, many medical tests and examinations were not carried out, or were conducted less frequently than required. The situation became completely absurd; prisoners and detainees who had surpassed the 80th, 90th and even 150th day of their hunger strike were still held in the IPSMC. This led to such clear a danger that the Red Cross issued a statement on May 9, 2012,⁴⁴ demanding, in accordance with PHR-Israel, that hunger strikers be transferred to hospitals when their hunger strike surpassed the 40-day mark.

Each independent physician from PHR-Israel who visited hunger strikers recommended prisoners and detainees to be transferred immediately to hospital and remain hospitalized for the duration of their hunger strike. This recommendation was implemented only once, in the case of Khader Adnan, the first hunger striker.

⁴⁴ <http://www.icrc.org/eng/resources/documents/news-release/2012/israel-palestine-news-2012-05-08.htm>



CHAPTER THREE

Israeli Court Responses to IPS Violations

Over the course of the hunger strikes, the IPS systematically violated various basic rights of the hunger strikers. The courts represented the strikers' last resort to safeguard their rights. The court responded positively to every individual request submitted by PHR-Israel that an independent physician be permitted to examine hunger strikers, but refused to address the fundamental issue raised in the petitions regarding successive visits by the independent physician, according to a frequency to be determined by the physician, in accordance with the patient's needs. The court thus compelled PHR-Israel and hunger strikers - who were represented by PHR-Israel - to reapply each time to the court, sometimes so that the same physician could visit the same hunger striker.

The situation was more complex concerning other petition topics, such as requests to transfer hunger strikers in advanced-stages to hospitals, allowing family members to visit hunger strikers, and ending the shackling of hunger strikers in hospitals. As the hunger strikes continued, PHR-Israel observed that the court (like the IPS) stiffened its attitude, expressed in its denial of requests to permit family visits to hungers strikers whose lives were in danger, despite a previous court decision permitting family visits to Khader Adnan, the first hunger striker. In December 2012, district court-center-vice president, Judge Avraham Tal also ignored PHR-Israel's request that Ayman Sharawni not be shackled in hospital; in contrast, when PHR-Israel petitioned at the beginning of 2012 against the shackling of Khader Adnan, Judge Tal ruled against the shackling.

During the hunger strike, 19 individual petitions were filed to permit an independent PHR-Israel physician to visit the hunger strikers. All petitions were heard by Judge Avraham Tal, the vice-president of the Central District Court. His decision in every case was to permit a PHR-Israel physician to coordinate a visit, but, as noted, successive visits to provide for ongoing follow-up were not authorized in the same petition, except in the cases of Khader Adnan and Hana' Shalabi. That decision forced PHR-Israel staff to contact IPS each time to coordinate a visit, complete IPS application procedures, and only a few days later, after the request was refused or no response granted, petition the court, wait for a hearing, be granted permission for a single visit, and only then coordinate with the IPS a date for the visit. The entire procedure is extremely lengthy and prevents the hunger striker from receiving optimal and consistent medical consultation and treatment.

The following is an example of a ruling handed down by Judge Tal (April 4, 2012):

“My decision is to permit each of the petitioners to be seen by a private physician according to Commissioner’s Regulation 04.4000, that is, one visit during the month of April 2012, in the presence of the prison physician and in coordination with the prison administration. In case of a medical need for an additional visit to one of the petitioners in April 2012, the petitioners’ representative must submit a new petition.”

This ruling does not acknowledge the unique conditions of a hunger strike and the obvious need for consistent visits. Instead, it states that visits by an independent physician will be subject to the regulations of the commissioner,⁴⁵ which are based on the Patients’ Rights Law with respect to obtaining a second opinion, and ignores the fact that the IPS consistently violates its own regulations.

Four individual petitions demanding the transfer of hunger strikers to hospital were rejected: The first petition related to the hospitalization of the hunger striker Tha’ir Halahla. On May 7, 2012, Judge Tal ruled that the IPS must provide Tha’ir’s medical records from the start of his hunger strike to physicians at Assaf Harofeh and that they [Assaf Harofeh doctors] would decide, “whether the petitioner requires hospitalization.” According to the ruling, the department director at Assaf Harofeh was mandated to announce his decision “no later than 48 hours after receiving the documents.” Judge Tal concluded, “In light of the above, I reject the petition.” In line with the ruling, Tha’ir’s medical records were sent to the physician at Assaf Harofeh, who determined that the IPSMC was fully capable of treating the petitioner. Assaf Harofeh’s decision was shown to a number of PHR-Israel volunteer specialists who found it on their opinion to be problematic, primarily because the physician concluded, solely by reviewing medical records, that Tha’ir did not require hospitalization. In our view, when a claim regarding the denial of adequate care in question, the patient himself ought to be examined.

Physicians for Human Rights-Israel believes that the decisions of the court regarding matters involving the protection of the rights of the hunger strikers ignores the fact that the IPS consistently violated the prisoners’ health rights among other rights.

⁴⁵ Cf. fn. 37, above

Urgent petition to the High Court of Justice by PHR-Israel and other human rights organizations⁴⁶ demanding that hunger strikers in an advanced-stages of hunger strike be transferred and admitted into public hospitals (May 11, 2012): This petition was supported by an expert medical opinion addressing the medical condition of hunger strikers examined by PHR-Israel volunteers, as well as an additional expert opinion declaring as a matter of principle, that the IPSMC facility is not appropriate for the needs of the strikers, both medically and ethically. With respect to the matter of principle, the judge on duty rejected our request for an urgent hearing, but ruled that the State must respond within four days. With respect to the hunger strikers themselves, it was decided that PHR-Israel should petition the district Court on Administrative Matters, yet concluded that “presumably, after the petitioners’ representatives call the state’s attention to the cases of individual hunger strikers, they will be examined and everything that is necessary will be done, including hospitalization if authorized.”

Denial of family visits: PHR-Israel submitted three petitions for family visits on behalf of strikers and their families. Responses received from the court failed to acknowledge that the detainee was conducting a prolonged hunger strike and that meeting with family members might be very important, and that the family would want an opportunity to visit the striker while he is still lucid, conscious and alive. Even when the condition of one striker deteriorated and was hospitalized, Judge Tal stated,

“the Patients’ Rights Law stating that “a patient hospitalized in a medical institution may receive visitors at times and in adherence to arrangements determined by the director of the medical institution” applies on the applicant – even though he is a prisoner. However, regulations set by the IPS commissioner state that the right for family visits is – as far as prisoners are concerned – a benefit that can be taken away once they commit a disciplinary offense such as going on a hunger strike.

The judge also noted, in a manner that arouses concern, that “the [petitioner’s] medical condition is not sufficiently serious (nor, we hope, will it become so serious) as to justify family visits.” It should be noted that the hunger striker to whom this decision refers was on the 64th day of his hunger strike when this petition was submitted.

The fact that exceptional permission for family visits is considered – if at all – only in cases in which the prisoner’s medical condition deteriorates so drastically vitiates the Patients’ Rights Law and its explicit concern for support before they are about to die. It should be noted that here too the IPS and the court retreated from their earlier position. In the case of Khader Adnan, a family visit was authorized – although only in response to a petition – when he was hospitalized at Ziv Hospital in Safad. Khader was then in a less advanced-stage than were later hunger strikers, but subsequent requests for family visits were denied even though physicians determined there was immediate danger to the lives of most of the hunger strikers detailed in this report.

⁴⁶ The petition was submitted by Attorneys Michael Sfard and Carmel Pomerantz. Organizations joining the petition included Addameer, The Public Committee against Torture in Israel, Adalah, Mossawa, Gisha and Yesh Din.

Physicians for Human Rights-Israel believes that the decisions of the court regarding matters involving the protection of the rights of the hunger strikers ignores the fact that the IPS consistently violated the prisoners' health rights among other rights. The court essentially authorized the IPS to violate its own procedures with no oversight or meaningful challenge to IPS conduct. The message that hunger-striking prisoners and detainees received was that they require the backing of one or more human rights organizations and must be represented by a number of attorneys.



CHAPTER FOUR

Conduct and Responsibility of Israel's Medical Establishment

The Ministry of Health (MoH): Despite repeated appeals by PHR-Israel,⁴⁷ the Ministry of Health issued no public statements concerning the ethical and professional obligations of IPS medical staff or the inability of the IPSMC to provide optimal treatment to hunger strikers. This was despite the fact that the Yisraeli Committee – which examined the capacities and functioning of the IPSMC – was established by the Ministry of Health itself. The Ministry responded to only a few of the inquiries received from PHR-Israel; responses were limited to the MoH restating its commitment to the Patients' Rights Law.

Nevertheless, it is worth noting several of the actions taken by the Ministry of Health. A meeting was held on May 14, 2012 between the Ministry of Health and IPSMC staff, though PHR-Israel is unaware of what was discussed at this meeting and what impact it had, if any, on IPS medical personnel conduct. In mid-April, the Ministry of Health also distributed to hospitals (apparently in wake of the April 17th start to the mass hunger strike) a pamphlet on "treatment guidelines for prisoners and detainees undertaking hunger strikes." The guidelines focus on parameter for treatment, force-feeding, IPS ethics committee procedures and considerations, dealing with emergency situations and forcible resistance. The guidelines do not devote much attention to professional and clinical treatment issues. In all, in our view, its coverage of the ethical aspects of hunger strikes was extremely limited.

We believe that the document's weakness lies precisely in what it fails to mention, the right of the hunger striker to receive independent medical advice, enjoy medical privacy and confidentiality, and to be completely free of pressure and threats. All these matters fall under the topic of dual

⁴⁷ For example, <http://phr.org.il/default.asp?PageID=37&ItemID=1380>

loyalty. We have the impression that the document, despite its importance, was written more out of concern for outlining a legal foundation for dealing with the “problem” without having to violating accepted conventions and principles, and less out of a desire to ensure that the hunger strikers were given optimal treatment and maximum protections while struggling under very complex conditions.

In varying contexts over the years, including during the hunger strikes, the MoH has made it clear that it has no authority, including no medical authority, over the Israeli Prison Service, and that its ability to monitor or direct IPS physician conduct is limited. The Ministry of Health supports the employment of physicians under the auspices of the Israeli Prison Service, as opposed to the view held by PHR-Israel, as well as by the Israeli Medical Association, that IPS physicians should not be subordinate to the IPS but to a professional medical body. PHR-Israel believes that a situation in which a professional ministry responsible for health in Israel lacks authority over particular medical personnel is problematic.

Hospitals: The role of public hospitals during the hunger strikes was not only limited to their ability to provide better medical treatment and follow-up than the IPS infirmary. The hospital’s civilian atmosphere, dedicated solely to caring for the patient’s health and welfare, provides hunger strikers with a neutral civilian environment in which pressures and threats are moderated and violence against them should ostensibly stop. The degree of trust by the hunger-striking prisoner or detainee always depends on how strictly the hospital preserves the hunger striker’s rights and how willing it is to provide the protections that are needed. This trust is essential first and foremost to prevent irreversible damage to the striking prisoners and detainees’ health and possibly even to prevent death.

During the hunger strikes, hospitals differed among themselves with regards to their treatment and conduct toward hunger strikers. To the best of our knowledge, some hospitals made efforts to understand the clinical and ethical issues involved in hunger strikes, by firmly opposing violations of the rights of hunger strikers (such as refusing to treat a shackled hunger striker and demanding the removal of his shackles), cooperating and consulting with the independent attending physician, remaining in contact with the hunger striker’s family and updating them regarding the striker’s medical condition, adhering to medical ethical norms, and more.

Other hospitals limited their role providing the necessary clinical medical treatment, and nothing more. The following are some examples of serious failings that in our opinion could have been prevented:

Shackling: In most hospitals, hunger strikers were shackled. We are concerned that the hospitals did not ask that their hunger-striking patients not be shackled, or failed whatsoever to prevent shackling, despite the fact that, as noted above, the Ministry of Health has issued explicit guidelines on the issue and that IPS procedures also require professionals to exercise discretion before shackling prisoners and detainees, specifying that shackling is to be used only as a last resort.

Failure to provide information to treating physicians: In a number of cases, even with a confidentiality waiver signed by the prisoners and detainees themselves granting access to PHR-Israel's independent physicians to their medical records, some hospitals still withheld information from PHR-Israel volunteer physicians who called or appeared in person requesting information on their patients.

Failure of hospitals to keep the families of hunger strikers informed of their loved ones medical condition: Besides withholding information from PHR-Israel volunteer physicians, some hospitals also refused to pass information to relatives, even when they called for updates.

The Ziv Hospital Ethics Committee came to a decision to force feed hunger striker Khader Adnan: To their credit, we note that medical staff refused to carry out the decision.

Concerns that patients were released early or transferred to other hospitals for non-medical reasons: Some hospitals made the admission of hunger strikers to their institution very difficult or acted to have prisoners and detainees transferred, for reasons that are not clearly medical. At least one hospital decided not to admit a hunger striker because the prisoner refused to accept their proscribed medical treatment. This refusal to provide care is rooted in a narrow view of medical treatment (will the patient agree to take vitamins, agreeing to receive an IV, etc.), and fails to consider alternative means of reducing pain and suffering. It certainly fails to consider the functioning of the IPS Medical Center, structural hostility between IPS medical staff and the hunger strikers and the need of the latter to have access to medical personnel who are not wearing prison staff uniforms.

The Israeli Medical Association (IMA): IMA conduct should be evaluated in view of World Medical Association guidelines, notably the WMA Recommendation adopted in Montevideo in October 2011 :⁴⁸

Where physicians are working in situations of dual loyalty, support must be offered to ensure they are not put in positions that might lead to violations of fundamental professional ethics, whether by active breaches of medical ethics or omission of ethical conduct, and/or of human rights, as laid out in the Declaration of Tokyo.

National Medical Associations (NMA's) should offer support for physicians in difficult situations, including, as feasible and without endangering either patients or doctors, helping individuals to report violations of patients health rights and physicians' professional ethics in custodial settings.

Out of numerous inquiries submitted by PHR-Israel to the IMA via phone and fax, only a handful was answered. Two inquiries were answered only after international stakeholders submitted a related appeal from abroad.

⁴⁸ <http://www.wma.net/en/30publications/10policies/t9/>

With regard to the issue of shackling, on May 8, 2012, IMA attorney Malka Baruo, responded that

“Professor Reches [head of the IMA] was gratified to hear that the restraints used in this case would be reduced to the minimum necessary, and not employed at all during medical exams.”

It should be noted that this response does not even relate to the fact that the striking prisoners and detainees do not constitute a threat and there is no justification for shackling them.

With respect to hospitalizing advanced-stage hunger strikers, despite the fact that PHR-Israel was informed on April 30, 2012 by phone that the IMA supports PHR-Israel’s position that advanced-stage hunger strikers should be hospitalized, the IMA refrained from stating their view publicly, after the Red Cross itself called for hospitalization. According to Attorney Barouo’s response, quoted above, “Professor Reches stated his understanding that not all the hunger strikers could be transferred to civilian hospitals but trusts that the decision whether or not to do so will be made according to purely clinical considerations,” With that, he virtually left the decision up to the IPS on a case-by-case basis, disregarding principle criticism that the ability of the IPSMC to treat them is in fact quite limited.

The IMA did not accept PHR-Israel’s invitation to join its petition demanding civilian hospitalization.

Visits by independent physicians: Even though PHR-Israel had been asked directly by the hunger strikers themselves to send physicians, and enjoys their trust, the IMA did not support our request to send independent physicians. Instead, they proposed sending their own physicians. We do not know whether or not the IPS honored their proposal.

On October 4, 2012, Professor Avinoam Reches, chairman of the IMA Ethics Committee, called on the Ministry of Health in an article published in Ha’aretz⁴⁹ to establish an interdisciplinary committee to formulate treatment policy for hunger strikers in Israeli prisons. Professor Reches wrote, “In my opinion, establishing a multi-disciplinary committee that includes representatives of the Ministry of Justice, the Ministry of Health, the Israeli Medical Association and human rights organizations is urgently needed in order to formulate an agreed national policy in cases such as these. We should not leave it to the professional conscience of one lone physician to have to face such an impossible decision.”

On October 16, the members of PHR-Israel’s ethics committee⁵⁰ wrote to the Ministry of Health and the IMA welcoming Prof. Reches’ proposal. As the human rights organization that has played a significant and active role in treating and monitoring the hunger strikers, we asked

⁴⁹ <http://www.haaretz.co.il/news/health/1.1841569>

⁵⁰ <http://www.phr.org.il/default.asp?PageID=37&ItemID=1668>

to be included as a member of the proposed multi-disciplinary committee and participate in formulating a treatment policy for hunger strikers. Our letter also stated, "this committee, when established, should determine the procedures to be followed by the IPS and other law enforcement agencies with respect to hunger strikers, as well as the procedures of the hospital system. It is vital to define and standardize medical conduct within these institutions, particularly because professionals obviously find themselves in a situation of dual loyalty and are forced to make extremely significant medical and ethical decisions by themselves, without any external support system and while being subject to pressures and constraints."

On October 18 we received a reply from Dr. Roni Gamzu, Director General of the Ministry of Health, who wrote: "While not rejecting your proposal, I believe that the Ethics Bureau [meaning the IMA ethics committee] is obligated to discuss and determine the policy it will recommend."



CHAPTER FIVE

Conclusions and Recommendations

The question of Palestinian prisoners, considered by their people to be political prisoners and prisoners of war, represents one of the fundamental issues in the struggle to liberate Palestine. Palestinian society views their release as an integral component of the liberation of Palestinian land and people from occupation.

The struggle of the hunger strikers against administrative detention has exposed the arbitrariness of this form of detention and has made it a focus of public discussion in Israel and in the world, to a greater extent than ever before.⁵¹ Israel's response to the demands of the Palestinian hunger strikers, administrative detainees and prisoners, was apparently a result of a number of factors, the most important of which was Israel and the international community's apprehension over a possible flare-up that might lead to a third intifada. An additional factor was the growing international pressure against Israel's sweeping use of administrative detention.

Israel's attempts to conceal the repressive political motivations on which its policy of administrative detention is based by describing Palestinian political prisoners as dangerous terrorists and ticking bombs threatening the peace and security of the Israeli public, failed increasingly as the hunger strikes continued.

During the hunger strike PHR-Israel witnessed violations of medical ethics and violations of the rights of hunger-striking prisoners and detainees – including violations of the right to health – as

⁵¹ Cf. major statements on the subject: Statement by UN Secretary General Ban Ki Moon - [http://www.un.org/apps/news/story.asp?NewsID=41959&Cr=palestin&Cr1=Decision of the European Parliament](http://www.un.org/apps/news/story.asp?NewsID=41959&Cr=palestin&Cr1=Decision%20of%20the%20European%20Parliament), p. 74, par. 11 - <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+20120705+SIT+DOC+PDF+V0//EN&language=EN> Recommendation by Yitzhak Aharonovich, Minister of Internal Security, to limit administrative detentions <http://www.haaretz.co.il/news/politics/1.1699896> Statement by Catherine Ashton, European Union Secretary for Foreign Affairs - http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132456.pdf

well as a deviation from professional standards. This ensemble of violations endangered the lives of the hunger strikers and denied them independent medical advice. This is but one component of a system that enables, and/or ignores, additional violations of prisoners and detainees' rights – some even more serious. Ignoring these violations gives a green light to a continued trampling of rights of one of the most vulnerable populations.

The manner in which the IPS health system dealt with the hunger strikes showed to degree they are subordinate to the prison system, itself subordinate to Israel's political echelons. As a result, IPS health system is subordinate to security and political considerations that contradict the best interests of hunger-striking patients and, of course, exacerbate issues of dual loyalty.

England, which has a history of hunger strikes, the most well-known of which resulted in the deaths of ten hunger strikers in 1981, formulated principles to ensure optimal and ethical medical treatment. In Israel, despite PHR-Israel's requests to formulate such principles, and despite recommendations by Israeli and international experts prescribing optimal treatment, it appears that the IPS is hankering down because it realizes that any consultation with outside individuals will result in a loss of control. We believe the fact that the previous IPS chief medical officer went on extended leave at the height of the hunger strike in May and later left her job in July raises concern that a stance within the IPS supporting adherence to medical-ethical principles was seen as an impediment to operating in accordance with security and political needs.

As long as prison health system is completely subordinate to the prison system and its security and political considerations, the problem of dual loyalty will persist. Extreme bias favoring of the interests of the prison system will continue, as will violations to the rights of prisoners and detainees in general, and especially those on hunger strike. The Israeli medical establishments has not sufficiently intervened to prevent harm to hunger strikers and to ensure they are treated in accordance with professional and ethical standards. PHR-Israel repeatedly beseeched the Ministry of Health and the IMA to be more actively involved and to express leadership and responsibility during the hunger strikes, but most of these requests went unanswered. The very few responses that were received reiterated the view of the IPS without trying to challenge or examine IPS statements and views.

In our view, Professor Avinoam Reches' proposal to formulate a policy for treating hunger strikers, and the Ministry of Health's support of the proposal in principle – that is, when it eventually gets around to implementing it – is not sufficient. The IMA and the Ministry of Health must actively move the process forward instead of making do with declarations, and to intervene in cases when their intervention is needed.

It is clear that the conduct of representatives of the health systems and of health establishments is deeply rooted in political culture and the general attitude of state authorities toward Palestinian prisoners and detainees. It is therefore also clear that a long-term solution to ensuring their

rights and human dignity requires that Israel cease its policy of repression and abuse toward Palestinian prisoners and detainees, which is typically used as an instrument of political pressure and punishment. It is imperative that Israel cease its use of administrative detention and release all administrative detainees. In the interim, even as part of a repressive system, the health system must act to ensure that the rights of prisoners and detainees are honored and must that professional and ethical values in the service of its patients are maintained. To this end, we summarize here some of our principal recommendations with respect to ethical and professional treatment of hunger strikers, which were formulated based on PHR-Israel's experience monitoring and treating Palestinian hunger strikers throughout 2012.

Recommendations: Structural Reforms

- Establish an external monitoring system of oversight and control for proper follow up and treating of hunger strikers, that would include, but not limited to, representatives of the Ministry of Health, the IMA and human rights organizations.
- Offer IPS and hospital physicians supplementary training courses familiarizing them with medical, professional and ethical standards for treatment of hunger strikers.
- Include medical treatment of prisoners and detainees in medical school curricula with specific attention to the ethical and clinical treatment of hunger strikers.
- End the categorization of hunger strikes as disturbances to prison order - the response to which is punishment of hunger strikers - and end the following practices: isolating hunger strikers, fining them, confiscating their belongings and preventing family visits.
- Establish a committee to examine the transfer of authority over medical and health services for prisoners and detainees from the IPS to the Ministry of Health.
- Regularize the contact of all prisoners and detainees with family members and family visits as a right rather than a privilege which can be cancelled as punishment. Similarly, allow hunger strikers to have contact with family members and receive regular visits.
- Establish procedures requiring IPS medical personnel to document and report injuries and ill-treatment and abuse to prisoners and detainees in general and to hunger strikers and prisoners being interrogated in particular, and establish mechanisms to ensure implementation of these procedures.
- Investigate all complaints submitted by PHR-Israel and other bodies on behalf of hunger strikers concerning violations of their rights by the IPS medical system and with respect to the operation of the IPS Ethics Committee during hunger strikes, including complaints about abuse, forced treatment and IPS failure to document or to report violence against or abuse of hunger strikers by prison guards.

Immediate Recommendations

- Adopt all the ethical standards defined in the Malta Convention for treating hunger strikers.
- Ensure that hunger strikers are treated in the same manner as every other patient, as specified by the Patients' Rights Law.
- Allow independent physicians unrestricted and consistent access to hunger strikers, for monitoring, treatment and follow-up, as frequently as the independent physician deems necessary.
- Provide independent physicians unrestricted access, with the hunger striker's approval, to all medical information and records related to their treatment and medical condition.
- Notify the independent physician and consult with them regarding the hunger striker's medical condition and the treatment they require.
- Transfer advanced-stage hunger strikers to hospital until they end their strike and their recovery is ensured (including at the point they start eating again).
- Refrain from shackling hunger strikers while they are hospitalized.

The work of prisoners and detainees department at PHR-Israel is supported by private donors and by the following: The Royal Norwegian Embassy, HEKS-EPER, EED, The European Union, medico international, The Social Justice Fund, The Sigrid Rausing Trust, Christian Aid, cultures of Resistance, The Samuel Sebba Charitable Trust, the Naomi and Nehemia Cohen Foundation.

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ANNEXES



MINISTRY OF HEALTH

Director General

Amany Dayif
Prisoners & Detainees Department
Physicians for Human Rights
Shvat 23, 5573
February 03, 2013
Our ref.: 06041213
(In reply: indicate reference)

Dear Sir/Madame,

Ref.: Report surveying Palestinian prisoners' hunger strikes in the course of 2012
Your letter אג37-13--אג of 21.1.13

You got your dates a little mixed up.

Written on 21.1.13, received on 30.1.13, and you ask for response on 6.1.13. J

We shall thoroughly read the report, discuss it with IPS and decide on our policy, taking into account the recommendations.

Respectfully,

Prof. Roni Gamzu

Copies: Dr. Boaz Lev, Associate Director General, Ministry of Health
Attorney Talia Agmon, Legal Department, Ministry of Health
Ms. Smadar Salman, Office of the Director General – pls. set a date for a conference next month

www.health.gov.il

המנהל הכללי
Director General



משרד
הבריאות
לחיים בריאים יותר

ISRAEL MEDICAL ASSOCIATION

February 10, 2013

Shvat 30, 5573

62-2013-m

Amany Dayif
Prisoners & Detainees Department – Physicians for Human Rights
52, Golomb St.
Tel Aviv 66171

Dear Sir/Madame,

Ref.: Report on Palestinian Prisoners' Hunger Strike in Israeli Prisons

Your ref.: א36-13--א

We have received your above-mentioned letter with the aforementioned report.

We find the writing of the report distressing, since we believe it is replete with inaccuracies and unilateral statements.

As you know, IMA has worked tremendously to ensure the wellbeing and safety of the hunger strikers, among other things by visiting detention facilities, conversing with the strikers, getting in touch with IPS's physicians and with doctors who treated the strikers in hospital, including the hospital's director, meetings and joint visits with Red Cross representatives, etc. The facts as we know them differ greatly from what was written in the report.

We suggest that you shelve the report in its current form, and re-check the objective and accurate facts vis-à-vis the relevant authorities, before publishing your summation on this issue.

Respectfully,

Dr. Leonid Eidelman, Chairman
Israel Medical Association



Dr. Leonid Eidelman, Chairman
Israel Medical Association

February 13, 2013
Ref.: 13-73--אע

Dear Dr. Eidelman,

Ref.: Your response to the report on Palestinian prisoners on hunger strike in Israeli prisons
Your letter: 62-2013-m

Sending the report and requesting your response have presented IMA with an opportunity to respond in an appropriate, professional and concrete manner; namely: to respond to the alleged inaccuracies and unilateral statements. One would have expected that an organization which, by definition, is supposed to act as an ethical compass of the medical community in Israel would respond in an informative way.

It should be noted that visits by the International Red Cross or IMA doctors are not a substitute for visits by an independent doctor if so requested by the hunger striker as mandated by regulations of the World Medical Association and other international organizations specializing in medical ethics.

As for the activity and involvement of IMA during the hunger strikes, we presented in the report our findings based on our experience and intense involvement in the accompaniment of most the strikers in the later stages of the hunger strike. Things that were not done publicly, or were not brought to our attention, could not have found a place in our report. In your response, it would have been worthwhile if you could have specified the actions you have taken and, in your opinion, were not reflected in the report. To date, our appeals to you while treating the hunger strikers as well as our repeated requests for the interference of IMA to secure the wellbeing of the hunger strikers and their right to appropriate treatment weren't answered.

Moreover, PHR-IL is not the only organization to which information about IMA's activity concerning the hunger striking prisoners should have been forwarded. We believe that IMA is obliged to present its conclusions and proposals to the public in general and to Israel's medical community in particular, so that the latter could internalize the appropriate way to deal with the challenge of hunger strikes. Keeping this activity and these stances as a secret between you and IPS is practically tantamount to concealing information from the public, the hunger strikers and the medical community and thus prevents the possibility of learning and internalizing the ethical and professional values that IMA is supposed to disseminate and instill in its members.

Sincerely,

Amany Dayif
Prisoners & Detainees Department

Hadas Ziv
Public Outreach