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FROM PELICAN BAY TO PALESTINE: THE LEGAL NORMALIZATION OF FORCE-FEEDING HUNGER- STRIKERS

By Azadeh Shahshahani and Priya Arvind Patel***

INTRODUCTION

Hunger-strikes present a challenge to state authority and abuse from powerless individuals with limited access to various forms of protest and speech—those in detention. For as long as hunger-strikes have occurred throughout history, governments have force-fed strikers out of a stated obligation to preserve life. Some of the earliest known hunger-strikers, British suffragettes, were force-fed and even died as a result of these invasive procedures during the second half of the 19th century.¹

This Article examines the rationale and necessity behind hunger-strikes for imprisoned individuals, the prevailing issues behind force-feeding, the international public response to force-feeding, and the legal normalization of the practice despite public sentiment and condemnation from medical associations. The Article will examine these issues through the lens of two governments that have continued to endorse force-feeding: the United States and Israel. This examination will show that the legal normalization of force-feeding is repressive and runs afoul of international human rights principles and law.

I. WHY INDIVIDUALS HUNGER-STRIKE AND GOVERNMENTS FORCE-FEED

In custodial settings, like prisons and detention centers, individuals with limited self-determination utilize hunger-strikes to express opposi-

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1. Tracey M. Ohm, Note, *What They Can Do About It: Prison Administrators' Authority to Force-Fed Hunger-Striking Inmates*, 23 WASH. U. J.L. & POL'Y 151, 154 nn.13-15 (2007).

tion and to call for personal or systemic changes. For imprisoned individuals, refusing food is usually the only method of meaningful protest, because their bodies are the only remaining sphere over which they still exert control while incarcerated. Hunger-strikes fall into at least four categories that sometimes overlap: 1) Strikes related to frustration at conditions of confinement or reason for detention; 2) Strikes intended to call attention to specific issues, such as prison conditions; 3) Strikes used as a bargaining tool, such as to seek transfers or demands relating to conditions of confinement; and 4) Strikes with irrational or suicidal aims.² Regardless of an individual's expressed rationale, hunger-strikes preserve autonomy and dignity within imprisoned and powerless populations.

Force-feeding is a non-consensual act of aggression against an individual who has chosen to refuse food.³ As explored through historical examples below, governments which engage in force-feeding typically proffer two reasons: 1) they have a duty to preserve the life of individuals in their custody and care; 2) they must act to preserve national security and security within the prison population. Force-feeding is carried out when these goals are viewed as outweighing the autonomy and basic rights of the imprisoned individual, despite the extreme pain and suffering the act of force-feeding can cause.

II. HISTORICAL OVERVIEW OF FORCE-FEEDING AND DEVELOPMENT OF THE INTERNATIONAL ETHOS OPPOSING IT

A. *Israel*

Issues surrounding the morality, or immorality, of force-feeding have arisen over the past fifty years in the context of the detention of Palestinians in Israeli prisons and detention centers. Though there is little concrete evidence or documentation of Israel's use of force-feeding, individual source reports and anecdotes shed some light on the practice.

Since at least 1969, there have been at least twenty-six hunger-strikes by Palestinian prisoners.⁴ One of the most well-known of these strikes was the Nafha Hunger Strike by eighty prisoners in the summer of 1980.⁵ During this thirty-three-day-long strike, Israeli authorities used

2. Steven C. Bennett, *The Privacy and Procedural Due Process Rights of Hunger Striking Prisoners*, 58 N.Y.U. L. REV. 1157, 1157 n.1 (1983).

3. Sumer Dayal, *Prosecuting Force-Feeding: An Assessment of Criminality Under the ICC Statute*, 13 J. INT'L CRIM. JUST. 693, 693-94 (2015).

4. Rania Zabaneh, *Palestinian Hunger Striker Recalls Being Force-Fed*, AL JAZEERA: MIDDLE E. NEWS (July 30, 2015), <http://www.aljazeera.com/blogs/middleeast/2015/07/palestinian-hunger-striker-recalls-force-fed-150730162850460.html>.

5. *Id.*

force-feeding attempts to break the Palestinian prisoners' resolve. These prisoners first drafted a list of demands and submitted it to the Nafha prison administration.⁶ The prisoners were requesting better treatment and conditions while in prison such as an end to the use of solitary confinement, proper beds and blankets to sleep on, warmer clothes during the winter, bimonthly family visits, expansion of cell windows for light exposure, and more.⁷

When those requests went unheard, the imprisoned individuals attempted to fight for better conditions via a hunger-strike that began on July 14, 1980. After nine days of striking, prison officials transferred twenty-six of the prisoners to the nearby Ramla prison under the rationale that these prisoners were weakened from not eating, and had contracted pneumonia.⁸ After physical abuse and torture failed to coerce the prisoners to break their strike, prison authorities resorted to force-feeding them through tubes inserted into their mouths, allegedly to remedy failing health conditions.⁹ This force-feeding in Ramla in 1980 resulted in the deaths of two prisoners, Rasem Halawa and Ali al-Jafari.¹⁰ A prison spokesman claimed that trained nurses were present, and that the deaths were an accident.¹¹ Other prisoners, however, signed affidavits asserting that nurses and guards beat them in order to get them to eat.¹² One imprisoned individual said that a rubber tube from an enema bag was forced into his stomach when he refused to eat.¹³

After the second death sparked international attention, Israel's Interior Ministry said the government would appoint a committee to review the practice—but that the force-feeding would continue in the meantime.¹⁴ Abdulrahim Nubani, one of the prisoners force-fed during the Nafha strike, has since stated, “[force-feeding] was used to break spirits, not to feed prisoners—it was torture.”¹⁵ Nubani describes being force-fed in more detail: “They tied me down and brought a tube, shoved it down my nose and pushed—I felt my head exploding, down to my stomach. I

6. *Id.*

7. *Id.*

8. William Claiborne, *2d Prisoner Dies After Israelis Force-Fed Arabs*, WASH. POST (July 25, 1980), https://www.washingtonpost.com/archive/politics/1980/07/25/2d-prisoner-dies-after-israelis-force-fed-arabs/4d85da8b-3f98-4753-8dc3-edb58c4b00e9/?utm_term=.99e0d9ad82a8.

9. Zabaneh, *supra* note 4.

10. *Id.*

11. Claiborne, *supra* note 8.

12. *Id.*

13. *Id.*

14. *Id.*

15. Zabaneh, *supra* note 4.

felt my stomach burn. It was empty and they gave us hot water and salt, lots of salt. I was bleeding and powerless.”¹⁶

Another prisoner force-fed during the Nafha strike was Ismail Abusalama. Abusalama’s daughter has written about his experience, describing prison officials use of a *zonda*—a device consisting of a container and long tube that could stretch from the nose or mouth down to the stomach—with gruesome detail: “The *zonda* was dirty and ‘any mistake carried the risk of death[,]’ my father said. ‘It looked as if it had just been dipped in sewage. It was used on successive prisoners without being cleaned. The prison guards thought it was an effective way to disgust prisoners enough to accept food.’”¹⁷ These descriptions are consistent with other accounts from Ramla. In 1980, the Washington Post reported allegations that guards had suffocated the Palestinian victims by pumping salt water into their lungs.¹⁸

Though Nafha has been the most publicized example of Israeli authorities’ force-feeding of Palestinian prisoners, it was not the first incident. The first reported fatality resulting from force-feeding was the death of Abdul-Qaer Abu al-Fahm on May 11, 1970, during a hunger-strike in Ashkelon Prison.¹⁹ Mousa Sheikh, another former Palestinian prisoner who participated in hunger-strikes in 1970 and 1976, described the impact of being force-fed: “‘When it was done to me, I felt my lungs close as the tube reached my stomach,’ Sheikh recounted. ‘I almost suffocated. They poured milk down the tube, which felt like fire to me. It was boiling. I could not stay still and danced from the pain. I danced a lot.’”²⁰ Sheikh attributes long-term health repercussions to being force-fed, including heart and lung problems. He further reports that his cellmate died as a result of force-feeding.²¹ Another documented death was that of Ishaq Maragha, who died from being force-fed in the Beersheba Prison in 1983.²²

Though these accounts shed light on some instances and types of force-feeding that have occurred in Israeli detention centers, it is unclear

16. *Id.*

17. Shahd Abusalama, *How My Father Survived a Hunger Strike in Israel*, AL JAZEERA (May 30, 2017), <http://www.aljazeera.com/indepth/features/2017/05/father-survived-hunger-strike-israel-170523063347512.html>.

18. Claiborne, *supra* note 8.

19. ADDAMEER PRISONER SUPPORT & HUMAN RIGHTS ASS’N, FACTSHEET: FORCE-FEEDING UNDER INTERNATIONAL LAW AND MEDICAL STANDARDS 3 (Nov. 16, 2015) [hereinafter FORCE-FEEDING FACTSHEET].

20. Linah Alsaafin, *I Was Force-Fed by Israel in the ‘70s: This is My Story*, MIDDLE E. EYE (Aug. 14, 2015), <http://www.middleeasteye.net/news/former-palestinian-prisoner-recounts-experience-force-feeding-45-years-ago-2078639559>.

21. *Id.*

22. FORCE-FEEDING FACTSHEET, *supra* note 19, at 3.

just how often force-feeding practices have been implemented. It is also unclear to what extent force-feeding has continued after the 1980s. The possibility of the continued use of this technique in the context of Palestinian hunger-strikes, particularly after a mass hunger-strike in 2012 protesting open-ended administrative detentions, has persisted.²³ More recently, there were reports that the Israeli government considered the possibility of force-feeding brothers Mahmoud and Muhammed Balboul, prisoners who refused food for seventy-nine and seventy-seven days, respectively, in July of 2016, but who were ultimately released from administrative detention.²⁴

B. *The United States*

The most prolific incidents of force-feeding in the United States occurred on U.S. territory, at Guantanamo Bay, Cuba. As a response to the September 11, 2001 attacks, the United States opened the Guantanamo Bay detention camp to hold individuals suspected of terrorism as enemy combatants.²⁵ Since its opening, imprisoned individuals at Guantanamo Bay have protested indefinite detention as well as the conditions of their confinement. In 2002, almost 200 imprisoned individuals went on hunger-strike in response to prison officials' suppression of their religious practices.²⁶ Two hunger-strikers also protesting their indefinite detention were ultimately force-fed that year.²⁷ In 2005, after around 200 imprisoned individuals (one third of the camp) went on hunger-strike, officials force-fed around twenty.²⁸ Hunger-strikes continued until the last known strike in 2013, when 106 of 164 imprisoned individuals went on strike.²⁹ Officials force-fed forty-five imprisoned

23. Harriet Sherwood, *Palestinian Prisoners End Hunger Strike*, THE GUARDIAN (May 14, 2012), <https://www.theguardian.com/world/2012/may/14/palestinian-prisoners-end-hunger-strike>.

24. *Bethlehem: Mahmoud Balboul Tells of His 79-Day Hunger Strike*, INT'L MIDDLE E. MEDIA CTR. (April 24, 2017, 6:45 AM), <http://imemc.org/article/bethlehem-mahmoud-balboul-tells-of-his-79-day-hunger-strike/>.

25. IAN MILLER, A HISTORY OF FORCE FEEDING: HUNGER STRIKES, PRISONS, AND MEDICAL ETHICS, 1909–1974, at 1 (2016).

26. Mara Silver, Note, *Testing Cruzan: Prisoners and the Constitutional Question of Self-Starvation*, 58 STAN. L. REV. 631, 633–34 (2005); see also MILLER, *supra* note 25, at 1.

27. Silver, *supra* note 26, at 633–34.

28. Neil A. Lewis, *Guantanamo Prisoners Go on Hunger Strike*, N.Y. TIMES, (Sept. 18, 2005), <http://www.nytimes.com/2005/09/18/politics/guantanamo-prisoners-go-on-hunger-strike.html>.

29. *Guantanamo Detainees' Hunger Strikes Will No Longer Be Disclosed by U.S. Military*, WASH. POST (Dec. 4, 2013), <https://www.washingtonpost.com/world/national-security/guantanamo-detainees-hunger-strikes-will-no-longer-be-disclosed-by-us->

individuals,³⁰ and at the end of the year, announced that they would no longer disclose information about hunger-strikers at the camp.³¹

More recently, the U.S. government implemented a new policy of force-feeding at Guantanamo. Beginning in September 2017, officials stopped force-feeding twice a day and are permitting even longer stretches of time to pass before force-feeding hunger-strikers.³² The goal appears to be to allow hunger-strikers to get closer to death before force-feeding them, keeping them in a “half alive” state.³³

Even before the hunger-strikes at Guantanamo Bay, detained hunger-strikers in the United States who protest detention conditions, the length of their detention, and irregularities in trials or process, have been force-fed.³⁴ Hunger-strikers at the Administrative Maximum Facility in Colorado, for example, are regularly force-fed.³⁵ In 2007, it was reported that there had been at least 900 instances of force-feeding at the facility during a six-year period.³⁶ In an opinion piece in the *New York Times*, Guantanamo hunger-striker Samir Naji al Hasan Moqbel described being force-fed in 2013:

I will never forget the first time they passed the feeding tube up my nose . . . As it was thrust in, it made me feel like throwing up. I wanted to vomit, but I couldn't. There was agony in my chest, throat and stomach. I had never experienced such pain before. I would not wish this cruel punishment upon anyone . . . I am still being force-fed. Two times a

military/2013/12/04/f6b1aa96-5d24-11e3-bc56-c6ca94801fac_story.html?utm_term=.338b9e469f27.

30. Carol Rosenberg, *Guantánamo: 2 Detainees Quit Hunger Strike; Calm in Communal Prison*, MIAMI HERALD (July 30, 2013), <https://www.miamiherald.com/news/nation-world/article1953178.html>.

31. *Guantanamo Detainees' Hunger Strikes Will No Longer Be Disclosed by U.S. Military*, *supra* note 29.

32. Profile on Amhed Rabanni, REPRIEVE, <https://www.reprive.org.uk/case-study/ahmed-rabbani/> (describing a practice of twice-daily force-feedings) (Last visited Jan. 1, 2018); Andy Worthington, *Guantanamo Detainee: US changed force-feeding policy*, AL JAZEERA (Nov. 15, 2017), <http://www.aljazeera.com/news/2017/11/guantanamo-detainee-changed-force-feeding-policy-171115161210148.html>.

33. Worthington, *supra* note 32.

34. *See, e.g.*, Ohm, *supra* note 1, at 154 (describing how imprisoned American suffragists were force-fed three times a day during hunger strikes in 1917).

35. Steven Hsieh, *Colorado's Federal Supermax Prison Is Force-Feeding Inmates on Hunger Strike*, THE NATION (Feb. 27, 2014), <https://www.thenation.com/article/colorados-federal-supermax-prison-force-feeding-inmates-hunger-strike/>.

36. *Supermax: A Clean Version of Hell*, CBS NEWS (Oct. 11, 2007), <https://www.cbsnews.com/news/supermax-a-clean-version-of-hell/2/>.

day they tie me to a chair in my cell. My arms, legs and head are strapped down. I never know when they will come.³⁷

Although individuals held in U.S. civil immigration detention facilities engaging in mass hunger-strikes have also been threatened with force-feeding by prison officials and by the courts, there are no publicly known instances of force-feeding.³⁸ In each documented case, the strikes have ended before force-feeding needed to be implemented.³⁹

As noted above, the force-feeding of the individuals detained at Guantanamo Bay remains the most prolific occurrence of force-feeding in the United States, largely due to the already abhorrent nature of indefinite detention without trial.⁴⁰ Force-feeding at Guantanamo Bay has attracted national and worldwide condemnation, which likely prompted the U.S. government's decision to cease publication of information about hunger-strikers in the first place. Several nongovernmental organizations, including Physicians for Human Rights and Amnesty International, have condemned the practice. The American Medical Association has said that the practice of force-feeding "violates core ethical values of the medical profession."⁴¹ Still, the American Medical Association has thus far refused to penalize physicians engaging in the practice of force-feeding, and has failed to require its members to cease participating in the practice altogether.

In August 2018, thousands of imprisoned individuals across the United States collectively participated in a nineteen-day hunger-strike to protest conditions, labor exploitation, federal laws that boost mass incarceration, and racial disparities in the criminal legal system.⁴² Hunger-

37. Samir Naji al Hasan Moqbel, *Gitmo is Killing Me*, N.Y. TIMES (Apr. 14, 2013), <https://nyti.ms/1347n9N>.

38. See Press Release, NWDC Resistance, A Dozen Continue on Hunger Strike in NWDC: Cuban Asylum Seekers Face Force Feeding and Solitary Confinement (Sept. 4, 2017), <http://www.nwdcreistance.org/wp-content/uploads/2015/09/sept-4-press-release.pdf>; Ivan Martinez, *U.S. Judge Orders Force-Feeding of Immigration Detainees on Hunger Strike in Florida*, RADIO HAVANA CUBA (Dec. 22, 2015), <http://www.radiohc.cu/en/noticias/internacionales/79559-us-judge-orders-force-feeding-of-immigration-detainees-on-hunger-strike-in-florida>.

39. *Id.*

40. See Jessica Naudziunas & Eliza Barclay, *Why Doctors Oppose Force-Feeding Guantanamo Hunger Strikers*, NPR (July 11, 2013), <https://www.npr.org/sections/thesalt/2013/07/10/200751527/why-doctors-oppose-force-feeding-guantanamo-hunger-strikers>.

41. *Id.*

42. Ed Pilkington, *Major Prison Strike Spreads Across US and Canada as Inmates Refuse Food*, THE GUARDIAN (Aug. 23, 2018), <https://www.theguardian.com/us-news/2018/aug/23/prison-strike-us-canada-forced-labor-protest-activism; German>

striking continues to be incarcerated individuals' method of exerting control and protest speech, in the United States and abroad.

III. LEGALIZATION OF FORCE-FEEDING DESPITE WIDESPREAD INTERNATIONAL OPPOSITION

A. Israel

In July 2015, the Israeli parliament (Knesset) passed the Prison Ordinance Law (Amendment No. 48), which allows prison authorities to force-feed individuals on hunger-strike.⁴³ This law, spurred by the 2012 mass hunger-strike of over 2,000 Palestinian prisoners, passed by a narrow margin of 46-40 votes.⁴⁴ Dissenting votes included members of the Knesset's Joint List, a political alliance of Arab-dominated parties in Israel, who argued that in Israel, "no prisoner has ever died from a hunger-strike; five prisoners, however, have died that were force-fed."⁴⁵ Members of the Knesset and other Israeli government officials justified the legislation by arguing that it would prevent the risk of death by hunger-strike,⁴⁶ and that it was necessary to combat imprisoned Palestinians who used hunger-strikes as a tool to pressure Israel into releasing other prisoners.⁴⁷ They further argued that the law requires judicial approval before force-feeding as additional rationale for reasonableness.⁴⁸ Section 19N(e) of the law states that in deciding whether to permit force-feeding, a court should consider "risk to human life or real concern for serious harm to national security, to the extent that evidence to such effect has been presented to the court."⁴⁹

In opposition to the passage of the Prison Ordinance Law, the Israel Medical Association (IMA) instructed doctors to ignore the law and chal-

Lopez, *America's Prisoners Are Going on Strike in at Least 17 States*, VOX NEWS (Aug. 22, 2018), <https://www.vox.com/2018/8/17/17664048/national-prison-strike-2018>.

43. *Israel Passes Law Allowing Force-Feeding of Prisoners*, BBC NEWS (July 30, 2015), <http://www.bbc.com/news/world-middle-east-33717075>.

44. *Id.*

45. Judah Ari Gross, *Knesset Passes Controversial "Force-Feeding" Bill for Prisoners*, TIMES OF ISR. (July 30, 2015) <https://www.timesofisrael.com/knesset-passes-controversial-force-feeding-bill-for-prisoners/>.

46. HCJ 5304/15 *Isr. Med. Ass'n (IMA) v. Knesset*, ¶ 17, 42 (Sept. 11, 2016) (Isr.), translated by Israeli Supreme Court Project, Cardozo Sch. of Law, <http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Israel%20Medical%20Association%20v.%20Knesset.pdf>.

47. See *id.* at ¶ 49, 65; FORCE-FEEDING FACTSHEET, *supra* note 19, at 1.

48. See *IMA v. Knesset*, at ¶ 39, 44.

49. *Id.* at ¶ 61.

lenged the law in court.⁵⁰ The IMA, along with various human rights organizations such as the Al Mezan Center for Human Rights, Yusuf Al-Siddiq Organization for Prisoner Support, Physicians for Human Rights Israel, The Public Committee Against Torture in Israel, Yesh Din Volunteers for Human Rights, and others, challenged the Prison Ordinance, and specifically § 19N(e).⁵¹ Some critics argue that this law is intended to provide the Israeli government with an “escape route,” by which it can force an end to hunger-strikes without having to meet any demands of prisoners or the consequences of prisoner deaths.⁵²

Despite these grievances, Israel’s High Court upheld the law as constitutional because “a hunger-striker is not an ordinary patient but a person who knowingly and willingly places himself in a dangerous situation as a protest or means of attaining a personal and public goal.”⁵³ In its opinion, the High Court defined force-feeding as encompassing a range of procedures from using an intravenous, nasogastric tube, inserted through the abdomen into the stomach to providing medications.⁵⁴ In upholding the law, the High Court stated that the primary purpose of the law is to protect the lives of hunger-striking prisoners because the state is duty-bound to provide medical treatment to persons in custody who need it.⁵⁵ The secondary purpose of the law, it said, is to ensure national security.⁵⁶ Thus, a judge, when determining whether force-feeding is permissible, should take a balanced approach in protecting a prisoner’s life while attempting to only minimally infringe his autonomy.⁵⁷ The High Court cautioned that force-feeding should be a last resort, and only for extreme cases where other procedures have been exhausted: where force-feeding is “necessary” to prevent a risk of the loss of a prisoner’s life or severe, irreversible disability.⁵⁸ The High Court further required that the “treatment” of force-feeding be the most minimal treatment required (to preserve dignity while preventing pain and suffering).⁵⁹

Other procedural requirements set by the Court include that the physician make “significant efforts” to persuade the prisoner to consent

50. Jack Khoury, *Israel’s High Court Finds Force Feeding Constitutional: “A Hunger Striker Is Not an Ordinary Patient,”* HAARETZ (Sept. 11, 2016), <http://www.haaretz.com/israel-news/1.741456>.

51. See *IMA v. Knesset*.

52. FORCE-FEEDING FACTSHEET, *supra* note 19, at 8.

53. Khoury, *supra* note 50.

54. *IMA v. Knesset*, at ¶ 7.

55. *Id.* at ¶ 105.

56. *Id.*

57. *Id.* at ¶ 106–07.

58. *Id.* at ¶ 127.

59. *Id.* at ¶ 131.

to feeding, that the prisoner be represented by an attorney, and that a court hear the prisoner.⁶⁰ A court's decision to allow force-feeding in any specific circumstance is appealable to the High Court.⁶¹

Since the implementation of this law, there is no indication that it has yet been used to support any instances of force-feeding. Though the law was in effect in August 2015, it was not used when a Palestinian prisoner, Mohammad Allan, suffered brain damage after a two-month-long hunger-strike protesting his indefinite administrative detention without charge.⁶² The Israeli High Court in this instance ordered the release of Allan due to his deteriorated health, but did not rule on any aspect of the legitimacy of his (or any) administrative detention. Despite the fact that the issue before the Court was the validity of the continued administrative detention of Allan in light of his failing health, and though the Court did not address legal issues of force-feeding, Israel's Minister of Public Security blamed the IMA (Israel Medical Association) for the Court's decision to release Allan because it directed all doctors to refuse to participate in force-feeding.⁶³

B. *The United States*

Hunger-strikers in U.S. federal prisons are governed by executive regulations first developed in 1980. The regulations provide that when a hunger-striker's life or health is in danger, the prison doctor "shall give consideration to forced medical treatment of the inmate."⁶⁴ Following the regulations, a few states have also passed their own similar regulations or laws.⁶⁵ U.S. Immigration and Customs Enforcement (ICE) has also promulgated detention standards that provide for a hunger-striker to be force-fed when their "life or health is at risk."⁶⁶

In the United States, a handful of challenges to force-feeding have reached state and federal courts, with most courts permitting force-feeding to occur. Courts typically invoke a balancing test, purporting to consider the individual's right to privacy and self-autonomy against the

60. *IMA v. Knesset*, at ¶ 11; 136.

61. *Id.* at ¶ 15.

62. Diaa Hadid, *Israeli Court Approves Release of Fasting Palestinian*, N.Y. TIMES (Aug. 19, 2015), <https://www.nytimes.com/2015/08/20/world/middleeast/palestinian-prisoner-hunger-strike-israel.html>.

63. *Id.*

64. 28 C.F.R. § 549.65(a) (2018).

65. Ohm, *supra* note 1, at 164-65.

66. See IMMIGRATION & CUSTOMS ENF'T, U.S. DEP'T OF HOMELAND SEC., PERFORMANCE-BASED NATIONAL DETENTION STANDARDS, § 4.2(V)(E) (2011), <https://www.ice.gov/doclib/detention-standards/2011/4-2.pdf>.

state's duty to preserve the individual's life and the state's interests in maintaining the safety, security, and order of the prison or detention center.⁶⁷ Some courts have additionally considered the amount of resources diverted from general population to the hunger-striking imprisoned individual and the protection of third parties' interests, such as whether the hunger-striker has children who might be affected by the death.⁶⁸ In most cases where courts have upheld challenges to force-feeding, the state notably did not argue or present evidence on the impact a hunger-striker's death might have on the administration and order of the prison system.⁶⁹ In one case, a court sustained a challenge to force-feeding based on a lack of evidence that the imprisoned individual's condition was actually life threatening.⁷⁰

In 2011 and 2013, people incarcerated in various California prisons, including the notorious Pelican Bay State Prison, launched hunger-strikes to protest the use of solitary confinement and other detention conditions.⁷¹ The 2013 strike saw around 30,000 incarcerated people refuse food.⁷² Towards the end of the strike, prison officials obtained a court order authorizing the force-feeding of hunger-strikers, including those who had signed orders asking not to be resuscitated.⁷³ It is not publicly known whether any of the strikers were actually force-fed.

In 2014, a Navy nurse refused to carry out his duty of force-feeding Guantanamo Bay imprisoned individuals.⁷⁴ His superiors called for an investigation and possible discharge of the nurse. In response, the American

67. See *Aamer v. Obama*, 742 F.3d 1023, 1039 (D.C. Cir. 2014); *Lantz v. Coleman*, No. HHDCV084034912, 2010 WL 1494985 at *8 (Conn. Supp. Mar. 9, 2010) (collecting cases).

68. See *Lantz v. Coleman*, 2010 WL 1494985 at *12, *23.

69. See *Zant v. Prevatte*, 286 S.E.2d 715, 716 (Ga. 1982); *Thor v. Superior Court*, 855 P.2d 375, 379 (Cal. 1993); *Singletary v. Costello*, 665 So. 2d 1099, 1105 (Fla. Dist. Ct. App. 1996).

70. *U.S. v. Yasin*, 4:16-cv-167 (LJA), (M.D. Ga. May 16, 2016).

71. Sharon Bernstein, *California Gets OK to Force-Fed Some Hunger-Striking Inmates*, REUTERS (Aug. 19, 2013), <https://www.reuters.com/article/us-usa-california-hungerstrike/california-gets-ok-to-force-feed-some-hunger-striking-inmates-idUSBRE9710ZV20130820>; Paige St. John, *Inmates End California Prison Hunger Strike*, L.A. TIMES (Sept. 5, 2013), <http://articles.latimes.com/2013/sep/05/local/la-me-ff-prison-strike-20130906>.

72. St. John, *supra* note 71.

73. Heather Saul, *California Court Rules Prisoners on Hunger Strike Can Be Force-Fed*, INDEPENDENT (Aug. 20, 2013), <https://www.independent.co.uk/news/world/americas/california-court-rules-prisoners-on-hunger-strike-can-be-force-fed-8775912.html>.

74. Benedict Carey, *Nurses Urge Leniency Over Refusal to Force-Fed at Guantánamo Bay*, N.Y. TIMES (Nov. 19, 2014), <https://www.nytimes.com/2014/11/20/health/nurses-urge-leniency-over-refusal-to-force-feed-at-guantnamo-bay.html>.

Nurses Association publicly offered its support of the Navy nurse.⁷⁵ The ANA's standard deviated from the AMA's, citing a nurse's "ethical right" to decide whether to participate in force-feeding.⁷⁶ The nurse was permitted to resume his duties in the Navy despite his refusal to force-feed.⁷⁷

In 2017, a detained individual in a southwest Georgia immigration detention center began a hunger-strike.⁷⁸ ICE sought a court order allowing force-feeding, which the court authorized under the rationale that "the government has a legitimate interest in saving the life of the defendant."⁷⁹ The decision met criticism and condemnation from physicians and rights groups across the country, with a Physicians for Human Rights spokesperson proclaiming that "[i]t's ethically and clinically unjustifiable, and no health professional should ever take part in it."⁸⁰ The strike ended before the facility commenced force-feeding the detained individual.⁸¹

Although medical professionals may violate ethical duties in carrying out force-feeding, the courts have imposed legal liability upon these individuals for refusing to participate in force-feeding. Recently, the Seventh Circuit Court of Appeals heard a case against medical staff responsible for the care of a woman who died after refusing food and water for two weeks in a state detention center.⁸² The Seventh Circuit found the medical professionals liable for the woman's "untimely death."⁸³

IV. THE LEGAL NORMALIZATION OF FORCE-FEEDING IS REGRESSIVE AND RUNS AFOUL OF INTERNATIONAL HUMAN RIGHTS PRINCIPLES AND LAW

In response to Israel's 2015 law permitting force-feeding, Physicians for Human Rights compiled a list of international agreements that Israel's 2015 law violated, including: the World Medical Association's Declaration of Malta, Israel's own Patients' Rights Act, the WMA's 1975 Declaration of Tokyo, the Istanbul Protocol, the International Convention on

75. *Id.*

76. *Id.*

77. Press Release, American Nurses Association, ANA Hails Decision to Allow Navy Nurse to Resume Full Military Duties, (May 4, 2016), <http://www.nursingworld.org/FunctionalMenuCategories/MediaResources/PressReleases/2016-News-Releases/NavyNurseResumeMilitaryDuties-PressRelease.html>.

78. See Jeremy Redmon, *Facing Deportation, Detainee in Georgia Refuses Food*, ATLANTA J. CONST. (May 22, 2017), <http://www.myajc.com/news/breaking-news/facing-deportation-detainee-georgia-refuses-food/LnQW88uBo6oUUMmP1JE7TP/>.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Miranda v. County of Lake*, 900 F.3d 335, 341-42 (7th Cir. 2018).

83. *Id.*

Civil and Political Rights, the UN Convention Against Torture, and more.⁸⁴ Amnesty International condemned the legislation and the act of force-feeding as an extreme violation of prisoners' rights over their bodies.⁸⁵ The UN also released a statement asserting that utilizing force-feeding violates principles of informed consent and called on Israel to end the practice of administrative detention.⁸⁶ The response to the Israeli law shows that challenges to the legislation involve not only asserting violations of international treaties, but also asserting violations of fundamental human rights principles and engaging in sustained organizing.

More recently, international outcry against the 2015 law was inspired by an April 2017 hunger-strike in which more than 1,100 Palestinian prisoners participated.⁸⁷ The strikers sought to gain better prison conditions, such as family visits.⁸⁸ After nineteen days, 850 individuals were still taking part in the strike. Because the IMA refused to participate in any force-feeding measures, the Israeli government considered flying in foreign doctors to force-feed prisoners.⁸⁹ This possibility was met with vehement opposition in the international community and reignited outcry against the law itself.

One legal scholar, Sumer Dayal, argues that force-feeding, as a violation of international law, can and should be prosecuted by the International Criminal Court as a form of torture.⁹⁰ Dayal finds support for this in the World Medical Association's labeling of force-feeding as "unjustifiable" and "never ethically acceptable" with a mentally competent individual.⁹¹ He also cites a European Court of Human Rights case which provides a comprehensive analysis of force-feeding as a violation of the European Convention on Human Rights when not medically necessary to preserve life, lacking procedural safeguards, and beyond the minimum level of severity, even when approved by a government.⁹² Dayal argues that the ICC's statute on crimes against humanity is the proper lens for

84. AMANY DAYIF, PHYSICIANS FOR HUM. RTS. ISR., FACT SHEET ON FORCED FEEDING (Aug. 6, 2015), <http://www.phr.org.il/en/fact-sheet-forced-feeding/?pr=186>.

85. *Force Feeding: An Extreme Violation of a Prisoner's Rights Over Their Body*, AMNESTY INT'L ISR. (last visited Sept. 30, 2017), <http://www.amnesty.org.il/en/cat/822/>.

86. Press Release, World Health Org., UN Joint Statement on New Israeli Law on Force-Feeding of Detainees (Aug. 8, 2015), <http://www.emro.who.int/pse/palestine-news/un-joint-statement-on-new-israeli-law-on-force-feeding-of-detainees.html>.

87. Jack Moore, *Israel "Considers Drafting Foreign Doctors" to Force-Feed Palestinian Hunger Strikers*, NEWSWEEK (May 5, 2017), <http://www.newsweek.com/israel-considers-drafting-foreign-doctors-force-feed-palestinian-hunger-594997>.

88. *Id.*

89. *Id.*

90. Dayal, *supra* note 3.

91. *Id.* at 694.

92. *Id.*

the evaluation of force-feeding as torture. Dayal further argues that even if there is not enough evidence that force-feeding amounts to torture, it can nevertheless be prosecuted under the ICC's statute covering "other inhumane acts."⁹³

It is important to revisit the two proffered reasons for why governments force-feed: 1) they have a duty to preserve the life of individuals in their custody, and 2) force-feeding is necessary to preserve national security and security within the prison population. Given the large consensus from medical professionals that force-feeding constitutes torture, however, we must conclude that force-feeding is used simply to preserve control over prison populations. Given this purpose, it is clear that force-feeding is repressive, violates the fundamental right of self-determination, constitutes torture, and must end.

CONCLUSION

In any setting, force-feeding is an abhorrent practice and a violation of human rights. It is a physical and psychological violation of an individual's right to free expression and bodily integrity. We see examples in the history of suffering of individuals in American and Israeli detention centers and prisons. The accounts of individuals who have suffered physically and psychologically, and international opinion, highlight the immorality and cruelty of such a practice. It is one that must be stopped, but it will take global awareness and a strong stance against the practice to do so.

93. *Id.* at 707.