

# Using Ethics Committees to Justify Force Feeding Political Prisoners in Israel

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## Abstract

Thousands of Palestinian prisoners are held in Israeli prisons without trial. For some of them, engaging in hunger strike is the last resort in opposing unlawful detention and inhumane prison conditions. While mainstream bioethics deliberation, reasonable arguments, and international legal and medical professional declarations prohibit force feeding, local ethical deliberations, professional medical guidelines, and legislation allow the use of medical judgment and clinical ethics committees to force feeding these prisoners. Until now Israeli physicians refused to do so but this may change in the future. The international medical and bioethics communities need to stand behind these medical professionals as well as prisoners. Clinical Ethics committees in Israel must choose whether they serve the interests of these prisoners-patients and perhaps their political or human rights agenda, or whether they are subservient of an unjust, oppressive regime.

“Our resistance embodies our humanity... [which] lies in the idea of sacrifice for freedom. It is like the candle that burns and consumes itself for others... It lights the way for the other including you, you write this research so that you can see the road ... For us this is our humanity, to sacrifice for the other. Those who have gone away [the martyrs] did not take anything with them but they just sacrifice the self for the other.”<sup>1</sup>

## Introduction

This article is being written in the midst of an ongoing civil unrest in Israel, where millions of people have been protesting for several months against the government’s attempt to curb the judicial power of the Israeli Supreme Court.<sup>2</sup> The Reasonableness Clause, which prevents the Court from evaluating governmental decisions based on public reason, has in fact been introduced as law and is the first step in the process. This law practically nullifies Israel as a democratic country.

What is perhaps most striking in this civil unrest is the tension between the Israeli’s public opposition to losing their own political rights in a country that is no longer a democracy on the one hand, and the seeming apathy of some towards the continuous violation of political and moral rights of Palestinians living in the Occupied Palestinian Territory (oPt) on the other.<sup>3</sup> Several major human rights organizations and scholars have indeed defined the Israeli regime in the oPt as apartheid, and a recent report by 17 human rights organizations in Israel describes how such violation has continuously worsened in the past 56 years.<sup>4</sup> The report specifically highlights three trends: increasing violent policies e.g. torture during investigations, increasing violence as shown in the number of deaths among Palestinian citizens, including women and children, and increasing anti-Palestinian and anti-democratic legislation. Importantly, the report also warns against the judicial overhaul, while acknowledging that the Israeli Supreme Court has actually played an important role in backing and legitimizing Israeli policies against Palestinians.<sup>5</sup>

The bioethical implications of the Israeli occupation have been reviewed elsewhere.<sup>6</sup> The focus here is the violation of the moral and political right of Palestinians to bodily integrity and autonomy, specifically by the threat of force-feeding. Discussing force feeding in the Palestinian context is enlightening for several reasons. First, it provides one example of the complicity of the Supreme Court in the Israeli occupation and gross violations of basic human rights. Second, it illustrates how unreasonable argumentation and a misguided interpretation of empirical data can lead to and justify unjust acts.<sup>7</sup> Third, it sheds lights onto the current state of affairs of Israeli bioethics, and how it at once feeds into and is perhaps influenced by the political environment. Fourth, and relatedly, it demonstrates the potential of

clinical ethics committees to do wrong and cause significant harm. It specifically highlights the political role that ethics committees play or might play in this and similar contexts.

This paper first reviews the political context of hunger strikes by Palestinian prisoners and force feeding in Israel. It next critically reviews how clinical ethics committees have been used or may potentially be used to justify the force feeding of Palestinian political prisoners. Lastly, the paper argues that the force feeding of Palestinian political prisoners (and in fact all prisoners, for that matter) is ethically unjustified. Using the concept of ‘resistance,’ the paper also argues that the decision of the ethics committee will inevitably place it on one side of history: the wrong one- that of the oppressors, or that right one- that of the resisters. The committee’s decision may also influence the outcome of the hunger-strike as an act of resistance.

The following discussion greatly relies on the use of ‘rights’ of different kinds, so in order to prevent confusion a clarificatory note is warranted.

### Legal, Moral, and Political Rights

Rights in general denote entitlements of individuals that confer corresponding duties upon others to do or provide something or refrain from doing something. ‘Basic’ rights simply denote rights that are fundamental to other rights: they are the building blocks of other, non-basic rights while in turn they are not dependent on any other rights. From a normative perspective, basic rights claims trump non-basic rights claims.

Legal rights denote a legal authority’s sanctioned, or positivistic, entitlements that provide the basis for claims for and against certain conditions, resources, actions, etc. Legal rights arguably make sense only in the context of a legal authority such as a liberal or decent (to modify from Rawls) state that grounds and legitimizes their normative power.<sup>8</sup> Moral rights in contrast refer to natural entitlements that stem and draw their normative power directly from the fact of being a human being, or a person, on this planet. Moral rights exist a priori to any legal or political institution and are thus independent of such institutions. Following others, moral rights will be understood here as a dialectical short cut to avoid the need for deeper argumentation.<sup>9</sup> Thus, for most of the paper, prisoners are simply assumed to have a moral right to starve to death and not be force fed. This moral right will only be defended in the last section.

Lastly, political rights denote entitlements owed to individuals as ‘legal persons.’<sup>10</sup> These rights are guaranteed by often idealistic or aspirational international human right conventions and customary law. They exist independently of any state powers, hence any regime that does not respect them can be deemed unjust. The function of political rights is to ensure the ability of individuals to participate in the civil and political life in their countries of origin or at least to some extent in their country of residence. Article 26 of the International Covenant on Civil and Political Rights provides a good example of political rights:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>11</sup>

More abstractly, political rights are about ensuring equal access to the political space in which individuals can speak and act, in the words of Hanna Arendt.<sup>12</sup> Only in such safe spaces, where individuals are equally and adequately respected and their voices heard, can individuals fulfill their constructive role in human society. Depriving one of one’s political rights deprives one from acting and speaking, from participating in the political. This deprives one of the possibility of living life to the fullest.

In what follows political and moral rights may at times be used interchangeably as there is a significant overlap between the two.

### Force Feeding in Israel

According to the Council of Europe, “A person deprived of his or her personal liberty is to be regarded as a ‘political prisoner’:

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
- b. if the detention has been imposed for purely political reasons without connection to any offence;
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;

d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,

e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.”<sup>13</sup>

The Council adds that, “Those deprived of their personal liberty for terrorist crimes shall not be considered political prisoners if they have been prosecuted and sentenced for such crimes according to national legislation and the European Convention on Human Rights.”

Palestinian political prisoners are considered by Israel to be terrorists or promoters of terrorism. They are considered by their own compatriots, other activist groups in other parts of the world, and perhaps the entire Arab world as freedom fighters. They might see themselves as part of a Palestinian resistance movement and/or a global resistance movement of the oppressed. Yet at the same time they cannot but be parents or children of those who await them in the oPt. They thus want to be reunited with their family at the same time they might want to resist what they experience as an injustice both towards them and their people.<sup>14</sup>

While a limited use of imprisonment without trial- or administrative arrest- to protect the public good may at times be warranted under international law, the United Nations Office of the High Commissioner for Human Rights has determined that it is only allowed under the conditions of several safeguards:

“The power of administrative and ministerial authorities to order detentions is highly controversial, and some experts believe it should be abolished. It is important to be aware, however, that this form of detention is not outlawed by international law, even though it is surrounded by some important safeguards.”<sup>15</sup>

These safeguards include the following:

- 1) Non- arbitrariness
- 2) Arrest must be based on grounds and procedures established by law
- 3) Information of the reasons must be given promptly
- 4) Court control of the detention must be available as well as compensation in the case of a breach.

Based on these criteria and other international legal instruments, the special rapporteur for the situation of human rights in the Palestinian Territory occupied since 1967 berated Israel for its excessive use of this policy, particularly in the case of Maher Al-Akhras (see below).<sup>16</sup>

With their basic human right of liberty crushed, and without any real legal recourse,<sup>17</sup> Palestinian prisoners have for the past 60 years engaged in hunger strikes. Inspired by other freedom fighters such as members of the Provisional Irish Republican Army,<sup>18</sup> Palestinian prisoners have opted to sacrifice their health and lives for a greater good: equal respect, political freedom, and basic and non-basic political human rights including the right for a fair trial and humane imprisonment conditions.<sup>19</sup> Their resistance to oppression is literally embodied.<sup>20</sup> Locked in a legal and political system of oppression and despair, they see the act of hunger strike primarily as an act of hope and love towards their families and homeland.<sup>21</sup> This is well expressed in the testimony of Hanna Shalabi, a Palestinian woman who was imprisoned for 27 months in Israeli prisons without trial, in an essay entitled “A Woman Alone:”

“I wondered where was humanity and dignity, when all they brought was darkness and pain... I thought to myself, people all over the world were sleeping in peace and tranquillity, here we are in our homes, being hit by guns and sticks in the middle of the night... I was sentenced to administrative detention without a charge against me. I had to make a decision whether to die or live in dignity. I decided to go on hunger strike until I obtained my freedom from the clutches of the occupier. As days went by, the hunger strike was taking its toll, my body was becoming weaker, I was having blackouts, my bones were protruding from my wasting body, my life was a misery. On day forty-seven I declared that I would not abandon my strike, I would not be sentenced to administrative detention seven times without charge. Oh, Allah, at last they have relented and I have achieved my liberty. Yes, sacrifice is the brother of freedom. Now I will be expelled to Gaza, away from my family and friends, but moving to a part of my homeland and freedom means everything to me.”<sup>22</sup>

Thirty Palestinian prisoners initiated a hunger strike in September 2022, protesting their unlawful administrative arrest and prison conditions. Luckily this strike ended in October upon Israeli concessions.<sup>23</sup> Israeli hospital physicians have so far withstood the pressure from various sources to force feed these prisoners. But a perfect storm is brewing, as professional

medical guidelines, existing legislation, an extreme, non-democratic right-winged government, and local ethical discourse place healthcare professionals between a rock and a hard place.<sup>24</sup>

The Israeli Medical Association (IMA) prohibits the force feeding of hunger strikers, but allows some flexibility once the striker loses consciousness. Thus, the IMA code of ethics reads “A physician shall not participate in forced feeding of a hunger striker.”<sup>25</sup> On the very same page, however, the code requires the physician to inform the prisoner whether she would indeed be willing to respect the prisoner’s wishes: “A physician must inform the hunger striker whether he will be willing to accept the latter's request to refuse any food and/or liquids, including artificial feeding, if he should lose consciousness.”<sup>26</sup> One wonders how the two statements can be true: that physicians should not force feed, and that physicians must tell prisoners whether they are willing to respect their wishes not to be force fed, thus allowing for the possibility that some physicians would indeed insist on force-feeding.

One page afterwards the IMA’s true position is revealed: “If the hunger striker loses consciousness and is no longer able to express his wishes, the physician shall be free to decide to the best of his awareness and conscience how to continue to treat the hunger striker, while respecting to the utmost the views and wishes of the hunger striker as expressed to him during the hunger strike.”<sup>27</sup> This is not how a surrogate decision making process works.<sup>28</sup> The first level in such a process respects the patient’s continued autonomy as expressed while competent either verbally or by way of some form of advance directive or a living will or instructions for treating healthcare professionals. The physician should not have any say in the matter. The IMA position here is actually extreme in its divergence from mainstream bioethical scholarship.

A 2015 law in Israel allows the prison system to force feed prisoners in case of risk to their lives. The Israeli Supreme Court has upheld the law.<sup>29</sup> Several Israeli and Jewish scholars have supported such legislation and force feeding in general with arguments that have been debunked.<sup>30</sup> Several UN Special Rapporteurs on torture and the right to health have strongly opposed the law, equating force feeding to torture.<sup>31</sup> Previously, a report by the UN Special Rapporteur Joan Mendez specifically discussed torture in healthcare. Relying on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its authoritative interpretations, Mendez particularly questions the validity of the doctrine of ‘medical necessity,’ often espoused to justify the force feeding of prisoners.<sup>32</sup>

Here we focus on the use or potential use of clinical ethics committees to force feed political prisoners, and an argument that was actually used by an ethics committee for that purpose, namely that a prisoner is likely to change their minds once they are force-fed. While we are not alleging torture in this instance as discussion with the chair of the relevant ethics committee made clear that there was no intent to inflict harm and was considered a medical necessity, force feeding in this instance could still be considered to meet the definition of cruel, inhuman or degrading treatment.

### [Clinical Ethics Committees to Justify the Unjustifiable](#)

Legislation, policy, and professional guidelines in Israel involve clinical ethics committees in decisions about force feeding. Other than institutional and superior (national) research review committees (which in Israel are designated 'Helsinki committees'), several different kinds of clinical ethics committees operate in Israel, including committees that approve abortions, that define biological death, and the more traditional, hospital-based or HMO (Health Maintenance Organization)-based committees.

Hospital clinical ethics committees may be distinguished into two kinds. Statutory committees draw their authority from the Patient's Rights Act passed by the Israeli Knesset in May 1996. The Act grants these committees three main functions: approving treatment despite the patient's disagreement; allowing the withholding of private medical information to the patient to prevent unnecessary harm; and to compromise confidentiality in order to reduce public health risks. By law, these committees should consist of a person with legal qualifications equivalent at least to a strict Court Judge and who will serve as chair, two specialist physicians from different specialties, a social worker, a nurse (a late addition to the Act) and a community representative. Statutory committees' decisions ought to be based on a majority rule and are legally binding.<sup>33</sup>

A committee may be activated by clinicians, hospital administrators or rarely relatives to deliberate on dilemmas arising from clinical practice. While the extent to which these committees are in effect being used vary across different institutions in Israel, a survey done more than two decades ago has revealed that most hospitals did not use or rather minimally used these committees.<sup>34</sup> A recent, yet unpublished survey by the first author points to very little improvement since then. The law also dictates that members of the committees undergo



periodic training in bioethics, but the same survey by the first author reveals that this is not followed.

Perhaps because these committees are somewhat cumbersome and resource-intensive, an advisory committee is the model most often used in hospitals. These committees consist of 1-2 members with or without medical background who may or may not have formal ethics training. Advisory committees draw their authority strictly from the hospital management. They may be consulted via the same mechanism as statutory committees.

A 2018 memo by the Israeli Ministry of Health grants a statutory hospital ethics committee the option of deliberating the case of a prisoner who engages in a hunger strike.<sup>35</sup> Similarly, a memo issued in January 2022 by the Israeli Prison system allows the use of an ethics committee to force feed a prisoner against his explicit refusal. What general considerations are to be weighed up by the ethics committee?

The Patient's Rights Act in Israel states the following regarding bypassing patients' objection to treatment:

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

1. The patient has received information as required to make an informed choice;
2. The treatment is anticipated to significantly improve the patient's medical condition;
3. There are reasonable grounds to suppose that, after receiving treatment, the patient will give his retroactive consent.”

In September 2020, the ethics committee at Kaplan Medical Center in Israel was consulted regarding the force feeding of Maher Al-Akhras, who at that time was hunger striking for 46 days. Maher was protesting his unlawful arrest due to alleged links to Palestinian terrorist organizations. According to the committee's report, Maher was suffering from vomiting and nystagmus, but nothing in its reporting suggests that he lost his cognitive ability to make

medical decisions. Maher did ask his physicians to treat him once he loses consciousness, and told the committee that if he felt to be critically ill, he would request treatment.

Despite ostensibly acknowledging the patient's full autonomy at the time, meaning *while* Maher was fully conscious, the ethical committee allowed his force feeding. In its approval, the committee has confirmed all three criteria mentioned above:

1. Maher received the information required to make an informed choice.
2. Maher risks irreversible harm, and force feeding him by intravenous fluid and vitamin administration, or any other means is likely to improve his condition and prevent such harm.
3. Since Maher expressed his wishes to live and return to his family, there is reason to think that he would give his retroactive consent to be force fed.

Fortunately, physicians at the hospital refused to force feed Maher and he ended his hunger strike after 103 days once the Israeli government promised to refrain from arresting him again.

The committee's conclusion and its cynical use of the Patient Rights act would be abhorring to most ethicists and clinicians, but in the current Israeli context it may be used to justify the force feeding of other Palestinian prisoners in the future. It should not, because the committee's conclusion is misguided.

### [Making A Case Against the Force Feeding of Political Prisoners](#)

To recap, Maher was deemed to be fully competent to make medical decisions by the same ethics committee that recommended his force feeding. The ethics committee approved his force feeding under the assumption that he would give retroactive consent. Note, however, that "retroactive consent" in clinical practice does not exist; it is rather an oxymoron. Patients may either be competent to make medical decisions- and therefore their wishes should be respected unless they clash with other considerations such public health- or they may not be competent, and then decisions would be based on a three tiered model of surrogate decision-making processes.<sup>36</sup> As mentioned above, the first step in this model consists in abiding by the patient's continued autonomy either previously expressed verbally or as reflected in any form of advance directive, where the patient specifies what should be done once they lose autonomy. Even in research settings the notion of retroactive consent is highly controversial

and mostly untenable.<sup>37</sup> The alleged reliance on ‘retroactive consent’ is simply hard paternalism in disguise, and in clinical care this kind of paternalism is usually unjustified.<sup>38</sup> This means that the Israeli Patient’s Rights Act should be revised.<sup>39</sup> This also means that the Committee is mistaken in relying on it in its judgment.

While the committee’s conclusion may be aligned with the Israeli Patient’s Rights Act, it is not aligned with virtually all international legal and professional guidelines regarding force feeding including the World Medical Association Malta Declaration.<sup>40</sup> It is also not aligned with mainstream medical ethics, where the patient’s autonomy, or more specially the principle of respect for personal autonomy, is key (which is not to say it is the first principle among the others).<sup>41</sup> The normative value of this principle may be sufficiently established via any one of different pathways. It can first be established by way of a maxim, well accepted in medical ethics, even by those who advocate relational autonomy.<sup>42</sup> It secondly may be established by relying on a comprehensive moral theory.<sup>43</sup> A third pathway relies on or draws from common morality, arguably captured by a set of well-established human rights.<sup>44</sup>

The International Covenant on Civil and Political Rights determines that humans have an inherent dignity, which in turn engenders several inviolable moral and political rights. Such inviolable or non-derogable rights include the right for freedom of opinion and expression, right to privacy, right against torture and inhuman treatment, and right to life, liberty and security of person. The moral and political right over one’s body-often called bodily or physical integrity- is also considered to be an inviolable right.<sup>45</sup> Article 10 of the Covenant particularly pertains to those stripped off their liberty: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>46</sup> Being non-derogable means that it must be respected under all conditions, or in philosophical speech, all things considered.

In medical practice and ethics, these basic rights translate to a patient’s right to self-determination, self-authorization, and self-governance, otherwise known as moral autonomy.<sup>47</sup> Respect for autonomy means respecting the wishes of patients and their ability to make medical decisions regarding their own care regardless of the consequences to themselves. It also means respecting their bodily integrity. In clinical contexts this right stands unless it is infringed by public health considerations. Another way of expressing this

argument is that the principle of respect for personal autonomy entails both positive entitlements for something- or positive rights- and entitlements against something- or negative rights. As has been established many years ago "...the limits on positive rights may be greater than the limits against negative rights."<sup>48</sup>

Autonomy-based and other arguments to justify basically the right to starve to death have been articulated and defended elsewhere.<sup>49</sup> Since hunger-striking invariably has health consequences and because these consequences are usually dealt with by health professionals, the same reasoning may be used to spell out the ethical case that applies for all prisoners, regardless of whether they stood trial.

Prisoners lose their personal autonomy but not their moral autonomy.<sup>50</sup> They also do not lose their ethical claim for bodily integrity.<sup>51</sup> If anything, since they are a vulnerable population, more attention should be devoted to respect their moral autonomy and bodily integrity.<sup>52</sup> Competent political prisoners who engage in a hunger strike and become patients are entitled to make medical decisions, including dying as a result of their starvation. They do not wish to die; their goal is not death. Rather, they risk death or ill-health for a perceived greater cause, namely equal human dignity and respect. For them, equal human dignity and respect might entail better prison conditions and/or general freedom of movement and from oppression. The same arguments apply for prisoners who have lost their competence, after losing consciousness for instance. A surrogate decision-making process is generally used and advocated in medical practice in such situations, whereby the first step is probably the most relevant here: follow the previous expressed wishes and intentions of the prisoner, which are most likely to represent his true wishes even after losing competence.<sup>53</sup>

Using perhaps less dramatic language, prisoners who hunger strike and object to feeding-forced or otherwise- are simply refusing care. Refusing care is, and should be considered, a patient prerogative. The same way patients are allowed to forego treatment in most cases (barring cases in which other considerations apply e.g. directly observed therapy for tuberculosis) they should *inter alia* be allowed to forgo food and force feeding. Again, this applies both to prisoners under administrative arrests and under normal (just) circumstances.

Leaving aside the language of bioethics, administrative arrests are only justified if certain safeguards are in place. In the Israeli context the safeguards are inadequate, thus making the policy unjustified and unlawful according to international law. Regardless, legal persons who lose their freedom- even legitimately- still warrant respect and still maintain their non-

derogable political rights. Force feeding, then, is arguably more of a biopolitical issue than bioethical.<sup>54</sup>

### The Biopolitics of Hunger Strikes

Non-derogable political rights include freedom of expression and protest. Hunger strikes fit comfortably alongside almost all mainstream conceptualizations of protest or resistance, with clear opposition in mind and often with clear political motivation.<sup>55</sup> They are also a form of protest that shines a light on the intersection of health and protest. Protest and health intersect in a variety of ways, from how health knowledge is contested, to how health is used to frame or motivate acts of resistance.<sup>56</sup> Hunger strikes are not only a form of protest that have health consequences, they leverage health and wellbeing to, amongst other reasons, communicate suffering, make demands or even disrupt. Ashjan Ajour, after interviewing several political prisoners, captures this well:

“The prisoners choose to transform their bodies into a site of revolution. The body here becomes more than the material body, for the singularity of hunger strike becomes an emblem of Palestinian self-determination and the body of the hunger striker a symbol of a communally shared body politic. From their singular encounter with colonial power, they constitute an intersubjective political consciousness of Palestinian self-determination at the collective level.”<sup>57</sup>

Thinking about hunger strikes as a political issue as opposed or in addition to a medical issue may be helpful for different reasons, but particularly relevant for this discussion are the implications for clinical ethics committees in Israel. First, conceptualizing hunger strikes as a political manner foreground the political nature in relation to the decisions made by clinical ethics committees. While clinical ethics committees are independent bodies they cannot escape influence from the broader political climate in Israel. Additionally any decision made by a committee has political implications, that is, an ethics committee that is deliberating on such a politically motivated act of hunger striking in what is clearly a highly politicized milieu *cannot but* play a political role.<sup>58</sup> One wonders then why clinical ethics committees should be involved in this kind of cases at all- hunger strikers should be considered competent until they are clearly not, and healthcare professionals should simply provide them nutrition such as vitamins and water with salt if that is what patients want.

Second and conversely, resistance opens new opportunities for action and opposition. Using the language of resistance and acknowledging the relevance of political in addition to merely

bioethical arguments in the context of hunger strikes, clinical ethics committees should understand and make explicit that their decision places them on the side of the oppressors or wrongdoers, or on the side of resisters who in this case have the moral upper hand. The former include Israeli legislators, the Israeli Supreme Court, and those who devised and uphold institutional and professional guidelines permitting the force feeding of political prisoners. The latter obviously include those political prisoners who engage in hunger strike, but also healthcare professionals who oppose pressure from their professional superiors, various scholars, and the Israeli government and refuse to force feed these prisoners in accordance with the Malta Declaration.<sup>59</sup> In a practical sense, this could involve openly opposing force feeding. As mentioned, healthcare professionals in Israel have so far resisted the political pressure to force feed, so much so that at one point the government (specifically Benjamin Netanyahu as Health Minister) considered importing physicians from India to to conduct the force-feeding.<sup>60</sup> The motivation behind their resistance is probably their perception of fundamental professional ethics as captured by formal professional ethical codes issued by the IMA or the World Medical Association or even the Hippocratic Oath. But in the increasingly conservative political atmosphere in Israel, pressure on healthcare professionals to engage in force-feeding is likely to increase, and healthcare professionals whose political position already aligns with the government may be more inclined to do so. Clinical ethics committees may then be the only thing separating the prisoner from force-feeding.

Resistance can also involve the facilitation or enablement of more covert acts of resistance. Ethics committees could work with healthcare workers to enable hunger strikers in making their stand against injustice. An ethic committee for instance may instruct healthcare workers to secretly provide liquids and vitamins for sustenance while still allowing prisoners to make a public stand against injustice.

Third, and in the broader political context, consideration of the political nature of hunger strikes brings into question the decision-making processes of clinical ethics committees, made with little oversight and with no means to appeal. In this regard, the fact that Maher was eventually not force-fed highlights the complexity and current tensions within the Israeli healthcare system. Maher was caught between the law and a statutory ethics committee on the one side, warranting and recommending for his force-feeding, and healthcare providers on the other end, refusing to do so and opting to respect his moral autonomy. Luckily for Maher, the IMA code allowing for force-feeding did not apply here, as Maher was still conscious and

competent to make medical decisions. But healthcare providers may indeed be more inclined to force-feed once prisoners lose their consciousness in accordance with the IMA code and as allowed by Israeli law. It is again this type of cases where an ethics committee may be the only thing separating the political prisoner from being force-fed. For this to happen, however, further training for these committees may be warranted, focusing on commonly accepted arguments in mainstream bioethics. This is also the reason why decisions by these committees should be made public and open to scrutiny by members of the public as well as the national and international bioethics community. As in the present case, committee members could then realize that they have gotten it wrong, and hopefully be better informed in similar cases in the future. To alleviate some of the complexity described, we conclude by offering explicit recommendations to both healthcare professionals and clinical ethics committees in Israel on the management of prisoners who engage in hunger strike:

1. Prioritise moral autonomy, including obtaining advance directive where possible.
2. Be publicly transparent in your decisions.
3. Enable a rigorous support system for prisoners that is separated as much as possible from the prison apparatus and local security services, for example by having a consultation by an independent healthcare provider.
4. Recognise the broader political context in which the hunger strike is occurring, including the patients' right to protest.
5. Be aware of your own biases and potential sources of influence. If you are somehow placed under undue political pressure to engage in force feeding, refuse, and seek guidance by relevant organizations in Israel, such as Physicians for Human Rights-Israel, or the Red Cross.
6. Leverage the media and activist groups to amplify the patients' wishes in case they are being unjustly silenced.
7. Before making a rash decision, consult the international literature on the ethics of hunger strike and force-feeding and consider consulting peers with expertise in medical ethics.
8. The decision to force feed may not even be a decision that is suitable for clinical ethics committees. An ethics committee may then simply decide to support the clinician in her refusal to force-feed the patient.

The Israeli government, in turn, ought to allow healthcare professionals to opt-out of their professional role in the case of force-feeding. It should re-consider the lawlessness of force-feeding and whether it wishes to stain the purity of the medical profession by expecting it to take an active role in a practice that may be more politically than medically motivated.

## Summary

A perfect storm is brewing in Israel, with the rise of political and religious extremism and perhaps a descent of mainstream bioethics. Political pressure upon clinicians to force feed political prisoners will undoubtedly increase in this environment. More than ever, they will need the backing of the global medical and bioethical community.

This paper explores the role or potential role of clinical ethics committees in Israel in the force feeding of Palestinian prisoners in Israel. It first critically reviews the current condition of Palestinian prisoners and the Israeli policy of administrative arrests. It then explains how legislation, policy, and professional guidelines leave room for ethics committees to justify force feeding, focusing on the case of Maher Al-Akhras where the hospital ethics committee actually approved his force feeding. The paper then makes an ethical case against the force feeding of prisoners who are competent to make medical decisions or have made decisions to forgo treatment while being competent and have since then lost their competence. The paper lastly emphasizes the political role that clinical ethics committees invariably fulfill in this kind of decisions.

The quote opening this paper highlights how for Palestinian prisoners in Israel a hunger strike remains the last resort to express their resistance to oppression and to hold on to what they perceive as their fleeting humanity. Legislation in Israel is unlikely to become more friendly towards Palestinians. Clinical ethics committees will increasingly have to decide whether to be part of an unjust oppression, or rather contributors to humanity.

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<sup>1</sup> Hasan Safadi, a Palestinian citizen formerly arrested without trial by Israel. (Ajour 2021 p.10)

<sup>2</sup> While this manuscript has been evaluated, war broke out in Israel. In consultation with the editors, we opted not to address the war in this manuscript and largely leave it in its original form.

<sup>3</sup> [‘A dark day for Israeli democracy’: US Jewish groups denounce Netanyahu’s judicial overhaul | Israel | The Guardian](#) accessed 8/23 [In Israel's Pro-democracy Struggle, the Military and Civilians Shouldn't Mix - Opinion - Haaretz.com](#) accessed 8/2023 [Israel: unpopular judicial reform involves repeal of law set up under British colonial rule in Palestine – here’s what that tells us \(theconversation.com\)](#) accessed 8/23 People in Israel



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have of course protested against the occupation through the years, but their numbers and impact have been dwindling.

<sup>4</sup> (Falk and Tilley 2017, "B'tselem. A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid" 2021, "Human Rights Watch. A Threshold Crossed. Israeli Authorities and the Crimes of Apartheid and Persecution" 2021, Amnesty International. Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity 2022, Muhareb, Rghebi et al. 2022, Amnesty International. Autonomated Apartheid: How Facial Recognition Fragments, Segregates, and Controls Palestinians in the OPT 2023)

<sup>5</sup> (Falk and Tilley 2017, "B'tselem. A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid" 2021, "Human Rights Watch. A Threshold Crossed. Israeli Authorities and the Crimes of Apartheid and Persecution" 2021, Amnesty International. Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity 2022, Muhareb, Rghebi et al. 2022, Amnesty International. Autonomated Apartheid: How Facial Recognition Fragments, Segregates, and Controls Palestinians in the OPT 2023, "State of The Occupation Year 56: A Joint Situation Report" 2023)

<sup>6</sup> (Lederman, Shepp et al. 2018, Lederman, Lederman et al. 2019, Lederman 2021, Lederman, Lederman et al. 2022, Lederman, Majadli et al. 2023)

<sup>7</sup> (Lederman and Lederman 2017, Lederman 2018, Lederman and Voo 2021)

<sup>8</sup> (Buchanan 2013) Buchanan would probably disagree with our definition of political rights because for him only two kinds of rights exist: moral human rights and legal human rights. At most, he would probably claim that 'political rights' are really moral rights in political science speech. He might be right. In any case, the main argument presented here will not be affected.

<sup>9</sup> (Harris 1985)

<sup>10</sup> (Article 16: Recognition as a Person Before the Law 2020)

<sup>11</sup> [International Covenant on Civil and Political Rights | OHCHR](#) accessed 8/2023

<sup>12</sup> (Arendt 1958)

<sup>13</sup> [PACE website \(coe.int\)](#) accessed 11/2023

<sup>14</sup> (Ajour 2021)

<sup>15</sup> (United Nations. Office of the High Commissioner for Human Rights. Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers 2003 p.175)

<sup>16</sup> [UN expert calls for Israel to end practice of administrative detention and immediately release Maher Al-Akhras | OHCHR](#) accessed 8/2023

<sup>17</sup> (Erakat 2019)

<sup>18</sup> (Hashim 2021)

<sup>19</sup> (Kenny 2018)

<sup>20</sup> (Ajour 2021)

<sup>21</sup> (Barda 2012)(Ajour 2021)

<sup>22</sup> (Ajour 2021 Pp.77-78)

<sup>23</sup> [Thirty Palestinian Detainees Suspend their Collective Hunger Strike after 19 Days | Addameer](#) accessed 1/2023

<sup>24</sup> (Lederman and Lederman 2017)

<sup>25</sup> [EthicalCode2018.pdf \(ima.org.il\)](#) p.110. accessed 1/2023

<sup>26</sup> [EthicalCode2018.pdf \(ima.org.il\)](#) p.110. accessed 1/2023

<sup>27</sup> [EthicalCode2018.pdf \(ima.org.il\)](#) p. 111. Accessed 1/2023

<sup>28</sup> (Beauchamp and Childress 2009)

<sup>29</sup> (Lederman and Lederman 2017, Kenny 2018)

<sup>30</sup> (Gross 2013, Barilan, Golan et al. 2015, Lederman and Lederman 2017, Lederman 2018)

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<sup>31</sup> [Force-feeding is cruel and inhuman – UN experts urge Israel not to make it legal | OHCHR](#)  
accessed 10/2023

<sup>32</sup> (United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez 2013)

<sup>33</sup> (Wenger, Golan et al. 2002) (Peled-Raz 2014)

<sup>34</sup> (Wenger, Golan et al. 2002)

<sup>35</sup> [mr09\\_2018.pdf \(health.gov.il\)](#) accessed 1/2023

<sup>36</sup> (Sulmasy and Snyder 2010)

<sup>37</sup> (Carins, Shaw et al.)

<sup>38</sup> (Childress 1990, Beauchamp and Childress 2009)

<sup>39</sup> It is argued that the Israeli Patient's Rights Act differs from Western law in allowing a critical evaluation of the patient's current expressed wishes against their past character, even though English courts occasionally did exactly that. (Peled-Raz 2014) The argument given to justify this part of the law is that for various reasons the patient's current explicit wishes do not really reflect their authentic autonomy. (Peled-Raz 2014) This argument has received some backing in the mainstream bioethics and medical literature. (Sulmasy and Snyder 2010) Our response to an argument along the same lines in the present context is that even if the argument is generally plausible, it should only be applied in rare cases, and the case discussed here is not one of them.

<sup>40</sup> [WMA Declaration of Malta on Hunger Strikers – WMA – The World Medical Association](#)  
accessed 8/2023

<sup>41</sup> (Childress 1990)

<sup>42</sup> (Donchin 2000) (Jennings 2016)

<sup>43</sup> (Beauchamp and Childress 2009)

<sup>44</sup> (Beauchamp and Childress 2009)

<sup>45</sup> (Marshall 2012)

<sup>46</sup> (Article 10: Treatment of Those Deprived of Their Liberty 2020)

<sup>47</sup> (Mackenzie 2014)

<sup>48</sup> (Childress 1990 p.13)

<sup>49</sup> (Lederman and Lederman 2017, Lederman 2018, Buzath and Lederman 2023)

<sup>50</sup> (Lederman and Lederman 2017)

<sup>51</sup> (Shaw 2019)

<sup>52</sup> (Childress 1990)

<sup>53</sup> (Childress 1990)

<sup>54</sup> (Kenny 2018) (Garasic 2015)

<sup>55</sup> (Guy and Ryan 2022)

<sup>56</sup> (Essex 2023)

<sup>57</sup> (Ajour 2021 p.8)

<sup>58</sup> (Filc, Ziv et al. 2014)

<sup>59</sup> (Barilan, Golan et al. 2015)

<sup>60</sup> [נתניהו: נייבא רופאים מהודו כדי להזין בכפייה פלסטינים - שיחה מקומית \(mekomit.co.il\)](#) accessed 10/2023