PHR
Physicians for Human Rights

Using science and medicine to stop human rights violations

Physicians for Human Rights' Submission to the Human Rights Committee During its Consideration of the Fourth Periodic Report of the United States

I. Physicians for Human Rights

Physicians for Human Rights (PHR) is an independent organization that uses medicine and science to stop mass atrocities and severe human rights violations against individuals. We use our investigations and expertise to advocate for the:

- Prevention of individual or small scale acts of violence from becoming mass atrocities
- Protection of internationally-guaranteed rights of individuals and civilian populations
- Prosecution of those who violate human rights

PHR was founded in 1986 on the idea that health professionals, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to stop human rights violations. Today, our expertise is sought by local human rights organizations, governments, the United Nations, international courts, and regional groups like the African Union and the European Union. The power of our investigations allows us to work with others to raise awareness and press for change on the most severe human rights violations of the day.

II. Indefinite Detention is a violation of human rights.

Indefinite detention is a form of individual detention used in the national security and immigration settings whereby detainees are not told when or if they will be released. This report focuses on indefinite detention in the national security setting. Criminal proceedings offer a predictable timeline and structure through which defendants are ensured full Constitutional rights, including the right to a fair trial and to their freedom if the prosecution fails to prove their case beyond a reasonable doubt. Conversely, detainees in the national security context can be kept in custody on the basis of facts or suspicions about a detainee's associations, affiliations, inclinations, religious or political beliefs, or national or ethnic identity. Many of these factors are not circumstances over which the detainee has substantial control.

To date, more than 500 detainees have been released from Guantánamo Bay.[1] Eighty-four detainees remain at Guantánamo despite being cleared for release.[2] Nevertheless, detainees are forced to remain in indefinite detention without the sanctuary of the legal structures that protect defendants within the domestic criminal justice system.

A. Indefinite detention causes serious and long-term psychological and physical health effects.

[1] Dept. of Justice et. al, Guantánamo Review Task Force, January 22, 2010, at http://www.justice.gov/ag/guantanamo-review-final-report.pdf.

[2] Max Fisher, Kafka at Gitmo: Why 86 Prisoners are Cleared for Release but Might Never Get It, Wash. Post, April 25, 2013, http://www.washingtonpost.com/blogs/worldviews/wp/2013/04/25/kafka-at-gitmo-why-86-prisoners-are-cleared-for-release-but-might-never-get-it/.

Psychological Effects[3]

Indefinite detention is both a condition marked by immense uncertainty about its duration and one that is characterized by a profound lack of control over the duration of that detention. Further, it renders the detainee incapable of predicting what factors might affect its duration. The psychological health affects affiliated with indefinite detention and chronic uncertainty include severe and chronic states of stress, high rates of severe anxiety, despair, Post Traumatic Stress Disorder (PTSD), helplessness, hopelessness, depression, anxiety, and dread. These conditions have led large numbers of detainees to attempt, sometimes successfully, suicide. Chronic uncertainty creates a state of constant and heightened anxiety about unknown and unknowable dangers and outcomes, creating deep stress with no fixed object. Uncertainty can subsequently allow authorities to elicit physiological and psychological responses to pain without physically touching the detainee. Anxiety, dread, and uncertainty are all closely connected. The threat of the unknowable created by uncertainty can prompt free-floating, chronic anxiety, which is, at its most potent, a sense of excessive uneasiness and apprehension, or a state of chronic and extreme dread. Dread can be disabling and debilitating, as it highlights detainees' vulnerability and lack of control.

Detainees are also at high risk for developing PTSD. Both the length of detention and detainees' cultural and religious beliefs can affect the severity of their PTSD. To detainees from Islamic countries or cultures for whom exhibiting or acknowledging mental health problems is stigmatizing and suicide is prohibited, the anxiety, despair, helplessness, and dread triggered by the uncertainty of indefinite detention may be experienced as even more isolating and paralyzing, particularly for deeply religious Muslims who may interpret feelings of hopelessness and despair as a lack of faith.

Social isolation also contributes to pathological levels of distress. Research indicates that being isolated from a community of friends and family causes debilitating stress and can seriously impair the ability to cope with stressful situations. Additionally, stressful events activate a basic psychological need for warmth, support, and protection, enhancing risks for affiliated debilitating levels of distress. Research also reveals that people cope with stressful situations by managing their environment. As detainees have no control over their circumstances, and are in such an extreme situation that every element of their schedule is managed and organized for them, their ability to cope with their conditions is severely compromised.

Physical Effects

Physical harms caused by indefinite detention can be either a physical manifestation of psychological stress that detainees endure or a response to the physical risks to which detainees are vulnerable simply due to the nature of their indefinite detention.

Chronic stress and anxiety have measurable and deleterious effects on every system in the human body. Specifically, stress directly affects several core physiologic systems, and can lead to a domino effect of illness and disease. Stress affects the immune system, the cardiovascular system, and the adipose tissue and muscle. These compromised systems can lead to an accelerated metastatic spread of cancer and viral

[3] The following information is reported in Physicians for Human Rights' Report Punishment Before Justice: Indefinite Detention in the US (2011).

infections or heightened risk of a heart attack and sudden death. Chronic stress is also a contributing factor in the development of asthma, diabetes, gastrointestinal disorders, viral infections, and autoimmune disorders. Chronic stress has also has been shown to have neurological effects, including damage that mirrors the effects of a stroke and can cause neuronal atrophy and cell death. The adrenal steroids secreted by physical and psychological reactions to stress have negative long-term effects on the nervous systems.

Indefinite detention also deprives individuals of social networks, which have been found to be strongly protective of mortality from established disease, specifically hypertensive disorders and cardiovascular disease. This indicates that detainees with pre-existing heart conditions may be more likely to suffer a cardiovascular event due to the stress induced by the conditions of their detention. The lack of a social network may make it less likely that the detainee will survive this cardiovascular event. It is therefore not surprising that evidence shows that high numbers of detainees have succumbed to cardiac-related deaths. Studies have also indicated that loneliness, or the absence of qualitatively and subjectively satisfying connections, is associated with increases in the stress hormone epinephrine, rises of salivary cortisol (a stress-induced steroid that affects metabolism and immune function), and changes in DNA transcription that change a cell's sensitivity to circulating cortisol, thus dampening the ability to shut off the body's inflammatory response.

The psychological distress associated with indefinite detention may also manifest as physical disease. Somatization is the manifestation of physical symptoms absent an organic cause. Somatization has been frequently observed in traumatized populations as an alternative to the traditional manifestation of psychological stress through PTSD, anxiety, and depression. Subsequently, some detainees likely manifest this same psychological stress through breathing difficulties, nausea, back pain, or skin disorders. Cultural factors may be related to somatization, and evidence suggests that men whose cultures favor social integration and interaction and presume that men play a superior or dignified role may find the shame of admitting to feelings of helplessness, anxiety, and depression so great that they underreport or deny symptoms of pain.

All of these physical effects must be considered in conjunction with the fact that detainees are at heightened risk for abuse from other detainees and from authorities. Indefinite detention may create an atmosphere of lawlessness or vigilantism amongst authority figures, increasing rates of abuse. Evidence also indicates that female detainees are regularly targets of sexual threats, coercion, and abuse due to the uncertainty of their circumstances.

Psychological and physical effects of indefinite detention are not resolved upon release. Evidence indicates that physical, social, and emotional issues associated with detention continue to plague individuals long after their release. In addition to harms suffered in custody, indefinite detention makes detainees vulnerable to new physical, social, and emotional harms once released. Indefinite detention causes enduring personality change, specifically radical changes in self-perception and drive, which may manifest through ongoing distress, disability, and social dysfunction that can be persistent or exacerbated by the passage of time. Indefinite detention also has emotional, social, and economic consequences for detainees, their children, their spouses, and their extended family, making it difficult for families to return to a state of wellness and stability even if they are reunited. Indefinite detention affects all members of

the family, and can cause long-term PTSD, phobic anxiety, or dysfunctional beliefs amongst partners and children.

B. The health effects caused by indefinite detention encourage detainees to participate in prolonged hunger strikes.

As previously outlined, indefinite detention causes severe and chronic feelings of anxiety, helplessness, stress, and depression. In addition to a sense of helplessness and a lack of control related directly to their indefinite detention, detainees are mired in a system with no legitimate review process and limited access to federal courts. Executive Order 13567 was issued by President Obama in 2007 to create a periodic review of individuals detained at Guantánamo Bay Naval Station.[4] Additionally, Congress in 2012 set forth new guidelines for transferring detainees out of Guantánamo in the National Defense Authorization Act.[5] Although current legislation would allow certain approved detainees to return to their countries or to be otherwise removed from Guantánamo Bay and authorized to live internationally, 84 detainees are currently approved for release from Guantánamo Bay yet remain in detention.[6]

The lack of agency and control associated with indefinite detention is a catalyst for an extreme physical response by detainees. Since their conditions are so heavily managed, a hunger strike may seem to detainees to be an obvious response in order to maintain some semblance of control or authority over themselves and their bodies. Hunger striking allows detainees to exert both the most extreme and the most basic control over their lives under circumstances where everything is both monitored and measured on their behalf. This is a natural response to both the physical conditions of their indefinite detention and to the subsequent physical and psychological health effects.

C. Force-feeding is an inhumane, unethical, and unlawful response to detainee hunger strikes.

Detainees at Guantánamo Bay have participated in hunger strikes on multiple occasions. During 2013, a large community of detainees participated in a hunger strike, with over 100 out of 166 detainees refusing food at the apex of the strike. The government has indicated that at least 46 detainees were force-fed during the 2013 hunger strike.[7] As previously outlined, refusing food presents perhaps the only option for detainees to express control in this extraordinarily monitored environment. Nevertheless, the joint taskforce at Guantánamo Bay's standard operating procedures for the medical management of detainees on hunger strike at was made public in May 2013. These graphic procedures highlighted methods for forcibly feeding detainees who refused food. This practice includes the restraining of the striking detainee and the insertion of a tube into the detainee's stomach through his nasal passage. When restrained, a

[4] Exec. Order No. 13567, 3 C.F.R. 567 (2011).
[5] National Defense Authorization Act, 112th Cong. 4310 (2012).
[6] *See supra* at note 2.
[7] Ann Marimow, Judge Rejects Request to Block Force-Feeding of Guantánamo Bay Detainees, Wash. Post, July 16, 2013, http://articles.washingtonpost.com/2013-07-16/national/40606715_1_hunger-strike-detainees-force-feeding.

detainee is shackled by a guard and a mask is put over the detainee's face.[8] Following the arduous feeding process, which takes approximately thirty minutes, the detainee is isolated in a dry cell where authorities ensure that the he does not vomit or attempt to vomit.[9] If the detainee vomits or attempts to vomit, he may be shackled once again into the restraint chair for the duration of observation.[10] Detainees may be kept in restraints for up to two hours at a time.[11]

The World Medical Association (WMA) has called force-feeding "inhuman and degrading."[12] The WMA clarified its guidelines against force-feeding (as originally set forth in the Declaration of Tokyo) in the Revised Declaration of Malta, which set forth a set of protocols for how physicians should respond to hunger strikes, insisting that a competent patient's wishes and autonomy must be respected.[13] Additionally, the American Medical Association (AMA) has spoken out against force-feeding on multiple occasions. AMA director Jeremy Lazarus wrote a letter to Secretary of Defense Hagel on April 25, 2013 saying that force-feeding "violates core ethical values of the medical profession."[14] The European Court of Human Rights has found that, "repeated force-feeding, not prompted by valid medical reasons but rather with the aim of forcing the applicant to stop his protest, and performed in a manner which unnecessarily exposed him to great physical pain and humiliation, can only be considered as torture."[15]

Federal courts have been unable to address the legality of force-feeding practices.[16] Nevertheless, in response to a claim brought by a detainee at Guantánamo Bay, U.S. District Judge Gladys Kessler highlighted the illegality of force-feeding under Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and called the process of force-feeding a "painful, humiliating, and degrading process."[17] Judge Kessler called for direct action by President Obama as the commander-in-chief to address this issue.

IV. The United States' response fails to address significant human rights concerns affiliated with indefinite detention and to sufficiently answer questions posed by the UN Human Rights Committee (HRC).

The United States failed to respond adequately to concerns raised by the HRC regarding indefinite detention and the Guantánamo Bay Naval Base. Although detainees have a right to file *habeas corpus* petitions, these have been largely unsuccessful in recent years. Considering the high burden of proof for conviction in criminal cases specifically due to a national history and culture dedicated to protecting the rights and freedom of all people, it is astonishing that the government's standard is set so low for

[8] Joint Task Force Guantanamo Bay, Cuba, Joint Medical Group, "Standard Operating Procedure: Medical Management of Detainees on Hunger Strike," SOP NO: JTP-JMG #001, March 5, 2013, http://www.aljazeera.com/humanrights/2013/05/201358152317954140.html.
[9] Id.
[10] Id.
[11] Id.
[12] World Medical Assn., WMA Condemns All Force-Feeding, 2006, http://www.wma.net/en/40news/20archives/2006/2006_10/.
[13] World Medical Assn., The Declaration of Malta, October, 2006.
[14] Jeremy Lazarus, *Hunger Strikes Letter,* April 25, 2013.
[15] Cirop v. Moldova, App. No. 12066/02, Eur. Ct. H.R. (June 19, 2007).
[16] 28 U.S.C. § 2241(e)(2).
[17] Dhiab v. Obama, No. 05-1457(GK), 2013 WL 3388650, at *2 (D.D.C. July 8, 2013).

detainees who have already been stripped of their freedom. Furthermore, as the HRC points out in their questions to the U.S. government, the Periodic Review Board as outlined by President Obama has been stalled and stymied.

In response to the HRC's query regarding protecting the Article 14 rights of detainees, the U.S. government claims that they have taken "great strides" to ensure that those accused receive fair trial. This claim is unsubstantiated. Amongst the rights awarded to all people under Article 14 of the ICCPR are the rights to be presumed innocent until proven guilty, to be informed promptly and in detail the charge against him, and to be tried without undue delay. Detainees at Guantánamo are forcibly and physically detained, and then held without freedom of body and movement, many without trial, and in some cases without being told what evidence has been used to detain them. This is a direct violation of Article 14 of the ICCPR.

Furthermore, a Federal judge only recently halted a protocol that enforced genital and anal searches of detainees prior to meetings with their attorneys. As Judge Lamberth for the DC Circuit Court wrote, "the choice between submitting to a search procedure that is religiously and culturally abhorrent or foregoing counsel effectively presents no choice [for detainees]."[18] This protocol, although halted, violated both the language and the intention of Article 14, which protects the right to counsel for all people.

In response to the HRC's question regarding detainees that are cleared for release from Guantánamo Bay, the United States indicated that there are no prisoners cleared for release. However, 84 detainees are currently cleared for release as of the submission of this report.

Although President Obama has acknowledged that Guantánamo Bay is "a symbol around the world for an America that flouts the rule of law,"[19] steps must be taken to ensure accountability and to remedy egregious violations of the ICCPR.

IV. Legal framework: The United Nations' position on indefinite detention and torture.

Indefinite detention and force-feeding violate several articles of the ICCPR. Indefinite detention specifically violates Article 9, as detainees at Guantánamo Bay have been denied their right to liberty and security of person and in many cases have not been informed of a reason for arrest. General comment 8 to Article 9 highlights that, in circumstances of "preventative detention," detainees must still be notified of the reason for their detention. As previously outlined, indefinite detention is also a violation of Article 14, which protects the right to due process. Detainees are not allowed to participate in the civil or criminal trial structure within the United States, and the only recourse available is the option to file a petition for *habeas corpus*. Furthermore, previous protocols that are culturally prohibitive have kept detainees from seeking counsel.

Force-feeding violates Article 7 of the ICCPR, which protects against torture. As highlighted by a plethora of sources, including U.S. District Court Judge Kessler and UN representatives, force-feeding may be a form of torture when conducted upon a non-consenting competent individual. As described in the standard

[18] Hatim v. Obama, No. 12-mc-398, 2013 WL3467134 at *14 (D.D.C.July 11, 2013).
[19] Barack Obama, Remarks by the President at the National Defense University (May 23, 2013).

operating procedure for responding to detainees on hunger strike, force-feeding is a violent, painful, and degrading experience. Force-feeding also violates Article 10, which protects the inherent dignity of detained persons. In addition to the deeply painful and violent nature of the force-feeding procedures, this practice also undermines the ability of competent persons to make decisions for themselves and subsequently is – by its very nature – a violation of the detainees' inherent dignity.

Abuses by authorities at Guantánamo Bay also violate the UN Convention Against Torture ("UNCAT"). Acts of torture are prohibited under Article 2 of UNCAT even in states of war or public emergency. Furthermore, Article 12 of UNCAT enforces that states are obligated to investigate any potential acts of torture. PHR has issued multiple reports documenting torture and other abuse in national security detention settings,[20] yet many of those responsible have not yet been held to account.

VI. Recommended Questions

PHR recommends that the Human Rights Committee pose the following questions relating to indefinite detention and force-feeding to the government of the United States.

1. Why do the existing standard operating procedures refer to unethical medical procedure of force-feeding a competent non-consenting individual?

2. When will the remaining 84 detainees currently cleared for release be released from Guantánamo Bay?

3. When will the public receive further information regarding the functions of the Periodic Review Boards described in Executive Order 13567?

4. How is the Declaration of Malta followed by physicians and other medical professionals at Guantánamo Bay?

VII. Recommendations

PHR encourages the Human Rights Committee to consider the following recommendations to the United States:

1. The United States should revise its standard operating procedures in national security detention facilities so that competent detainees are not force-fed without their consent.

2. The United States should implement an administrative or procedural review of force-feeding procedures on both a large-scale and an individual basis. This review should be used to determine whether physicians followed the guidelines set forth in the Declaration of Malta by determining the competency of hunger strikers at the beginning of the strike and by determining the intent of the hunger strikers.

3. The United States should ensure that the joint taskforce and medical advisory board reflect the guidance and opinions of leading medical bodies including the WMA and AMA. The authority of the

[20] Physicians for Human Rights, Break Them Down: Systematic Use of Psychological Torture by US Forces (2005); Physicians for Human Rights, Broken Laws Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact (2008).

medical advisory board should be strengthened in relation to the command and control structures at Guantánamo Bay such that physicians' advice in medical matters is given precedent over command structure. Furthermore, members of such a body should adhere to the highest standards of professional ethics and be subject to ethical review.