Voluntary Protest Fasts- Information for Detainees

Introduction

You have notified a member of the UN Detention Unit senior management[1] that you have commenced a voluntary protest fast (commonly referred to as a hunger strike). You have therefore been given this document to inform you about the way your protest and needs will be handled by the UNDU senior management and medical professionals who will provide care.

Throughout your voluntary protest fast you will be treated in accordance with the internationally accepted standards of medical ethics on the treatment of hunger strikers. In particular, the revised version of the World Medical Association ('WMA') Declaration on Hunger Strikers, which was adopted in October 2006, known as the Declaration of Malta[2].

Please note that the Rules of Detention will continue to dictate your conditions of detention throughout your voluntary protest fast and therefore you continue to have the opportunity to request review of the conditions of your detention in accordance with the Complaints Procedure[3].

During your initial meeting with the UNDU senior management:

1. The UNDU senior management will try to establish the motivation for your voluntary protest fast.

2. There should be a clear exchange of information between you and all the staff involved, if necessary making use of interpretation.

3. Although it is considered that you have the right to refuse nutrition and/or hydration, it is not believed to be an appropriate form of protest when other options, notably judicial, administrative or diplomatic, are available.

4. You should be aware that under the guidance of the Declaration of Malta and in acknowledgement of your right to use your body in protest, should you be determined to take your protest to its ultimate end, you will be allowed to die with dignity rather than being resuscitated against your will.

5. If you have indicated an intention to proceed with your protest then this document serves as an outline of the procedure which will be followed.

Following your meeting with the UNDU senior management:

6. The Registrar and President will be informed of your protest.

[1] The Commanding Officer (CO), the Deputy Commanding Officer or the Assistant Commanding Officers.
[2] Annex II
[3] Annex III

7. You will be weighed as soon as practicably possible after your meeting with the UNDU senior management.

8. Within 72 hours of notification to the UNDU senior management, 24 hours if you have commenced a thirst strike, you will be examined by the Medical Officer (MO) in order to establish your competence, the autonomy and motivation of your protest and to establish your medical condition at the start of the protest.

9. The MO will, on the basis of your medical history, assess any additional risk factors[4] requiring extra attention.

10. The MO will provide information to you as to the probable consequences of the voluntary protest fast in relation to your health and the potential impact of any risk factors determined from your medical history.

11. Should you be refusing fluids, you shall be given this information within 24 hours since your state of health will deteriorate extremely quickly.

12. The MO is professionally obliged to inform the CO of your health condition as the CO is responsible for your care and a voluntary protest fast constitutes a serious threat to your heath and welfare.[5]

13. The MO shall provide the CO with an initial report on the outcome of his examination of you. This information will be provided to the Registrar and the President of the Tribunal as they have the ultimate responsibility for your care. In accordance with Rule 34 of the Rules of Detention, the Registrar is obliged to keep information relating to your health confidential unless you consent to its disclosure or it is ordered by a Judge or Chamber of the Tribunal, after consultation with the MO.

14. An assessment by an independent psychiatrist will also be performed in order to establish your psychiatric condition and to evaluate your mental capacity and therefore your competence to make the decision to undertake a voluntary protest fast.

15. In addition you may also consult a doctor of your choice, in accordance with Rule 31 of the Rules of Detention. Should the consultation be granted in accordance with Rule 31 (B), the MO shall be informed of the outcome of all consultations and shall be given the opportunity to be present throughout any examination.

16. As your body can go through major physical and psychological changes during a voluntary protest fast, you may be monitored 24 hours a day, in accordance with Rule 39 of the Rules of Detention.[6]

[4] See Annex I paragraph 4.
[5] The MO will be able to assist should you have any questions about medical confidentiality.
[6] In accordance with the Rules of Detention you may request review of this decision pursuant to the Complaints Procedure.

17. Your decision to undertake a voluntary protest fast shall be respected provided the UNDU management is confident that it is well-informed and voluntarily made.

18. The conditions of your detention, including access to media, communication and other facilities, may be amended throughout the course of your protest.[7]

19. You may be transferred to the Penitentiary Hospital at any time during your protest.[8]

<u>If you are transferred to the Penitentiary Hospital:</u>

1. ICTY detainees admitted to the Penitentiary Hospital legally remain in the custody of the ICTY. Consequently a UNDU Detention Officer under the authority of the UNDU senior management will continue to perform the daily functions in relation to your detention in the Penitentiary Hospital and the MO will continue to be responsible for the co-ordination of your medical care.

2. The Rules of Detention will continue to dictate your conditions of detention throughout your detention in the Penitentiary Hospital and therefore you continue to have the opportunity to request review of the conditions of your detention in accordance with the Complaints Procedure.

3. All staff will respect the confidentiality of your medical information.

4. You will be placed in a cell with facilities for camera observation. Should it be required, the Registrar, with the approval of the President, will issue the decision to monitor your cell in accordance with Rule 39 of the Rules of Detention.[9]

5. During the voluntary protest fast no television will be provided in your cell.[10]

6. Other forms of communication/information may be restricted if they are seen to interfere with the care provided.[11]

<u>Further Important Information</u>

1. The treating physicians are obliged to continually reinforce to you the consequences, both reversible and irreversible, of your voluntary protest fast, so that you can decide whether to continue this course of action or not. You

[7] In accordance with the Rules of Detention you may request review of any such decision pursuant to the Complaints Procedure.
[8] In accordance with the Rules of Detention you may request review of this decision pursuant to the Complaints Procedure.
[9] In accordance with the Rules of Detention you may request review of this decision pursuant to the Complaints Procedure.
[10] In accordance with the Rules of Detention you may request review of this decision pursuant to the Complaints Procedure.
[11] In accordance with the Rules of Detention you may request review of this decision pursuant to the Complaints Procedure.

will be asked if you intend to continue your voluntary protest fast on a daily basis.

2. Should you wish to receive this information from a doctor independent of the detention authorities, a trust doctor may be requested. The trust doctor will be selected through the 'Netwerk Vertrouwensartsen' (trust doctors network) administered by the Johannes Wier Stichting.[12]

3. Whilst you remain mentally competent, artificial feeding will only be commenced with your consent. Should you have become mentally incompetent, your treating physicians have an obligation to assess whether or not to artificially feed you in accordance with the Declaration of Malta.

4. Force feeding will not be undertaken.

5. Should you wish to make advance instructions regarding your treatment, they will be respected in accordance with the Declaration of Malta[13]. Therefore should you express your determination to take your protest to its ultimate end, you will be allowed to die with dignity rather than being resuscitated against your will.

[12] The Johannes Wier Foundation describes itself as "a Dutch human rights organization for doctors, dentists, nurses and paramedics. The focus of the organization is on the specific responsibility of all health care workers regarding human rights."

[13] Articles 17, 18 & 19 of the Declaration of Malta (attached as Annex II).

Annex I - Courses of Voluntary Protest Fasts

1. Course of a Total Hunger Strike/Total Voluntary Protest Fast

For reference only: The usual clinical evolution of a hunger strike in an initially healthy and young patient[14] who continues to drink water, with no other intake of nutrients (total fasting), is as follows:

Week 1

If the detainee takes sufficient fluids physical changes are few. The hunger, pain and cramps disappear after around two days. Blood sugar levels drop slightly, 0.6 to 0.8 mmol/l. They subsequently remain at that level.

During the initial month:

a. Loss of weight.
b. Orthostatic hypotension (sudden fall in blood pressure) and bradycardia (slowed heart rate) can cause dizziness and possibly headaches.
c. Mobility is reduced due to loss of muscle tissue and fatigue.
d. Concentration diminishes.
e. Body temperature drops as a result of a lowered metabolic rate.
f. The patient may suffer stomach pain and hiccups.
g. Exhaustion makes communication difficult.

After the first month

Around the fortieth day, hunger strikers begin to feel seriously ill.[15] A general malaise is accompanied by:

a. Loss of hearing
b. Deterioration in vision, seeing double
c. Ataxia (unsteadiness)
d. Dysarthria (speech articulation problems)
e. Oculo-motor problems[16]
f. Nausea and vomiting
g. Icterus (yellowing of the cornea)
h. Dry, flaky skin
i. Decubitus (pressure sores)
j. Bleeding in the digestive tract
k. Loss of concentration, apathy and mood changes, but no psychological deterioration
l. Problems in forming sentences and words.

Critical phase

This phase is characterised by mood swings and confusion and leads into the terminal phase of pre-coma, coma and ultimately death. This phase can be as

[14] It must be noted that the average UNDU detainee profile is neither healthy nor young. See Annex I paragraph 4 *Additional Risk Factors*.

[15] As accurately described in 'Ein Hungerkunstler'of Franz Kafka (1924).

[16] Lack of oculo-motor control results in involuntary, rapid, oscillating movement of the eyeballs (nystagmus), double vision (diplopia), crossed-eyes (converging strabismus) which in turn causes in extreme vertigo, uncontrollable vomiting and the inability to swallow water. Although this phase is temporary (occurring between 35 to 42 days) it ends when the eyes become totally paralysed. It is particularly unpleasant for the protester.

short as a few hours; important arrangements must be made well before it starts as the hunger striker will no longer be capable of expressing himself clearly.

The fatal outcomes of total fasting were generally documented to occur any time between 55 and 75 days depending on the initial physical constitution and individual adaptation. Other than death resulting from complications of an additional risk factor, death in a total hunger strike is generally the result of acute depletion of Vitamin B1 (Thiamine). Hunger strikers need to be advised that "death occurs some time after six full weeks of fasting and survival after ten weeks of total fasting is practically impossible".[17]

2. Course of a Non Total Hunger Strike/Non-Total Voluntary Protest Fast
The intake of vitamins or calories allows the hunger striker to extend the duration of the strike, however it does not reduce the risk of permanent damage. In such circumstances, the course of the non-total hunger strike is a similar but prolonged version of a total hunger strike with the terminal point dependant upon the nutritional value taken.

3. Course of a Dry Hunger Strike/Thirst Strike/Dry Voluntary Protest Fast:
The course of a thirst strike has a much reduced timescale. Acute depletion of water intake cannot last more than a week, if that. Depending on the ambient temperature and humidity and the striker's level of stress and physical activity, "[d]eath occurs in 4 to 10 days", for an initially healthy and young person refusing to take fluids.[18] It is extremely rare for a dry faster to die from dehydration. Death is more likely to be caused by severe thiamine depletion.

Physical and mental deterioration is rapid. In view of this, the detainee's mental capacity must be evaluated within the first 24 hours to establish the competence of the protester and regularly thereafter to monitor the progress of the fast. In the case of a person refusing fluids, his weight, state of hydration, pulse and blood pressure must be measured at least daily and neuropsychological signs should be examined even more frequently as the health condition deteriorates.

4. Additional Risk Factors:
The following medical factors can predispose to the rapidly fatal evolution of a hunger strike and affect the usual course of a hunger strike, which renders the timing of the terminal phase practically impossible to determine.
   a. Age (particularly in relation to fragility[19] in old age);
   b. General level of health;
   c. Clinical obesity/chronic underweight;
   d. Diabetes;

[17] WMA Declaration of Malta – A Background Paper on the Ethical Management of Hunger Strikes, World Medical Journal, Vol. 52, No. 2, June 2006, paragraph 3.
[18] Promoting Health in Prisons – A WHO Guide to the Essentials in Prison Health, World Health Organization, 2007, page 39.
[19] Fragility refers to the increased sensitivity to change due to deterioration of all organs systems as a result of the natural aging process.

e. Kidney disease;
f. Cardiovascular disease;
g. Epilepsy;
h. Stomach/bowel disease, and particularly antecedents of gastritis or ulcers;
i. Pregnancy;
j. Use of medication.

Annex II - Declaration of Malta

World Medical Association Declaration on Hunger Strikers

Adopted by the 43rd World Medical Assembly Malta, November 1991 and editorially revised at the 44th World Medical Assembly Marbella, Spain, September 1992.

This revised version adopted by the World Medical Assembly in Pilanesberg, October 2006.

PREAMBLE

1. Hunger strikes occur in various contexts but they mainly give rise to dilemmas in settings where people are detained (prisons, jails and immigration detention centres). They are often a form of protest by people who lack other ways of making their demands known. In refusing nutrition for a significant period, they usually hope to obtain certain goals by inflicting negative publicity on the authorities. Short-term or feigned food refusals rarely raise ethical problems. Genuine and prolonged fasting risks death or permanent damage for hunger strikers and can create a conflict of values for physicians. Hunger strikers do not wish to die but some may be prepared to do so to achieve their aims. Physicians need to ascertain the individual's true intention, especially in collective strikes or situations where peer pressure may be a factor. An ethical dilemma arises when hunger strikers who have apparently issued clear instructions not to be resuscitated reach a stage of cognitive impairment. The principle of beneficence urges physicians to resuscitate them but respect for individual autonomy restrains doctors from intervening when a valid and informed refusal has been made. An added difficulty arises in custodial settings because it is not always clear whether the hunger striker's advance instructions were made voluntarily and with appropriate information about the consequences. These guidelines and the background paper address such difficult situations.

PRINCIPLES

2. Duty to act ethically. All physicians are bound by medical ethics in their professional contact with vulnerable people, even when not employed to provide therapy. Whatever their role, physicians must protest if coercion or maltreatment of detainees occurs and must try to prevent it.

3. Respect for autonomy. Physicians should respect individuals' autonomy. This can involve difficult assessments as hunger strikers' true wishes may not be as clear as they appear. Any decisions lack moral force if made involuntarily by use of threats, peer pressure or coercion. Hunger strikers should not be forcibly given treatment they refuse. Forced feeding contrary to an informed and voluntary refusal is unjustifiable. Artificial feeding with the hunger striker's explicit or implied consent is ethically acceptable.

4. "**Benefit" and "harm".** Physicians must exercise their skills and knowledge to benefit those they treat. This is the concept of "beneficence", which is complemented by the concept of "non-maleficence" or *Primum non Nocere.* These two concepts need to be in balance. "Benefit" includes respecting individuals' wishes as well as promoting their welfare. Avoiding "harm" means not only minimising damage to heath but also not forcing treatment upon competent people nor coercing them to stop fasting. Beneficence does not involve prolonging life at all costs, irrespective of other values.

5. Balancing dual loyalties. Physicians attending hunger strikers can experience a conflict between their loyalty to the employing authority (such as prison management) and their loyalty to patients. Physicians with dual loyalties are bound by the same ethical principles as other physicians, that is to say that their primary obligation is to the individual patient.

6. Clinical independence. Physicians must remain objective in their assessments and not allow third parties to influence their medical judgement. They must not allow themselves be pressured to breach ethical principles, such as intervening medically for non-clinical reasons.

7. Confidentiality. The duty of confidentiality is important in building trust but it is not absolute. It can be overridden if non-disclosure seriously harms others. As with other patients, hunger strikers' confidentiality should be respected unless they agree to disclosure or unless information sharing is necessary to prevent serious harm. If individuals agree, their relatives and legal advisers should be kept informed of the situation.

8. Gaining trust. Fostering trust between physicians and hunger strikers is often the key to achieving a resolution that both respects the rights of the hunger strikers and minimises harm to them. Gaining trust can create opportunities to resolve difficult situations. Trust is dependent upon physicians providing accurate advice and being frank with hunger strikers about the limitations of what they can and cannot do, including where they cannot guarantee confidentiality.

GUIDELINES FOR THE MANAGEMENT OF HUNGER STRIKERS

9. Physicians must assess individuals' mental capacity. This involves verifying that an individual intending to fast does not have a mental impairment that would seriously undermine the person's ability to make health care decisions. Individuals with seriously impaired mental capacity cannot be considered to be hunger strikers. They need to be given treatment for their mental health problems rather than allowed to fast in a manner which risks their health.

10. As early as possible, physicians should acquire a detailed and accurate medical history of the person who is intending to fast. The medical implications of any existing conditions should be explained to the individual. Physicians should verify that hunger strikers understand the potential health consequences of fasting and forewarn them in plain language of the disadvantages. Physicians should also explain how damage to health can be minimised or delayed by, for example, increasing fluid intake. Since the person's decisions regarding a hunger strike can be momentous, ensuring full patient understanding of the medical consequences of fasting is critical. Consistent with best practices for informed consent in health care, the physician should ensure that the patient understands the information conveyed by asking the patient to repeat back what they understand.

11. A thorough examination of the hunger striker should be made at the start of the fast. Management of future symptoms, including those unconnected to the fast, should be discussed with hunger strikers. Also, the person's values and wishes regarding medical treatment in the event of a prolonged fast should be noted.

12. Sometimes hunger strikers accept an intravenous saline solution transfusion or other forms of medical treatment. A refusal to accept certain interventions must not prejudice any other aspect of the medical care, such as treatment of infections or of pain.

13. Physicians should talk to hunger strikers in privacy and out of earshot of all other people, including other detainees. Clear communication is essential and, where necessary, interpreters unconnected to the detaining authorities should be available and they too must respect confidentiality.

14. Physicians need to satisfy themselves that food or treatment refusal is the individual's voluntary choice. Hunger strikers should be protected from coercion. Physicians can often help to achieve this and should be aware that coercion may come from the peer group, the authorities or others, such as family members. Physicians or other health care personnel may not apply undue pressure of any sort on the hunger striker to suspend the strike. Treatment or care of the hunger striker must not be conditional upon suspension of the hunger strike.

15. If a physician is unable for reasons of conscience to abide by a hunger striker's refusal of treatment or artificial feeding, the physician should make this clear at the outset and refer the hunger striker to another physician who is willing to abide by the hunger striker's refusal.

16. Continuing communication between physician and hunger strikers is critical. Physicians should ascertain on a daily basis whether individuals wish to continue a hunger strike and what they want to be done when they are no longer able to communicate meaningfully. These findings must be appropriately recorded.

17. When a physician takes over the case, the hunger striker may have already lost mental capacity so that there is no opportunity to discuss the individual's wishes regarding medical intervention to preserve life. Consideration needs to be given to any advance instructions made by the hunger striker. Advance refusals of treatment demand respect if they reflect the voluntary wish of the individual when competent. In custodial settings, the possibility of advance instructions having been made under pressure needs to be considered. Where physicians have serious doubts about the individual's intention, any instructions must be treated with great caution. If well informed and voluntarily made, however, advance instructions can only generally be overridden if they become invalid because the situation in which the decision was made has changed radically since the individual lost competence.

18. If no discussion with the individual is possible and no advance instructions exist, physicians have to act in what they judge to be the person's best interests. This means considering the hunger strikers' previously expressed wishes, their personal and cultural values as well as considering their physical health. In the absence of any evidence of hunger strikers' former wishes, physicians should decide whether or not to provide feeding, without interference from third parties.

19. Physicians may consider it justifiable to go against advance instructions refusing treatment because, for example, the refusal is thought to have been made under duress. If, after resuscitation and having regained their mental faculties, hunger strikers continue to reiterate their intention to fast, that decision should be respected. It is ethical to allow a determined hunger striker to die in dignity rather than submit that person to repeated interventions against his or her will.

20. Artificial feeding can be ethically appropriate if competent hunger strikers agree to it. It can also be acceptable if incompetent individuals have left no unpressured advance instructions refusing it.

21. Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment. Equally unacceptable is the forced feeding of some detainees in order to intimidate or coerce other hunger strikers to stop fasting.

Annex III – Complaint Procedure

UNITED NATIONS DETENTION UNIT
REGULATIONS FOR THE ESTABLISHMENT OF A COMPLAINTS PROCEDURE FOR DETAINEES
(IT/96)

Issued by the Registrar
April 1995

Regulations for the Establishment of a Complaints Procedure for Detainees

Issued by the Registrar pursuant to Rules 84 - 88 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention").

Complaints Procedure

1. A detainee may make an oral or written complaint or request concerning the conditions of his detention direct to the Commanding Officer or his representative at any time. A daily log shall be kept of all such complaints and of the action taken in respect thereof.

2. If, in the opinion of the Commanding Officer, the complaint is justified and it is within the power of the Commanding Officer to rectify the matter complained of, the Commanding Officer shall advise the detainee accordingly and shall take action to rectify the matter as soon as practicable.

3. If, in the opinion of the Commanding Officer, the complaint is justified but the power to rectify it does not lie with the Commanding Officer or the Commanding Officer does not believe the complaint is justified, the Commanding Officer shall advise the detainee accordingly. The detainee may then make a formal complaint to the Registrar in accordance with these Regulations.

4. A detainee may make a formal complaint concerning the conditions of his detention, including an alleged breach of the Rules of Detention or of any Regulations adopted thereunder, to the Registrar at any time, whether or not such complaint has already been raised with the Commanding Officer, provided that not more than two weeks have elapsed since the incident complained of. The complaint shall not be read or censored by the staff of the prison unit and shall be passed to the Registrar without delay.

5. Counsel for the detainee may assist the detainee in connection with any formal complaint.

6. The Registrar shall acknowledge receipt of all formal complaints within twenty-four hours of receipt.

7. The Registrar shall examine the substance of the complaint and determine whether it should be dealt with by the Registrar, being a complaint about an administrative matter or a matter of general concern, or whether it relates to an alleged breach of the rights of the individual detainee, in which case it shall be referred to the President for consideration. The Registrar shall, in any event, forward a copy of each and every complaint to the President. The Registrar shall advise the detainee of his decision and shall inform the detainee of the time-frame, being not more than two weeks, in which he may expect determination of the complaint. If the detainee is not satisfied with the Registrar's classification of the matter, he may, within one week of receipt of the Registrar's determination, request the Registrar to put the matter to the President for a final decision as to who should handle the complaint.

8. The Registrar or the President shall investigate the complaint promptly and efficiently and shall seek the views of all relevant persons or bodies, including the Commanding Officer. The detainee shall be permitted to communicate freely and without censorship on the matter with the Registrar

during this period and the Registrar shall, where appropriate, pass all such communications to the President without delay.

9. The Registrar shall respond to the complaint on his own behalf or on behalf of the President within one week of receipt where possible and, in any event, not more than two weeks from receipt. If the complaint is justified, action to rectify it shall be taken within that two-week period if possible and the detainee advised accordingly. If the complaint is justified but will take longer than two weeks to rectify, the Registrar shall notify both the detainee and the President and shall keep them informed, on a weekly basis, of the action that is being taken.

10. If the complaint is found to be justified and is capable of rectification, the Registrar shall implement such rectification as soon as practicable. Rectification may include cancellation, reversal or revision of a previous decision relating to the conditions of detention of the detainee. If the complaint is found to be justified but is not susceptible to practical rectification, the Registrar may, in consultation with the President, take whatever action he sees fit and is empowered to exercise.

11. If the Registrar or the President finds the complaint to be unfounded, the Registrar shall notify the detainee in writing, giving reasons for rejection of the complaint.

12. Rejection of a complaint by the Registrar or the President does not bar the detainee from raising such complaint again. In such cases, the Registrar, in consultation with the President, may reject the complaint without further enquiry if it reveals no additional matters not already considered.

13. In addition to the above, a detainee may, at any time during an inspection of the detention unit by inspectors appointed by the Tribunal, raise a complaint concerning the conditions of his detention with the inspectors and shall be entitled to talk with such inspectors out of the sight and hearing of the staff of the detention unit.