

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*  
Promoting human rights by protecting those who defend them

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Wednesday, July 24, 2013

Mr. Eric Holder  
US Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Mr. Charles E. Samuels, Jr., Director  
Federal Bureau of Prisons  
320 First Street, NW  
Washington, DC 20534  
United States of America  
Fax: (202) 514-6620; Email: [info@bop.gov](mailto:info@bop.gov)

Dear Sir;

**Re: International law obligations to release of Lynne Stewart for medical treatment**

Further to our letter of [23 May 2013](#), LRWC requests U.S. authorities to take all steps necessary to ensure the immediate release of Lynne Stewart to facilitate her treatment at the Memorial Sloan-Kettering Cancer Center in accordance with the release plan approved by her probation officers. The in-prison medical care and treatment of Ms Stewart constitutes a violation of international law binding on the U.S. The refusal by U.S. authorities to allow Ms Stewart to access the proper and necessary medical treatment arranged at the Memorial Sloan Kettering Cancer Center constitutes a violation of U.S.'s legal duties under international law to protect and ensure her rights to life and to humane treatment.

We understand that the Director of the Federal Bureau of Prisons has refused to approve the application for compassionate release of U.S. attorney Lynne Stewart, based on an apparent misunderstanding of the applicable law. The letter from Kathleen Kenney, General Counsel for the Assistant Director, states that Ms Stewart is not expected to die within the next 18 months and, “[a]ccordingly...does not present a condition in the present circumstances considered extraordinary and compelling to merit RIS at this time.” This is the wrong test to apply when considering an application for release in order to obtain the medical treatment most likely—scientifically—to maximize Ms Stewart’s survival. A prognosis that Ms Stewart is not expected to die within 18 months provides no legal justification for denying her application for release. The United States is bound by international law to protect the life of Lynne Stewart. This includes the legal duty to ensure, while she is a prisoner, that she receives medical treatment seen as either necessary or medically advisable to preserve and extend her life.

These duties arise from the *International Covenant on Civil and Political Rights* (“ICCPR”), ratified by the U.S. in 1992 and the *American Declaration on the Rights and Duties of Man* (“American Declaration”) adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948. The ICCPR and the American Declaration both impose a duty on the U.S. and other states to ensure the right to life of all persons including prisoners, without discrimination.

The state has a heightened duty to ensure proper medical care for prisoners whose ability to seek and obtain medical care is restricted by their imprisonment.

As a member of the Organization of American States (“OSA”) the U.S. has agreed to uphold the Charter of the OAS<sup>1</sup> and the American Declaration<sup>2</sup>. Article I of the American Declaration obliges states to ensure that “[e]very human being has the right to life...” Article II provides that [a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed, or any other factor”. Article XI imposes a separate duty to ensure the preservation of health and well being of all persons. The American Declaration is regarded by the Inter-American Court of Human Rights (“IACtHR”) and the Inter-American Commission on Human Rights (“IACHR”) as imposing binding legal obligations on states, such as the U.S., that have signed but not ratified the companion *American Convention on Human Rights* (“American Convention”).

Article 4 of the American Convention guarantees the right to life and Article 5 guarantees the right to humane treatment for prisoners. Article 5 has been interpreted to include a duty to provide prisoners with regular medical care and adequate medical treatment. This provision has been further interpreted as compelling authorities to facilitate and allow medical assistance to detainees by a physician of their choice<sup>3</sup>.

The IACHR has ruled that the American Declaration must be interpreted in light of developments in the *corpus juris gentium* of international human rights law, including the Inter-American Human Rights System and specifically, the American Convention and jurisprudence of the IACtHR<sup>4</sup>. The IACHR has described the American Convention as representing “an authoritative expression of the fundamental principles set forth in the American Declaration”<sup>5</sup>.

In *Vera Vera v. Ecuador*<sup>6</sup>, the accused sustained a gunshot to his chest during his arrest. He was not taken immediately to hospital after his arrest and later died of his injuries. The IACtHR reiterated that the state has a negative obligation to respect right to life and a positive obligation to take the appropriate measures to ensure them in fulfilling its general obligation established in Article 1(1). As the institution is responsible for prisons, the state is the guarantor of the rights of those under its custody. This requires the state to guarantee the health and welfare of inmates by providing them with required medical care, and to ensure that the manner and method of any deprivation of liberty does not exceed the unavoidable level of suffering inherent in detention. The IACtHR held that by delaying transport to the hospital, the State had violated both the prisoner’s right to life under Article 4 and right to humane treatment under Article 5.

Article 6 of the ICCPR, which the U.S. ratified in 1992, obliges states to ensure the “inherent” right to life of all persons. The United Nations Human Rights Committee has determined that states must ensure adequate (i.e. appropriate and timely) medical care for all detainees arising from combined duties to ensure: the right to life under Article 6; freedom from torture or cruel, inhuman or degrading treatment and punishment under Article 7; and the humane treatment of prisoners in accordance with Article 10.

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<sup>1</sup> *Charter of the Organization of American States*, 30 April 1948, 119 UNTS 3 at Preamble and Article 3(I): Appendix A, No 1.

<sup>2</sup> *American Declaration*, *supra* note 2 at Preamble and Article II: Appendix A, No 2.

<sup>3</sup> Van Kempen, Piet Hein, Positive Obligations to Ensure the Human Rights of Prisoners: Safety, Healthcare, Conjugal Visits and the Possibility of Founding a Family Under the ICCPR, the ECHR, the ACHR and the AfChHPR (2008), at [http://www.internationalpenalandpenitentiaryfoundation.org/Site/documents/Stavern/05\\_Stavern\\_Contribution%20Van%20Kempen.pdf](http://www.internationalpenalandpenitentiaryfoundation.org/Site/documents/Stavern/05_Stavern_Contribution%20Van%20Kempen.pdf)

<sup>4</sup> *Mary and Carrie Dann v United States* (2002), Case No 11.140, Report No 75/02, at paras 96-97, Annual Report of the Inter-American Commission on Human Rights: 2002, [Dann].

<sup>5</sup> *Ibid* at para 97.

<sup>6</sup> *Vera Vera v. Ecuador*, [2011] IACHR at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_226\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_226_ing.pdf)

These provisions of the ICCPR compel states to provide for the most appropriate medical treatment in accordance with current professional standards. The 18 month delay in facilitating surgery and the use of leg irons, belly chains and handcuffs during treatment are contrary to current professional standards.

The European Court of Human Rights (“ECtHR”) has defined the state duty to provide access to adequate medical treatment as part of the overarching obligation to protect the right to life of prisoners. This jurisprudence is instructive given the similarities of the provisions in the *European Convention on Human Rights* (“European Convention”) and those in the American Declaration, the American Convention, and the ICCPR. Further, the decisions of the ECtHR are persuasive authority in the Inter-American system.

In *Salakhov and Islyamova v. Ukraine*<sup>7</sup>, the ECtHR ruled there was a violation to the right to life in a case where a prisoner was refused medical treatment and later died. Mr. Salakhov was HIV positive and his health in prison began to deteriorate. He suffered from a constant fever, weight loss and other symptoms. The authorities downplayed his complaints. He was handcuffed to his hospital bed throughout his hospitalization. He was released from prison and died two weeks later.

The ECtHR held that the prohibition on torture and cruel, inhuman and degrading treatment imposes an obligation on the State to ensure that the health of a prisoner is adequately secured and that the detention centre and hospital failed to provide Mr. Salakhov with adequate medical care which violated his rights. The Court also found that handcuffing Mr. Salakhov during his hospitalization despite his critical state of health and the fact that he had never behaved violently, also constituted a violation of the prohibition on cruel, inhumane, and degrading treatment.

The ECtHR found that the State had violated the prisoner’s right to life. The Court affirmed that a state’s positive obligation to protect the right to life is triggered when “the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”

U.S. authorities in this case were aware of Ms Stewart’s diagnoses and the prescribed treatment when she entered prison. They are also aware of the deterioration of her medical condition and that the Memorial Sloan-Kettering Cancer Centre has devised a course of treatment that will begin immediately upon Ms Stewart’s release. The quality of the medical treatment available to Ms Stewart at Memorial Sloan-Kettering is undeniably far superior to the treatment that has been, or could be, provided by the Federal Bureau of Prisons. Refusing to allow Ms Stewart to access this treatment eliminates the opportunity to extend her life and reverse the damage consequent on the inadequate care in prison and subjects her to an additional punishment not contemplated (or authorized) by the original sentence. In so doing it violates Ms Stewart’s right to life and to humane treatment and constitutes a violation by the U.S. of legal duties to ensure the enjoyment of those rights by all persons.

In *Gulay Cetin v. Turkey*<sup>8</sup>, the applicant was diagnosed with metastatic gastric cancer after she was imprisoned. An oncologist’s assessment found her condition was life-threatening and recommended transferring her to a more suitable facility. The authorities refused to move her. The prisoner was unable to carry out everyday activities without assistance. The prisoner’s sister was allowed to stay with her in the prison ward to provide her with constant care. The prisoner deteriorated and died when she was transferred to an intensive care unit. Although this complaint was set aside for failure to exhaust domestic

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<sup>7</sup> *Salakhov and Islyamova v. Ukraine*, [2013] ECHR, Application No. 28005/08, at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117134#{"itemid":\["001-117134"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117134#{)

<sup>8</sup> *Gulay Cetin v. Turkey*, [2013] ECHR, Application No. 44084/10 at <http://sim.law.uu.nl/SIM/CaseLaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/164d4d9faea32579c1257b21002e2a91?OpenDocument>

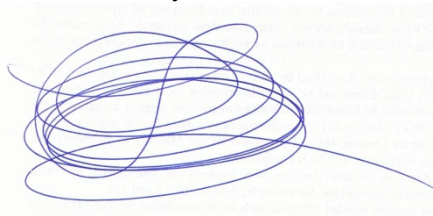
remedies, the ECtHR ruled that the state's detention of the applicant amounted to inhuman and degrading treatment in breach of Article 3 of the European Convention on the basis that the decision to keep her in detention despite the fact that her health had been continually deteriorating, prevented the application from dying in dignity with her family.

When Ms Stewart was sentenced, surgery prescribed to eradicate her cancer was scheduled to take place within a week. Ms Stewart was then forced by prison authorities to wait 18 months for that surgery. While in prison, her medical condition has worsened alarmingly such that her cancer is now diagnosed as stage 4 and terminal. Ms Stewart was then subjected to medically inadvisable conditions during chemotherapy treatments: being unnecessarily restrained by leg irons, handcuffs and belly chains and denied treatment results for weeks. That delay and the atrocious treatment have undoubtedly contributed to her current condition and are shortening her life expectancy.

LRWC calls on the Director of the Federal Bureau of Prisons and other U.S. authorities to take all steps necessary to facilitate the immediate release of Lynne Stewart to access proper medical treatment at Memorial Sloan-Kettering Cancer Center as approved by her probation officers.

We look forward to your action on this urgent matter.

Yours sincerely,

A blue ink handwritten signature, appearing to be 'Gail Davidson', written over a light grey grid background.

Gail Davidson  
Executive Director  
Lawyers' Rights Watch Canada

A black ink handwritten signature, appearing to be 'Grace Chen', written on a white background.

Grace Chen, B.A.,J.D.  
Barrister and Solicitor  
LRWC member

A black ink handwritten signature, appearing to be 'Marjorie Cohn', written on a white background.

Marjorie Cohn  
Professor, Thomas Jefferson School of Law  
Deputy Secretary General, International Association of Democratic Lawyers