

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

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 736 1175 – Fax: +1 604 736 1170
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Monday, December 15, 2014

Warden David Pelham
Bowden Institution
PO Box 6000
Innisfall, Alberta, T4G 1V1
Email: c/o jeff.campbell@csc-scc.gc.ca

Dear Warden Pelham;

Re: Medical treatment for Omar Khadr

Lawyers' Rights Watch Canada (LRWC) writes to:

- Alert you to the international law that imposes a duty on Canada and on Correctional Services Canada to ensure that Omar Khadr is provided with competent and timely medical care and treatment in accordance with professional standards and
- Request authorities to ensure that Omar Khadr immediately receives the medical care and treatment necessary to ensure preservation of his eyesight.

We understand that Omar Khadr is blind in his left eye and is at risk of losing sight in his right eye due to shrapnel injuries and cataracts. Omar Khadr was transferred to Correctional Services Canada on 29 September 2012. At that time, his eyesight was already severely impaired: eyesight in his left eye had been destroyed by injuries inflicted by U.S. Armed Forces in July 2002; eyesight in his right eye was at risk from shrapnel injuries, also inflicted in 2002. Vision in his right eye is apparently now deteriorating more rapidly due to the cataracts. Emergency medical treatment to arrest further deterioration and maximize restoration of his vision is urgently needed.

Canada has a duty under international law to provide Omar Khadr with the health care necessary to ensure his life and wellbeing.¹ The state must provide prisoners with the most appropriate medical treatment in accordance with current professional medical standards so as to ensure life and well being and to prevent imposition of further punishment or suffering—in this case loss or impairment of eyesight—not ordered by the courts.

¹ Lines, Rick, "The Right to Health of Prisoners in International Human Rights Law" (March 2008) 4:1 International Journal of Prisoner Health 3, available at http://www.ahrn.net/library_upload/uploadfile/file3102.pdf, citing *Lantsova v Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

These duties arise from a number of instruments including the *International Covenant on Civil and Political Rights* (“ICCPR”), ratified by Canada 19 May 1976, and the *American Declaration on the Rights and Duties of Man* (“American Declaration”).² The ICCPR and the American Declaration both impose a duty on Canada, as a state party, to ensure the right to life and humane treatment of all persons including prisoners, without discrimination. These rights are also guaranteed by the *American Convention on Human Rights* (“American Convention”).

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* (approved by the Economic and Social Council in 1957 and again in 1977) also entitles prisoners to prompt and effective medical attention and treatment. Article 22 (2) states: “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.”

The United Nations Human Rights Committee’s (HR Committee) has determined³ that adequate or appropriate and timely medical care must be provided to all prisoners as an integral part of state duties to ensure the enjoyment by all persons of the following rights:

- Article 6 on the right to life,
- Article 7 on the prohibition on torture or cruel, inhuman or degrading treatment and punishment, and
- Article 10 on the right to humane treatment of prisoners.

Canada has a duty to be proactive in providing adequate medical care. The HR Committee has also stated that

[I]t is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection...the essential fact remains that the State party by arresting and detaining individuals takes responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected.⁴

As a member of the Organization of American States and a signatory to the American Declaration, Canada is similarly obliged to provide prisoners with the medical care and treatment required to maintain life and well-being. The Inter-American Court of Human Rights (IACtHR) has ruled that to comply with the American Convention, states must provide medical care and treatment to prisoners at a standard sufficient to ensure that

² The American Declaration was adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

³ See also the following cases: HR Committee ‘Concluding Observations: Georgia’ (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the HR Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; HR Committee ‘Concluding Observations: Portugal’ (2003) UN Doc A/58/40 vol I 56 para 83(11); HR Committee ‘Concluding Observations: Cambodia’ (1999) UN Doc A/54/40 vol I 57 para 306; HR Committee ‘Concluding Observations: Congo’ (2000) UN Doc A/55/40 vol I 43 para 282; HR Committee ‘Concluding Observations: Mongolia’ (2000) UN Doc A/55/40 vol I 49 para 332; HR Committee ‘Concluding Observations: Syrian Arab Republic’ (2001) UN Doc A/56/40 vol I 70 para 81(13).

⁴ *Lantsova v Russian Federation* (Communication No. 763/1997, U.N. Doc. CCPR/C/74/763/1997 (2002) para 9.2.

detention does not result damages to health that could be prevented or remedied with timely and competent care.

Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of the rights of those under its custody. This implies the State's duty to guarantee the health and welfare of inmates by providing them, among other things, with required medical care, and it must also ensure that the manner and method of any deprivation of liberty do not exceed the unavoidable level of suffering inherent in detention.⁵

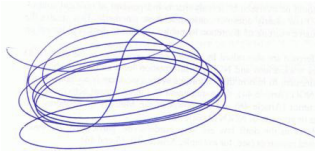
Although Canada is not a party to the American Convention, this interpretation applies to duties under the American Declaration. The Inter-American Commission on Human Rights has described the American Convention as representing "an authoritative expression of the fundamental principles set forth in the American Declaration."⁶

LRWC appreciates that you are familiar with the duty under the *Corrections and Conditional Release Act* to provide inmates with essential health care that conforms with professionally accepted standards.⁷ We hope this reference to the applicable international law duties will assist authorities in overcoming any hurdles in the way of providing the medical treatment that appears, from our information, to be so urgently needed.

We trust you share our concern that all steps be taken immediately to prevent loss and repair damage to Omar Khadr's eyesight.

Thank you for your prompt attention to this important matter.

Sincerely,



Gail Davidson, Executive Director, LRWC

Copied to:

Office of the Correctional Investigator
Howard Sapers
P. O. Box 3421, Station "D"
Ottawa ON K1P 6L4
org@oci-bec.gc.ca

⁵ *Vera Vera v. Ecuador*, [2011] IACtHR at para. 42.
http://www.corteidh.or.cr/docs/casos/articulos/seriec_226_ing.pdf

⁶ Annual Report of the Inter-American Commission on Human Rights: 2002, para. 97.

⁷ *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 86. (1) & (2).

Steven Blaney
Minister of Public Safety
House of Commons
Ottawa, Canada K1A 0A6
steven.blaney@parl.gc.ca

The Honourable Peter MacKay
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, Canada K1A 0A6
mcu@justice.gc.ca

Jonathan Denis Q.C.
Minister of Justice and Solicitor General
Province of Alberta
3rd floor, Bowker Building
9833 - 109 Street
Edmonton, Alberta, T5K 2E8
ministryofjustice@gov.ab.ca

Correctional Services Canada
Commissioner, Don Head
National Headquarters
340 Laurier Avenue West
Ottawa, Ontario, K1A 0P9