

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: +1 604 738 0338 – Fax: +1 604 736 1175
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Wednesday, August 14, 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

Dear Sirs;

Re: International law duty to release Lynne Stewart for medical treatment at Memorial Sloan-Kettering Cancer Center.

LRWC writes to:

- alert you to the international law that imposes a duty on the United States to ensure that Lynne Stewart is released immediately for the treatment recommended at the Memorial Sloan-Kettering Cancer Center; and,
- urge United States compliance with international law; and,
- request the immediate release of Lynne Stewart for medical treatment at the Memorial Sloan-Kettering Cancer Center

A review of the 24 June 2013 letter from the U.S. Department of Justice, Federal Bureau of Prisons and the 9 August 2013 decision of the United States District Court, Southern Division of New York, indicates that judicial and prison authorities and counsel for the Department of Justice failed to consider the applicable international law duties of the United States to protect the life of Lynne Stewart (and other prisoners) by ensuring proper medical treatment.

The procedural requirements of 28 U.S.C. § 2255 and 18 U.S.C. § 3582 do not exhaust or defeat this overarching international law duty. Adherence to domestic statutory provisions allowing the modification of a sentence based on compassionate grounds do not exhaust the state's duty to ensure that Ms Stewart as a prisoner receives the recommended and medically advisable treatment. Nor do the statutory provisions extinguish or limit a prisoner's internationally protected right to receive medical treatment outside the prison to preserve or extend life.

Authorities erred in proceedings as though: a/the statutory provisions allowing release on compassionate grounds were the only law protecting Ms Stewart's entitlement to be released for medical treatment outside the prison; and, b/ when the statutory requirements were not met, both the individual right and the state duty were exhausted.

Re: International law duty to release Lynne Stewart for medical treatment at Memorial Sloan-Kettering Cancer Center

Authorities further erred in considering only whether the sentence could be vacated, set aside or corrected. The international law provisions entitling a prisoner in Lynne Stewart's circumstances to medical treatment of choice in a civil facility, trigger the state's duty to alter how and where the sentence will be served during treatment, not the length of the sentence.

These international law duties arise, inter alia, from the *International Covenant on Civil and Political Rights* ratified by the U.S. in 1992 and the *American Declaration on the Rights and Duties of Man* adopted by the Ninth International Conference of American States, 1948. As explained in our [27 May 2013](#) and [24 July 2013](#) letters, these and other instruments impose a legal duty on the United States to protect the right to life of all persons. Specific state duties to protect prisoner are further defined in instruments such as the *Standard Minimum Rules for the Treatment of Prisoners*. Article 22(2) of the Minimum Rules obliges states to ensure that "Sick prisoner who require specialist treatment shall be transferred to specialized institution or to civil hospitals..." (emphasis added).

The US Supreme Court in *Estelle v. Gamble* acknowledged the Standard Minimum Rules when determining whether a prison failed to provide adequate medical care to an inmate:

The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common-law view that '[i]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.' (*Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976) (internal quotation marks omitted))

The scope of the right to life as it applies to persons sentenced to imprisonment has been determined by Comments and decisions of the United Nations Human Rights Committee and by decisions of other international tribunals including the Inter-American Court of Human Rights.

The jurisprudence is clear that a state's right to deprive a convicted person of liberty carries with it the legal duty to ensure proper medical treatment so that the loss of liberty does not cause a deprivation or shortening of life not authorized by the sentence. The duty to allow and ensure medical treatment of choice in a civil facility is triggered by one or more of the following circumstances all of which are present in Lynne Stewart's case.

- ❖ the person's medical condition has deteriorated in prison;
- ❖ the person has, subsequent to sentencing, been diagnosed as terminally ill;
- ❖ treatment that is medically advisable to extend the prisoner's life and/or improve their condition is available in a civil facility;
- ❖ treatment inside the prison has been substandard or contrary to prevailing medical standards;
- ❖ treatment comparable to that recommended and available in a civil facility has not been provided or is not available in the prison;
- ❖ civil and prison doctors disagree as to prognosis and/or recommended treatment and the patient opts for the treatment recommended in the civil facility;

The court ruled on 9 August 2013 that it has no jurisdiction to review and reduce Lynne Stewart's sentence unless and until the Director of the Bureau of Federal Prisons makes a motion to the court and that the refusal of the Director to make file a motion is not reviewable. In making this latter determination, the court noted (at p. 15) that "the Director's ability to seek a sentence reduction is a power not a duty." The court was not advised of and failed to note, the state's overarching international law duty to ensure Ms Stewart's access to the medical treatment

Re: International law duty to release Lynne Stewart for medical treatment at Memorial Sloan-Kettering Cancer Center

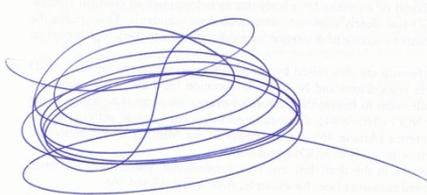
considered optimum -- i.e. the treatment proposed by the Memorial Sloan-Kettering Cancer Center. We note also that, in view of Ms Stewart's grave condition, *audita querela* (see p. 22) should have been issued on the grounds that the petitioner has a legal right to release that arose subsequent to conviction and sentencing.

Finally the court observed that it would "give prompt and sympathetic consideration to any motion for compassionate release filed by the BOP, but is it for the BOP to make that motion in the first instance." We urge you to give "prompt and sympathetic consideration" to the international law rights and duties cited and to comply with them in releasing Ms Stewart.

The issue that requires immediate attention is not whether the law allows the continued imprisonment of a person diagnosed after sentencing as terminally ill. The issue is the absolute right of access to necessary medical treatment—i.e. treatment that is medically advisable to extend the prisoner's life and/or improve their condition. Lynne Stewart has an absolute right to be released for the purpose of accessing treatment outside the prison when, as in this case, comparable treatment is not available inside the prison and/or when treatment inside the prison has been demonstrably substandard.

We call on you to ensure that all steps are taken to ensure that Lynne Stewart is released for treatment at the Memorial Sloan-Kettering Cancer Center.

Sincerely,



Gail Davidson, LRWC Executive Director



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

Copied to:

Gabriela Carina Knaul de Albuquerque e Silva
Special Rapporteur of the Human Council on the independence of judges and lawyers
C/o Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10 Switzerland Fax: +41 22 917 9006; e-mail:
SrindependenceJL@ohchr.org

Juan Mendez
Special Rapporteur on Torture
Email: sr-torture@ohchr.org

Re: International law duty to release Lynne Stewart for medical treatment at Memorial Sloan-Kettering Cancer Center

