

September 13<sup>th</sup>, 2005

The Honourable Monte Kwinter  
Minister of Community Safety &  
Correctional Services  
18th Floor, 25 Grosvenor Street  
Toronto, ON M7A 1Y6

Dear Minister Kwinter:

**Re: Unlawful Detention Conditions of Mohammed Mahjoub**

Mohammed Mahjoub has been detained without trial in an Ontario prison for over five years. He is currently facing death as a result of the failure of the government of Ontario and the government of Canada to respond to his reasonable and most basic requests. His death will be a direct result of the failure of our governments to act in accordance with international standards. As Director of Human Rights Watch Canada, I wish to add our group's voice to the outcry regarding the conditions of Mr. Mahjoub's detention.

Mr. Mahjoub has been detained in a provincial detention institution pursuant to a security certificate issued under the *Immigration Act*.<sup>1</sup>

### **Mr. Mahjoub's Just Demands**

Mr. Mahjoub rightly feels that the conditions of his detention are unjust and his primary demands include:

1. Proper medical treatment for the Hepatitis C, as a prescribed liver biopsy has been denied by the government;
2. Proper medical care for a leg injury sustained at the jail;
3. Filling a long neglected prescription for eyeglasses and;
4. Physical visits with his young children once a month.

None of these basic demands have been met, leaving Mr. Mahjoub with no other means to draw attention to his concerns than to commence a hunger strike.

### **Mr. Mahjoub's Conditions Violate International Principles for Protection of Detainees**

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<sup>1</sup> HRW has serious concerns respecting detentions pursuant to the security certificate regime, which I have not addressed in this letter. HRW has conducted extensive research on this issue, which was recently published in HRW's widely circulated report, "Still at Risk: Diplomatic Assurances no Safeguard Against Torture" (April 2005).

Although Mr. Mahjoub is a federal detainee, he is within your jurisdiction in a provincial jail, and it is therefore your responsibility to respond to this crisis.

By failing to adhere to Mr. Mahjoub's requests, the Ontario governments is shamefully failing to adhere to the *Body of Principle for the Protection of All Persons Under Any Form of Detention and Imprisonment* (adopted by general assembly resolution 43/173 of 9 December, 1998) (the "Principles"). Ontario is specifically in contravention of the following principles:

- Principle 19 - a detained or imprisoned person shall have the right to be visited by...members of his family...
- Principle 24 - ...medical care and treatment shall be provided wherever necessary. This care and treatment shall be provided free of charge.
- Principle 25 - a detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment shall have the right to request or petition a judicial or other authority for a second medical examination or opinion.
- Principle 33 - every request or complaint shall be promptly dealt with and replied to without undue delay...

Further, the *Principles* require you to act. Principle 7(2) states "Officials that have reason to believe that a violation of the *Principles* has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers."

The *Principles* also require to you act by imposing potential liability for your failure to do so, as Principle 35(1) states that: "Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by this domestic law."

### **Mr. Mahjoub's Conditions Violate UN Rules on Treatment of Prisoners**

Your failure to act is further in contravention of the *Standard Minimum Rules of the Treatment of Prisoners* (adopted by the First United Nations Congress on the Prevention of Crime in the Treatment of Offenders, held at Geneva in 1955 and approved by the economic and social council by its resolution 663C(XXIV) of 31 July 1957 and 2076(LXII) of 13 May 1977) (the "Rules"). These rules provide that:

- Section 25(1) - [a] medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specifically directed and
- Section 37 - Prisoners shall be allowed under necessary supervision to communicate with their family...at regular intervals...by receiving visits.

As of today, Tuesday, September 13, Mr. Mahjoub is on day 69 of his hunger strike. A number of health professionals have reviewed his situation and have concluded that if his hunger strike continues much longer a fatal outcome, or at least a disability, is certain.

You have the power to avoid such an outcome by ensuring that our province lives up to its international obligations in respect of treatment of prisoners. Your action can, and must, save Mr. Mahjoub's life.

Yours truly,

Jasmine Herlt  
Director  
Human Rights Watch Canada

JLE/dbc

cc. The Right Honourable Paul Martin  
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