

United States of America

Submission to the United Nations Universal Periodic Review (UPR) Ninth Session of the Human Rights Council (HRC) Working Group on the UPR 22 November–3 December 2010

Stakeholder Submission by the Leonard Peltier Defense Offense Committee¹

EXECUTIVE SUMMARY

1. An innocent man, Indigenous activist Leonard Peltier was wrongfully convicted in 1977 in connection with the shooting deaths of two agents of the Federal Bureau of Investigation (FBI). Peltier has served over 34 years in prison despite proof that he was convicted on the basis of fabricated and suppressed evidence, as well as coerced testimony. The US Courts of Appeal have repeatedly acknowledged investigative and prosecutorial misconduct in this case but, by their decisions, have refused to take corrective action. A model prisoner, Leonard Peltier also has been denied fair consideration for parole and Executive Clemency. (The *Official Submission for the Cluster Report on “US Political Prisoners and Domestic Repression”* by the Leonard Peltier Defense Offense Committee, 15 March 2010, which provides further case detail, is appended.)
2. Over 600 pages of documentation on the Peltier case were received and entered by Secretariat Julian Berger of the Working Group for Indigenous Populations in 1995 and repeated appeals have been brought to the UN on his behalf since Peltier’s imprisonment. UN luminaries such as Kenneth Deer (former Chair/Rapporteur of the U.N. Workshop on Indigenous Media); Dr. Miguel Alfonso Martinez (former Chair, U.N. Working Group on Indigenous Populations); and Mary Robinson (former U.N. High Commissioner for Human Rights) have written to the President of the United States urging Peltier’s release.
3. During the past four years, Leonard Peltier has continued to be:
 - a victim of arbitrary detention, denied equal treatment under the law and subjected to arbitrary attacks upon his honor and reputation;
 - held in servitude;
 - subjected to torture and to cruel, inhuman and degrading treatment; and
 - prevented from manifesting his religion in practice, worship and observance.
4. The international community must demand that the US comply with its human rights obligations and that Peltier be immediately and unconditionally released.

BACKGROUND AND FRAMEWORK

5. The US Department of State conducted meetings with non-governmental organizations and other domestic civil society groups, state and local authorities, tribal governments, universities, and individuals on the status of respect for human rights in the United States. During two meetings with tribal governments, in particular (16-17 March 2010), the Peltier case was characterized as a stain on the human rights record of

¹ Established in April 2008, the Leonard Peltier Defense Offense Committee engages in public education, media relations and political lobbying regarding the Peltier case and works closely with attorneys to win Peltier’s freedom. Further, the LP-DOC works in solidarity with other political prisoner organizations and those seeking environmental and social justice, advocates for Indigenous and human rights, and the US movement for overall criminal justice reform and the abolishment of the death penalty.

the US. As reported by the Navajo Nation,² “...it is largely believed Mr. Leonard Peltier was wrongly imprisoned and must be expeditiously released.” Duane H. “Chili” Yazzie, chair of the Navajo Human Rights Commission, said the Indigenous Peoples of North America await a sign that the US has indeed listened to their concerns. “One signal that we will look for is some word from a very contemporary tragedy that continues—the illegal imprisonment of my brother Leonard Peltier.” Further statements on Peltier’s behalf were made at the consultation in Berkeley and San Francisco, California (25-26 March 2010).

Current Normative and Institutional Framework for the Promotion and Protection of Human Rights

6. A member state of the UN, the US is a signatory to the Universal Declaration of Human Rights (UDHR); and a party to the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention to Suppress the Slave Trade and Slavery, as well as the supplementary convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery. The US also has an extensive constitutional and legislative framework to address human rights issues. The fourteenth amendment of the US Constitution contains an Equal Protection Clause that formally recognizes the principle of equality before the law. The US Department of Justice (DOJ) has the nationwide authority to investigate human rights violations and challenge patterns or practices of misconduct among its operating units, including Offices of the US Attorney, FBI and US Bureau of Prisons (BOP). Congressional committees supervise the DOJ.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Information on the implementation of international human rights obligations

7. **Suppression of Struggles Against Racism and Colonialism**—UN Committees (the HRC, Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Racial Discrimination) oversee the implementation of binding agreements—the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and the ICERD—and must consider Indigenous issues when examining reports by States on their performance under these treaties. The Convention on the Prevention and Punishment of the Crime of Genocide confirmed that genocide, whether committed in peace or in war, is a crime under international law. The historical genocide of Indigenous Peoples of North America is well-documented. US policies also have sought to achieve the assimilation and integration of Indigenous Peoples, a modern form of genocide (destruction of identity and cultural heritage). Further, US treaties with the Indigenous Peoples also have been unfairly negotiated and treaty rights have been breached and obligations not fulfilled—contrary to Article 6 of the US Constitution (which establishes the Constitution and the laws and treaties of the United States made in accordance with it as the supreme law of the land), as well as international law.
8. While the US is not a signatory to the UN Declaration of the Rights of Indigenous Peoples, the ICCPR (Article 1) confirms the right of all peoples to self-determination and, in conformity with the Charter of the UN, States must respect that right. The American Indian Movement (AIM), of which Peltier is part, was/is a human/civil rights organization engaged in a struggle for self-determination of Indigenous Peoples that encompasses areas of health, housing, education, language, culture, social and legal institutions, employment, land and resources, political rights, religious/spiritual rights and practices and equality in the administration of justice. Such struggles are deemed legitimate and in full accord with the principles of international law. Attempts to suppress such struggles against colonial regimes and policies are incompatible with the UN Charter and the UDHR. Further, on June 26, 1975, the US government was the

² Navajo Nation Human Rights Commission. *Listening Session with the US Federal Government: The Summary of Testimonies and Statements Submitted by Indigenous Leaders, Organizations and Persons to the United States of America*

aggressor and forced Peltier and other AIM members into a defensive posture. A firefist ensued. (Peltier's defendants, tried separately, were acquitted on grounds of self-defense.) Under the Third Geneva Convention, therefore, Peltier should be accorded the status of prisoner of war (POW). The violation of that legal status entails full responsibility in accordance with the norms of international law.

9. **Arbitrary Detention and Attacks on Honor and Reputation**— Article 9 of the UDHR states that “no one shall be subjected to arbitrary arrest, detention or exile.” To date, the above framework has lacked adequate protections and remedies related to the use of the US judicial system as an instrument to quash dissent and interfere with the right to hold opinions, manifesting in investigative and/or prosecutorial misconduct and effecting wrongful convictions. Neither does it, in practice, prevent the disproportionate imprisonment of persons of color in the US, including Indigenous Peoples. Data show that, due to federal jurisdiction over “major crimes” on reservations, Indigenous Peoples are imprisoned more often and for longer periods of time than if they were convicted and sentenced in State or tribal courts.
10. The lynchpin of the prosecution's case against Peltier was the ballistics testimony which, years after his conviction, was discovered to be false. Exculpatory evidence also was withheld at trial. In April 2009, the US Attorney General announced that he had ordered the dismissal of the indictment against former US Senator Ted Stevens on corruption charges (effectively vacating the conviction) because government prosecutors had withheld potentially exculpatory evidence from Stevens' attorneys who stated: "This jury verdict was obtained unlawfully. The government disregarded the Constitution, the Federal Rules of Criminal Procedure, and well-established case law... which require the government to reveal to the defense all evidence that demonstrates the innocence of the accused... The misconduct of government prosecutors, and one or more FBI agents, was stunning. Not only did the government fail to disclose evidence of innocence, but instead intentionally hid that evidence and created false evidence that they provided to the defense." Concern about guarantees which should be enjoyed by all persons deprived of their liberty (including equal treatment under the law) led to adoption of the UN of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Equal treatment under the law dictates that Peltier's conviction, like that of Stevens, be vacated and his freedom restored.
11. Others convicted of similar crimes in the US are released on parole after serving a fraction of the time already served by Leonard Peltier. From the time of Peltier's conviction in 1977 until the mid-1990s, according to the Bureau of Justice Statistics (US Department of Justice), the average length of imprisonment served for homicide in the United States ranged from 94 to 99.8 months. Rather than Peltier being released on parole (which was not excluded by the sentencing court), in the past four years, the US has imposed a heavier penalty than one that was applicable at the time of his conviction. According to its own guidelines, Peltier has remained in prison even though the punishment which was applied has been executed. The BOP refuses to correct his mandatory release date and the US Parole Commission to act on his mandatory release date, both in violation of substantive and procedural due process rights guaranteed under the US Constitution and statutes of the United States. Further, the Parole Commission has stated that Peltier will not receive parole until he "recognizes his crime," a violation of Article 14(g) of the ICCPR and despite a government prosecutor's admission that the government "did not and cannot prove" Peltier's alleged guilt or "what part he may have played" in the deaths of the agents.
12. In recent public pronouncements and submissions to the Parole Commission, the US also has arbitrarily attacked Peltier's honor and reputation alleging offenses for which he either was never charged or charges of which he was acquitted; and presenting uncorroborated testimony from criminal proceedings to which Peltier was not a party and therefore by a witness Peltier has been unable "to examine, or have examined." Nor has Peltier been able "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."
13. **Servitude**—According to Articles 4 and 23 of the UDHR, respectively, “No one shall be held in slavery or servitude...” and “[e]veryone, without any discrimination, has the right to equal pay for equal work.” In addition, the ICCPR (Article 8) states: “No one shall be held in servitude.” Regulations of the BOP have the effect of holding Peltier (and other inmates) in servitude. Despite his advancing age, as well as poor

health, Peltier is subject to compulsory labor (without a sentence of imprisonment with hard labor having been imposed). All prisoners in the custody of the BOP also are compensated at a rate below the minimum wage as defined by federal law. These practices constitute a contemporary form of slavery.

14. **Torture or cruel, inhuman and degrading treatment**—Principle 6 in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that “No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.” Today Mr. Peltier continues to be afforded substandard care in noncompliance with standard medical protocols. As the HRC may recall, for many years, he had a seriously debilitating jaw condition which left him unable to chew properly and caused consistent and severe pain and headaches. The prison medical facilities could not properly treat this condition and two prison surgeries only worsened Peltier's condition. A physician from the Mayo Clinic in Rochester, Minnesota, offered to repair Peltier's jaw free-of-charge, but was repeatedly turned down by prison authorities until the UN sharply rebuked the US for subjecting Peltier to inhumane conditions. Surgery was performed and his condition improved somewhat. Subsequent surgeries are required, however, to fully address Peltier's condition. To date, such treatment has not been approved by prison officials. In recent years, Peltier has again begun to experience severe discomfort related to his jaw, teeth, and gums. In addition, a victim of severe diabetes, in recent years, BOP has interfered with Peltier's ability to adequately monitor and manage his blood sugar.
15. Some time ago, Peltier suffered a stroke which left him partially blind in one eye and Peltier currently suffers from high blood pressure, a heart condition, and other emerging health issues. According to an affiliate of Physicians for Human Rights, he risks blindness, kidney failure, and stroke given his inadequate diet, living conditions, and health care.
16. Peltier also has been provided inadequate protection against physical assault and bodily harm while in the BOP's custody. In January 2009, without warning, Peltier was transferred from US Penitentiary-Lewisburg to US Penitentiary-Canaan. Upon being released into the general population, Peltier was attacked by other inmates and sustained severe injuries. Despite being a victim of unprovoked violence, Peltier was subjected to solitary confinement. Against Principle 16 in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Peltier was prevented for a time from notifying members of his family as to his location and, in violation of Principle 18 of the same, denied access to legal counsel.
17. **Freedom of Religion**—BOP discriminatory regulations have the effect of preventing Peltier from manifesting his religion in practice, worship and observance. In recent years, the BOP has restricted the use of tobacco as well as other implements of ceremony, and decreased the frequency and duration of ceremonies. Christian prisoners are not subjected to such interference or restrictions.

Cooperation with human rights mechanisms

18. Recognizing that Leonard Peltier has been imprisoned for decades for a crime he did not commit, various governments³ and dignitaries⁴ have called for Peltier's release. The above violations also have been formally challenged by human right organizations, but with no effect. On June 23, 1995, Amnesty International (AI) submitted a letter of concern about the Peltier case to the US Attorney General. With no Executive Review of the case forthcoming, in 1999, AI called for Leonard Peltier's release.⁵ Before the US Congress, in 2000, AI issued this statement: "Amnesty International considers Leonard Peltier to be a political prisoner... Amnesty International believes that Leonard Peltier should be immediately and unconditionally released."⁶ In briefings to the United Nations since 1992, AI has actively pursued Leonard

³ <http://users.skynet.be/kola/resolutions.html>

⁴ <http://users.skynet.be/kola/vips.html>

⁵ AI Index: AMR 51/160/1999 15 July 1999

⁶ Transcript: Carlos Salinas, Amnesty International, Congressional Briefing for Leonard Peltier, Washington, DC, 17 May 2000

Peltier's freedom. AI submitted a briefing to the HRC in February 2006 (updated in early July 2006), in which AI again called for Leonard Peltier's release. According to AI-USA senior deputy director Curt Goering: "Given that the case against Peltier unraveled years ago, his continued imprisonment is only protracting a grave miscarriage of justice... When you consider the concerns that plague the case... it is unconscionable that Leonard Peltier should continue to suffer behind bars. It is high time for the US government to... right the wrongs of the past."

RECOMMENDATIONS

19. **Action on Regional and International Agreements**—The United States' failure to engage fully with the international community is demonstrated by the number of important regional and international agreements that it has not yet committed to uphold in the international arena. To address human rights offenses against the Indigenous Peoples of North America, in general, and Leonard Peltier, specifically, the US should take immediate steps to endorse the United Nations Declaration on the Rights of Indigenous Peoples. The US also should take action on the regional and international agreements it has not signed or ratified: American Convention on Human Rights; International Convention for the Protection of all Persons from Enforced Disappearance; Protocols I and II to the Geneva Conventions; and the Rome Statute of the International Criminal Court.
20. **Executive Clemency**—Strategies to only ameliorate his conditions of confinement will not remedy the many years of human rights violations suffered by Peltier. Therefore, the UN must draft, pass and directly send to the President of the United States a resolution calling for an immediate award of Executive Clemency to Leonard Peltier.
21. **Executive Review**—Concurrently, the UN should draft, pass and directly send to the Attorney General of the United States a resolution calling for an immediate Executive Review of the Peltier case and a demand for equal treatment under US and international law and in accordance with the UDHR.
22. **Transfer of custody**—The General Assembly has affirmed that participants in resistance movements and freedom fighters, if arrested, be treated as POWs. It has also found that seriously sick or long-term POWs be repatriated or interned in a neutral country. Accordingly, the UN should draft, pass and directly send to the President of the United States and the US Secretary of State a resolution calling for Peltier's immediate transfer to the custody of the Turtle Mountain Band of Chippewa Indians in accordance with that sovereign nation's two formal requests in 2009 to the President of the United States and the US Attorney General for Peltier's transfer into its custody.
23. **Investigation of arbitrary detention**—Peltier's continuing imprisonment is inconsistent with relevant international standards, i.e., norms relating to detention after the completion of a sentence, for example, as well as exercise of the freedoms guaranteed by articles 7, 10, 14 and 19 of the UDHR and articles 1, 2, 5, 7, 8, 9, 10, 14, 15, 18, 19, 21, 26 and 27 of the ICCPR. The absence of a fair trial (and fair consideration for parole or Executive Clemency), are of such gravity as to give deprivation of Peltier's liberty an arbitrary character. Therefore, the Working Group on Arbitrary Detention must investigate Peltier's continuing imprisonment, as well as discrimination (on the basis of race and political belief) as the root cause of his arbitrary detention.
24. **Investigation of conditions of confinement**—Together with the Committee on Torture, the Working Group on Arbitrary Detention must assess Peltier's conditions of confinement, including but not limited to the BOP's provision of medical care and protection from physical abuse. In addition, the Working Group on Contemporary Forms of Slavery must investigate BOP patterns or practices as regards prisoner labor.
25. **Investigation of violation of religious rights**—The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples must investigate the infringement of Peltier's right to freedom of religion and that of manifesting his religion in practice, worship and observance.

APPENDIX

United Nations Universal Periodic Review: Official Submission for the Cluster Report on “US Political Prisoners and Domestic Repression” by the Leonard Peltier Defense Offense Committee. 15 March 2010

The United States claims to be a government of law, promoting within its integral processes guarantees of fairness and justice. Through the US Constitution, the Bill of Rights and the structure of its judicial system, the United States asserts that all persons within its borders shall be protected against arbitrary arrest and ensured a fair trial by an independent and impartial tribunal. These guarantees have been recognized as fundamental—not only in the United States, but also by the signatory nations of the Universal Declaration of Human Rights. In the United States, however, this basic protection has been and continues to be thwarted by security and intelligence agencies that use the judicial system as a tool of political repression against those who raise fundamental criticism against the domestic and foreign policies of the United States.

In 1981, Amnesty International (AI) issued a Proposal for a Commission of Inquiry into the Effect of Domestic Intelligence Activities on Criminal Trials in the United States of America (ISBN: 0 86210 038 0), citing the case of Leonard Peltier, a member and leader of the American Indian Movement (AIM), a civil rights organization which promoted the sovereignty of Indigenous Nations, as a graphic example of the growing menace to freedom and justice within the American judicial system. The AI proposal pointed to the use by the United States of coerced and now admittedly false eyewitness affidavits used to extradite Mr. Peltier from Canada to the United States for prosecution. Agents of the Federal Bureau of Investigation (FBI) terrified a young Indian woman named Myrtle Poor Bear into signing affidavits that she had seen Mr. Peltier kill two FBI agents on the Pine Ridge Indian Reservation during a firefight between AIM members and the FBI on June 26, 1975. Although the Court of Appeals referred to the use of the affidavits as a “clear abuse of the investigative process by the FBI,” the Court did nothing to correct this gross breach of international law and the extradition treaty between the United States and Canada.

Some four years after the 1977 conviction of Leonard Peltier by the United States, his attorneys determined under US law (“Freedom of Information Act”) that some 18,000 pages of FBI files existed on the investigation of the firefight and prosecution of Leonard Peltier and his codefendants, rather than the 3,500 pages the government reported to the trial court. It is now known that the United States still suppresses over 140,000 pages (in their entirety or in part), largely claiming “national security” concerns as a reason therefore. Documents released, to date, have revealed that (contrary to published government accounts that the deceased agents were engaged in regular criminal investigations on the Pine Ridge Reservation in 1975) the FBI had planned a few weeks before the firefight to engage in a paramilitary operation against the men, women and children of AIM who lived in the very area where the firefight took place. One of the two agents killed in the firefight, trained in counterintelligence, was a Special Weapons and Tactics team member on special assignment to the reservation expressly for this purpose. The investigation of the deaths of the agents also was immediately transferred from the General Crimes Division of the FBI to the Intelligence Division—specifically under the direction of Richard Held, the then head of the Domestic Security Section of the FBI.

The FBI documents also revealed that the government targeted Peltier for criminal prosecution as being the man who actually killed the agents, although the evidence at most pointed to him as being one of 26 to 40 adult AIM members who engaged in the firefight with the FBI. According to one document, dated some two weeks after the firefight, the FBI decided to “lock Peltier into the case.” Later dated documents disclosed that the FBI not only fabricated the aforementioned affidavits, but also the only evidence the government claimed at trial linked Mr. Peltier to the killing of the agents. The documents revealed (counter to the trial testimony of a FBI “expert”) that the weapon attributed to Peltier could not have fired the bullets that killed the agents. Also, contrary to the government’s evidence at trial, the deceased agents did not chase a van containing Peltier onto

the Jumping Bull property where the agents were later killed, but rather a red pickup with occupants unknown that is known to have left the scene within moments of the agents' death.

The US Court of Appeals, presented with this previously suppressed evidence, ruled in September 1986 that the government suppressed evidence and that the evidence tended to show the government's chief witness lied about the most important evidence in the case, casting "a strong doubt on the government's case". However, had this evidence been available to the defense, the Court said, Leonard Peltier possibly (but not probably) would have been acquitted. The Court therefore affirmed the lower court's denial of a motion for a new trial.

Since the 1980s, the US Courts of Appeal have repeatedly acknowledged investigatory and prosecutorial misconduct in the Peltier case. As late as November 2003, the 10th Circuit Court of Appeals stated, "...Much of the government's behavior at the Pine Ridge Reservation and its prosecution of Leonard Peltier is to be condemned. The government withheld evidence. It intimidated witnesses. These facts are not disputed." The Courts have refused to take corrective action and the United States Supreme Court has refused to hear any appeal brought on Leonard Peltier's behalf.

A model prisoner, Peltier was denied parole (early release under supervision of the criminal justice system) in 1994 and again in 2009, largely due to Peltier's refusal to admit to a crime he did not commit. On 24 February 2010, parole authorities acknowledged Peltier's advancing age, deteriorating health, significant release plan, and good prison record, but stated that these elements do not warrant his release. Peltier will not be considered for parole again until 2024. Further, in his final days as president, George W. Bush denied Peltier's application for a grant of Executive Clemency. The application had been active since 1992.

AI has investigated this case for many years and called on the US government to institute an executive review of the case (AI Index: AMR 51/160/1999, 15 July 1999). "Amnesty International considers Leonard Peltier to be a political prisoner... [and] believes that Leonard Peltier should be immediately and unconditionally released." (AI representative Carlos Salinas, US congressional briefing, 2000). Also, in briefings to the United Nations since 1992, AI has actively pursued Leonard Peltier's freedom, most recently submitting a briefing in February 2006 (updated in early July 2006). Following Peltier's 2009 parole denial, senior deputy director of Amnesty International-USA, Curt Goering, responded: "Given that the case against Peltier unraveled years ago, his continued imprisonment is only protracting a grave miscarriage of justice... When you consider the concerns that plague the case... it is unconscionable that Leonard Peltier should continue to suffer behind bars."

Despite the US government's admission in 1985 and again in 1992 that it does not know who killed the agents, "did not and can not prove" Peltier's guilt, and does not know what part Peltier "may have played" in the deaths of the agents—also despite a recent admission by codefendant Robert Robideau (now deceased), who had been acquitted on grounds of self defense, that he alone shot the agents—Leonard Peltier continues to serve two consecutive life sentences in a maximum security prison. This case, which is not an isolated one, exemplifies how the US government is willing to use its judicial system as an instrument of revenge, as well as to quash dissent in the United States. Even when a prisoner is able to prove this has occurred, he/she is provided with a limited forum for relief—and one lacking in substance.