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Item 11 (a) and (e) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
TORTURE AND DETENTION;
RELIGIOUS INTOLERANCE

Written statement* submitted by the International Indian Treaty Council,
a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Torture and Detention

The International Indian Treaty Council and human rights organizations from around the world are profoundly disappointed that the final days of his administration, President Clinton failed to grant Executive Clemency for American Indian political prisoner Leonard Peltier.

President Clinton expressed his commitment to seriously consider clemency for Leonard Peltier. Religious, human rights, Indigenous and political leaders around the world voiced their strong support. But he apparently bowed to unprecedented pressure exerted on him by the US Federal Bureau of Investigation (FBI), which included inflammatory and inaccurate full page newspaper ads, meetings with the President, an FBI-staged demonstration in front of the White House, and a national call-in campaign.

The FBI has opposed all legal petitions for a new trial for Mr. Peltier, in which evidence supporting his innocence would be presented. In 1980 over 12,000 documents generated from the FBI case were released in accordance with the "Freedom of Information Act" adopted by the US Congress. These documents proved Mr. Peltier was innocent of the murders of two FBI agents who were killed in the June 26, 1975 shoot-out on the Pine Ridge Indian Reservation in South Dakota, USA. Despite the US governments' own admission that it could not prove who shot the agents, Mr. Peltier was denied a new trial and has spent nearly 26 years in prison for the agents' deaths.

The released documents revealed intensive FBI surveillance of American Indian Movement (AIM) activity on Pine Ridge prior to the shoot-out, as well as a plan to use "paramilitary operations" against AIM. During the three year period surrounding the shoot-out, scores of AIM members and traditional Lakotas were victims of beatings, drive-by shootings, and stabbings carried out by local vigilantes collaborating with the FBI. Many questions about FBI complicity in this violence remain unanswered.

Meanwhile, the US government continues to withhold over 6,000 full and 5,000 partial documents pertaining to this case, despite former President Clinton's executive order requiring the release of government documents with the passage of 25 years. These documents contain crucial evidence further supporting Peltier's innocence. They also provide additional information about the US governments' role in the repression of the American Indian Movement and in orchestrating Mr. Peltier's conviction by any means necessary, including falsifying extradition documents and ballistics reports, coercing testimony, and suppressing evidence.

Leonard Peltier, from Leavenworth Federal penitentiary, requested that IITC present his statement to the members of the Commission at this time: "What my case boils down to is not a dispute over facts or evidence, but rather, the FBI's desire to conceal the truth. What traditional Native people wanted were basic human rights: the right to self-determination, the right to practice our religion, safety from political violence, and access to resources in our own homeland. Rather than listening to us, we were criminalized. In order for America to progress and become a better nation, it must allow the full truth to be revealed and it must take steps to ensure that the abuses do not reoccur."

The IITC calls upon this Commission to utilize every mechanism at its disposal and within its mandate to call for full disclosure by the US government of information in this case. The IITC filed a complaint on behalf of Leonard Peltier to the Committee on Arbitrary Detention in 1997, but to date

has received no response. We call upon the UN Committee on Arbitrary Detentions to renew its active investigation into the shameful facts of this case, especially now that a domestic remedy has been denied. Justice for Indigenous Peoples of the world depends upon justice for Leonard Peltier.

The IITC also expresses our grave concern at recent news of intimidation and unjust imprisonment of indigenous Mapuche leaders, members of the organization *Consejo de Todas las Tierras* (CTT) Aucan Huilcaman, Manuel Santander, Margot Collipal, Adan Ayenao, Adrian Ayenao and Sergio Marillan. They were detained Temuco, Chile on November 29, 2001 for allegedly assaulting police officers during an unprovoked raid on their office on July 20, 2001. The Mapuche leaders reject these charges and maintain that they were the victims of a violent assault by police in which men and women were beaten and office equipment and files were confiscated without justification.

The IITC is concerned that the Indigenous leaders in custody will not be treated in full accordance with international human rights law and the Chilean constitution. The IITC has been informed that their imprisonment has been carried out under military laws dating back to the Pinochet dictatorship, and that there is a risk that they may be tried by military tribunal without recourse to normal channels of justice. IITC has also received reports that this action was instigated by powerful logging and forestry interests who oppose the Mapuche struggle to regain and defend their traditional lands.

Religious Intolerance

In 1999, the United Nations Rapporteur on Religious Intolerance Mr. Abdelfattah Amor reported to the Commission on Human Rights on the situation of Religious Intolerance in the United States, E/CN.4/1999/58/Add.1, citing many examples of religious intolerance impacting Indigenous Peoples in that country. To date, many of the situations addressed in this report continue unabated, and some have even worsened.

One example is the ongoing denial of religious freedom for Native American prisoners in the United States of America. This concern also was presented to the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban South Africa in September 2001, by Mr. Lenny Foster, Board member of the International Indian Treaty Council. Mr. Foster is the Coordinator of the National Native American Prisoners Rights Advocacy Coalition, and spiritual advisor and Director of the Navajo Nation Corrections Project representing over 1,500 Native Americans incarcerated in 96 state and federal prisons in the US.

The IITC calls the attention of the members of the Commission to the following excerpts from his intervention:

"...I want to thank you for the opportunity to convey a serious concern about the denial of the religious and spiritual practices of the Native American Peoples who are incarcerated in the United States prison system. It is a primary human rights issue for Native American communities and Peoples because it affects the very essence of our cultural and spiritual beliefs...

"The United States government displaced many of our ancestors physically and spiritually. During that relocation, many of the traditional ways of spiritual and religious practices were repressed... However, a spiritual and cultural revival has developed in the past thirty years in which the Native

Americans have sought to regain their culture. This spiritual healing has seen the Peoples of all Tribal backgrounds embracing and returning to the roots of their respective spiritual and religious practices.

"...Traditional religious and spiritual practices such as the cleansing and purification ceremonies have proven to be very successful in positive changes in attitude, in behavior and personality... Having access to a traditional spiritual leader to provide instruction and teach the ceremonies is very important and has also been a successful approach. All of these therapies have to be done on a consistent basis.

"Long hair, worn in a traditional fashion for cultural and spiritual beliefs is also very important. The California state Department of Correction has recently implemented a haircutting policy for Native Americans and this racist practice is very detrimental to the spiritual and psychological well-being and contributes to severe depression. Equal access and use of sacred herbs and items such as sage, cedar, sweet grass mountain tobacco, and sacred items such as the Pipe, drum and gourd are very important to the traditional ceremonies.

"Also, there are Native Americans presently on Death Row, condemned to die and waiting to be executed... It is very important for a condemned person to be allowed to use the sweat lodge as a Last Rite request yet the various prison officials in California and Missouri have denied such requests.

"...The enforcement and compliance with existing laws, policies and statutes are not uniform. Lawsuits filed in the US to enforce existing laws have resulted in adverse decisions. Freedom of religion for Native American prisoners has depended upon the whim of individual prison officials.... These racist attitudes and racial discrimination should not be the basis for the arbitrarily and capriciously denying these basic human rights"

The cases presented by IITC under this agenda item each reflect the impacts of unequal and discriminatory application by states of international human rights standards with regards to Indigenous Peoples. Pervasive double standards in the practice of justice, human rights and due process by states, which in effect exclude Indigenous Peoples from full enjoyment of international as well as national laws and standards protecting civil and political rights, must no longer be tolerated by the world community.

We urge the Commission on Human Rights and in particular the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People to address this ongoing grievous discrepancy in the application of international human rights norms and standards without further delay.
