

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA USA 10/2016:

20 October 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/6, 33/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of Mr. **Leonard Peltier**, who has been imprisoned under the supervision of the Federal Bureau of Prisons since 1977.

Mr. Peltier was the subject of a previous urgent appeal by the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent to your Government on 2 November 1998 (E/CN.4/1999/61, par- 751), where he expressed his concern for the alleged continued denial of medical treatment on several occasions, inhumane prison conditions, isolation, beatings and inadequate surgery in prison, which led to a 14-hour coma and made him require a transfusion of 11 litres of blood.

Mr. Peltier was also the subject of a communication sent by the Special Rapporteur on the rights of indigenous peoples (USA 2/2011, A/HRC/18/51), also related to alleged inhuman prison conditions and denial of access to appropriate health care for his conditions at the time, which included congenital jaw problems, diabetes, hypertension and enlarged prostate. We would like to thank your Excellency's Government for the response received on 25 November 2011. However, his deteriorating situation has prompted us to bring his case to your Excellency's Government's attention again.

According to the information received:

Mr. Leonard Peltier is a Native American of the Anishinabe and Lakota Nations, a former member of the American Indian Movement and a well-known activist within the civil rights movement. On 18 April 1977, he was found guilty of the murder of two Federal Bureau of Investigation (FBI) agents during an armed confrontation on 26 June 1975 at the Pine Ridge Indian Reservation, South

Dakota. He was sentenced to two consecutive terms of life imprisonment on 1 June 1977.

Mr. Peltier is now 72 years old and has been imprisoned for over 39 years. Since 2011, Mr. Peltier has been housed at the Coleman Federal Correctional Complex in Florida. Mr. Peltier was placed in solitary confinement on several occasions for a number of reasons, including during pending internal prison investigations, safety concerns, rules infractions and awaiting prison facility transfers. In total, he has been held for more than six years under different forms of prison segregation regimes.

Mr. Peltier suffers congenital jaw problems, diabetes, high blood pressure and loss of vision and motor function due to a stroke. His health continues to deteriorate, and recently he was diagnosed with abdominal aortic aneurysm, which can be fatal if it ruptures. The Federal Bureau of Prisons has rejected his petition to be transferred to a hospital and undergo surgery for his aneurysm, arguing that only when the aneurysm reaches a width of five centimeters will his surgery be authorized. In January 2016, Mr. Peltier's aneurysm was 5 centimeters long and 4.3 centimeters wide.

Mr. Peltier's repeated requests to be transferred from the high-security prison where he is currently serving his sentence (United States Penitentiary, Coleman) to a lesser security center due to his deteriorating health condition have been rejected.

On 17 February 2016, Mr. Peltier filed an Executive Clemency petition base on his poor health condition arguing that after 39 years of imprisonment justice has been served for the deaths of the two FBI agents in 1975.

We wish to reiterate our very serious concern for the physical and psychological integrity of Mr. Peltier, in particular for the allegations of continued denial of adequate health care while in detention.

While we do not wish to prejudge the accuracy of these allegations, we would like to urge your Excellency's Government to take all necessary measures to guarantee the right of Mr. Peltier not to be subjected to torture or other cruel, inhuman treatment, in accordance with article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights (ratified by the United States of America on 8 June 1992), as well as his right to adequate medical treatment in detention, in accordance with article 25 of the Universal Declaration of Human Rights on the right to health. This right has been interpreted by the Committee on Economic, Social and Cultural Rights to establish the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment 14, Para. 34).

We would also like to refer your Excellency's Government to Principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicating that all prisoners should have access to the health services available in the country. Moreover, as outlined by the UN Standard Minimum Rules for the Treatment of Prisoners (see the revised version adopted on 5 November 2015 and renamed "Mandela Rules), the provision of health care is the responsibility of the state authorities and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

We would also like to recall your Excellency's Government's attention to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268), in which it is observed that, while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged or indefinite solitary confinement may never constitute a legitimate instrument of the State. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days, because, at that point, according to scientific literature, some of the harmful psychological effects of isolation can become irreversible. Prolonged or indefinite solitary confinement causes severe mental and physical pain or suffering and constitutes torture and other cruel, inhuman or degrading treatment or punishment.

We would also like to refer your Excellency's Government's attention to the United Nations Declaration on the Rights of Indigenous Peoples which was adopted by the General Assembly on 13 September 2007, endorsed by your Government on 16 December 2010, and in particular to Article 7 which refers to the rights to life and physical and mental integrity of indigenous individuals.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Peltier in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information concerning the measures taken to ensure the physical and psychological integrity of Mr. Peltier, and in particular what additional remedial measures have been taken to ensure his access to adequate health care taking his serious medical conditions into account.
3. Please provide information on the criteria that have been taken into account to maintain Mr. Peltier in a high-security prison.
4. Please provide information on any considerations that are being made regarding the clemency petition of Mr. Peltier.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

Juan Ernesto Mendez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment