OPINION No. 15/2005 (UNITED STATES OF AMERICA)

Communication addressed to the Government of the United States of America on 12 September 2004.

Concerning Mr. Leonard Peltier.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group regrets that the Government has not replied within the 90-day deadline and has not provided any information on the case in question. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

3. (Same text as paragraph 1 of opinion No. 20/2004.)

4. According to the information received, Mr. Leonard Peltier, born on 12 September 1944, Native American (Chippewa, Lakota), leader and advocate of the American Indian Movement (AIM), was reportedly arrested on 7 February 1976 at Smallboy's Camp, Alberta, Canada, by the Royal Canadian Mounted Police and immediately extradited to the United States. Mr. Peltier is currently detained at the Leavenworth Federal Penitentiary in Leavenworth, Kansas, United States of America. Mr. Peltier was arrested in Canada and extradited to the United States for the murder of two FBI agents. He was convicted on 18 April 1977 on two counts of first-degree murder and sentenced to two consecutive life sentences by a jury trial presided over by Federal District Judge Benson in Fargo, North Dakota.

5. The communication alleges that the criminal proceedings against Mr. Peltier displayed substantial flaws of such gravity as to give an arbitrary character to his imprisonment. To support this allegation the source makes the following points:

(a) The trial and conviction of Mr. Peltier were concluded on coerced, perjured and fabricated evidence from the FBI and, contrary to United States criminal law and procedure, the defence was not allowed to present critical witnesses or evidence at trial;

(b) Exculpatory evidence in the hands of the prosecution was withheld from the defence at trial;

(c) Mr. Peltier has served time significantly longer than required in order to be released on parole in similar cases and parole has been denied on the basis of the conviction for murder of FBI agents, although the Government admitted to the Court of Appeal that it did not know who killed these agents. Furthermore, the source reports that in September 2004, Mr. Peltier filed a lawsuit in the District of Columbia Federal Court concerning the alleged illegal extension of his sentence by the United States Parole Board. It is alleged that the Parole Board extended Mr. Peltier's parole to 2008, at a time when it should have set his release date under applicable federal guidelines;

(d) The Government selected a trial judge and venue racially prejudiced against indigenous peoples in order to ensure that Mr. Peltier would be convicted.

6. The Working Group ascertained that the majority of the issues set out under (a)-(d) of the previous paragraph have been addressed by the appeals filed on behalf of Mr. Peltier, namely:

(a) At the first appeal (published as *United States v. Peltier*, 585 F. 2nd 314 (1978)), issues of FBI misconduct, allowing of prejudicial and inflammatory evidence not relevant to the case and disallowance of evidence favourable to the defendant were raised. The court examined the evidence and affirmed the conviction;

(b) The second appeal (published as *United States v. Peltier*, 731 F. 2nd 550 (1984)), concerned the appellant's request for a new trial based on the release of thousands of pages of previously unreleased FBI documents detailing the Bureau's misconduct and alleged use of fabricated, false and perjured testimony. The Circuit Court remanded the case for an evidentiary hearing at the trial court level, before the same judge who had convicted the defendant, and denied a new trial, over defence objections. The issues at this evidentiary hearing were limited and the appellate Circuit Court asked the trial judge to rule again on the motion of a new trial;

(c) The third appeal (published as *United States v. Peltier*, 800 F. 2nd 772 (1986)), reviewed the trial judge's evidentiary hearing and reaffirmed the denial of a new trial;

(d) The fourth appeal (published as *Peltier v. Henman*, 997 F. 2nd 461 (1993)), raised the issue that the Government admitted that it had no proof that Mr. Peltier had shot the FBI agents. The court, on appeal, concluded that even if that were so, the appellant was somehow involved and that was enough to sustain the conviction.

7. From the above, the Working Group concluded that Mr. Peltier could exercise his right to remedy before national courts against the procedural flaws of which he was allegedly the victim and that the competent appellate jurisdiction heard those appeals on the merits, but dismissed all of them for various reasons.

8. As to the selection of an allegedly racially prejudiced judge, the source is silent on why the selection of that judge had not been challenged by the defence, which would have been able to do so.

9. As to the failure of Mr. Peltier to be granted a parole, the information provided by the source is not sufficient to conclude that the allegedly longer time before the grant of parole than usually required would have made the prison sentence being served by Mr. Peltier arbitrary.

10. Mr. Peltier was given an opportunity to raise all the complaints listed in the communication before the national appellate courts, which, in well-reasoned decisions, dismissed them. Therefore, the Working Group, noting that it is not mandated to be a substitute for national appellate courts, renders the following opinion:

The deprivation of Mr. Leonard Peltier is not arbitrary.

Adopted on 26 May 2005