

To: Members of the U.N. Human Rights Committee

From: Judge Claudia Morcom for the Meiklejohn Civil Liberties Institute and the International Association of Democratic Lawyers.

Date: May 31, 2006

SUMMARY (with citations to paragraphs ¶¶ in attached Report)

Right to self-determination and rights of persons belonging to minorities (Art. 1 and 27); Non discrimination and right of equality before the law and to the equal protection of the law (Art 2 and 26).

1. In 1995 the Committee was interested in determining how the right to self-determination and the rights of persons belonging to minorities could be implemented under U.S. law. (¶ 1). Specifically the Committee was concerned about the blockade against Cuba. Since 1995 this issue has come into clearer focus with the arrest and conviction of five Cuban men (the “Cuban Five”). The “Cuban Five” were charged with conspiracy to commit murder and espionage, using false identity and documents, and being unregistered agents of Cuba. Their trial was held in Miami, Florida, a city where the dominant ideology is anti-Castro. On appeal the question is whether these men were convicted for the crimes with which they were charged or whether the political ideologies of the jurors, the media, and the district attorney led to the jury verdict against them. (¶¶ 2-5). The three judge panel of the U.S. 11th Circuit Court of Appeals reversed their conviction on appeal and ordered a retrial in a venue removed from Miami. The U.S. Government appealed this decision and on February 13th, 2006, the 11th Circuit reheard the argument en banc. In March 2006, the City Council of Detroit, Michigan, unanimously adopted a resolution urging the 11th Circuit to retry the “Cuban Five” in a different venue. The opinion of the 11th Circuit is pending at this time. (¶¶ 6-8)

2. There is another issue of self-determination exemplified in the case of Leonard Peltier, who was convicted in 1977 for killing two FBI agents (which Peltier consistently denies). Numerous NGOs and the American Indian Movement who support the release of Peltier note that even though two FBI officers were killed, the killings occurred in a “war-like atmosphere” in which FBI agents had been terrorizing residents of the Pine Ridge Indian reservation in the wake of the Pine Ridge protest in the early 1970s. In April 2006, the U.S. 8th Circuit Court of Appeals determined that the U.S. District Court where Leonard Peltier was tried had subject matter jurisdiction even though the killings occurred on Native American land and even though Peltier was convicted under statutes that required the crime to take place in special maritime and territorial jurisdiction of the United States, jurisdictions that do not include Native American land. (¶¶ 11-12).

Recommendations: ¶¶ 2, 3, 4, 9, 10, 13, 14, 15

Treatment of persons deprived of liberty (Art. 10); Prohibition of torture and cruel, inhuman or degrading treatment or punishment (Art. 7).

3. Abuse of prisoners in detention is an issue of supreme importance. In its 2d/3d Report the U.S. noted that the government prohibits overcrowding and cruel and unusual punishment. However, disturbing new statistics from the Department of Justice and disturbing new situations indicate that overcrowding in prisons and other acts of abuse are occurring. (¶¶ 16-17). Regarding overcrowding, the U.S. has seen a steady increase in the number of persons placed in prisons in the last 10 years with an increase of 2.6% from June of 2004 to June of 2005. (¶ 18). Regarding cruel and unusual punishment two recent issues have come into focus: (A) out of the five Cuban men arrested in 1998 (see ¶ 1 above) two have wives in Cuba and one has a daughter who is a U.S. citizen. One of these men has not been permitted to see his wife since his arrest in 1998, the other has not been permitted to see his wife or daughter since 2000 because the U.S. Government refuses to grant visas to these two women. Denying these men contact with their families is contrary to Articles 10, 23, and 24.1 and a long history of U.S. law. (¶¶ 17-19). (B) At the time of the Katrina flooding some of the guards working in prisons threatened and attacked prisoners with police dogs and tasers and forced prisoners to wade through and in some cases remain for days in toxic sewage water without food or potable water. (¶¶ 20-21).

Recommendations: ¶¶ 22, 23, 24

To: Members of the U.N. Human Rights Committee

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Re: Update on issues 1, 15, 16, 19, 21, and 24 cited in CCPR/C/USA/Q/3 related to Articles 1, 2, 7, 10, 23, 24.1, 26, and 27. Articles 1, 2, 26, and 27 deal with ensuring right to self-determination and rights of persons belonging to minorities, and non discrimination and right of equality before the law using the specific examples of the “Cuban Five” and Leonard Peltier not covered in the 2d/3d U.S. Report with facts not mentioned in the earlier presentation by Judge Morcom at the March Committee meeting in New York. Articles 7, 10, 23, and 24.1 deal with the treatment of persons deprived of liberty, and the prohibition of torture and cruel, inhuman or degrading treatment or punishment using the specific examples of the “Cuban Five” and the Katrina (and Rita) disaster victims also not covered in the 2d/3d U.S. Report with facts not mentioned in the earlier presentation by Judge Morcom at the March Committee meeting in New York.

RIGHT TO SELF-DETERMINATION AND RIGHTS OF PERSONS BELONGING TO MINORITIES (ART. 1 AND 27); NON DISCRIMINATION AND RIGHT OF EQUALITY BEFORE THE LAW AND TO THE EQUAL PROTECTION OF THE LAW (ART 2 AND 26).¹

1. In 1995 the Human Rights Committee asked for more information about the right of self-determination as stated in Article 1 of the Covenant, and how it could be implemented under United States law.² The Committee further stated that the blockade against Cuba “would seem to contravene that Article.”³ In its 2005 response to the Committee’s question regarding the right of self-determination, the U.S. said nothing about the right of self-determination in relation to the blockade against Cuba. Further, although the U.S. made many statements in regard to self-determination and Native Americans, questions still arise regarding self-determination and criminal trials. These issues are highlighted in two current U.S. cases.

Recommendations

- 2. That appropriate inter-federal and state institutional mechanisms be established for the review of existing legislation and other measures with a view to achieving full implementation of the Covenant, including its reporting obligations.**
- 3. That the U.S. increase its efforts to prevent and eliminate persisting discriminatory attitudes and prejudices against persons belonging to minority groups including, where appropriate, through the adoption of affirmative action.**
- 4. That measures be taken to ensure greater public awareness of the provisions of the Covenant and that the legal profession as well as judicial and administrative authorities at federal and state levels be made familiar with these provisions, especially Article 1, in order to maximize the likelihood that there will be no further prosecutions of persons seeking self-determination, whether Cuban or Native American.**

Upholding Self-Determination and Due Process in All Cases: e.g., the “Cuban Five”

¹ Human Rights Committee. *List of Issues to be Taken up in Connection with the Consideration of the Second and Third periodic Reports of the United States of America*. 03/30/2006.

² Human Rights Committee. *Summary Record of the 1401st Meeting*, 04/17/1995, ¶ 39.

³ *Id.*

5. Of several incidents reported by concerned NGOs, *U.S. v. Campa, et al*, sharply raises the question of the alleged denial of due process rights of five Cuban men currently awaiting retrial. According to the U.S. 11th Circuit Court of Appeals, at the time of their trial, 700,000 people of Cuban decent were living in Miami.⁴ 500,000 of these people “remembered leaving their homeland, 10,000 had a relative murdered in Cuba, 50,000 had a relative tortured in Cuba, and thousands were former political prisoners.”⁵ It is certain that some supporters of the Cuban Government also lived in Miami at the time of the trial. However, for the last four decades a powerful anti-Castro sentiment has been a dominant value in Miami.⁶

6. On September 12, 1998, federal agents arrested five Cuban men (two of whom are U.S. citizens) in Miami, Florida, and charged them with twenty-six counts of violating the federal laws of the United States. Twenty-four of these counts were “relatively minor and technical offenses, such as the use of false names and failure to register as foreign agents.”⁷ According to the Detroit, Michigan City Council, which studied the matter, the mission of the “Cuban Five” was not to obtain U.S. military secrets, as was charged, but rather to monitor the terrorist activities of armed mercenaries drawn from the Cuban exile community in Florida and report their planned threats back to Cuba.⁸

7. In March of 2006, the Detroit City Council unanimously adopted a resolution urging the retrial of the “Cuban Five” in a different venue. A three-judge panel of the U.S. 11th Circuit Court of Appeals had reviewed the lengthy transcript of the jury trial, and the motions and briefs supporting defense motions made during trial: (a) for continuances when large demonstrations were held against the 5, and extensive media coverage assumed their guilt, (b) for change of venue, and (c) finally for a retrial based on misconduct by the U.S. Attorney and stated fear by some jurors as to what would happen if they voted for acquittal.

8. The Court had reversed the convictions and ordered a new trial in a venue removed from Miami, Florida, which the Court found to be unable to provide a fair trial to Cuban nationals charged with pro-Castro activities. The U.S. Government did not abide by this decision but appealed to the Circuit Court to rehear the appeal en banc. On October 31, 2005, that motion was granted,⁹ and on February 14, 2006, the court heard the argument.¹⁰ The Court’s decision is pending.

Recommendations

- 9. That the U.S. Government work with the government of the state of Florida and all other state governments to develop strong support for the principle of self-determination and trials without prejudice based on national origins or political opinion.**
- 10. That the U.S. Government be encouraged to carry out its duties to enforce ICCPR Articles 1, 2, 26, and 27, as well as U.S. law in all cases, and to withdraw its appeal from the 11th Circuit’s order for a retrial in a venue removed from Miami, Florida.**

Upholding Self-Determination and Native American Jurisdictional Rights: e.g., The Case of Leonard Peltier

⁴ *U.S. v. Campa*, 419 F.3d 1219, 1228-29 (11th Cir. 2005).

⁵ *Id.* at 1229.

⁶ *Id.* at 1228.

⁷ Detroit City Council, *Michigan Campaign to Free the Cuban Five*, 03/2006, P. 1.

⁸ *Id.*

⁹ *U.S. v. Campa*, 429 F.3d 1011, 1012 (11th Cir. 2005).

¹⁰ “Atlanta Appeals Court Revises the Cuban Five Case,” *globalexchange.org*, Feb. 14, 2006, <http://www.globalexchange.org/countries/americas/cuba/3746.html> (accessed May, 23, 2006).

11. The question of indigenous peoples' right to self-determination under U.S. and UN law is raised sharply by Leonard Peltier's incarceration. In 1977, during the Pine Ridge protest against the poor living conditions on the Pine Ridge Indian Reservation located in two of the poorest counties in the United States, Leonard Peltier was active in the American Indian Movement (AIM).¹¹ AIM claims that there was a "war-like atmosphere" in which FBI agents were terrorizing residents.¹² Two FBI officers were killed, and Peltier was charged with the killings, which he denies committing.¹³ The U.S. district court sentenced Peltier to two consecutive life terms.¹⁴

12. The U.S. statutes upon which Leonard Peltier was convicted and sentenced require that the crime take place in the special maritime and territorial jurisdiction of the United States. The Pine Ridge Indian Reservation is not within either of those two jurisdictions, therefore, the defense asked that the court vacate the illegal sentences imposed upon Peltier. In 2006, the U.S. 8th Circuit Court of Appeals agreed to consider whether the U.S. district court had subject matter jurisdiction even though the killings occurred on Native American land, which is not within the special maritime and territorial jurisdiction of the United States.¹⁵ On April 28, 2006, the Court held that the district court did have such jurisdiction.¹⁶ This decision can be appealed to the U.S. Supreme Court.

Recommendations

13. That steps be taken by the U.S. Government to ensure that previously recognized Native American rights cannot be extinguished.

14. That the Self-Governance Demonstration Project and similar programs should be strengthened to continue to fight the high incidence of poverty, sickness and alcoholism among Native Americans.

15. That the U.S. Government vacate any illegal sentences of Native American prisoners, including Leonard Peltier's.

TREATMENT OF PERSONS DEPRIVED OF LIBERTY (ART. 10); PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART. 7).¹⁷

16. In 1995 the Committee expressed the hope that "measures be adopted to bring conditions of detention of persons deprived of liberty in federal or state prisons in full conformity with Article 10 of the Covenant."¹⁸ In 2005, in response to the Committee's question concerning detention of persons deprived of liberty, the U.S. noted that the government prohibits overcrowding and cruel and unusual punishment.¹⁹ Disturbing new statistics by the U.S. Department of Justice and disturbing new situations indicate that overcrowding in prisons and other acts of abuse are occurring.

17. Regarding overcrowding, the U.S. Department of Justice recently released figures showing that the 56,428 new inmates added to the system from June 2004 to June 2005 account for a 2.6

¹¹ "Pine Ridge Indian Reservation," Wikipedia, http://en.wikipedia.org/wiki/Pine_Ridge_Indian_Reservation (accessed May 23, 2006).

¹² "Leonard Peltier," Wikipedia, http://en.wikipedia.org/wiki/Leonard_Peltier (accessed May 23, 2006).

¹³ "Leonard Peltier: Shackled Eagle," <http://members.tripod.com/~RFester/tribute.html> (accessed May 23, 2006).

¹⁴ Wikipedia, Leonard Peltier

¹⁵ *U.S. v. Peltier*, 2006 WL 1118872 (8th Cir. 2006).

¹⁶ *Id.*

¹⁷ Human Rights Committee. *List of Issues to be Taken up in Connection with the Consideration of the Second and Third periodic Reports of the United States of America*. 03/30/2006.

¹⁸ Human Rights Committee. *Concluding Observations of the Human Rights Committee: United States of America*, 03/10/95, ¶ 299.

¹⁹ United States of America. *Second and Third Periodic Report of the United States of America to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*. 10/21/2005, ¶ 472.

percent rise in the U.S. prison and jail population.²⁰ The study did not indicate that there was a 2.6 percent rise in the number of prison guards or prison space and facilities.

18. Restriction of visiting rights of family members is clearly within the purview of Articles 10 and 23, specifically with regard to the “Cuban Five,” mentioned above. It is also a violation Article 7, prohibiting cruel and unusual punishment. Article 10 also raises many issues regarding the victims of Katrina that the U.S. did not address, some of which will be described below.

19. In its March 2006 resolution on the “Cuban Five,” the Detroit City Council unanimously urged that visas be given immediately to two of the wives of the defendants.²¹ One of the men imprisoned has not seen his wife or his daughter²² (a US citizen) since November of 2000 and another man has not seen his wife since his arrest in 1998.²³

20. In New Orleans the protection of prisoners against abuse was violated when some guards shot inmates with bean bags and tasers while forcing them into flooding cells, threatened and sometimes attacked prisoners with police dogs, and forced prisoners to wade through toxic sewage water.²⁴ Juvenile offenders were also abused when they were trapped in their cells in hip-deep sewage filled water for days without food or potable water.²⁵ All of these examples are abuses of Articles 7, 10, and 24.1.

21. By ratifying Article 10 of the ICCPR, the U.S. made a commitment to guarantee that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,” and that the essential aim of the penitentiary system shall be the prisoners’ “reformation and social rehabilitation.” There is no dignity, reformation, or social rehabilitation when detained prisoners are denied the right to see their families; when prisoners are threatened, attacked, and abused by guards; or when prisoners are forced to stand in, wade through, and drink sewage water. By ratifying Article 23, the U.S. made a commitment to guarantee that the family be entitled to protection by society and the State.²⁶ Further, U.S. law has long “recognized the importance of marriage as a social institution which is favored in law and society. Marriage has been described as an institution which is the foundation of society ‘without which there would be neither civilization nor progress.’”²⁷ By denying visas to two of the wives of the “Cuban Five” defendants, and other prisoners’ family members, the U.S. Government is denying their commitment to Articles 10 and 23 of the ICCPR.

Recommendations

22. That conditions of detained persons deprived of liberty in federal and state prisons be brought within full conformity of Article 7, 10, 23, and 24.1 of the ICCPR.

23. That the U.S. Department of Justice and Bureau of Immigration and Custom Enforcement prepare new regulations ensuring that the right to travel and the right to visitation are enforced under Article 10 and Article 23 of the ICCPR and under the

²⁰ “Jail, Prison Populations rise 2.6 percent,” *cnn.com*, May 21, 2006,

<http://www.cnn.com/2006/LAW/05/21/incarceration.rate/index.html> (accessed May 23, 2006).

²¹ Detroit City Council, *Michigan Campaign to Free the Cuban Five*, 03/2006, P. 3.

²² And see “Convention on the Rights of the Child” signed by the US on February 16, 1995.

²³ “Don’t Let The U.S. Government Destroy These Families,” <http://www.cubanfivefamilies.com/> (accessed May 23, 2006).

²⁴ “Men and Women at Orleans Parish Prison Detail Chaos Following Katrina,” *aclu.org*, November 17, 2005,

<http://www.aclu.org/prison/conditions/21620prs20051117.html> (accessed May 23, 2006).

²⁵ “Group Slams New Orleans’ Juvenile Prison,” *Yahoo news*, May 9, 2006,

http://news.yahoo.com/s/ap/20060510/ap_on_re_us/katrina_young_prisoners (accessed May 23, 2006).

²⁶ Article 23 states, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” In June of 2004, Amnesty International stated, “In the case of prisoners whose families reside outside of the US, indefinite or even permanent denial of visits from the prisoner’s immediate family is perceived as a severe deprivation to the individual.”

²⁷ See *Maynard v. Hill*, 125 U.S. 190, 211 (1888).

Committee Against Torture’s conclusions and recommendations from their thirty-sixth session in May of 2006.²⁸

- 24. Specifically that the U.S. Government grant immediate visas to the wives of the “Cuban Five” defendants and others similarly situated.**

²⁸ The Committee Against Torture requested that the acts of psychological torture are “not limited to ‘prolonged mental harm’, but constitute[] a wider category of acts, which cause[] severe mental suffering.” Severe mental suffering and/or prolonged mental harm is witnessed by the amount of time the “Cuban Five” waited in prison to hear their case, are further waiting to hear the outcome of the 11th circuit’s holding determining whether or not they will be given a new trial, and how two of the men have been kept from seeing their wives. Committee Against Torture. *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention*, 05/18/2006, ¶ 13.