

15 July 1999

## **APPEAL FOR THE RELEASE OF LEONARD PELTIER**

Amnesty International is appealing for the release from prison of Leonard Peltier, an Anishinabe-Lakota Indian, who is serving two consecutive life-sentences for the murders of two Federal Bureau of Investigation (FBI) agents. The FBI agents, Ronald Williams and Jack Coler, were shot at point-blank range after being wounded in a gunfight with Indian activists on the Pine Ridge Indian Reservation on 26 June 1975. Peltier fled to Canada. He was extradited to the USA and convicted of the murders in 1977.

Amnesty International has investigated this case for many years. Although Amnesty International has not adopted Leonard Peltier as a prisoner of conscience, the organization remains concerned about the fairness of the proceedings leading to his conviction and believes that political factors may have influenced the way in which the case was prosecuted. Peltier is now in his twenty-second year of imprisonment and has exhausted all legal appeals against his conviction. He was denied parole (early release under supervision of the criminal justice system) in 1994 following a parole hearing in 1993 and his case will not be heard again via a full hearing by the Parole Commission until December 2008. Amnesty International has for some years been calling on the federal government to institute an executive review of the case but there is no evidence of any such action having been taken. In view of Amnesty International's continuing concerns about this case, and the fact that available remedies have been exhausted, Amnesty International is now calling for Leonard Peltier to be released from prison through an act of presidential pardon.

### **Background and Summary of Amnesty International's Concerns**

A summary of the case, describing the circumstances in which the agents were killed and Peltier's trial and appeals, is contained in the attached extract from Amnesty International's report *USA: Human Rights and American Indians (AI Index AMR 51/31/92)*, entitled "*Other Cases of Concern: Leonard Peltier.*" As outlined in this document, Peltier was a leading activist with the American Indian Movement (AIM) whose members were involved in a campaign to protect traditional Indian lands and resources and had come into conflict with both the Pine Ridge tribal government and the FBI. Two other AIM members, Darelle (Dino) Butler and Robert Robideau, were originally charged with the FBI agents' murder and were tried separately in 1976. They admitted being present during the gunfight but were acquitted on grounds of self-defence, after submitting evidence about the atmosphere of fear and terror which existed on the reservation prior to the shoot-out.

There is evidence that the government intensified its pursuit of Leonard Peltier after the acquittal of Butler and Robideau. Peltier was extradited from Canada partly on the testimony of Myrtle Poor Bear,

an American Indian woman who signed a statement saying she had seen Peltier shoot the agents at close range. Poor Bear, who was a notoriously unreliable witness, later retracted this statement as having been obtained under duress and said she had never even met Peltier. The prosecution did not use Myrtle Poor Bear as a witness at Peltier's trial. However, they introduced ballistics evidence which purported to show that it was Peltier's gun which killed the agents at close range after they were already wounded and disabled. This evidence effectively prevented Peltier from being able to present the same self-defence argument which had resulted in the Butler/Robideau acquittals. However, serious questions have since been raised about the reliability of this ballistics evidence.

The government has continued to argue that, even if they can no longer prove that Peltier killed the agents, he is still guilty of "aiding and abetting" in the murders through being in the group involved in the exchange of gunfire from a distance. However, Amnesty International believes that the doubts which have been raised about Peltier's role in the actual killings of the agents undermine the whole case against him, as "proof" that he was the actual killer was a key element in the prosecution's case at the trial.

Amnesty International's concerns about various aspects of the case are outlined in a letter to the US Attorney General dated 23 June 1995, which is also attached to this action. These concerns include the following:

- The FBI knowingly used perjured testimony to obtain Leonard Peltier's extradition from Canada to the USA. The FBI later admitted that it knew that the affidavits of Myrtle Poor Bear, an alleged eye-witness to the murders, were false. This in itself casts serious doubt on the *bona fides* of the prosecution, even though Poor Bear's affidavits were not used at Peltier's trial.
- Leonard Peltier's attorneys were not permitted to call Myrtle Poor Bear as a defence witness to describe to the trial jury how she had been coerced by the FBI into signing false affidavits implicating Peltier. The trial judge refused to allow her to appear on the grounds that her testimony could be "highly prejudicial" to the government.
- Evidence which might have assisted Leonard Peltier's defence was withheld by the prosecution. This included a 1975 telex from an FBI ballistics expert which stated that, based on ballistics tests, the rifle alleged to be Peltier's had a "different firing pin" from the gun used to kill the two agents. At a court hearing in 1984, an FBI witness testified that the telex had been merely a progress report and that another bullet casing tested later had been found to match "positively" with the rifle linked to Peltier. However, the reliability of the government's ballistics evidence remains in dispute.
- The ballistics evidence presented at Peltier's trial was crucial to the prosecution's case. It was presented as the main evidence linking Peltier as the actual point-blank killer of the two FBI agents. Without this evidence, the case against Peltier would have been no stronger than the case against Dino Butler and Robert Robideau, who were also charged with the Pine Ridge killings. Butler and Robideau were tried separately and permitted to argue that there was an atmosphere of such fear and terror on the reservation that their move to shoot back at the agents constituted legitimate self-defence. They were acquitted.
- The trial judge refused to allow the defence to introduce evidence of serious FBI misconduct relating to the intimidation of witnesses (the testimony of Myrtle Poor Bear).

Had such evidence been presented, it may have cast doubt in the jury's mind about the reliability of the main prosecution witnesses, three young Indians (Anderson, Draper and Brown) whose testimony (that Peltier was in possession of an AR-15 rifle during the shoot-out) was the main evidence linking Peltier to the alleged murder weapon.

The United States Court of Appeal for the Eighth Circuit ruled in 1986 that the prosecution had indeed withheld evidence which would have been favourable to Leonard Peltier and would have allowed him to cross examine witnesses more effectively. However, it concluded that this had not materially affected the outcome of the trial, and it upheld Peltier's conviction. However, the judge who wrote this opinion, Judge Gerald Heaney, has since expressed his concern about the case. In a 1991 letter to Senator Daniel Inouye, Chair of the Senate Select Committee on Indian Affairs, Judge Heaney expressed his belief that "the FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court decided that these actions were not grounds for reversals, they are, in my view, factors that merit consideration in any petition for leniency filed". He also stressed the need to take into account the background context to the fire-fight during which the two agents had been killed (see Amnesty International's letter to the Attorney General of 23 June 1995).

## **Further information on the case**

### **Petition for clemency through an act of Presidential pardon**

Peltier's lawyers filed a petition for a presidential pardon several years ago, urging President Clinton, who visited the Lakota Pine Ridge Reservation on 7 July 1999, to use his powers of pardon to commute the sentence. However, they have received no response and are not aware of any recommendation having been passed to the White House from the office of the Pardon Attorney (an office within the Justice Department which reviews the case before making a recommendation to the White House). Amnesty International has received several replies from the office of the Pardon Attorney since 1995, stating that Peltier's petition for commutation of sentence or clemency is still under review.

### **Parole application**

The parole Commission decided at Peltier's last full, formal parole hearing in 1993 that his case would not be formally reviewed again for a further 15 years - setting his next parole hearing for December 2008. Since then there have been several interim hearings at which the Commission has refused to reconsider the decision to deny parole on the grounds that Peltier did not accept criminal responsibility for the murders of the two FBI agents. This is despite the fact that, after one such hearing, the Commission acknowledged that, "the prosecution has conceded the lack of any direct evidence that you personally participated in the executions of the two FBI agents ..." Peltier has always denied that he was involved in killing the agents.

In June 1999 Peltier's lawyers filed a *habeas corpus* petition in a federal district court, claiming that the parole board's decision not to hear the case again for 15 years was arbitrary and unconstitutional, and a violation of guidelines which should be applied to the case. The petition also states that changes in the laws and procedures relating to parole since 1975 have been wrongly applied retroactively in Peltier's case, meaning that he has been required to serve far longer in prison than was the case at the time of his conviction.

### **Peltier's medical condition**

Leonard Peltier suffers from a congenital problem with his jaw, which has deteriorated during his imprisonment. At the present time, his jaw is reportedly frozen open at 13 millimetres and he has difficulty in eating as well as pain and discomfort. In 1996 he had two operations on his jaw at the US Medical Center for Federal Prisoners in Springfield, Missouri. However, these operations were not successful and his condition is alleged to have worsened. Currently, his attorneys are asking the federal Bureau of Prisons to allow further diagnostic tests to be made so that an oral surgeon from a prestigious outside hospital (the Mayo Clinic in Minnesota) can review Peltier's medical history and decide if he is able to provide further treatment. Amnesty International wrote to the federal prison authorities in March 1999 asking the prison authorities to provide the records which have been requested. His attorneys are continuing to pursue his medical concerns.