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VERDICT OF THE INTERNATIONAL TRIBUNAL ON POLITICAL PRISONERS AND PRISONERS OF WAR IN THE UNITED STATES*

INTRODUCTION

The Special International Tribunal on the Human Rights Violations of Political Prisoners and Prisoners of War in the United States was held in New York City from the 7th to the 10th of December, 1990. The Tribunal examined the situation of the national liberation movements of the New African, Native American and Puerto Rican sectors. Sponsored by a wide coalition of over 88 organizations from the civic, religious, anti-imperialist, labor and national liberation sectors, the Tribunal considered the US government's conduct ironic: as the U.S. government proclaims itself to be a defender of human rights in the world, demanding the freedom of political prisoners in other countries, it forcefully denies the existence of over 100 Political Prisoners and Prisoners of War within its own prisons by claiming they are "terrorists".

The panel of judges established parallels between the struggles and the conditions of Political Prisoners and Prisoners of War jailed in the US with those that suffer imprisonment under despotic regimes such as that of South Africa, jailed for their activism against apartheid.

This successful event held at Hunter College included the active participation of various jurists and renowned international figures: Frank Badohu, Barrister and Solicitor of the Supreme Court of Ghana and member of the association of African Jurists in Ghana; Jawad Boulus, Palestinian lawyer; Lord Anthony Gifford, British Barrister and Member of the House of Lords; Norman Paech, Professor of Public International Law and Constitutional Law at the University of Hamburg, Germany; Jose R. Rendón, Solicitor and Professor of Law and Political Science at the University of San Marcos, Peru; Celina Romany, Professor of Jurisprudence and Human Rights at City University of New York Law School; Toshi Yuki Tanaka, Professor of Political Science at University of Melbourne, Australia; George Wald, Professor Emeritus of

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Biology at Harvard University, and winner of the Nobel Prize in biology. The event was coordinated by Dr. Luis Nieves Falcón, renowned sociologist, lawyer, writer, and member of the Pen Club.

At the start of the Tribunal, attended by more than 1200 persons from 10 countries of every continent and 15 states of the US, the above-mentioned jurists stated that the Tribunal claimed jurisdiction under international law approved by international organs, specifically Resolution 1503 (XLVIII) approved by the Economic and Social Council of the United Nations. It should be noted that the necessary steps were taken to address the petitioners as well as to inform the government of the United States and its political subdivisions in question that they could present testimony on their behalf.

Following the presentation and review of the numerous documents provided to the jurists, and after hearing testimony of various representatives of the national liberation struggles, including the Puerto Rican National Hero, Rafael Cancel Miranda, the Tribunal declared that the US government must follow the same international laws and principles that it demands from other nations of the world; that the US government’s denial of the existence of Political Prisoners and Prisoners of War in its jails, and its consequent deprivation of the protection internationally offered by these laws constitutes an outright violation of the prisoners’ human rights. Therefore, this honorable body of jurists recommended the “rectification by the government of the US on this matter and recommended the international community draw attention and make statements on this point.”

The verdict put forward by the jurists describes the legal and social situation of the groups that made accusations against the US government regarding violations of their human rights. Regarding Puerto Rico, the tribunal adopted the verdict of the Permanent People’s Tribunal in Barcelona, Spain during 1989. The Tribunal also extended recognition of Prisoners of War status to those members of the Faln (Armed Forces for National Liberation) jailed in the US.

The Tribunal ruled that they are anti-colonial combatants captured in the course of their struggle for national liberation, as stipulated in Article I, Paragraph 4 of the Additional Protocol to the Geneva Convention of 1949. The Tribunal also indicated that the US government refuses to recognize this status based on the claim that it is not a signatory to the Additional Protocol.

The Tribunal demanded and advocated the immediate exarceration of the Puerto Rican POWs and demanded their transfer to a neutral country.

With the verdict and the spirit of solidarity with the more than 100 political prisoners in US prisons that characterized this event, the struggle for their unconditional amnesty enters a new internationalized stage. The judgment will soon be presented in Geneva, at the Human Rights Commission of the United Nations.

THE COMPLAINT


POLITICAL PRISONERS AND PRISONERS OF WAR IN THE UNITED STATES PETITIONERS,

—against—

THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

GEORGE BUSH, PRESIDENT,
RICHARD THORNBURGH, ATTORNEY GENERAL,
WILLIAM SESSIONS, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION,
WILLIAM WEBSTER, DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY,
MICHAEL QUINLAN, DIRECTOR OF THE BUREAU OF PRISONS,
THE DIRECTOR OF THE FEDERAL PAROLE BOARD,
THE GOVERNORS, DIRECTORS OF THE PRISONS AND DIRECTORS OF THE PAROLE BOARDS OF EACH STATE WHEREIN POLITICAL PRISONERS OR PRISONERS OF WAR ARE INCARCERATED:

Defendants.

PETITIONERS DO HEREBY CHARGE THE ABOVE-NAMED DEFENDANTS AS FOLLOWS:

SUMMARY OF CHARGES

1. The above named defendants and their predecessors1 are charged with the denial of self-determination, failure to comply with fundamental laws and principles of international law and human rights, and using their criminal justice system to imprison and repress those who seek

...
national liberation and/or oppose US foreign and domestic policies. The indictment also charges the defendants with illegal and arbitrary arrests and detentions, denial of fair trials, cruel, inhuman and degrading treatment of prisoners and conspiracy to commit the above acts.

JURISDICTION

2. Jurisdiction is conferred on this Tribunal pursuant to accepted principles of international law approved and adopted by the world community in the charter of the United Nations and utilized by the world community in convening such extraordinary tribunals as that convened in Nuremburg in 1949. Jurisdiction to hear the crimes alleged herein is also inherent in those provisions of International Law set forth in paragraphs 16-18 herein.

3. Petitioners are presently incarcerated because they oppose the colonial, imperialist, racist, repressive, authoritarian, militaristic, sexist or homophobic conduct of the United States government or are involved in a national liberation struggle.

4. Petitioners have been denied or deprived of all available remedies within the US judicial system and therefore appeal to the International Community pursuant to accepted principles of international law and fundamental human rights.

THE PARTIES

5. The petitioners are political prisoners and prisoners of war.
   a. A "political prisoner" is a person who is incarcerated as a result of her/his activity in opposition to injustices perpetrated by the United States government and its political subdivisions.
   b. A "prisoner of war" is a person incarcerated because of her/his actions as combatants in a movement seeking liberation from the United States.

COUNT I

DENIAL OF THE RIGHT TO SELF-DETERMINATION

6. The defendants have engaged in the following acts against the legitimate national liberation movements of Blacks in the US/New Afrikans, Mexicano, Native American, and Puerto Rican peoples:
   a. the refusal to recognize the legitimacy under established principles of international law, of the national liberation movements;
   b. the refusal to apply the principles of the Geneva Convention to persons involved in these national liberation movements;
   c. the use of US criminal laws to imprison persons involved in these national liberation movements for acts which are political in nature and in furtherance of the self-determination of their respective peoples;
   d. The targeting and repression of persons who support these movements for national liberation.

7. With respect to Blacks in the US/New Afrikans the defendants have engaged in the following acts:
   a. have since the earliest days of US history, enslaved and colonized people of African descent;
designed to disrupt or neutralize organizations involved in the liberation of Puerto Rican people; i.e., the movement for the liberation of Puerto Rico; the Popular Boricua (Los Macheteros); Armadas de Liberación Nacional (FALN) and El Ejército Puertorriqueño (EPP). They and other organizations which fight for the liberation of the Puerto Rican people have engaged in the following acts:

9. With respect to Native American people, the defendants have engaged in the following acts:

a. have, since the earliest days of European colonization, stolen and expropriated their land and have enslaved and colonized the people of Native American descent;

b. have refused to honor and recognize the sovereignty of Native American peoples and have suppressed all their attempts to preserve their sovereign nations;

c. have engaged in a systematic pattern of infiltrating, subverting, repressing and criminalizing the activities of organizations which fight for the liberation of the Mexican homeland;

d. have maintained a military border dividing the Mexican nation and people;

e. have created and maintained a special federal police force, the United States Border Patrol, who control/stop/contain the migration of Mexicanos in their homeland;

f. have allowed, permitted and condoned the existence of white supremacist groups which have carried out terrorist acts against the Mexican people within their occupied homeland;

g. have engaged in a systematic pattern of infiltrating, subverting, repressing and criminalizing the activities of organizations which fight for the liberation of the Mexican homeland;

10. With respect to Puerto Rican people, the defendants have engaged in the following acts:

a. have, since 1898, enslaved and colonized the people of Puerto Rico;

b. have refused to recognize the right of Puerto Rico to self-determination and independence;

c. have suppressed all attempts by the Puerto Rican people to reclaim their sovereignty;

d. have engaged in a systematic pattern of infiltrating, subverting, repressing and criminalizing the activities of organizations which fight for the liberation of Puerto Rican people including, among others, the American Indian Movement (AIM);

e. have instituted and engaged in unconstitutional and illegal programs and actions, such as COINTELPRO, designed to disrupt or neutralize organizations involved in the liberation struggle of Native American people, i.e., the continued false imprisonment of Leonard Peltier and the US military siege of Wounded Knee.

11. There are Euro-American people in the U.S.A. who have acted in solidarity with the national liberation struggles described in Count I as well as national liberation struggles throughout the world. They and other Euro-Americans have struggled for peace, against racism, equal human rights for women and lesbian and gay people and against the massive military and nuclear build-up of the United States government. They base their actions on their duty under international law, including the 1949 findings of the Nuremberg Tribunal and/or religious beliefs.

12. With respect to the foregoing individuals, the defendants have engaged in the following acts.

a. have criminally prosecuted and repressed the activity of persons and/or organizations which acted in solidarity with national liberation struggles and/or for human rights and peace;

b. have instituted unconstitutional and illegal programs and actions, such as COINTELPRO, which were designed to disrupt or neutralize organizations such as Students for a Democratic Society, Vietnam Veterans Against the War, the United Freedom Front, the Plowshares Movement and the women's movement;

c. have imprisoned members of these and other organizations;

d. have refused to recognize the status of these persons as political prisoners.

COUNTER III

GENOCIDE

13. The defendants have engaged in a pattern of conduct against African American, Mexican, Native American, and Puerto Rican people which constitute genocide against these peoples. Included in the defendants' conduct is:

a. the killing and causing of serious bodily harm to members of these nationalities;

b. the deliberate infliction on these nationalities of conditions of life calculated to bring about their physical destruction in whole or in part;

c. the imposition of measures intended to prevent births within these nationalities;

d. the suppression of the languages, cultures, and true histories of these nationalities.

COUNT IV

DEPRIVATION OF FUNDAMENTAL RIGHTS

14. The defendants have falsely accused, arrested and convicted petitioners because of their opposition to colonialism and US foreign and domestic policies and have
committed the following acts:

a. have denied reasonable bail;

b. have labeled people who oppose colonialism and US policies as a "danger to the community" and therefore eligible for preventive detention;

c. have imprisoned people who refuse to cooperate with secret grand juries convened to investigate people and movements who oppose colonialism and US policies;

d. have employed overbreadth conspiracy and seditious conspiracy statutes to unfairly prosecute people who oppose US colonialism and other US policies;

e. have employed anonymous petit juries, where names and addresses are withheld from the accused, to prejudicially imply that the accused is dangerous and guilty;

f. have used prejudicial court security measures to give the impression the accused is dangerous and guilty;

g. have denied the accused effective access to counsel or counsel of their choice and have used illegal surveillance of attorney-client communications;

h. have limited and/or denied the right of the accused to present a full defense, including the use of international law;

i. have allowed the prosecution to submit secret government evidence in camera;

j. have denied people involved in national liberation movements the right to be tried in the venue of their struggle;

k. have meted out grossly disproportionate sentences to people who oppose colonialism and US policies;

l. have employed the threat of a death sentence and imposed death sentence on people who oppose US policies to suppress political opposition;

m. have denied parole or other discretionary release because of people’s affiliation, activities and beliefs.

COUNT V

CRUEL, INHUMAN AND DEGRADING TREATMENT

15. The defendants have subjected political prisoners and prisoners of war to a variety of conditions in prison designed to break their will to resist, intimidate them from or punish them for persisting in their political beliefs and affiliations with movements and/or organizations which resulted in their incarceration, including, among other things:

a. physical assault;

b. long term assault in solitary confinement, administrative segregation, sensory deprivation, and specialized control units;

c. denial and restriction of visitation, harassment of families, and detention and interrogation of prisoners’ children;

d. arbitrary and unwarranted cavity probes and strip searches, including such searches of women prisoners by male staff;

e. arbitrary transfers from one prison to another, and to prisons far from family and community;

f. denial of adequate medical care; including denial of adequate diet;

g. overt racist threats, epithets and discrimination;

h. denial of religious worship, and diet, particularly for Muslim and Native American prisoners;

i. denial of access to programs and privileges available to social prisoners;

j. denial of access to and censorship of literature related to their movements and political beliefs;

k. punishment for speaking out and organizing against racist, sexist, and homophobic prison policies and in support of prisoners with AIDS;

l. arbitrary use of the prison disciplinary system.

VIOLATIONS OF LAW

16. On Violations of Law with respect to political prisoners and those claiming status as prisoners of war, the defendants, acting individually and severally have illegally denied the petitioners’ rights protected by International Law under United Nations Charter, Articles 1(2) 55, 56; Universal Declaration of Human Rights, Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 19, 25, 26 and 28; International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1, 2, 3, 4, 5 and 6; International Covenant on Civil and Political Rights, Part I, Article I, Part II, Article 2.3(a)(b)(c), Article 3, Article 5.1, 5.2; Part III, Article 6.1, 6.2, Article 7, Article 8.1, 8.2, 8.3, Article 9.1, 9.2, 9.3, 9.4, 9.5, Article 10.1, 10.2(a), 10.2(b), 10.3; Article 14.1, 14.2, 14.3(a), 14.3(b), 14.3(c), 14.3(d), 14.3(e), 14.3(f), 14.3(g), 14.6, Article 16, 17, 18, 19.1, 19.2, 26 and 27; International Covenant on Economic, Social and Cultural Rights, Part I, Article I, Part II, Article 2.1, 2.2, Part III, Article 6, Article 7(a), Article 11, Article 12.1, 12.2 (d) and Article 13.1; Convention on the Prevention and Punishment of the Crime of Genocide; Standard Minimum Rules for the Treatment of Prisoners; Declaration on the Protection of All Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. As to the petitioners claiming status as prisoners of war, the defendants, acting individually and severally, have illegally denied the petitioners’ rights protected by International law including, among others: the right of self-determination under United Nations Charter, Article 1.2 and General assembly Resolutions 1514(XV) and 2625 (XXV); Resolution 2621 (XXV) reaffirming “the inherent right of colonial people to struggle by all necessary means at their disposal against colonial powers which suppress their aspiration for freedom and independence;” Resolution 3103 (XXVIII) stating basic principles of the legal status of combatants struggling against colonialism; the Geneva Convention; the International Bill of Rights; the International Convention Covenant on Economic, Social and Cultural Rights, Article I; the International Covenant on Civil and Political Rights, Article I; the Geneva Conventions of 1949 and the Protocols thereto.

18. With respect to the political prisoners who have not claimed prisoner of war status, the defendants, acting individually and severally as set forth above, have illegally violated the petitioners’ constitutional and statutory rights enumerated below: the rights of the petitioners to fundamental due process under the Fifth and Fourteenth
Amendments to the Constitution of the United States and the equivalent provisions in State Constitutions, equal protection of the laws under the Fifth and Fourteenth Amendments to the Constitution of the United States and the equivalent provisions in State Constitutions, the right to be free from illegal civil rights deprivations under 42 U.S.C. 1983, 1985 and 1986, freedom of speech and assembly under the First Amendment to the Constitution of the United States and the equivalent provision in State Constitutions, freedom from illegal search and seizure under the Fourth Amendment to the Constitution of the United States and the equivalent provision in State Constitutions, freedom from cruel and unusual punishment under the Eighth Amendment to the Constitution of the United States and the equivalent provision in State Constitutions.

WHEREFORE, petitioners request that this Tribunal make: A statement of findings declaring the following:

19. there exists within the United States people who are political prisoners and prisoners of war incarcerated for their opposition to the policies of the US government and/or their involvement in movements for national liberation;

a. As to the petitioners claiming status as prisoners of war, the defendants have illegally denied such petitioners the Prisoner of War Status guaranteed by the Geneva Convention Relative to the Treatment of POW's and the Additional Protocols; United Nations General Assembly Resolution 1514 (XV) and 2625 (XXV); Resolution 2621 (XXV); Resolution 3103 (XXVIII);

b. Further, with respect to those petitioners who avail themselves of the protection of United States law, the defendants have illegally violated the Petitioners' Constitutional and Statutory rights including the right of Due Process under the Fifth and Fourteenth Amendments to the Constitution of the United States; Equal Protection of the Laws under the Fifth and Fourteenth Amendments, the Right to be Free from Illegal Civil Rights Deprivations under 42 U.S.C. 1983, 1985 and 1986, Freedom of Speech and Assembly under the First Amendment, Freedom from Illegal Search and Seizure under the Fourth Amendment, Freedom from Cruel and Unusual Punishment under the Eighth Amendment, and all the equivalent provisions in the respective State Constitutions.

20. the United States and its political subdivisions where political prisoners and prisoners of war are incarcerated have violated international law in criminalizing political opposition to government policies and refusing to recognize the legitimacy of the national liberation movements of African American, Mexican, Native American, and Puerto Rican peoples; and in refusing to recognize the legitimacy of the solidarity of Euro-American persons with national liberation movements and/or for human rights and peace.

21. the United States and its political subdivisions wherein political prisoners and prisoners of war are incarcerated have violated international law by continuously refusing to allow the exercise of the right to self-determination by African American, Mexican, Native American and Puerto Rican peoples;

22. the United States and those states wherein political prisoners and prisoners of war are incarcerated have violated international law in that they have engaged in a pattern of conduct constituting genocide against African American, Mexican, Native American and Puerto Rican peoples;

23. the United States and those states wherein political prisoners and prisoners of war are incarcerated have violated international law by failing to recognize fundamentally accepted international principles of due process, fair trial and humane treatment;

A declaration that:

24. the convictions of the petitioners are null and void and the US government and its political subdivisions must release them and/or permit them to go to any country willing to accept them.

25. the Petitioners are entitled to full compensation for their wrongful imprisonment.

Dated: New York, New York
November 28, 1990

SPECIAL PROSECUTORS

The following organizations and individuals join the petitioners:

National Petitioners
Black and Puerto Rican Studies Department, Hunter College
Breton Irish Law Society of New York
Christian Church (Disciples of Christ), Church Action for Safe and Just Communities
Clergy and Laity Concerned
Comité Unitario Contra La Represión-CUCRE
Community Self Defense Program
December 12th Movement
Emergency Committee on Political Prisoners Rights
Evening Session Student Government, Hunter College
Freedom Now!
Free Puerto Rico Committee
Friends of the Ohio 7
General Board of Church and Society, United Methodist Church
Interfaith Prisoners of Conscience Project of the Prophetic Justice Unit/NCC
International League for the Rights and Liberation of Peoples
Movimiento de Liberación Nacional (MLN-PR)
National Lawyers Guild
New Afrikan People’s Organization-NAPO
Prairie Fire Organizing Committee-PFOC
Racial Justice Working Group of the National Council of Churches
Research Committee on International Law and Black Freedom Fighters
United Church Board for Homeland Ministries, UCC
United Church Board for World Ministries, World Issues Office, UCC
War Resisters League
Verdict

Local Petitioners
Action for Community Empowerment (ACE)
African and Caribbean People's Resource Center
All African People's Revolutionary Party
American Indian Movement-AIM
Association of Legal Aid Lawyers of New York
Brooklyn Political/POW Prisoner Committee
Chicago Committee in Solidarity with the People of El Salvador-CISPES
Central American Solidarity Committee-Hunter College Evening Session
Committee Against Anti-Asian Violence
Committee on Freedom for Political Prisoners in the US
Committee to End the Marion Lockdown
Comité en Defensa de Derechos Ciudadanos, Inc. CDDC
Concerned Japanese Americans
Consortium on Peace Research, Education Development/COPRED
Eighth Day Center for Peace and Justice
Freedom and Justice Legal Defense Fund: Mondo/Poindexter Committee
Freedom Socialist Party
Friends and Family of Grand Jury Resisters
Haiti Progrés
Immovilize Apartheid Coalition
International Association of Democratic Lawyers
International Campaign to Free Geronimo ji Jaga Pratt
International Indian Treaty Council
John Brown Anti-Klan Committee
Korea Working Group
Lawyers Committee for Human Rights
Michigan Faith and Resistance
Midwest Committee in Solidarity with the People of El Salvador-CISPES
Metodistas Asociados Representando la Causa Hispano-Americana (MARCHA)
Movimiento de Liberación Nacional Mexicano
National Alliance against Racist and Political Repression
National Black United Front
National Chicano Human Rights Council
National Coalition against Censorship
National Committee To Free Puerto Rican Prisoners of War
National Committee for Independent Political Action (NCIPA)
National Conference of Black Lawyers-NCBL
National Religious Task Force on Criminal Justice
Native American Support Network
New York Circus
New York 3 Freedom Campaign
Nicaragua Solidarity Network
Out of Control
Palestine Solidarity Committee
Patrice Lumumba Coalition
Pensamiento Critico
People's Law Office
Plowshares Defense Fund
Progressive Union of Columbia Students
Provisional Government, Republic of New Afrika-RNA
Queens 2 Defense Committee
Radical Women

Individual Petitioners
Diana MTK Austin
Eleanor J. Bader
Fernando Bendfeldt, M.D.
James R. Bennett
Robert Bensing
Peter Berkowitz
Sangeeta M. Bernardi
Leonard B. Bjorkman
Robert Bloom, Esq.
Gladys Blum
Dwight L. Bolinger
Laura Booth
Jason Brody
Rita Bo Brown
Naomi Burns
Jeanne A. Butterfield, Esq.
Joyce Cadoo
Elizabeth R. Campbell
Pete Carter
Donald Cavellini
Shirley Cereseto, M.D.
Ward Churchill
Clay Colt
Andres Thomas
Conteris
Lee Cranberg, M.D.
Richard Csontos
George F. Davis
Emily Deh Ferrari
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Evelyn L. Freeman, Ph.D.
Ellen Friedland
Robert J. Gibson
Judith Glaubman
Leon Golub
Leon M. Goodman

Resurrection Roman Catholic Church
Robeson Defense Committee
The Catholic Worker-Olive Branch
The Fourth Wall Theater
Third World Newsreel
Venceremos Brigade-NY Regional
Washington Area Committee for Political Prisoners Rights
West Coast Eddie Hatcher Defense Committee
West Town Community Law Office
Women Against Imperialism
Women in Support of Political Prisoners
THE VERDICT

I. CONSTITUTION OF THE TRIBUNAL

The Special Tribunal on Violations of Human Rights of Political Prisoners and Prisoners of War in United States Prisons and Jails was convened by 88 sponsoring and endorsing organizations from all parts of the United States. The members of the Special Tribunal assumed jurisdiction pursuant to accepted principles of international law approved and adopted by the world community under the United Nations Charter, in accordance with the precedents of the Nuremburg and Tokyo Tribunals and following procedures approved by the Economic and Social Council of the United Nations (Resolution 1503 (XLVIII)).

The Tribunal received extensive written and oral evidence from political activists and experts testifying in support of a detailed indictment of the United States government, alleging, inter alia, the denial of the right of
people in the United States and Puerto Rico to self-determination; the criminalization of the legitimate struggle against illegal acts committed by the government of the United States; the denial of the rule of law to those engaged in such struggles and the use against them of torture, inhuman and degrading treatment.

The Special Tribunal does not sit as a court of law but, like the Bertrand Russell Tribunals on the US war against the Vietnamese people, this Tribunal applies principles of customary international human rights law. Article 38 of the Statutes of the International Court of Justice recognizes the authoritative effect of the findings of such tribunals on contemporary standards of international law.

The Defendant government and its agencies are bound to respect international human rights law, not least because Article VI of the Constitution of the United States provides that treaties and other international agreements are "the supreme law of the land."

Although customary principles of law require Petitioners to exhaust their domestic remedies before having recourse to international fora, the overwhelming weight of testimony presented to the Tribunal showed that the courts and judicial officers of the United States routinely refuse to allow Petitioners to raise defenses based on international law and that relief under the law is routinely denied. Therefore we find that Petitioners have in fact exhausted all domestic remedies and that the Special Tribunal is entitled to review all of the cases presented for its consideration.

The Tribunal is satisfied that all appropriate steps were taken by Petitioners to inform the Defendant government and its agencies of the nature and purposes of the Tribunal hearings, including the service of the indictment on President George Bush and other appropriate federal and state officials, and that every opportunity was given to Defendants to attend and present testimony. Although Defendants failed to avail themselves of the opportunity to testify, many of the documents and expert witnesses indicated fairly the basis of the government's opposition to Petitioners' claims, and the Tribunal has duly noted Defendants' views in reaching its findings.

In examining the evidence and reaching its conclusions, the Tribunal has taken and employed the following definitions:

"Self-Determination": the right by virtue of which all peoples are entitled freely to determine their political status and to pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence. (Common Article 1(1) of the International Human Rights Covenants, 1966)

"Prisoner of War": those combatants struggling against colonial and alien domination and racist regimes captured as prisoners are to be accorded the status of prisoners of war and their treatment should be in accordance with the provisions of the Geneva Conventions Relative to the Treatment of Prisoners of War, of 12 August 1949. (General Assembly Resolution 3103 (XXVIII)).

"Genocide": any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group. (International Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (Article 2)).

"Political Prisoner": a person incarcerated for actions carried out in support of legitimate struggles for self-determination or for opposing the illegal policies of the United States government and/or its political sub-divisions.

II. OVERVIEW

1990 has been a landmark year in the world-wide campaign for the recognition and freedom of political prisoners. The release of Nelson Mandela, Walter Sisulu and other anti-apartheid fighters, and the negotiations for the release of all South African political prisoners, have shown that even the most repressive and intransigent regimes must at some point acknowledge the existence of political prisoners and account for their treatment and continuing imprisonment. For decades the South African government denied the existence of political prisoners, branding imprisoned anti-apartheid fighters as criminals and terrorists. However, the growing liberation struggle of the people of South Africa and world-wide solidarity forced the government of South Africa to abandon this farcical denial of political prisoners. Similarly, the triumph of the liberation struggle of the Namibian people led by SWAPO resulted in the independence and self-determination of Namibia, constituting a resounding affirmation of customary principles of international human rights law.

Ironically, the US government has expressed strong support, albeit selective, for the freeing of political prisoners throughout the world. At the same time, however, the US government vociferously denies the existence of political prisoners at home and resolutely echoes a familiar refrain that those who claim to be political prisoners and prisoners of war are simply terrorists and criminals.

This Tribunal presents a unique and important opportunity to review carefully Petitioners' contention that the US does indeed hold political prisoners and prisoners of war.

The Tribunal members have approached this responsibility with the utmost of seriousness and careful scrutiny. The US government must be held to the same standard of international law and human rights safeguards that it subscribes for the other nations of the world. The denial of the existence of political prisoners and the consequent failure to afford such prisoners the fundamen-
nal protections of humanitarian international law constitute serious violations of human rights which, if found to be true, would require the immediate attention of world public opinion and rectification by the US government.

Numerous supporting documents which are delineated in the appendix were also submitted. Of particular interest were documents of the Counter-Intelligence Program (COINTELPRO) of the US Federal Bureau of Investigation (FBI) showing its program to disrupt and neutralize leaders and organizations of the Black, Puerto Rican, Mexican-Chicano and Native American self-determination struggles.

As we will spell out in more detail in the body of this document, the Tribunal finds that the US judicial system (state and federal) has been used in a harsh and discriminatory manner against people struggling for self-determination within its borders and Puerto Rico, as well as against other political opponents of the US government. Some have been falsely accused and had evidence favorable to their defense destroyed or suppressed, others have been tried on overbroad conspiracy charges which rely on associations and beliefs as an essential element, and many have been tried in an armed camp atmosphere saturated with prejudicial publicity designed to intimidate and prejudice the juries before whom they were tried. Most of the Petitioners have also received draconian disproportionate sentences and have been subjected to torture, cruel, discriminatory and degrading punishment.

We also find that the Black and Mexican people living within the borders of the United States, and Native American and Puerto Rican people have the fundamental right to exercise self-determination and to seek and receive support from other opponents of repression, and that the US government has carried out a consistent pattern and policy of repression against these peoples, their leaders and supporters.

We further find that captured combatants in a legitimate national liberation movement are entitled to the special protected status of Prisoner of War and should not be tried and imprisoned by the US government as criminals. Rather, these captured national liberation fighters must be held separately under conditions in accordance with the Geneva Convention and immediate steps taken to transfer these combatants to neutral countries until all hostilities cease between their movements and the US government.

We are mindful that the US judicial system is promoted by many here and throughout the world as one of the most progressive and protective of individual rights. The claim that the US does not have political prisoners has gone generally unchallenged. We believe that the evidence presented at the Tribunal overwhelmingly established the opposite case. The US government uses its judicial system to repress the legitimate political movements opposing the government.

It is of critical importance for the international human rights community as well as all freedom-loving people to bring to world attention the plight of US political prisoners.

III. THE RIGHT TO SELF-DETERMINATION

Over the last 30 years, since the passage in 1960 of the historic United Nations General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV)) which called for the "speedy and unconditional end to colonialism in all its forms and manifestations," the right to self-determination has evolved to a peremptory norm of International Law - a norm accepted and recognized by the international community of states as a whole from which no derogation is permitted.

Of particular importance to the codification of this fundamental right is the Universal Declaration of the Rights of People ("Algiers Declaration") which affirms that the peoples of the world "have an equal right to liberty, the right to free themselves from any foreign interference and to choose their own government, (and) the right, if they are under subjection, to fight for their liberation" This assurance is specified in Article 1, "Every people has the right to existence," and Article 6: "Every people has the right to break free from any colonial or foreign domination, whether direct or indirect, and from any racist regime."

In addition, U.N. Resolution 2625 (XXV) known as "The Declaration on the Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations" adopted by consensus in 1970, provides authoritative clarity to the character and importance of the right to self-determination. Its preamble affirms that "the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary law, and its effective application is of paramount importance for the promotion of friendly relations among States."

The Declaration mandates that every state has a duty to promote the principle of self-determination and to assist the United Nations in its realization so as to improve relations among states and "to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned." The right of self-determination as a peremptory norm of international law has been confirmed by the International Court of Justice in its Advisory Opinion on Namibia (ICJ Reports 1971) and in its decision in the Western Sahara case (ICJ Reports 1975). As the Vienna Convention on the Law of Treaties provides, a peremptory norm of international law (Jus Cogens) cannot be abridged or superseded by any act of sovereign will, including a treaty.

Finally the two international covenants on human rights (International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights (which the United States has refused to endorse) are initiated by a common Article 1 (1) indicating a place of primacy for self-determination: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The Tribunal heard evidence by Puerto Rican, Native American, Black and Mexican witnesses of their peoples' national development, characteristics, and continuing history of oppression. Witnesses also testified to the long
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Credit-Raúl Hernández Mercado.

history of repression against the organizations and leaders of their people. Each of these peoples satisfy the objective and subjective criteria for self-determination. Each perceive themselves as separate people and each suffers special targeting and oppression by the US government.

III.1 NATIVE AMERICANS

This Tribunal received ample evidence on the history of the Native American People's struggle for their right to self-determination and on the genocide committed against this people by the United States government.

The history of European and Native American relations reveals theft of 99% of the land base and genocidal practices of war, disease, alcohol, starvation and deculturalization which reduced the indigenous population from approximately 12.5 million to less than 227,000 by 1890.

Meeting substantial resistance, if not outright defeat, at times seeking alliances against others, what became the United States government entered into some 371 treaties with the indigenous people of North America during the 18th and 19th centuries. The importance of these treaties was embodied in Article VI of the US Constitution as the "supreme law of the land." By this principle, the United States government has incorporated into its domestic law the content of the treaties signed with the Native American people. However, as was pointed out consistently in the evidence presented to the Tribunal, the US government has systematically violated or refused to respect the terms of the agreements reached with the Native American people.

Therefore, this Tribunal recognizes that, first, the Native Americans constitute a people within international law definitions who are carrying out a struggle for self-determination. Moreover, this Tribunal takes notice that, despite all the treaties signed by the US government with the Native American peoples, the US has consistently denied those treaty rights to these peoples. In decisions of the US Supreme Court such as Cherokee Nation v. Georgia, 30 U.S. 5 Pet. 1 [1831] and Worcester v. Georgia, 31 U.S. 6 Pet. 515 [1832], the Court established the principle that Native American people are domestic and dependent on the US government, thus denying their right to self-determination. After these two Supreme Court decisions, the so-called "plenary power" doctrine was initiated by the US government which denied the right of the Native American people to organize and govern themselves. This, for example, is the pattern followed by the enactment in 1924 of the US Congress' Indian Citizenship Act (8 U.S.C.A. Sec. 1401). Through this Act US citizenship was imposed upon the Native American people. In addition, in 1934 the US Congress enacted the Indian Reorganization Act (25 U.S.C.A. Sec. 461) by which the US government decided to organize "tribal" councils to resemble corporate boards. The intention behind this was to reduce the autonomy of the Native American peoples to govern their own affairs.

Thus, this Tribunal after carefully hearing various witnesses and taking judicial notice of many historical aspects of US government policies towards the Native American peoples, considers that the practices of the US government are in breach of Common Article 1 of the United Nations International Covenants of 1966 (on Economic, Social and Cultural Rights and on Civil and Political Rights) guaranteeing amongst other things, the right of the people to self-determination.

Second, this Tribunal considers that the US government, has also conducted a policy of genocide against these people. The Tribunal follows the definition of Geno-
cide as established by Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. This Tribunal recognizes that the most cruel policies occurred in the early years of the US republic, when a plan of physical extermination was conducted against the Native American people. After failing to completely exterminate them, a new policy was designed to impose compulsory assimilation, so as to destroy the history and culture of the Native American people.

Tactics employed to achieve this end include the criminalization of Native religious practices, forced transfer of children through mandatory indoctrination at boarding schools for extended periods, adoption by non-Indians, enactment of laws designed to destroy traditional culture, e.g. by prohibiting the holding of land in common. Implementation of policies such as “termination” (where the federal government literally dissolved selected indigenous populations) and “relocation” (systematic dispersal of Native populations) were combined by the US government with declarations that certain groups of living peoples were “extinct”. Systematic, involuntary and uninformed sterilization of Native American women has compounded these genocidal policies, as has the use of the “blood quantum” method of identification to statistically manipulate out of existence certain groups of Native Americans.

Native Americans are the poorest population group in North America with the highest incidence of infant mortality, death by exposure, tuberculosis, plague disease, malnutrition and teen suicide. The average life expectancy of an American Indian male is 44.6 years and for females it is less than three years longer. For white males the figure is 74 years.

The policy of genocide has been legitimized by different laws approved by the US Congress, for example, the General Allotment Act (25 U.S.C.A. Sec. 331 [1887]) used to deprive the Native American people of the land that they consider common and sacred.

In addition, this Tribunal has taken notice of documents that proved the collaboration by the Bureau of Indian Affairs during the 1970’s, together with the Indian Health Service, in the systematic performance of involuntary sterilization on Native women. This particular practice, in conjunction with other practices of the US government, clearly manifests a pattern of committing genocide against the Native American people.

III.2 PUERTO RICANS

Of the four peoples represented before the Tribunal, the right to self-determination for the people of Puerto Rico is the clearest and most recognized by the international community. With a separate territory, language and culture, the plight of Puerto Rico constitutes one of the last remaining classic colonial cases in the world.

Beginning in 1973 and 1976 and then in each succeeding year, the United Nations Special Committee on Decolonization has reviewed the case of Puerto Rico, reaffirmed the right of the Puerto Rican people to self-determination and called upon the United States to stop all interference with the free and full exercise of that right. The US has refused to follow these mandates and has consistently used all its coercive powers to block the case of Puerto Rico from being considered by the entire General Assembly.

The Decolonization Committee resolutions, plus pronouncements from the non-aligned countries and the International Association of Democratic Lawyers, provide authoritative support for Puerto Rico’s right to self-determination. Even the President of the United States, George Bush, in his recent call for a referendum on the island’s status, has acknowledged that the Puerto Rican people have not chosen freely their present relationship with the US.

This Tribunal also adopts the findings and verdict of the Permanent Peoples’ Tribunal on Puerto Rico (Barcelona, January 27-29, 1989), which declared in part:

1. That Puerto Rico and its people have the right to freely determine their political, economic, social and cultural condition in accordance with the Algerian Declaration and the principles of International Law.
2. That the Constitution of the Commonwealth of Puerto Rico is not the proper way for the Puerto Rican people to exercise their self-determination right, whereas in the referenda which have been carried out on the Island, the required guarantees which govern the true exercise of said right, in accordance with the Resolutions of the U.N., have not been observed.
3. That the US has an international duty to respect the Right of Puerto Rico to its self-determination, in accordance with the obligations it has conventionally and customarily assumed.

Regrettably, the United States government refused to participate in the Barcelona Tribunal and has ignored its findings.

As clear as the Puerto Rican people’s right to self-determination is the historical record that such right has been denied to that people. Testimony established a military, political, psychological, economic, ideological, cultural and linguistic domination by US colonial power over Puerto Rico since the beginning of the US invasion and occupation. The evidence also was compelling as to the use of repression against the national movement for independence, its leaders and organizations. The Nationalist Party and its supporters were fiercely repressed in the 1930’s and again in the 1950’s when a mass resistance to US attempts to eliminate the independence movement resulted in the killing and arrest of hundreds of people.

Today that repression continues. Seventeen prisoners of war or political prisoners are serving draconian sentences, exiled from their homeland to jails in the United States. The FBI and the grand jury system are used to investigate, intimidate and intern independence activities and supporters. Thousands of others have been placed under surveillance and on “subversive lists” for their pro-independence sentiments. Presently nine more independence activists and leaders face conspiracy charges in Hartford, Connecticut, hundreds of miles from their homeland.

It should also be noted that some of the colonial conditions imposed on the people of Puerto Rico have genocidal characteristics. These include the forced
sterilization of 33% of Puerto Rican women of child-bearing age; the economically forced migration to the United States of one half of Puerto Rico’s population; the consequent deculturalization of the population; and one of the world’s highest rates of suicide, drug abuse and mental illness.

We again quote from the verdict of the Barcelona Tribunal as to the obligation of the US government to:

a) acknowledge the political prisoner status of those Puerto Ricans incarcerated due to their work and militancy in favor of Puerto Rico’s independence and to grant a general amnesty to all Puerto Ricans currently incarcerated because of their involvement in the struggle against colonialism.

b) relinquish the current powers the US Congress has to amend and approve the decisions made by the representative bodies and government of Puerto Rico.

c) completely transfer any power the US Congress or the US government may have over Puerto Rico, to a deliberative body with constitutional character, made up of representatives from all the political and social forces of Puerto Rico chosen on an equal elective basis.

d) negotiate such measures, as a transitional status of the juridical and political condition of Puerto Rico, until the self-determination right is effectively exercised.

We further call upon the United States government to accord prisoner of war status to those Puerto Rican prisoners captured as anti-colonial combatants.

III.3 BLACK PEOPLE IN THE UNITED STATES

It is an uncontested historical fact that Africans, forcibly brought to the area which would become the United States, came from various tribes and regions of Africa. In addition, these kidnapped Africans spoke many tongues and were forged into a new and distinct people, with distinct problems, requiring unique solutions, during the three century ordeal of chattel slavery. It is also historically documented that these Africans and their descendants were considered “three-fifths” of a human being, thereby necessitating an elaborate system of laws, cultural norms and religious canons to deprive people of African descent of their rights as human beings and, by extension, to deprive them of their right to self-determination.

In 1865 at the end of the US Civil War, the US government abolished slavery (13th Amendment) freeing the kidnapped African slaves. Rather than allowing this freed people to choose or reject citizenship and to freely exercise the right to self-determination, the 14th Amendment imposed citizenship upon them, as the Jones Act of 1917 would later do to Puerto Ricans and as the Indian Citizenship Act did to the Native Americans in 1924.

There have been various strategies, necessitated by a system of white supremacy, pursued by Black organizations in the United States in their efforts to obtain freedom and justice for their people. The main strategies at work today within the Black movement are the struggle for independent political power; forms of community control and autonomy; and some groups who advocate independence of the New African nation.

While the Tribunal recognizes that the right of self-determination for Black people in the US has not previously been established by international bodies or tribunals, we do not feel that this lack of precedent is determinative of the issue. Rather, this Tribunal believes that the evidence presented before us strongly supports the claim that Black people living within the borders of the United States are a distinct people entitled to self-determination. Equally compelling is the evidence that Black people in the US have been forcibly denied the freedom to exercise that right. From the inhuman outrage of slavery up to the present circumstance of attacks on community and political organizations, Black people in the United States have never been given the opportunity to choose their destiny. The documents submitted which establish this conclusion are the FBI Counter-Intelligence Program and the testimony on the targeting and repression of the Black Panther Party (BPP), Republic of New Afrika (RNA), Student Nonviolent Coordinating Committee (SNCC), Southern Christian Leadership Conference (SCLC), the MOVE organization and the Black Men’s Movement against Crack. The evidence also established that the Ku Klux Klan and other white supremacist hate groups functioned with impunity and often with the complicity of the government in committing acts of violence and intimidation against the Black community.

The history and treatment of Black people in the United States also supports a claim that the US government is guilty of the crime of genocide against the Black people. There is no question that during the kidnapping of Africans in the slave trade, and in the barbaric Middle Passage to North America, millions of Blacks were killed. In addition, during the more than 200 years of chattel slavery, Black people were wantonly murdered, savagely brutalized and denied all basic human rights.

The condition of Black people living in the United States today strongly suggests that policies of the US government are designed to lead to the elimination of Black people. The Tribunal was presented with evidence that:
(1) the infant mortality rate for Black people is double that for whites;
(2) Black women, are twice as likely to bear low weight babies than white women;
(3) The gap in life-expectancy rates between Blacks and whites has recently widened from 5.6 to 6.2 years, and "Blacks today have a life expectancy already reached by whites in the 1950's or a lag of about 30 years";
(4) The rate of survival for Black males over 40 years old in Harlem, New York City, is lower than for men in Bangladesh;
(5) Dangerously high blood pressure is a hidden cost of racial prejudice at least for some Blacks;
(6) In New York City "increasingly large numbers of women of child bearing age are dying . . . combined with the deaths of men in the same age group, the result is the destruction of families and the orphaning of tens of thousands of children, most in low-income African-American neighborhoods";
(7) AIDS is "more and more becoming a disease of poor, Black and Hispanic heterosexuals in the inner city." It is the leading killer of Black women in the 15-44 year age group in New York and New Jersey.
(8) Unemployment for Blacks is double the rate for whites and nearly 50% of Black teenagers are unable to find work;
(9) White families earn 45.5% more than Black families.

III.4 MEXICAN PEOPLE (CHICANOS) LIVING IN THE UNITED STATES

Mexican people living in the North of their country came under the authority of the US government after the Mexican-American War of 1841, a war generally recognized as expansionist and unjust and which deprived Mexico of 50% of its territory.

After the conquest and occupation, there was a continuing policy of brutal repression and exploitation of Mexican people throughout the occupied territories, including numerous lynchings and other killings.

Mexican people organized resistance to, and have fought against, this occupation. Among the most famous Mexican resistance fighters are Tiburcio Vazquez, Joaquin Murrieta and the Cortez and Espinoza brothers. Also, Juan Nepomuceno Cortina from Texas who, for fifteen years waged guerrilla warfare against the US government. Armed clandestine organizations also emerged like La Mano Negra and Las Gorras Blancas. In 1915, the Plan de San Diego was another armed uprising calling for self-determination and independence of the occupied territories. It was violently repressed.

Armed Rangers and other law enforcement agencies formed in California, New Mexico, Texas and Arizona were essentially private vigilantes organized to repress Mexicans with the consent of the US government. Between 1915 and 1920 about 5,000 Mexicans were killed along the border by the Texas Rangers, who have also been used to police migratory labor, striking unions, civil rights activists and organizations, and to beat up Mexican-Chicano candidates running for elected positions.

The FBI and grand jury have been used to repress the Mexican/Chicano resistance movement. Beginning in the late 1930's, the FBI has consistently investigated and monitored Mexican/Chicano organizations such as LULAC, the GI Forum, the Asociacion Nacional Mexicano-Americano. In the 1950's the FBI created the Border Coverage Program (BOCOV) as part of COINTELPRO. It maintained offices both in the occupied territories and Mexico. Additionally, the Border Patrol and the Immigration and Naturalization Service are special police agencies created primarily to be used against the Mexican people.

All these repressive actions are supplemented by the terrorist activities of the Ku Klux Klan against Mexicanos/Chicanos.

The homes of Mexicanos/Chicanos have been bombed and many have been killed. Among the latter are Ricardo Falcon, Rito Canales, Antonio Cordova and Los Seis de Boulder.

The Tribunal heard that a United States border separates the Mexican/Chicano people and that since the 1850's "Los Rinches" (the Rangers), a police terror force, have killed 20,000 Mexicanos/Chicanos. There have also been countless lynchings by North Americans. There is a high incidence of poverty, malnutrition and a proliferation of drugs (50% of incarcerated Mexicanos/Chicanos are held for drug offenses). Not only is there a high rate of premature births but although Mexicanos/Chicanos comprise 8% of the US population, 25% of all pediatric AIDS cases are found among Mexicanos/Chicanos children. Overall, there is a grossly disproportionate incidence of AIDS infection as compared with the general population.

Mexicanos/Chicanos have also been subjected to a policy of cultural assimilation, principally directed towards their Spanish language. The issue has become more acute with the newly imposed legislation compelling the use of the English language only and forbidding the use of Spanish in all official activities including schooling of Mexicanos children.

The Tribunal recognizes the claim that the Mexican/Chicano people living within the borders of the United States are a people entitled to exercise their right to self-determination.

IV. PUERTO RICAN PRISONERS OF WAR

Among the Petitioners are 13 Puerto Rican women and men (Carlos Torres, Adolfo Matos, Dylcia Pagan, Ida Luz Rodriguez, Carmen Valentín, Elizam Escobar, Alejandrina Torres, Ricardo Jiménez, Alicia Rodriguez, Luis Rosa, Edwin Cortés, Alberto Rodriguez and Oscar López Rivera), most of whom have been held in US prisons since 1980. They are serving literal life sentences for their involvement with a clandestine Puerto Rican independence liberation group, Fuerzas Armadas de Liberación Nacional (FALN). They are combatants in a struggle against colonialism and for national liberation in accordance with Article I, Paragraph 4 of Additional Protocol I to the 1949 Geneva Conventions, extending POW protections to "include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racial regimes, in the exercise of their right of self-determination." Pursuant to the Resolutions of the United Nations General Assembly on the Rights of
Colonial People and the Legal Status of Combatants Struggling Against Colonial and Alien Domination of Racist Regimes, which provides that combatants struggling against colonialism "are to be accorded the status of prisoners of war and their treatment should be in accordance with the Geneva Convention" (Resolution 3103 (XXVIII), 12 December 1973), these Puerto Rican combatants are entitled to be treated as Prisoners of War.

The US has refused POW status to these anti-colonial fighters, claiming that it is not a signatory to the Additional Protocols. This refusal to accept universally recognized humanitarian protections for peoples fighting colonialism, apartheid and alien domination, should not and does not preclude the according of these protections.

Colonialism has been identified as a crime for over three decades. The U.N. General Assembly has consistently asserted that colonized and dependent people have the right to use all means available including armed struggle to resist colonialism. And, since the General Assembly Resolution 3103 was passed in 1973, captured anti-colonial combatants have been entitled to POW status. This protected status for people fighting colonialism is specifically designed to assist the customary international law right to self-determination and to deter the colonial power from perpetuating the crime of colonialism.

The expansion of the definition of international conflicts in the Additional Protocols to the Geneva Convention, to include those struggling for national liberation, also constituted recognition by the international community that the protection of anti-colonial fighters was to be elevated to a customary norm of international law.

Clearly today, if not in 1977 when the Additional Protocols were first enacted, now that colonialism has been universally condemned and almost eradicated from the world, those who fight against colonialism are entitled to special protection and should not be criminalized by the colonial power.

We find, therefore, that Puerto Rican combatants who have asserted their right to POW status are entitled not to be tried in the US courts but to be protected under the Geneva Convention. We believe that these prisoners who have been illegally incarcerated and criminalized for over 10 years should be unconditionally released or, at the very least, transferred to a neutral country.

Certain other Petitioners who are people struggling for self-determination for Black people in the United States and Native American people have also asserted the right to be considered as prisoners of war. We believe that these claims have merit as these are peoples fighting against alien occupation or racist regimes. However, the evidence before the Tribunal does not allow us to reach a definitive conclusion at this time, and we recommend that there be further investigation into these claims.

V. WHITE NORTH AMERICAN OPPONENTS OF UNITED STATES GOVERNMENT POLICIES

Testimony was presented on behalf of white North Americans who have been imprisoned for protesting US foreign and domestic policies and against militarism, war and nuclear armaments. The actions of these Petitioners have taken a variety of forms, from symbolic acts of sabotage of weapons of war by the Plowshares group, to armed actions against US military or corporate targets supporting apartheid and intervention in Central America.

The Petitioners involved in these activities share a common belief that it is their responsibility as citizens of the United States to engage in acts of resistance intended to prevent or impede ongoing criminal activity in the conduct of the policies of the US government.

At the trials of these petitioners, United States courts have routinely denied them the opportunity to present a defense based upon a citizen's right to resist illegal state conduct and based upon their religious and/or political motivations. The Tribunal heard from an expert witness on international law that these defenses are well grounded in the First Amendment to the United States Constitution as well as the Tokyo and Nuremburg War Crimes Tribunals.

We conclude that the United States government has criminalized and imprisoned white North Americans who have struggled in solidarity with national liberation movements and other peoples struggling for self-determination, for peace and against nuclear armaments and against racism, sexism and other forms of discrimination.

VI. CRIMINALIZATION AND DENIAL OF THE RULE OF LAW

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law . . ."

Preamble to the Universal Declaration of Human Rights, December 10, 1948.

It is a violation of international law for a state to attempt to criminalize the struggle of peoples to achieve self-determination. According to the authoritative United Nations Resolution 2625 (XXV) of 1970: "Every State has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination and freedom and independence", and Resolutions 33/22 and 33/24 (1978) which condemn the imprisonment and detention of people fighting colonialism.

We have heard testimony of the development of a system of repression in the United States, which uses the courts and judicial system as a key element to deny peoples' rights to self-determination and to disrupt people organizing to oppose illegal US government policies.

The evidence shows that the US government is using a strategy which parallels certain other states (e.g. South Africa, Israel and British administration in the North of Ireland) confronting insurgent movements, through the creation of repressive and anti-democratic modifications to the legal system aimed at the suppression of radical political opposition. This counter-insurgency strategy allows for the enhancement of the power of law enforcement to surveil and infiltrate political groups as well as to coerce cooperation with police investigations and to criminalize political association.

The testimony showed that federal agents are authorized to spy on and infiltrate political, community and religious groups, and substantial evidence was received of
such activity. In addition, the Tribunal was informed of the use of highly sophisticated electronic technology to carry out video- and audio surveillance at the homes and workplaces of members and supporters of the Puerto Rican liberation movement.

Additionally, we were informed of litigation in Puerto Rico that has recently revealed the existence of more than 100,000 dossiers collected by the police on activists and supporters of the cause of independence who have been labelled "subversives" by the police because of their legitimate desire and work to end colonization.

The FBI also uses an interim power through the federal grand jury to force cooperation with investigations into political activities under pain of imprisonment for refusal. The grand jury, a secret proceeding under the direction and control of the government, is used as a tool to intern political people. The government issues subpoenas to a secret hearing where there is no judge and where defense counsel is barred from attending. The coerced witness can be stripped of his/her fundamental right to remain silent and forced to answer all questions about political associations and activities. A refusal to appear or answer results in civil contempt penalties of up to 18 months or criminal contempt, which has no maximum limit of sentence.

Scores of activists in political movements have been imprisoned over the last fifteen years through this process. The government has even re-subpoenaed activists who have already served time in prison for refusing to collaborate with grand juries, in full knowledge that the person has not collaborated and will not do so in future. This effectively constitutes internment without trial or just cause.

The evidence also showed that political activists are often charged with violations of broad conspiracy laws which rely on evidence of political associations and beliefs to prove "criminal" agreements. The Tribunal heard about two special statutes, Seditious Conspiracy and the Racketeer Influenced and Corrupt Organizations (RICO) Act, which specifically allow for the criminalization of membership in political organizations and national liberation movements. These statutes have been used to incarcerate political activists with lengthy sentences. The Seditious Conspiracy law specifically criminalizes opposition to US governmental authority and has been used particularly against the Puerto Rican independence movement to criminalize its resistance to colonialism. Under this law a mere agreement to oppose US authority with force, without proof of any act taken in furtherance of that agreement, is subject to a twenty year sentence.

Political prisoners in the US are also victims of false charges and prosecutions in which evidence favorable to the accused is deliberately suppressed. The Tribunal was presented with evidence of three particularly serious cases: Gerónimo Ji Jaga Pratt, Leonard Peltier and Dhoruba Bin Wahad, in which the government deliberately destroyed and concealed evidence which would have established their innocence.

Those charged with politically motivated offenses are frequently held in preventive detention. Specifically, the evidence showed that the US government's use of the Bail Reform Act of 1984 violates international law by designating as "dangerous to the community" persons who struggle for self-determination. This statute enables the government to jail its opponents for years without trial by means of indefinite preventive detention, thus denying the right to speedy trial or to release pending trial. When the FBI arrested fifteen Puerto Rican independentists on August 30, 1985, the government invoked this law to detain every accused. In spite of the community's clamor for these activists to be released, the courts found almost all of those arrested to be a "danger" to the community and held them under punitive isolation for periods between 18 months to almost four years without trial. The last to be released, Filiberto Ojeda Ríos, who had triple by-pass open heart surgery, was released only because the US courts held that his lengthy pretrial custody had become an embarrassment to US democracy. Ojeda was redetained for another year within three months of his release, as a result of a three year old charge arising out of his original arrest.

Excessive pretrial detention violates international law provisions Article II (1) of the Universal Declaration of Human Rights and Article 9 (3) of the International Covenant on Civil and Political Rights, as well as Article 8 (1) of the American Convention of Human Rights, 1969.

The Tribunal also received evidence of a series of repressive measures employed in political trials. Of particular concern was the evidence indicating a deliberate attack by the US government on the independence and impartiality of the trial jury. The media have been used to poison attitudes in the community from which that jury will be selected. Just as disturbing is the use of "anonymous" trial juries. Under the latter system, by declaring the necessity to keep jurors' identities secret, those same jurors are inevitably prejudiced into believing that they have cause to fear the political defendants. This fear is further exacerbated by the intentional and excessive militarization of courtroom security employed to turn political trial courts into armed encampments. The Tribunal was informed of the use of multiple metal detectors, concrete bunkers, armed marshals, sharp-shooters on roofs adjacent to courthouses and, in one case, the erection of a special bullet-proof glass partition to separate the accused from the public.

The Tribunal also heard that trial venues are manipulated, particularly in the case of Puerto Rican activists, to deny them a trial in their homeland by their peers. Also, politically accused persons are routinely denied the right to present a full defense, including issues of necessity and justification under international law.

The use of the judicial system to repress political activists violates Articles 6, 7, 8, 9 and 10 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights. Such conduct further violates Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966.

We find most disturbing that the US government continues to incarcerate certain Petitioners despite documentary and other proof, disclosed after conviction, conclusively establishing that they did not commit the offenses for which they have been tried.
Excessive and Inhumane Sentences

The evidence showed that the United States government metes out the longest sentences of any country in the world to its political prisoners. Such excessive and disproportionate sentences imposed on persons active in self-determination struggles and in support of those struggles constitute torture, inhuman and degrading treatment in violation of Article 1 of U.S. Resolution 3452 (XXX), the Declaration on Protection from Torture, 1975.

Most of the political prisoners and prisoners of war are serving the equivalent of natural life in prison. The Puerto Rican POWs, many of whom have already spent more than ten years in prison, have sentences averaging 67 years. The judge who sentenced them stated that he would have given them the death penalty if it had been within his power.

Mumia Abu Jamal currently sits on Pennsylvania's death row under sentence of death. Leonard Peltier has served over 13 years of two consecutive life sentences; Sundiata Acoli is serving life plus thirty years; Herman Bell, Nuh Washington and Jalil Bottom are each serving 25 years to life.

Evidence was presented demonstrating that the political beliefs of Petitioners have been used as a basis to impose, in many instances, sentences of life imprisonment. Moreover, it is clear that the sentences imposed upon Petitioners are grossly disproportionate to sanctions imposed upon members of right wing and/or racist organizations convicted of similar offenses. For example, an assassin of Chilean diplomat Orlando Letelier was permitted in a plea agreement, wherein most charges were dropped, to receive a sentence of 12 years. Conversely, Petitioner Yu Kikumura, arrested with three pipe bombs in his car, was charged with twelve separate offenses and received an aggregate sentence of 30 years.

In 1986, a man convicted for planning and carrying out bombings, without making warning calls, of ten occupied health clinics where abortions were performed received a sentence of ten years and was paroled after 46 months. By contrast, Petitioner Raymond Levasseur was convicted of bombing four unoccupied military targets in protest against US foreign policies and received a total sentence of 45 years.

Another acknowledged abortion clinic bomber received seven years following his arrest in possession of over 100 pounds of explosives in a populous Manhattan apartment building. Petitioners Tim Blunk and Susan Rosenberg, charged with possession of explosives in a storage facility, each received sentences of 58 years.

A Ku Klux Klansman, charged with violations of the Neutrality Act and with possessing a boatload of explosives and weapons to be used in an invasion of Dominica, received an eight year sentence. Petitioner Linda Evans was convicted of purchasing four weapons with false identification and was sentenced to 40 years, the longest sentence ever imposed for this offense in US history.

The evidence also established that Petitioners have been denied parole as a penalty for refusing to renounce their political beliefs and associations.

VII. TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT

As part of the system of repression in the United States, we heard testimony that the government uses the prisons as a key element in its efforts to deny peoples the right to exercise self-determination and disrupt people organizing to oppose US policies. The evidence established that the defendants use political beliefs and associations as a basis for classification and placement in highly punitive and restrictive isolation units.

The testimony of Dr. Stuart Grassian, a psychiatric expert on the serious and harmful effects of long-term isolation and solitary confinement, made a profound impression on the Tribunal. Evidence was also received which showed that in the early 1960's the US prisons adopted a policy to put into effect brainwashing practices to "modify" the behavior of political prisoners and resisters.

Further, with full knowledge that conditions of solitary confinement, "small group isolation", and restricted sensory stimulation cause adverse psycho-pathological effects, the evidence also showed that the defendants have created and maintained prisons and control units embodying these conditions, such as the US Federal Penitentiary at Marion, Illinois, the Women's High Security Unit at Lexington, Kentucky, and New York State's Shawangunk Correctional Facility.

The US penitentiary at Marion, condemned by Amnesty International as violating virtually every one of the United Nations Standard Minimum Rules for the Treatment of Prisoners, holds more political prisoners and prisoners of war than any other prison in the United States. Prison officials place political prisoners at Marion and retain them there for years although they do not meet the stated criteria for assignment there. A US court which found the conditions at Marion to pass constitutional muster was nonetheless forced to describe them as "sordid" and "depressing in the extreme". Locked in their cells over 22 hours daily, the prisoners at Marion are denied meaningful human interaction and essential sensory stimulation. Their visits are non-contact through glass, and they are required to submit to a strip-search before and after visits. Their only source of drinking water is contaminated with carcinogenic chloroform and is reliably suspected of containing dangerous levels of toxins.

The Women's High Security Unit at Lexington, Ky., which was closed in 1988 as the result of a national and international human rights campaign, was also condemned by Amnesty International, which found that the Federal Bureau of Prisons deliberately placed political prisoners there in cruel, inhuman and degrading conditions because of their political beliefs. The conditions included two years of isolation in subterranean cells, daily strip-searches, sleep deprivation and denial of privacy to the extent that male guards were able to observe the women bathing. Expert medical testimony demonstrated that the conditions were calculated to destroy the women psychologically and physically.

We find that the defendants place political prisoners and prisoners of war in such prisons, and under such conditions, as part of their efforts to destroy them and to
repress the struggles which they represent.

The evidence showed that in addition to the use of isolation in control unit prisons, the defendants also use other prison conditions as a means of breaking political prisoners and prisoners of war. These conditions include assassination; torture; sexual assault; strip and cavity searches, including such searches by male staff on women prisoners; punitive transfers; false accusations of violating prison rules; censorship; denial of religious worship; harassment of families; limitation of visits and denial of necessary medical care.

Several political prisoners with cancer have been subjected to lengthy and punitive delays in diagnosis and treatment. Alan Berkman, suffering from Hodgkins Disease, has nearly died several times because prison officials have withheld necessary medical treatment and refused to place him in an appropriate medical facility. Kwasi Balagoon, suffering with AIDS, was not diagnosed until ten days before his death. Silvia Baraldini’s palpable abdominal lumps were ignored for months, only to reveal that she had an aggressive form of uterine cancer.

The evidence also showed that the courts of the US have consistently condoned and sanctioned the application of such punitive and harmful conditions and their application to political prisoners and prisoners of war.

We find that the defendants’ treatment of political prisoners and prisoners of war constitutes torture, cruel, inhuman and degrading treatment in violation of Article 7 of the Universal Declaration of Human Rights and contravenes most of the United Nations Standard Minimum Rules for the Treatment of Prisoners. The US government is also in breach of the First, Eighth and Fourteenth Amendments to the Constitution of the United States and their equivalent provisions in the various state constitutions; the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the American Declaration of Human Rights and the Geneva Convention and the protocols thereto.

VERDICT

Based on the factual and legal foundations stated above, the Special Tribunal declares:

1) Within the prisons and jails of the United States exist substantial numbers of Political Prisoners and Prisoners of War.

2) These prisoners have been incarcerated for their opposition to US government policies and actions that are illegal under domestic and international law, including the denial of the right to self-determination, genocide, colonialism, racism and militarism.

3) The US government criminalizes and imprisons persons involved in the struggles for self-determination of Native Americans, Puerto Ricans, and Black and Mexican-Chicano activists within the borders of the United States.

4) Those peoples legitimately struggling for national liberation are not to be treated as criminals, but must be afforded the status of Prisoners of War under the Additional Protocol I to the Geneva Convention.

5) The US government also criminalizes and imprisons white North Americans and others who have worked in solidarity with struggles for self-determination as well as for peace and against nuclear arms, against racism, sexism and other forms of discrimination.

6) The criminal justice system of the US is being used in a harsh and discriminatory way against political activists in the U.S.

7) The use of surveillance, infiltration, grand juries, preventive detention, politically-motivated criminal conspiracy charges, prejudicial security and anonymous trial juries deprive political activists of fair trials guaranteed under domestic and international law.

8) Political people have been subjected to disproportionately lengthy prison sentences and to torture, cruel, inhumane and degrading treatment within the U.S. prison system.

Further the Tribunal calls on the US government to:

1) Release all prisoners who have been incarcerated for the legitimate exercise of their rights of self-determination or in opposition to U.S. policies and practices illegal under international law.

2) Cease all acts of interference and repression against political movements struggling for self-determination or against policies and practices illegal under international law.

Members of the Special International Tribunal

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Jawad Boulus
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Lord Anthony Gifford
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The Special International Tribunal on Political Prisoners and Prisoners of War in the United States received testimony from the following witnesses:

Dr. Imari Obadele: Representative of the Black Liberation Movement.

Ms. Assata Shakur: Former Political Prisoner. (Videotape deposition)


Sister Anne Montgomery: Former Political Prisoner and representative of Plowshares communities.

Ms. Elizabeth Murillo: Representative of the Mexican people living within the borders of the U.S.

Ms. Rita Zengotita: Representative of the Puerto Rican Liberation Movement.

Mr. Jorge Farinacci: Puerto Rican National Liberation Activist; on bond awaiting criminal trial.

Mr. Bobby Castillo: Former Political Prisoner and representative of Native Americans.

Mr. Ward Churchill: Representative of Native Americans.


Ms. Mary O'Melveny: Expert on disparate sentencing.

Ms. Patricia Levasseur: Former Political Prisoner.

Mr. Majid Barnes: Representative of the Black Liberation Movement.

Ms. Alberta Africa: Former Political Prisoner and member of MOVE.

Dr. Stuart Grassian: Expert on the psychopathological effects of long-term solitary confinement.

Mr. Rafael Cancel Miranda: Former Political Prisoner; representative; Puerto Rican National Liberation Movement.

Mr. Dhoruba Bin Wahad: Former Political Prisoner; representative of the Black Liberation Movement.

Mr. Bob Robideau: Former Political Prisoner, representative of Native Americans.

Professor Francis Boyle: Expert on International Law.

Mr. Jaime Delgado: Former Political Prisoner; member; Puerto Rican National Liberation Movement.

Ms. Jill Soffiyah Elijah: Expert on conditions of confinement of US political prisoners and pows.

Mr. Guillermo Morales: Former Prisoner of War (videotape deposition).

Documents Submitted by the Movements

- THE COINTELPRO PAPERS (1990), Ward Churchill and Jim VanderWall.
- FBI COINTELPRO documents on the Puerto Rican independence, Black, Native American, Mexican and Anti-imperialist movements.
- "Los Medios de Represi6n Utilizados por el Gobierno de los Estados Unidos en Control del Pueblo de Puerto Rico y Sus Medios de Liberaci6n Nacional y los Intentos de Criminalizar la Lucha Puerto-riquefia por la Independencia," Comité Unitario Contra la Represi6n y por la Defensa de los Presos Polfticos (CUCRE).
- "(Repressive Measures Used by the US government to Control the People of Puerto Rico and their Means of National Liberation and the Attempts to Criminalize the Struggle for Puerto Rican Independence," the Unitary Committee Against Repression and for the Defense of Political Prisoners) (CUCRE).
- "Alvaro Hernández and Alberto Aranda, Chicano Political Prisoners." Committee to Free Alvaro Hernández and Alberto Aranda and the Movimiento de Liberación Nacional Mexicano.
- Statement of Eve Rosahn.
- Statement of Sister Anne Montgomery.

Documents Submitted by Former Political Prisoners

- Statement of Majid Barnes.
- Affidavit of Dhoruba Al-Mujahid Bin Wahad.
Documents Submitted by Expert Witnesses

- "Political Prisoners and the Denial of Fair Trials," Michael E. Deutsch.
- "Memorandum on Disparate Treatment of Political Prisoners and Prisoners of War by United States Authorities on Sentencing and Parole Eligibility," Mary O’Melveny.
- Preserving the Rule of Law in the War Against International Terrorism, Francis Boyle, 8 WHITIER L. R. 735 (1986).
- Written statements by individual petitioners