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New open letter to all Honourable Deputies of the Bolivian National Congress urging them to reject the bilateral agreement with the United States on the International Criminal Court

Amnesty International is concerned that the Bolivian Senate has approved the bilateral immunity agreement signed by the Government and the United States of America in May last year. This agreement grants absolute impunity from international prosecution to US nationals who are accused by the International Criminal Court (ICC) of committing genocide, crimes against humanity or war crimes, including when such crimes are committed in Bolivian territory. Amnesty International, therefore, urges all Honourable Deputies to refuse to sign this agreement, since it violates obligations entered into by Bolivia under international law, including its obligations as State Party to the Rome Statute.

Amnesty International has been working towards the establishment of the International Criminal Court for over a decade, believing that the Court is an essential mechanism to end impunity for the worst crimes known to humanity, and that the fear of the government of the United States that the ICC may be used to bring politically motivated prosecutions against United States nationals is unfounded. The fair trial guarantees and safeguards against politically motivated trials in the Rome Statute wholly ensure that this fear is unjustified. Amnesty International is confident that the ICC, with 18 highly qualified judges, who are greatly respected by the international community – one of whom, Dr Rene Blattmann, is Bolivian and a highly qualified and experienced prosecutor – will be able to allay the US government's concerns and that the US government will in due course change its position on the ICC.

Amnesty International calls on the Honourable Deputies to bear in mind the following legal arguments against the impunity agreements, explained in detail in "*The International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes*" (AI index: IOR 40/025/2002) published by Amnesty International in August 2002 and available in Spanish from: <http://web.amnesty.org/pages/icc-docs-esl>.

Impunity agreements are illegal because they oblige state parties to the Rome Statute, such as Bolivia, to violate their obligations under international law, including the Rome Statute, to bring those responsible for genocide, crimes against humanity and war crimes to justice.

Impunity agreements are not permitted by the Rome Statute. Numerous legal analyses, including by Amnesty International, have concluded that statements by US authorities that Article 98 of the Rome Statute provides for impunity agreements are incorrect. In fact, Article 98 of the Rome Statute was designed to cover existing Status of Forces Agreements which determine which states have jurisdiction to investigate and prosecute crimes committed by the armed forces of a state stationed in

another state – and not to provide for agreements to give nationals of one state impunity from international justice.

Impunity agreements contain no assurance that if US nationals are not surrendered to the ICC they will be brought to justice in the United States or anywhere else. In fact, in some cases, US legislation does not allow it, since US criminal law does not include many of the crimes under international law included in the Rome Statute.

The European Union’s legal experts have also analyzed these agreements, and have reached the same conclusion: “entering into agreements with the United States - as presently drafted - would be inconsistent with the ICC States Parties’ obligation with regard to the ICC Statute and may also be inconsistent with other international agreements to which ICC States Party are also Party”. The European Union has also drawn up guiding principles which Amnesty International examines in *International Criminal Court: the need for the European Union to take more effective steps to prevent members from signing US impunity agreements* (AI Index: IOR 40/030/2002), published in October 2002, and available from <http://web.amnesty.org/pages/icc-docs-esl>

A state that signs such an impunity agreement would also give up its sovereign right to decide which court – whether one of its own courts, the courts of another state seeking extradition, or the ICC – should exercise jurisdiction over persons in its territory accused of crimes under international law, including crimes in its own territory. If the United States decided not to investigate or prosecute the accused, the state that surrendered the person to that country would have no way of compelling the accused to be investigated and, if appropriate, judged by his/her domestic courts, the courts of another state, or to ensure the surrender of the accused to the ICC. In addition, any state ratifying such an agreement would have to renegotiate all its existing extradition agreements with other states for the agreement to be effective, a time-consuming and ultimately futile exercise, since many states have already made it clear that they will not agree to such renegotiations.

We would also like to point out that the governments of Argentina, Brazil, Paraguay and Peru have publicly rejected this initiative by the US administration. The three latter countries have even been deprived of military assistance for not agreeing to sign it.

We hope the Honourable Deputies refuse to ratify this agreement or any agreement that seeks to provide impunity to anyone accused of genocide, crimes against humanity or war crimes, whatever their nationality.

Yours sincerely,

Claudio Cordone,
Director, International Law and Organizations Programme