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His Majesty
King Jigme Singye Wangchuck
Tashichho Dzong
Thimphu
Bhutan

5 June 2003

Your Majesty,

Open letter regarding bi-lateral agreement with the USA concerning the International Criminal Court

Amnesty International is concerned that the government of Bhutan has signed a bilateral agreement with the United States of America (USA) providing impunity for United States (US) nationals who have been accused by the International Criminal Court (ICC) of genocide, crimes against humanity and war crimes, including crimes committed on the territory of your state. This agreement may violate Bhutan's obligations under international law to bring those accused of genocide, crimes against humanity and war crimes to justice.

Amnesty International has been working towards the establishment of the ICC for nearly 10 years, believing that it is an essential mechanism to end impunity for the worst crimes known to humanity. No one should have impunity for these crimes. Amnesty International, together with the majority of the international community, believes that the US government's concerns that the ICC will be used to bring politically motivated prosecutions against US nationals are wholly unfounded; the substantial safeguards and fair trial guarantees in the Rome Statute would ensure that such a situation would not arise. Amnesty International is confident that the ICC, with 18 of the highest qualified and respected judges in the international community and a highly qualified and experienced Prosecutor, will allay the US government's concerns and that the US government will in due course change its position.

Amnesty International hopes that you will consider the following legal arguments against impunity agreements:

- Impunity agreements are unlawful because they commit states to violate their legal 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. US assertions that the agreements are provided for in Article 98 of the Statute are incorrect, as numerous legal analyses, including by Amnesty International, conclude. This article was designed to

AMNESTY INTERNATIONAL

INTERNATIONAL SECRETARIAT

Peter Benenson House, 1 Easton Street, London WC1X 0DW, United Kingdom

Tel: Int. Code: 44 (20) 7413 5500. UK Code: 020 7413 5500. Fax: Int. Code: 44 (20) 7956 1157. UK Code: 020 7056 1157

E-Mail: amnestyvis@amnesty.org

Web: <http://www.amnesty.org>

cover existing Status of Forces Agreements, which determine which state has jurisdiction to investigate and prosecute crimes committed by forces stationed in another country, not agreements designed 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 USA or anywhere else. In fact, in some cases the US judicial system would not be able to do so as US criminal law does not include many of the international crimes included in the Rome Statute.

These arguments are set out in detail in *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 from www.amnesty.org/icc/.

The European Union's legal experts have also analysed the agreement and have reached the same conclusion: "[e]ntering into US agreements - as presently drafted - would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties." The European Union further issued guiding principles which Amnesty International analyses 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 www.amnesty.org/icc/.

Even though Bhutan has not signed or yet ratified the Rome Statute it should not ratify an impunity agreement with the US or refuse to arrest and surrender persons accused by the ICC. Doing so may violate Bhutan's obligations under international law to bring to justice those responsible for genocide, crimes against humanity and war crimes, particularly if Bhutan does not investigate and, if there is sufficient admissible evidence, prosecute such persons or extradite them to a state that will fulfil its international responsibilities.

The agreement that the government of Bhutan has signed goes against the will of the overwhelming majority of the international community to ensure that no one, regardless of their nationality or status, can plan and commit these heinous crimes with impunity. We hope Bhutan will reconsider this decision, and that you will promote accession to the Rome Statute to ensure Bhutan's full support and participation in the ICC.

Yours sincerely,

Irene Khan
Secretary General