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His Excellency
Mr Gyude Bryant
Transitional Chairman
National Transitional Government of Liberia
Executive Mansion
PO Box 9001
Capitol Hill
Monrovia
Republic of Liberia

21 October 2003

Open letter to the Transitional Chairman of Liberia, urging rejection of the impunity agreement with the USA concerning the International Criminal Court

Dear Mr Bryant,

Amnesty International is concerned that the previous government of Liberia on 8 October 2003 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. Amnesty International is writing to urge you to renounce this agreement, which violates Liberia's obligations under international law, including as a party to the Rome Statute of the ICC.

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 which 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/.

- 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 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 crimes under international law included in the Rome Statute.

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/.

A state ratifying 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 - would exercise jurisdiction over persons found in its territory accused of crimes, including crimes in its own territory. If the USA decided not to investigate or prosecute the accused, the state that surrendered the person would have no way to compel the accused to return for investigation and prosecution in its courts, or the courts of another state, or to ensure the surrender of the accused to the ICC. In addition, each state ratifying such an agreement would have to renegotiate its existing extradition treaties 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 hope that you will renounce this agreement, and refuse to enter into any other agreement that seeks to provide impunity to anyone accused of genocide, crimes against humanity and war crimes.

Yours sincerely,

Irene Khan

Secretary General