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Open letter to members of Parliament of Palau

28 February 2003

Dear Members of Parliament,

Bi-lateral agreement with the USA concerning the International Criminal Court

Amnesty International is very concerned that the government of Palau has recently signed a bilateral agreement with the United States of America (USA) providing impunity for US nationals who have been accused by the International Criminal Court 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 refuse to ratify this agreement, which may violate Palau's obligations under international law.

In recent months, the USA, as part of a worldwide campaign against the new International Criminal Court, has been asking states to enter into agreements not to surrender US nationals to the Court. As of 13 February 2003, despite strong lobbying by the US since 6 May 2002, including threatening to withdraw military and other assistance from states that refuse to sign agreements, less than 20 states have signed an impunity agreement and not a single parliament has ratified one.

Amnesty International has been working for the establishment of the International Criminal Court for nearly a decade, believing that the Court is an essential mechanism to end impunity for the worst crimes known to humanity. No one should have impunity for these crimes.

In August 2002, Amnesty International issued the attached document *International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes* (AI Index: IOR 40/025/2002), which analyses the agreement the US has been asking states to ratify. The document demonstrates how such agreements lead to impunity and why any state which ratifies such an agreement would violate its obligations under the Rome Statute and international law.

Even though Palau 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

International Criminal Court. Doing so may violate their obligations under international law to bring to justice those responsible for genocide, crimes against humanity and war crimes, particularly if they do not investigate and, if there is sufficient admissible evidence, prosecute such persons or extradite such persons to a state that will fulfil its international responsibilities.

A state ratifying such an impunity agreement would also give up its sovereign right to decide what court - whether one of its own courts, the courts of another state seeking extradition or the International Criminal Court - 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 International Criminal Court. In addition, each state ratifying such an agreement would have to renegotiate every one of 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.

The European Union's (EU) legal experts have also analysed the agreements 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 EU 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) (also attached).

The agreement Palau has signed is in violation of its obligations under international law and furthermore 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 that you will refuse to ratify this agreement or any agreement which seeks to provide impunity to anyone accused of genocide, crimes against humanity and war crimes. Furthermore, we hope you will promote accession to the Rome Statute to ensure Palau's full support and participation in the International Criminal Court.

Yours sincerely,

Martin MacPherson
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