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His Excellency President Ahmad Tejan Kabbah
State House
Independence Avenue
Freetown
Sierra Leone

8 May 2003

Open letter to the President of Sierra Leone urging rejection of the impunity agreement with the United States of America on the International Criminal Court

Dear President Kabbah,

Amnesty International is dismayed to hear that on 6 May 2003 the Parliament of Sierra Leone was the first parliament in the world to ratify a bilateral impunity agreement with the United States government. This agreement will oblige Sierra Leone not to surrender to the new International Criminal Court (ICC) United States nationals accused of genocide, crimes against humanity and war crimes. This agreement violates Sierra Leone's obligations under international law, including as a state party to the Rome Statute of the ICC. It goes against the will of the vast majority of the international community to ensure that no one, regardless of nationality or status, can plan and commit these heinous crimes with impunity.

Amnesty International is writing to you to urge you not to grant consent to this unlawful impunity agreement.

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 never 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.

- Impunity agreements are unlawful because they commit states to violate their legal obligations under the Rome Statute and other international law 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. In fact, in some cases the United States 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.

The agreement approved by the Sierra Leone Parliament on 6 May 2003, which effectively undermines the ICC, sits ill with the Sierra Leone government's previous strong support for the ICC and the leading role which it has played in its establishment. In June 1998, during the conference in Rome on the creation of a permanent international criminal court, the delegation of Sierra Leone cited the experience of Sierra Leone as evidence of the need for the establishment of such a court. Sierra Leone was among the first countries to become a state party to the Rome Statute when it ratified the Statute on 15 September 2000.

In addition, this agreement is inconsistent with the Sierra Leone government's commitment to end impunity for the grave crimes committed during Sierra Leone's internal armed conflict as demonstrated by its agreement with the United Nations to establish the Special Court for Sierra Leone to try those who bear the greatest responsibility for crimes against humanity, war crimes and other serious violations of international humanitarian law. Entering into this impunity agreement with the USA is in marked contrast to attempts to get other states in the West Africa region to cooperate with the Special Court.

Amnesty International hopes that you will refuse to give consent to this or any other agreement which seeks to undermine the ICC and provide impunity to anyone accused of genocide, crimes against humanity and war crimes.

Yours sincerely,

Irene Khan
Secretary General

Cc: Philippe Kirsch, President of the International Criminal Court
H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, President of the Assembly of States Parties of the International Criminal Court.