

May 30, 2008

Dear Member of Congress,

As Congress begins the FY09 appropriations process, we, the undersigned organizations, would like to bring to your attention an important policy matter tied to the State/Foreign Operations appropriations bill. Since the summer of 2002, the Bush administration has aggressively sought to conclude bilateral immunity agreements (BIAs) with almost all countries, including every country in the world that has ratified the International Criminal Court (ICC) treaty. Many nations have refused to sign a BIA because they believe that doing so would breach their legal obligations under the Rome Statute, the treaty that established the Court. Countries, including those not party to the Court, have also refused in order to protect their sovereignty and out of respect for the ICC's values and purposes.

BIA agreements are of dubious benefit and the quest to secure them is a source of considerable friction between the U.S. and its allies in Europe, Africa, and Latin America. In the meantime the ICC has opened cases in Sudan, Uganda, and the Democratic Republic of Congo in an attempt to bring to justice some of the world's most heinous criminals. Rather than continue to support a policy that empowers non-cooperation with the Court, we urge Congress instead to include text in this year's appropriations bill that has been suggested by Representative Betty McCollum (D-MN), stipulating that "none of the funds made available in this Act under the heading "Economic Support Fund" shall be restricted based on the relationship between any government and the International Criminal Court."

The ICC treaty known as the Rome Statute, respects the Status of Forces (SOFA) and Status of Mission (SOMA) agreements that protect U.S. service personnel and civilian officials. Unfortunately, BIAs go much further by shielding private citizens and foreign U.S. contractors from the ICC. This makes BIAs especially offensive to other countries by forcing them to give up their sovereign right to apply their own legal procedures – in this case making use of the ICC – to persons who commit crimes on their territory.

Moreover, because they are bilateral in nature, BIAs can also shield foreign war criminals from the Court's jurisdiction, even if they are in U.S. custody. We strongly believe the current Congress should not continue to support this failed Bush administration initiative.

In 2004, Congress passed the Nethercutt Amendment, which threatened to cut off vital Economic Support Funds (ESF) to countries unwilling to sign BIA agreements. Former Rep. Jim Kolbe, then Republican chair of the Appropriations Subcommittee, spoke strongly against this amendment when it came to the House floor: "At a time when we are fighting the war on terrorism, reducing this tool of diplomatic influence is not a good idea. If we accept [this amendment], the U.S. will be hamstringing itself, placing a straitjacket on its diplomatic tools..." Although the Nethercutt language was not included in the FY07 Foreign Operations appropriations bill, it was unfortunately included, at the request of House appropriators, in the Consolidated Appropriations Act, 2008 (H.R. 2764, Section 671).

Congress has already recognized the negative impact of the BIA campaign and wisely voted to repeal two similar BIA related sanctions which were signed into law by the president: on Foreign Military Financing (FMF) and International Military Education and Training (IMET). House appropriators should bring a complete end to this counterproductive policy by adopting the McCollum language as part of the FY09 State/Foreign Operations appropriations bill.

One of our staff members will be in contact with your staff to answer any questions or respond to any concerns. We look forward to thanking you for your support on this important matter.

Sincerely,

Americans for Democratic Action

Amnesty International USA

Better World Campaign

Center for American Progress

Church Women United

Citizens for Global Solutions

Council for a Livable World

Evangelical Lutheran Church in America

Friends' Committee on National Legislation

Genocide Intervention Network

Human Rights First

Human Rights Watch

Maryknoll Office for Global Concerns

National Association of Social Workers

National Education Association

National Association of Evangelicals

Open Society Policy Center

Peace Action and Peace Action Education Fund

Presbyterian Church USA

United Church of Christ, Justice and Witness Ministries

United Methodist Church, General Board of Church and Society

United Nations Association – USA

Universal Human Rights Network

Unitarian Universalist Association of Congregations

World Organization for Human Rights, USA