

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL SUR 1/2017

10 August 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning delays to the trial of the President of Suriname, accused of crimes involving unlawful killings, and related threats to the independence of the judiciary.

According to the information received:

In November 2007, a trial was initiated against 25 individuals, including the current President of the Suriname, His Excellency Mr. Desiré Delano Bouterse. They are accused of the murder of thirteen civilians and two military personnel in 1982, the so-called "December murders". The trial began at a specially designed Military Court, located in the naval base of Boxtel, based on a complaint issued by lawyers acting on behalf of families of the victims.

On 19 July 2010, Mr. Desiré Bouterse, one of those accused in the trial, became the President of Suriname. He took up office on 12 August 2010.

On 9 March 2012, one of the accused defendants, Ruben Rozendaal, allegedly testified that he had direct knowledge of the events that took place in 1982.

Shortly after Mr. Rozendaal's testimony, on 4 April 2012, the Parliament adopted a law, over a period of four days, amending the existing Amnesty Law of 1989. The amendment granted amnesty to the incumbent President and others for the murders that allegedly took place in 1982. In subsequent declarations, President Bouterse reportedly stated that those who opposed the new Amnesty Law were "enemies of the people". Following this statement, the Prosecutor allegedly requested that the trial be suspended until the Constitutional Court could reach a decision regarding the constitutionality of the Amnesty Law.

On 14 July 2015, Mr. Desiré Bouterse was re-elected for a second mandate as President of Suriname.

On 9 June 2016, the Military Court found the Amnesty Law unconstitutional and ordered the proceedings to resume. On 29 June 2016, President Bouterse reportedly declared that the trial was a threat to national security, as it represented

a danger to the nation's economic stability. Invoking Article 148 of the Constitution of Suriname, which states that the Government may in specific instances give the Prosecutor General orders with regard to prosecution in the interest of state security, the President allegedly ordered the Prosecutor to halt the prosecution in question. On June 30 2016, the Military Court postponed the decision regarding whether or not to resume the trial. The Court was expected to continue the trial and to consider this new fact by 30 November 2016. However, on that date the trial was again postponed until 30 January 2017, allegedly due to illness of one of the judges.

In the meanwhile, in a ruling issued on 27 November 2016, the Court of Justice of Suriname also ordered the Attorney General to continue the prosecution against President Desiré Bouterse and other 24 members of the former Suriname Government that ruled from 1980 to 1987.

By early 2017, the Military Court reportedly ordered the Prosecutor to read the charges and ignore instructions by the President, since the matter was no longer in hands of the executive but of the judicial branch.

After another postponement on 9 February 2017, , the Military Court allegedly resumed the trial on June 28 2017. At a hearing on the same date, Suriname's Prosecutor reportedly urged the court to impose a 20-year jail term for Suriname's President for his role in the "December murders".

Without prejudging the accuracy of the information received, concern is expressed at the above allegations, particularly the continued delays in the trial of the alleged murders committed in 1982. Serious concern is also expressed at the apparent interference of the executive and legislative branch in the independence of the judiciary, in contradiction of the fundamental principle of the separation of powers and international human rights standards. In particular, concern is expressed at the amendment of the Amnesty Law in 2012 and at other attempts by the executive branch to halt the prosecution of those accused for murders that allegedly took place in 1982.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the measures adopted by your Excellency's Government to ensure that the independence of the judiciary

is and will be respected in the context of the trial of the 1982 murders initiated in 2007, in accordance with international human rights standards and Suriname's Constitution, as well as the fundamental principles of the independence of the judiciary and the separation of powers.

3. Please provide detailed information on how the amendments to the Amnesty Law adopted in 2012 complies with international human rights instruments.
4. Please provide detailed information on the status of investigations and trial on the "December 1982 killings" case.
5. Please provide information on reparation measures provided to families of the victims of the 1982 killings, as well as on any step taken towards an official recognition of responsibility and presentation of an official apology to the victims by the State and/or local authorities.

I would appreciate receiving a response within 60 days.

I intend to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be informed about these matters. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the independence of the judiciary is prescribed, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR), acceded to by your Excellency's Government on 28 December 1976, and the UN Basic Principles on the Independence of the Judiciary.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal. In this regard, General Comment No. 32 of the Human Rights Committee notes that the element of independence requires the judiciary to be free from political interference by the executive branch, as well as the legislature. The Committee notes in particular that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal (General Comment No. 32, para. 19, CCPR/C/GC/32).

With regard to the repeated delays in the trial of the 1982 murders, we would like to remind your Excellency's Government that General Comment No. 32 notes that an important aspect of the fairness of a hearing is its expeditiousness, highlighting that delays "detract from the principle of a fair hearing" (General Comment No. 32, para. 32, CCPR/C/GC/32).

Additionally, the UN Basic Principles on the Independence of the Judiciary state, *inter alia*, that all governmental institutions must respect the independence of the judiciary; that the judiciary shall decide matters before them impartially, without any improper influences, pressures, threats or interferences; and that any method of judicial selection shall safeguard against judicial appointments for improper motives.

Further, article 134 of the Constitution of the Republic of Suriname affirms the principle of judicial independence, stating that the cognizance and adjudication of all lawsuits is exclusively entrusted to the judiciary.

We would also like to remind your Excellency's Government that article 2.3 of the ICCPR binds States to investigate and provide remedies to victims for human rights violations, as determined by the appropriate judicial, administrative or legislative authority.

In this regard, the Human Rights Committee has affirmed that a failure to investigate and bring to justice perpetrators of human rights violations could in and of itself give rise to a separate breach of the Covenant, noting that these obligations are particularly important with respect to violations recognized as criminal under either domestic or international law, including summary and arbitrary killings. Accordingly, where public officials or State agents have committed violations of the Covenant, State Parties may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (General Comment No. 31, para. 18, CCPR/C/21/Rev.1/Add. 13).

With regard to the 2012 amendments to Suriname's Amnesty Law, the UN Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity affirm that perpetrators of serious crimes under international law may not benefit from amnesty measures – even when intended to foster peace and reconciliation – before the State has met its obligation to undertake a prompt investigation and, where appropriate, trial and punishment of those responsible for serious crimes under international law (Principle 24, E/CN.4/2005/102/Add.1).

Further, with regard to Suriname's continued delays in the trial of the 1982 murders, we would like to remind Your Excellency's Government that the UN General Assembly and Human Rights Council have repeatedly recognized the importance of the right of truth in relation to ending impunity and promoting human rights.¹ States have an obligation to ensure the inalienable right to know the truth about human rights violations, as well as to take other necessary steps to prevent a recurrence of violations (UN Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1). The Human Rights Council has also highlighted the need to recognize the right of victims of human rights violations, as well as their families and society as a whole, to know the truth regarding such violations (A/HRC/RES/9/11).

¹ A/RES/68/165; A/HRC/RES/9/11; and A/HRC/RES/12/12.