



Independent Observation Mission to the Trial of President
Desiré Delano Bouterse and Others in Relation to
Extrajudicial Executions That Took Place in December 1982 at
Fort Zeelandia, Paramaribo, Suriname

*Statement on the Importance of Resuming the Trial Without
Undue Delay*

ICJ, Geneva, 8 May 2017

ICJ Statement

This Statement updates a report issued by the International Commission of Jurists (ICJ) on 29 May 2012 as part of an on-going trial observation mission concerning the trial of former Suriname President Desiré Delano Bouterse, accused of crimes involving unlawful killings.¹

The initial trial (“Krijgsraad”) that has been the subject of this observation mission began well before the mission itself, in November 2007 at a specially designed Military Court, located in the naval base of Boxel. Almost immediately after families of the alleged victims presented the initial complaint in 2007, the Court issued the first of many suspensions of the trial.

Since 2012, whenever the trial has been suspended, the ICJ has expressed its concern at these delays, as well as its dissatisfaction with the continued uncertainty on the applicability of an Amnesty Law.² While the ICJ remains of the (cautious) view that there is still space for a fair trial in Suriname, continued delays in the Krijgsraad have made this already difficult task, even more challenging.

According to international law and standards, including jurisprudence produced by the UN Human Rights Committee in respect of the International Covenant on Civil and Political Rights, once authorities have knowledge of a violation they should initiate a prompt, serious, impartial and effective investigation and, if warranted, a criminal trial presided over by an independent and impartial tribunal, *without delay*.³ This jurisprudence of the Human Rights Committee has been confirmed by the Inter-American Court on Human Rights.⁴

On 2 August 2016, the Inter-American Commission on Human Rights expressed its “deep concern” over continued delays in the resumption of the trial.⁵

The ICJ has taken note of the fact that one of the key witnesses and accused in the original trial, Ruben Rozendaal, has repeatedly expressed his desire for the trial to take place without further delay.⁶ The case has been pending for 35 years since the events took place and for nearly 10 years since the trial began in 2007. As stated in previous ICJ public statements, *justice delayed is justice denied*.

¹ ICJ, Independent observation mission to the trial of President Desiré Delano Bouterse, Geneva, 29 May 2012, Available at: <https://www.icj.org/independent-observation-mission-to-the-trial-of-president-desire-delano-bouterse-and-others-in-relation-to-extrajudicial-executions-that-took-place-in-december-1982-at-fort-zeelandia-paramaribo-suri/>

² See: ICJ, *Unacceptable delays and uncertainty in trial of former President Bouterse and others*, Geneva, 22 January 2013. Available at: <https://www.icj.org/suriname-unacceptable-delays-and-uncertainty-in-trial-of-former-president-bouterse-and-others/>

³ See Human Rights Committee General Comment 31, CCPR/C/21/Rev.1/Add. 1326 May 2004 § 8, 15, and 18.

⁴ See Inter-American Court of Human Rights Case of *García-Prieto et al. v. El Salvador*, Judgment of 20 November 2007, §101; and Case of the *Gómez-Paquiyaqui Brothers v. Peru*, Judgment of 8 July 2004, §146.

⁵ Organization of American States *Expresses Deep Concern over Blocking of Trial for Grave Human Rights Violations in Suriname*, Washington D.C., No. 108/16, 2 August 2016. Available at:

http://www.oas.org/en/iachr/media_center/PReleases/2016/108.asp The jurisprudence of the Inter-American Court of Human Rights is reinforced, among other standards, by the *United Nations Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, passed by the General Assembly in 2005.

⁶ RNW (2012), 'Rozendaal: 'Bouterse heft ons allemaal misbruikt', *Radio Netherlands*, Published on 2 February 2012, last accessed on 21 May 2012 at: <http://www.rnw.nl/suriname/article/rozendaal-bouterse-heeft-ons-allemaal-misbruikt>

The Trial in Suriname

Due perhaps to the exceptional nature of the events of 12 December 1982, which have been followed by continued delays in the start and resumption of the trial, significant political and social divisions have emerged in the country.

The factual events of 1982 have been recounted several different sources, including the Dutch and Suriname media, and is in the is beyond the mandate of this mission.⁷ Our concern is with the conduct of the investigation and trial, and the social and political climate in which the trial has taken place. These have not only been subjects of interest by the ICJ, but also by the UNHRC, which already in 1985 called on Suriname to investigate these events.⁸

A preliminary judicial investigation was opened in the capital Paramaribo in 2000. In November 2007, the trial against Bouterse and 24 others began at a specially designed Military Court ("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, Desiré Delano Bouterse, one of those accused in the trial, became the democratically-elected President of Suriname. He took up office on 12 August 2010.

On 9 March 2012, another one of the accused, Ruben Rozendaal, testified that he had direct knowledge of the events that took place in 1982. Shortly after this testimony, on 4 April 2012, a law was swiftly adopted in Parliament over a period of four days, amending the existing Amnesty Law of 1989, and granting amnesty to President Bouterse and others for the murders that allegedly took place in 1982.⁹ President Bouterse subsequently gave public statements that those who opposed the Amnesty Law were considered as "enemies of the people".¹⁰ This statement was then followed by a request by the Prosecutor to suspend the trial until the Constitutional Court could reach a decision regarding the constitutionality of the Amnesty Law.

Since the trial was suspended in 2012, the ICJ has repeatedly expressed its concern about these delays, as well as its dissatisfaction with the continued uncertainty on the applicability of an Amnesty Law.¹¹

⁷ See: Amnesty International (2012) *Suriname: Families of Bouterse's victims seek justice 30 years on* 6 December 2012, Available: <https://www.amnesty.org/en/latest/news/2012/12/suriname-families-bouterse-s-victims-seek-justice-years>; NJCM (1983) *De gebeurtenissen in Paramaribo, Suriname, 8-13 december 1982: de gewelddadigedood van 14 Surinamers en 1 Nederlander*, Leiden 14 February 1983. See also: R. Van Elst (2002) 'Universele rechtsmacht over foltering: Bouterse en de Decembermoorden', *NJCM Bulletin* Vol. 27(3), p. 208-224; Zegveld, L., "The Bouterse Case", in *Netherlands yearbook of international law*, (2001) vol. 32 (2001), page 97-118 Elst, van der R., "Universele rechtsmacht over foltering: Bouterse en de Decembermoorden" in *NJCM-bulletin: Nederlands tijdschrift voor de mensenrechten*, vol. 27, issue 3 (2002), page 208-224; Willems, J.H.M., "Treatment of Customary International Law and Use of Expert Evidence by the Dutch Court in the "Bouterse" Case" in *Non-state actors and international law*, vol. 4 (2004), issue 1, page 65-74; Couso, J., A. Huneeus and R. Sieder (eds), *Cultures of legality: judicialization and political activism in Latin America*, Cambridge: Cambridge University Press 2010; Ávila Paulette, M. and C.A. Sunshine, *Victims unsilenced: the Inter-American human rights system and transitional justice in Latin America*, Washington, DC: Due Process of Law Foundation 2007.

⁸ Human Rights Committee Baboeram et al. v. Suriname, 4 April 1985, CCPR/C/24/D/154/1983.

⁹ Staatsblad van de Republiek Suriname 2012, No. 49.

¹⁰ ICJ Report, Independent Observation Mission to the Trial of President Desiré Delano Bouterse and Others in Relation to Extrajudicial Executions That Took Place in December 1982 at Fort Zeelandia, Paramaribo, Suriname, Geneva, 29 May 2012, p. 11.

¹¹ See: ICJ, *Unacceptable delays and uncertainty in trial of former President Bouterse and others*, Geneva, 22 January 2013. Available at: <https://www.icj.org/suriname-unacceptable-delays-and-uncertainty-in-trial-of-former-president-bouterse-and-others/>

On 14 July 2015, Desiré Delano Bouterse was re-elected for a second mandate as President of Suriname. On 9 June 2016, the Court found the Amnesty Law unconstitutional and ordered the proceedings to be resumed.¹² On 29 June 2016, President Bouterse used his authority as defined in Article 148 of the Constitution of Suriname and declared that the trial was a threat to national security, and ordered the Prosecutor to halt prosecution. The argument was raised that the criminal charges represented a danger for the economic stability of the country.¹³

On 30 June, 2016, the Court postponed its decision regarding a resumption of the trial against President Bouterse and the 24 other suspects. The Court was expected to continue the trial and to consider this new fact by 30 November 2016, but this time the trial was postponed until 30 January 2017, due to illness of one of the judges.

On 2 August 2016, the Inter-American Commission on Human Rights expressed its “deep concern” about the continued delays in the resumption of the trial.¹⁴

Eventually, by early 2017, the Court 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. Nevertheless, on February 9, 2017 the Court again postponed the trial.

ICJ remains concerned about continued delays in the resumption of the trial.

The amendment of the Amnesty Law in 2012 and a presidential order to halt prosecution in 2016 suggest there are deliberate efforts to delay or suspend the trial, using blocking or stalling techniques.

The continued delays lead to concerns in relation to respect by Suriname is for its obligations under the ICCPR and the American Convention on Human Rights, particularly in relation to the right to a fair trial, the obligation to prosecute violations of the right to life, and obligation to ensure the an effective remedy and reparation for victims.

All states hold a duty to bring to justice those responsible for crimes under international law. When there is no trial at all, justice is not served and the justice system itself loses credibility. Legal proceedings help to restore public confidence in the national institutions that failed individuals and help to re-establish damaged confidence in the rule of law.

The ICJ therefore urges all parties to push for a speedy resumption of the trial, both in the interests of the victims and in the interests of the accused.

¹² E.g. Article 131 (3) of the Constitution forbids any interference in the investigation or prosecution of cases and those pending in court. The Amnesty Law furthermore conflicts with the judicial decision to prosecute and at the same time is at odds with the American Convention on Human Rights (Pact of San José, 1969).

¹³ <http://www.dwtonline.com/laatste-nieuws/2017/01/30/artikel-148-in-decemberstrafproces-verworpen/>

¹⁴ Organization of American States *Expresses Deep Concern over Blocking of Trial for Grave Human Rights Violations in Suriname*, Washington D.C., No. 108/16, 2 August 2016. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2016/108.asp

Background

It is well established under international law and standards that States have an obligation to ensure criminal liability for gross human rights violations and crimes under international law. Victims of such crimes are entitled to access to justice, including a right to an effective remedy and reparation. Those who are suspected of having committed those crimes, for their part, have the right to a fair trial by a competent, independent and impartial tribunal established by law, which includes a trial without undue delay.

These universally applicable rights and principles are affirmed in numerous international human rights treaties and instruments beginning with the Universal Declaration of Human Rights in 1948 and remains a cornerstone principle of international human rights law. Among the applicable treaties to which Suriname is a treaty is the ICCPR, which it acceded to on December 28, 1976 as well as the Inter-American Convention on Human Rights on 12 November 1987.¹⁵

Article 2 ICCPR requires of state parties to provide for an effective remedy, which includes reparation, for any breach of ICCPR rights. The supervisory committee of the ICCPR, the UNHRC, has affirmed that, in addition to compensation, reparation will involve:

restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.¹⁶

Compliance with the obligation to investigate and to punish those responsible is closely linked to “the right of the next of kin of the alleged victims to know what happened and to know who was responsible for the respective events”.¹⁷

The UN General Assembly and the UN Human Rights Council have recognized the importance of the right to truth towards ending impunity and promoting human rights.¹⁸ The Human Rights Council has stressed the need “to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations”,¹⁹ and to establish appropriate and effective mechanisms to this end.²⁰

¹⁵ On 1 September 1989, Suriname lifted its state of emergency declared on 1 December 1986 in the territory of the Districts of Marowijne, Commewijne, Para, Brokopondo and in part of the territory of the district of Sipaliwini. During this period, Suriname derogated from articles 12, 21 and 22 of the Covenant.

¹⁶ See Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. HRC/2005/12/Add.1 at para. 16. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, adopted by the UN General Assembly.

¹⁷ See Inter-American Court of Human Rights Case of García-Prieto et al. v. El Salvador, Judgment of 20 November 2007, §102; and Case of the ‘Las Dos Erres’ Massacre v. Guatemala, Judgment of 24 November 2009, §105. In general about victims’ rights see e.g. the United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985.

¹⁸ UN GA Resolution 68/165 of 21 January 2014, Article 1; UN HRC Resolutions 9/11 of 24 September 2008, Article 1; Resolution 12/12 of 1 October 2009, Article 1; Resolution 21/7: of 24 September 2012, Article 1.

¹⁹ Resolution 9/11, Preamble; Resolution 12/12, Preamble. See also Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Commission on Human Rights, resolution 2005/81, Principle 2; Set of Principles on remedy and reparations, principle 4; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/19/61, 18 January 2012, § 48.

²⁰ Ibidem; Resolution 12/12, Preamble.

Accordingly, the UN Human Rights Council has appointed a Special Rapporteur with the mandate to advise on the promotion of truth, justice, reparation and guarantees of non-recurrence, and especially aims at ending impunity. With regard to the right to truth, the Rapporteur has stated the following:

States have a duty to investigate and prosecute violations of human rights and humanitarian law which constitute crimes under national or international law [...]. Failure to investigate and prosecute such violations gives rise to a separate breach of human rights treaty law. From a human rights perspective, the duty to investigate and prosecute flows from the right to an effective remedy. The right to truth of the victim, his or her next of kin, and, in certain instances, the whole society, forms part of this remedy.²¹

In respect of the American Convention, the Inter-American Court has held that the right to truth is triggered by a violation of the right to access to justice, remedy and information, under Articles 1(1), 8(1), 25, and 13 of the Convention.²² This right has been affirmed in recent cases, including in *Contreras et al. vs. El Salvador*, where the Inter-American Court recalled that “the right to know the truth has the necessary effect that, in a democratic society, the truth is known about the facts of grave human rights violations.”²³ This is a fair expectation that a state must satisfy, on the one hand, the obligation to investigate human rights violations and, on the other, public dissemination of the results of the criminal and investigative proceedings.”²⁴

The right to a fair trial is furthermore guaranteed in article 14 of the International Covenant on Civil and Political Rights (ICCPR) and article 8 of the American Convention. Its component parts have been set out in numerous other international and regional treaties, as well as non-treaty standards adopted by the UN and by regional intergovernmental bodies. They set out minimum guarantees that all systems should provide to ensure justice, respect for the rule of law and respect for the right to fair criminal proceedings. The right includes the right to be tried without undue delay. These standards do not only apply to trial proceedings (including appeal and sentencing); they also apply to pre-trial proceedings. The fundamental principles of fair trial are applicable and must be respected at all times, including during states of emergency and armed conflict.

²¹ <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/AnnualReports.aspx>; E.g. A/HRC/27/56.

²² *Contreras et al. v. El Salvador*, 31 August 2011 (Merits, Reparations and Costs), C No. 232, §§ 173 and 26; *Familia Barrios v. Venezuela*, 24 November 2011 (Merits, Reparations and Costs), C No. 237, in Spanish, § 291; *Gelman v. Uruguay*, 24 February 2011 (Merits and Reparations), C No. 221, § 243. *Radilla-Pacheco v Mexico*, C No. 209, 23 November 2009, §§ 180, 212, 313 and 334.

²³ *Fleury y otros v. Haiti*, 23 November 2011 (Merits and Reparations), C No. 236, in Spanish; *Gelman v. Uruguay*, op cit, § 256; *Gomes Lund y otros (Guerrilha do Araguaia) v. Brasil*, 24 November 2010, C No. 219, § 257; *Caracazo v. Venezuela*, 29 August 2002, C No. 95, §§ 117, 118.

²⁴ Relying on *Gelman v. Uruguay*, op. cit, § 192.