



Parliamentarians for Global Action

PARLIAMENTARY RESOLUTION ON THE ROLE OF LEGISLATORS AND THE LEGISLATIVE PROCESS IN STRENGTHENING THE RULE OF LAW IN CONFLICT PREVENTION, CONFLICT MANAGEMENT & POST-CONFLICT SITUATIONS

Whereas:

1. The rule of law refers to a system of governance in which all persons, institutions and entities, public and private, and including the State itself, are accountable to laws that have been properly determined through the electoral process, publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness in the law, and procedural and legal transparency.
2. The modern concept of State sovereignty is based on the understanding that the entitlement of States to the monopoly of executive powers is linked to the responsibility of the State to protect any person under its jurisdiction and to promote their enjoyment of universal, inviolable, interdependent and indivisible human rights;
3. As legislators representing citizens of organized political communities known as States, parliamentarians play an integral role in the establishment or restoration *and* consolidation of the rule of law;
4. Parliamentarians have the responsibility to ensure that the most appropriate standards and principles for the rule of law are in force in every transition or crises situation, and that such standards and principles are the only appropriate tool to protect all civil, cultural, economic, political and social rights of the individual;
5. The legislature is generally the first organ to be dismantled when a crisis situation degenerates, and it is often the last to be restored once conflict has abated. The restoration of the legislature is a key component of any effort to restore peace and stability under the rule of law;
6. Promoting the rule of law entails enabling the justice system to work effectively, namely, by establishing an appropriate institutional legal framework, establishing the relevant infrastructure, and training and assisting judges, lawyers, and law enforcement agencies;
7. An independent judiciary is a key component of conflict prevention as well as post-conflict peace-building;
8. Abuse of power by State authorities violates basic principles of the rule of law, such as the separation of powers and the equality of all before the law, and often entails violent or authoritarian practices that violate human rights;
9. National justice systems are often not equipped with adequate legislation and sufficiently independent judiciaries to prevent abuse of power and violations of fundamental human rights: this denial of access to justice results in impunity;
10. Gross violations of human rights and lack of access to justice can be a major cause of conflict;
11. States afflicted by conflict or emerging from conflict are often characterized by select application of the rule of law and weak institutions, and are often plagued by the widespread availability of arms, the market of which is not sufficiently regulated, thereby destabilizing an already-fragile environment;

12. States in “negotiated transition” and States emerging from conflict often lack the means to equip themselves with the necessary instruments to establish the rule of law, including an *independent justice system* and the “*constitutional*” *checks and balances*;
13. The State leadership in post-conflict situations and in transitional regimes is often unwilling or unable to address the legacy of violations of fundamental human rights, as well as crimes against humanity, acts of genocide and war crimes committed before and during the conflict;
14. The state of the justice system determines what options are available for accountability against impunity: in this respect, the complementary role of the International Criminal Court for atrocities committed after 1 July 2002 is an innovative element that reinforces the rule of law and the modern concept of State’s sovereignty,
15. The role of the United Nations and other international organizations, including regional organizations, is essential in establishing and strengthening the rule of law, provided that a participatory method is applied in involving all components of societies in crises (pre-conflict) or transition (post-conflict) to build State’s institutions and the justice system,

We, Members of Parliamentarians for Global Action agree as follows:

A) *As parliamentarians*, we commit ourselves to respect, promote and defend the rule of law in all its aspects and implications, including, but not limited to, fundamental principles such as

- (i) predictability and certainty in the application of the law,
- (ii) equality of all before the law,
- (iii) separation of powers,
- (iv) independence and autonomy of the judiciary,
- (v) supremacy of the law,
- (vi) accountability and the fight against impunity.

B) *As parliamentarians*, we commit ourselves to exercise the role of legislators in full respect of the basic principles of transparency, accountability, honesty and efficiency that must characterize the legislative process in each organized political community known as the State;

C) *As parliamentarians*, we affirm that governance based on the rule of law must be built on participatory methods and on local/national ownership of the legal system: in fact, “legitimacy” largely depends on the proper participation of local/national stakeholders in the process that creates laws. We therefore call upon international and regional organizations to be respectful of this approach and to devise best practices in involving local populations and know-how;

D) *As parliamentarians*, we shall make our best effort to enact legislation on key aspects for strengthening the rule of law, which we believe is integral not only to peace and security, but also to sustainable international development cooperation;

E) *As parliamentarians*, we are aware that it is essential to establish conditions of safety and public order in which institutions guaranteeing the rule of law can operate effectively, people can freely engage in political and other civic activities, and economic life can evolve: in this context we undertake to promote legislation establishing control mechanisms over the production and trade of arms, and criminalizing illegal trade and smuggling of armament;

F) *As parliamentarians*, we call upon governments and international institutions to enter into a permanent dialogue with legislators in so far as legislators can function as an “early-warning” mechanism for the prevention of conflict,

G) *As parliamentarians*, we wish to highlight the important role that *regional* organizations can play in defining and promoting common standards of rule of law, and in establishing governance mechanisms that implement the rule of law;

H) *As parliamentarians*, we welcome the forthcoming Report of the Secretary-General of the United Nations on “Justice and the Rule of Law: the Role of the UN”

In addition, we, Members of Parliamentarians for Global Action call upon:

D) The United Nations, in particular the Security Council, the General Assembly, and the Economic and Social Council, as appropriate; the special organizations and agencies within the UN system; the international financial institutions, regional arrangements, inter-parliamentary institutions and parliaments, to integrate into their discussions on the rule of law and justice, the following priorities:

- (i) developing ways and means for the UN and other aforementioned entities to better assist States, including legislators, in crises situations (conflict prevention) and in transition (post-conflict peace-building) in promoting and consolidating the rule of law, both in the short term and the long term,
- (ii) in particular, to consider establishing a department within the UN Secretariat dedicated to Justice and the Rule of Law, in order to accumulate the knowledge and capacity necessary to respond to specific post-conflict rule of law challenges, to better assist the Security Council in its relevant decision-making and, above all, to provide the UN system as a whole with an effective coordination mechanism,
- (iii) ensuring that strengthening an independent judiciary in the framework of separation powers and constitutional checks and balances will be pursued in all conflict-prevention and post-conflict peace-building and reconstruction strategies,
- (iv) ensuring that the process of reintegration of ex-irregular combatants in the armed forces and in the police is conducted in consultation with legislators, who play a key role in promoting training programmes for the armed forces and the police on the respect of human rights and international humanitarian law, as well as a clear chain of command and accountability that ensures civilian oversight on the military and judicial scrutiny on the police,
- (v) working with legislators to ensure that the principle of complementarity or subsidiarity between national justice systems and international jurisdiction is applied to effectively combat impunity for the most serious crimes of international concern, for which no amnesty is allowed under customary international law,
- (vi) ensuring that reconciliation measures and truth-telling mechanisms will be always respectful of the unalienable right to justice and redress of victims of human rights violations, especially when such violations amount to genocide, crimes against humanity or war crimes,
- (vii) assisting legislators in the essential effort to create or restore public confidence in the rule of law,
- (viii) assisting States in the creation or restoration and consolidation of the freedom of the press, under strict legal rules that will allow all the legitimate political components of a society (e.g. political parties or movements) to have access to the media according the principle of pluralism.

FIRST FIVE SIGNATORIES ON BEHALF OF THE PGA EXECUTIVE COMMITTEE:

Accra, May 11, 2004 _____ Hon. Kenneth Dzirasah (Ghana)

Brussels, May 11, 2004 _____ Sen. Alain Destexhe (Belgium)

Buenos Aires, May 12, 2004 _____ Sen. Marcelo Lopez Arias (Argentina)

Manila, May 12, 2004 _____ Ms. Loretta Ann Rosales MP (The Philippines)

Dakar, May 12, 2004 _____ Dep. Lamine Thiam (Senegal)

SIGNATORIES:

Washington, June 3, 2004 _____

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