

**FORUM:** Special Conference on Securing and Advancing Democracy

**QUESTION OF:** The role of an independent judiciary in maintaining checks and balances

**SUBMITTED BY:** Benin

**CO-SUBMITTERS:** Colombia, Dominican Republic, Sri Lanka, Uganda, Liberia, HRW, Portugal, Togo, Cameroon, Niger, Kyrgyzstan, Mali, Cambodia, ECA, Turkmenistan

SPECIAL CONFERENCE ON SECURING AND ADVANCING DEMOCRACY,

*Alarmed* by the little progress done to promote and resolve the question in hand,

*Reaffirming* the Universal Declaration of Human Rights which states that all people have the right to a fair trial, the access to justice, the right to equality before the law and right to recognition before the law,

*Recalling* the adoption of the Basic Principles on the Independence of the Judiciary of December 1985, the Universal Charter of the Judge of November 1999, the UN Basic Principles on the Role of Lawyers of September 1990 and the International Covenant on Civil and Political Rights of December 1966,

*Defining* an independent judiciary as an independent judicial system that is free from the control of any other government branches and private influences,

*Considers* checks and balances as a system of governance in which the government is divided into branches and each branch can limit or check the other branches which creates a balance between the separated powers,

*Examines* the possibility that some countries that are concerned with their sovereignty would want to engage into further treaties and agreements to protect their interests,

*Stressing* the importance of cooperating with NGOs and UN related organisations such as the International Association of Judges (IAJ) and the World Justice Project (WJP) to create a holistic system of checks and balances,

*Recalling* Article 1 of the UN Basic Principles on the Independence of the Judiciary which states that government and other institutions must respect the independence of the judiciary,

1. Suggests the creation of a system of courts and tribunals where the supreme court will serve above all others, all courts will act in accordance to the law of the state concerned as well as any other binding laws of any unions or agreements that the specific member is a part of, the judiciary will also strictly follow the Universal Declaration of Human Rights so that it remains in line with the basic principles and rights that are demanded internationally;
2. Advises to initiate a UN-supported operation called “Operation: Free-Law”, which will gather the major Non-Governmental Organizations (NGO’s) relating to this issue, such as the International Association of Judges (IAJ) and World Justice Project (WJP), in an effort to promote independent judiciaries all around the world and find methods to free the judicial systems of struggling member states, by:
  - a) gathering in a conference which will be held in the Hague every three months, with the attendance of UN officials who will be reporting the progress made during the conferences to the United Nations Secretary-General (UNSG), in order to:
    - i. ensure communication and transparency between organizations who make an effort to solve this issue
    - ii. discuss and analyse the methods these organizations use to solve this issue as well as reports made on the matter which contain information including but not limited to the overview of the case, the procedures for hearing the case, the rationale and legal basis of the judgment

- iii. delegations will present any improvements or successes of their independent judiciary
      - iv. increase cooperation in the exchange of information so that member states will be able to improve their independent judiciary
      - v. share a unified purpose of promoting and supporting judiciaries that are freed from external forces and building independent judiciaries
      - vi. discuss the possible negative outcomes of a member state that contains a completely independent judiciary system, including the possibility of the judges and people involved in the judiciary system being corrupted
      - vii. come up with new methods to solve the issue
    - b) getting in touch with member states who are making progress in building free judiciaries and analyzing their methods to get further insight on the matter
    - c) reaching out to member states who have judiciary systems that are thought to be under the heavy influence of external forces, in order to:
      - i. set realistic goals and establish guidelines for these member states
      - ii. discuss methods which are proven to be successful in other member states, as it was analyzed in sub-clause b
      - iii. if needed, integrate the methods which are discussed in sub-clause a
    - d) forming a new research organization, which will:
      - i. get in touch with member states for them to encourage reporting the process and rationales during its legal procedures and trials
      - ii. create a database for each member state, in which these reports will be recorded and open for public viewing
    - e) analyze the reports during the previously mentioned conference, and if there's a suspicion of these procedures being affected by an external force, getting in touch with the member state to improve the state of their judicial system
    - f) publish legal procedures, except for cases which can be considered as "confidential" by the government and be harmful for public viewing,
3. Urges all states to reinforce the measures put forth in the Basic Principles on the Independence of the Judiciary in order to solidify the independence of the body in ways such as but not limited to:
- a) all governments should allow the judiciary to act in accordance with the law, without influencing it, pressuring it, threatening it or restricting it in any way or form whatsoever and for any reason
  - b) any individual, group or organisation attempting to carry out the actions above will be held accountable in the court of law as governments should make these actions a criminal offense
  - c) all organisations including NGOs and governmental institutions will respect the independence of the body by solely observing and monitoring, but not interfering in its actions;
4. Proposes that UN officials train people who are going to part of the judiciary the officials will then leave so that the officials of the member state act on behalf of the country The officials will carry out actions such as but not limited to:
- a) the institution will create monthly reports of all the cases with a brief summary of the rationale behind every decision by placing at least two officials in every court who will closely monitor and create an outline of the activities of that court
  - b) every official will prepare his own reports so that they can be compared with the other official in that court, making sure that they are similar and thus creating an internal system of checks and balances
  - c) the officials from each court will then create an overview of all the positives and negatives which will be discussed in the conference mentioned above and then passed on to the judiciary which will act accordingly to improve. This will ensure that judicial proceedings are conducted fairly and that the rights of all parties are respected;

5. Encourages states to take anti-corruption measures to tackle judicial corruption such as but not limited to :
  - a) following up on the implementation of anti-corruption measures by publishing data regarding the effectiveness and benefits of these measures,
  - b) electing an Independent Attorney General, which will have the powers to investigate high government officials under probable cause in order to avoid corruption by high government officials,
  - c) ensure that judges of the most upper court such as the supreme court of a state has politically independent judges by:
    - i. undergoing extensive background checks into the court candidates by the civil society
    - ii. get approval from International observers delegated by the UN and/or other credible international bodies
  - d) keep track of and follow up on, the implementation of anti-corruption measures by making available data pertaining to the number and nature of alleged and proven cases of judicial corruption, in order to make a proper assessment of the phenomenon
  - e) creating an international court with members elected by member states dedicated to investigating and trying cases of corruption, with the ability to sentence cases of corruption and imprison people
  - f) creating a transparency program in each country that can enforce rules such as but not limited to:
    - i. forcing certain judges to write pieces detailing their decisions and thought processes in rulings
    - ii. creating a database for each country to keep opinions available to the public
    - iii. implementing a program such that judges and law experts can review and evaluate their colleagues and their decisions
  - g) implementing measures to strengthen the personal security of judges, in order to avoid forcefully induced rulings caused by the threatening of lives of judges/family by an external party such as:
    - i. increasing security within a court by delegating a special police force
    - ii. hiring a personal guard(s) in very extreme cases
  - h) ensuring the salary of a judge is representative of their responsibility and position in order to dissuade corruption for financial reasons,
  - i) informing people through social media campaigns and advertisements that:
    - i. corruption is a real issue threatening independent judiciaries and the integrity of the judicial system, which would undermine any attempt at democracy
    - ii. one of the best ways to combat corruption is transparency
    - iii. there are actions people can take to report corruption and what they entail;
6. Recommends raising people's awareness through a social media campaign, which will remind individuals about the importance of having independent judiciary systems and their legal rights during trial, through the means of:
  - a) social media websites
  - b) public Service Announcements (PSAs)
  - c) seminars
  - d) public speeches;
7. Encourages states to inform their population through the means stated in clause 6 to make sure everyone is aware of the competence of the judicial system and its nature, including but not limited to letting them know that:
  - a) transparency is the best way to combat corruption
  - b) there are actions people can take to report corruption and what they entail
  - c) people can report a case of corruption without fear of oppression

- d) an independent judiciary is the founding blocks of Human rights
- e) everyone has the right to a free trial under the United Nations Declaration of Human rights
- f) corruption is a real issue threatening independent judiciaries and the integrity of the judicial system, which would undermine any attempt at democracy.

8. Further recommends that data from the World Justice Project is used to ensure that the independence of the judiciary is maintained through means such as:
- a) Alerting nations that perform below a certain rank, that the independence of the judiciary in their country is threatened,
  - b) Distributing this data to relevant civil society organizations to ensure they can also use it to raise awareness about the judiciary.