



Paris, October 26, 2020

UNION INTERNATIONALE
DES HUISSIERS DE JUSTICE
ET OFFICIERS JUDICIAIRES
INTERNATIONAL ASSOCIATION
OF JUDICIAL OFFICERS

Directed to:

- His Excellency Gov. Marcos José Rocha dos Santos, Governor of the State of Rondônia;
- His Honorable Dr. Paulo Kiyochi Mori, Chief Justice of the State Court of Rondônia;
- His Excellency Dep. Laerte Gomes, Speaker of the House of Representatives of the State of Rondônia;
- His Excellency Dep. Adelino Follador, Chairman of the Commission of Constitution and Justice of the House of Representatives of the State of Rondônia.

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Honored Governor, Honored Chief Justice of the State Court of Rondônia, Honored Speaker of the House of Representatives of the State of Rondônia, Honored Chairman of the Commission of Constitution and Justice of the House of Representatives of the State of Rondônia;

Being the representative of UIHJ (International Union of Judicial Officers) an organization with 93-member associations of judicial officers from 90 countries, which is actually in terms of member countries one of the largest associations of legal professionals in the world, we consider any concern that arises from UIHJ member countries. For a number of years already, the FENASSOJAF is a respected member of our organization. FENASSOJAF, through its President, expressed its concerns regarding the profession of judicial officers in the State of Rondônia.

Trust in the enforcement system among economic operators is essential. A poorly functioning enforcement system hampers economic activities and creates legal uncertainty for investors and citizens alike. The economic aspects of a good enforcement system should not be underestimated. For economic growth a vibrant and competitive business sector is necessary. When those businesses are not able to collect their outstanding debts, a number of those businesses are forced into bankruptcy, and others must lay off employees or pass on costs to the consumers. Besides foreign investors will not likely invest in such a country. An inefficient system of enforcement has a detrimental impact on the country's economy.

Foremost the positive developments in Rondônia are the result of the responsible attitude of the colleagues towards their profession.

UIHJ aims to assist or advise its member-countries in the legal reform of their enforcement system and the implementation of legal changes in practice. In that respect, our contribution is based on the international standards and principles on enforcement as they can be found in documents such as the Rec 17/2003 of the Council of Europe and the 2009 Guidelines on enforcement of CEPEJ (the European Commission for the Efficiency of Justice). Further we use the overview of international standards and principles as collected by the UIHJ Scientific Council in the World Code on Enforcement.

*Membre consultatif du Conseil économique
et social de l'ONU.*

*Consultative Member of the Economic Council
of the United Nations Organisation*

*Membre observateur de la CNUDCI
Observer Member of UNCITRAL*

*Partenaire du Forum mondial sur le droit,
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Partner of the Global Forum on Law,
Justice and Development*

*Membre observateur à la Conférence de La Haye
de droit international privé
Observer Member at the Hague Conference
on Private International Law*

*Membre observateur permanent de la CEPEJ
du Conseil de l'Europe
Permanent Observer Member of the CEPEJ
of the Council of Europe*

*Membre fondateur de l'Institut de droit européen
(ELI)
Founding Member of the European Law Institute*

*Partenaire technique de l'OHADA
Technical Partner of the OHADA*

*Membre observateur auprès de l'UEMOA
Observer Member at the UEMOA*

We are closely following the developments related to the profession of judicial officers in the State of Rondônia, and in particular the last months, when we were informed about the State Bill 83/2020 (resolution 157/2020) that aims to delegate the competence of the communication of judicial acts from the judicial officers to the notaries.

Communication with parties is an inevitable part of the profession of the judicial officer. Due notification of parties is a necessary element of a fair trial and thus of enforcement. In all UIHJ member countries it is common that such notification is carried out by the judicial officer. Indeed, such notification is a basic precondition for the overall functioning of an enforcement system, and thus of the overall functioning of the justice system.

This is also confirmed by international standards. For example, the Recommendations of the Council of Europe, published based on the case-law of the European Court on Human Rights, explicitly indicate that enforcement procedures must “*d. provide for the most effective and appropriate means of serving documents (for example, personal service by enforcement agents, electronic means, post)*” (guiding principle III-2-d).

A similar remark is made in the CEPEJ Guidelines on enforcement of the Council of Europe (47 member countries):

19. Notification in all cases should encourage the defendant to comply with the court order

voluntarily and include a warning that in case of non-compliance enforcement measures could be used, including, if appropriate, further costs may be applied.

20. It should be possible to entrust enforcement agents with the service of notices. To this end, member states should determine conditions for a secure method for the service of documents.

21. Where notices generate rights or obligations, it is the duty of the enforcement agent to ensure that the parties are served with adequate notice in a timely manner.

22. Where the defendant's assets are to be sold at a public auction following their seizure, potential buyers should be notified in advance by efficient means of communication, guaranteeing rapid dissemination of information to the broadest possible public, while safeguarding the defendant's privacy. Member states should propose minimum dissemination standards taking account of the nature of assets, their estimated value and the date of sale.

Also, in Africa, the Uniform Act organizing Simplified Recovery Procedures and Measures of Execution of Ohada of 10 April 1998 specifies the procedures for informing the person who is the object of an enforcement procedure. Article 35 provides that “*Any person who, on the occasion of a measure to ensure the execution or protection of a claim, avails himself of a document, shall be required to notify such document or give a copy thereof, except where it has been notified before, unless otherwise provided for in this Uniform Act*”. In the special rules for seizure for sale, it is provided that the judicial officer or execution must inform the debtor. For example, “*Where the debtor is not present during the seizure operations, a copy of the report of the seizure shall be served to him and he shall be given a period of eight days to disclose to the bailiff or process-server the existence of any previous seizure and furnish him with the report thereof*” (Article 102).

In 2015, UIHJ published its international principles on enforcement (The Global Code of Enforcement). These have been widely accepted by all organizations, including the World Bank.

Article 8 of these principles also explicitly refer to the notification of documents by the judicial officer: *“Every measure of enforcement must on pain of nullity be preceded by the service or notification of the enforceable title on the debtor in accordance with the procedures provided for by national law. Every act of enforcement must be brought to the attention of the debtor.”*

UIHJ further has long lasting relationships with international organizations such as the World Bank, UNCITRAL, the International Monetary Fund, the European Commission and the Hague Conference on Private International Law. We are an active member of these organizations and have participated and cooperated with these organizations in legal reform projects in the area of enforcement in numerous countries. Within such legal reforms a major point of attention has always been a well-functioning system of notification of documents.

In that respect we attach the position paper of UIHJ as it was recently published and has been drafted in close cooperation with the distinguished members of the Scientific Council of UIHJ, which is without any doubt, the key scientific exposure of our association. It is this Scientific Council, with professors at law from universities from all over the world, that also drafted the principles on enforcement in the World Code on Enforcement.

The UIHJ considers that the communication with parties (i.e. the notification of documents) should be performed by the judicial officer. Such notification is an inseparable whole with civil proceedings and enforcement! Only the combination of such activities promotes an efficient justice system.

Regarding the current debate UIHJ expresses its concerns on the adoption of State Bill 83/2020 and is at your full disposal for any further assistance. UIHJ can provide the best international practices in this regard.

Respectfully



Marc Schmitz
President of UIHJ