

**Fifth Anniversary of the Association Ouest-Africaine des Hautes Juridictions
Francophones [West African Association of Francophone Supreme Courts]
(AOA-HJF)**

Cotonou Conference, January 13 through 15, 2004

DECLARATION OF COTONOU of January 15, 2004

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DECLARATION

Preamble

Following its primary objective of legal and judicial integration towards the strengthening of legal and judicial certainty within the African francophone area, the AOA-HJF, in the context of the celebration of its 5th anniversary, organized in the Palais des Congrès of Cotonou, on January 13, 14 and 15, 2004 an international conference on: The Rule of Law and the Separation of Powers.

The objectives of this conference were to:

1. Promote a deeper understanding of the complementary roles that all three branches of government play in a constitutional democracy governed by the Rule of Law;
2. Identify and categorize the main obstacles to the independence of the judiciary and the shortfalls of a vibrant democratic life based on the Rule of Law and the separation of powers;
3. Identify common solution strategies and mechanisms to improve the system; and,
4. Promote a systematized process to monitor and report on progress related to the implementation of priority reforms to strengthen the Rule of Law, the separation of powers and judicial independence and integrity.

The participants,

From the African francophone area, France, the USA and Canada, belonging to the judiciary, academia, parliaments, the executive and civil society,

Reaffirming their commitment to the principles recognized in the Declarations of Cotonou of September 14, 1991 and December 6, 2000, the Declaration of Cairo of November 1, 1995, the Declaration of Bamako of November 3, 2000 and the Declaration of Abuja of February 7, 2003 enshrining the primacy of the Law, the separation of powers and the independence of the judiciary for the strengthening of democracy and the consolidation of the Rule of Law,

Conscious of the insufficiency of the progress in the implementation of the actions derived from the Declaration of Bamako in the implementation of the commitments and recommendations of the aforementioned Declaration;

Reaffirming their commitment to the Rule of Law understood as:

- Representing the submission of the governing and the governed to a Constitution focused on the human being, the individual as legal subject;
- A State essentially based on the recognition and respect of human dignity and freedom implying that Man is the primary end of society; and
- A daily affirmation of the rule of the Law by the judge;

Reaffirming that the Rule of Law, understood as described above, implies the separation of the executive, legislative and judicial powers;

Conscious that:

- Rule of Law and democracy are inseparable;
- Democracy and the Rule of Law prohibit the confusion of powers;
- The separation of powers requires the guarantee of the institutional independence of the judiciary and the personal independence of the judge;
- The separation of powers implies a balance and a consultation between powers; and,
- Justice, the centerpiece of the Rule of Law, must have impartiality, integrity and efficiency;

The participants,

Noting the persistence of:

- The interference of other constitutional powers with jurisdictional operations despite the recognition of the principle of separation of powers in the Constitutions of the States of which the courts are members of the AOA-HJF;
- Sociological burdens which hinder the work of the judge;
- The internal malfunctioning of the judiciary;
- The poor material work conditions of the judge; and,
- The resistance to the implementation of the principle of the security of tenure of the judge;

Intending to see the development within the AOA-HJF zone of the legal and judicial roots of sustainable development;

Convinced that the separation of powers and the establishment of the genuine Rule of Law are fundamental conditions thereof;

Convinced that the strengthening of the independence of the judiciary is a necessary condition of the consolidation of democracy and the Rule of Law;

Intending to see the development of a collaborative synergy among powers;

Also **convinced** that this independence requires the development of regional institutions, in particular regional courts;

COMMITMENTS

The participants commit to working towards:

1. A collaboration between the executive, legislative and judicial powers, while respecting the scope of each power;

2. Judicial independence and efficiency; to that effect, they will seek to:
 - Deepen the study of the independence of prosecutors;
 - Establish exchange networks for legal and judicial information;
 - Work resolutely, within the AOA-HJF zone, towards administrative autonomy and the increase of the budget allocated to justice;
 - Work resolutely towards the adoption and respect of rules likely to guarantee to the Conseil supérieur de la Magistrature [Judicial Council] its autonomy and a composition likely to guarantee the effective independence of judges;
 - Work resolutely towards the adoption and respect of rules of ethics and professional conduct to preserve the integrity and dignity of judges;
 - Work resolutely towards the adoption and respect of rules of ethics and professional conduct to preserve the integrity and dignity of the other actors of the justice sector;
 - Work towards the improvement and rationalization of initial and continuing training of judges and judicial staff in contributing to the influence of the Ecole Régionale Supérieure de la Magistrature (ERSUMA), of the Centre International de Formation en Afrique des Avocats Francophones (CIFAF) and of national training schools;
 - Enable citizen access to the Law and justice;
 - Sensitize the public authorities to the need to ensure the effective enforcement of court decisions;
3. The strengthening of the capacity of all Democratic and Rule of Law Institutions: Parliaments, Oversight, Regulatory and Mediation Institutions, Human Rights Protection Entities;
4. The popularization of a democratic culture through the education and training of citizens and all stakeholders;
5. The fight against corruption, with a special focus at the national level on the respect of the separation of powers; and at the regional and international level on the implementation of the relevant legal instruments and the guarantees enshrined therein;
6. The establishment of a monitoring and assessment mechanism for the actions recommended by this Declaration, notably, in support of both the peer evaluation mechanisms mandated by NEPAD, and the francophone framework.

RECOMMENDATIONS

The participants recommend:

1. **To Civil Society**
 - A more active contribution to safeguarding the separation of powers;
 - A more active contribution to strengthening the independence of the judiciary and of the judge;

2. To the Press

That the public authorities of the AOA-HJF zone work towards:

- The respect of the freedom of the press;
- The guarantee of pluralism in the information sector;
- The improvement of the professional training of journalists;
- The adoption and respect of a law on the freedom of the press defining the parameters of that freedom and associated legal framework;

3. To the AOA-HJF

- To take all the necessary measures to implement this Declaration within the framework of the Association's Plan d'Action Triennal 2004-2006, adopted by its general assembly;
- To undertake all the studies, including those related to the lessons learned from the creation of regional courts to assess their role in the emergence of a justice responsive to the issues of independence and of the guarantee of the separation of powers; and,
- To dedicate itself to the implementation of these recommendations, and to the harmonization of relevant legal instruments and promotion of best practices.

Cotonou, January 15, 2004

** Unofficial IFES translation from the original French document.*