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Body, Health and Modernity in the Prism of Law in Africa

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Report

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Body, Health and Modernity in the Prism of Law in Africa

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Themes and Objectives

The modernisation of societies is accompanied by profound changes in perceptions and practices of the human body, especially with regard to health. Such changes are of special concern to the legal system, too. According to the Gabonese lawyer Pambo Tchivounda, "The jurisdictional era follows the sociologic one". Despite the common quotation of this token, its lack of relevance appears as soon as we try to understand how the law refers to body and health in Africa. It can be regarded as one of the main aspects of the African jurisdictional systems that they appear to be unable to realize what could be described as synthesis between tradition and modernity. Differing from (though not opposed to) the recent anthropological reconstruction of 'African modernity's' the term modernity would here primarily refer to those changes and institutions that are most obvious imports from Europe and North America since colonial times and are often called by this or equivalent words in local language use, too. In this context, the term modernity especially concerns biomedicine and written law including the resulting formalized social relations – without denying that even here considerably adaptation, hybridization, creolization, vernacularization and transformation has already taken place.

To evoke body, health and modernity through the prism of law means focusing on both concepts of (1) limits and of (2) standards.

- (1) The limit is above all that of the body. If it is indeed a component of personality, where does it end, and to what extent can (in a descriptive and in a normative sense) it be subjected to violence or force respectively? Competing and changing views of the person in all societies render these issues a source of continuing debate.
- (2) The second bundle of questions concern the standard of law that governs not only the body but also its uses and treatment, especially with regard to its health, in a context of constant changes. What levels and means of protecting and promoting the body and its health are possible and necessary?

From the wide range of possible topics concerning these relationships between different views of the body and resulting legal policies the seminar focussed on issues of penal law and social policy. One kind of issues concerned the questions what precisely it is that the judicial system has to protect and against which kinds of infringement it has to do this. The other kind of issues dealt with the role of the social system, both in the prevention of damages to health by

public health and in the care of the sick by the plurality of health care providers and systems of solidarity.

If the necessary synthesis between 'tradition' and 'modernity' in these issues has not been achieved and the notions of what constitutes the modern and what the traditional are not specified within these discourses questioning the body's limits and the problem of standard are certainly matters transcending any single discipline. Thus it could not be monopolized by lawyers or even solely by African researchers. Only from a plurality of disciplinary knowledge (sociology, law, anthropology, medicine, history, philosophy, economics, and so on), and cultural experiences solutions could be envisaged allowing new rules of effective and efficient law at the same time. Yet the existing discourses in these disciplines are, especially in African countries, notorious for a high degree of self-sufficiency. A legal system, however, largely modelled after the previous European colonial power, human sciences and humanities following ideas of 'value-free' investigation and a medicine blind to its social and political implications cannot claim to be as relevant to the African situation as they could and should.

Thus the main objective of the workshop was to apply experiences and theories from various areas to the actual questions, thus discussing solutions for issues that arise in Africa. The discourse on the re-evaluation of African cultures ('African renaissance') that thrived for about three decades highlights obvious contradictions in laws. How is it possible to regard as sacred all that is African and to continue condemning much of it at the same time by repeating the paradigms inherited from the period of colonial rule? It is therefore necessary to go beyond the mere aspect of repression dominating today in order to understand this issue more widely. Violations of the body do not arise solely from indigenous beliefs, they are problems of both traditional and modern institutions. At a time when technological advances and developments in medicine lead to profound changes, how can the body's defence be organized in Africa, in environments where material contingencies often take precedence over the ethical or legal requirements?

The relationship between body and health is highly relevant when one approaches this issue from the second perspective, that of public policy. Health and body then drive to the shores of policies of access to prevention and to care. Moreover, one raises today an increasingly marked requirement in favour of a right to a decent minimum as regards health. At this level there is again the question of the definition of the terms. What body is concerned by care? What health are we talking about at a time when this concept, as e.g. propagated by the WHO, covers a particularly wide range from food security to eradication of diseases? Despite constant proclamations of an inclusive notion, it must be noted that these issues are considered from only one angle in most African states. These are often the legal categories of former colonizers. The argument regularly highlighted is the impossibility of integrating indigenous categories in a modern system. How are health care systems built elsewhere regarding access to care? Is the rationality of modern medicine the only one to inform the social care of health? These questions are particularly relevant as there is a gap between social fact and legal standard in this area: The the promotion of traditional medicine does not translate into concrete legislation except for a few notable exceptions. We have to dwell on them in order to see if they can be "exported". In other continents, the same questions arise. How then can we successfully integrate these medicines in modern systems knowing that it is often financial contingencies that constitute an obstacle to the different initiatives? Thus health policy is not only a matter of regulation but also of financing. The question of general health care coverage becomes part of the question of legal standards on 'body, health and modernity'. What ways of organizing solidarity are best suited to fulfill this requirement under the conditions of African states at the given moment and in the future? The existing

models of health financing were thus considered from a legal and social sciences point of view – in addition to their dominating economic and administrative discussion.

Methodology and Results

The workshop was first of all a platform for considering concrete situations and proposing solutions to be tried on the continent. Therefore it went beyond the usual purely academic setting of the working sessions. In order to reflect on questions which are of real actuality in several African countries and to open Point Sud for Malian institutions and not just individual researchers, working sessions had not been confined to the institute's building, but took place in the premises of Malian institutions. This opened new chances for meeting and exchange.

Thus at the opening session in his institute, the director of the Institut national de formation des magistrats (INFJ), M. Oumarou Bocar, could welcome such distinguished guests as the professors of law Sylvie Grunwald from the University of Nantes and Estevao Mallet from the University of Sao Paulo. In their later lectures they presented lucid accounts of the developments in French criminal law and Brazilian labour legislation.

The importance of the workshop was highlighted by the fact that the highest institution of the judicial system in Mali, the Supreme Court with its president M. Nouhoun Tapili, the presidents of its different chambers and its Secretary General, received the participants in the Great Session Hall. The president emphasised that the workshop's focus is on the central issue of his institution's task as the first article of the Malian fundamental law guarantees the inviolability of the human person. Further exchange between the worlds of researchers and the practitioners of law would be necessary which was already conducted in a vivid discussion after the introduction.

As intended, the workshop brought academics from several disciplines in Africa, Europe, North and South America together with practitioners, educators and trainers from the fields of law and medicine. By taking place in a variety of institutional settings it did not only open up the public familiarity with Point Sud but demonstrated the different perspectives on legislation, jurisdiction and care in matters of the body and its health.

(a) Legal aspects:

The broad range of legal aspects were specially highlighted on the first, the third and the last day of the workshop thus accompanying the general discussion by a repeated reminder of the difficulties to have the desired state of affaires realized by law.

During the opening session and the visits to the Supreme Court and the Faculty of Law the workshop discussed possible cultural and social particularities in African countries that affect the application of a Eurocentric criminal law inherited from the colonial past. Body protection is traditionally a matter of criminal law. A prominent feature of criminal law in Africa and its protection of the body is the condemnation of social phenomena known under such names as witchcraft or fetishism, even though the legislator has been unable to define these offences. Therefore issues of magical causation of disease, concepts of preventing disease by female genital mutilation/excision and some traditional justifications for rape, place all constitute major challenges to law, in legislation, jurisdiction and administration.

Another set of legal questions common for countries in Sub-Saharan Africa are less caused by cultural differences but by the economic situation. Food hygiene and security under the conditions of production and trade in Africa or safety at the work place are largely neglected in situations of scarcity, both of finances and of jobs.

The various restrictions to a full application of the official law in all the circumstances mentioned were analysed: broad ignorance or lacking acceptance of legal prohibitions,

shortage of staff to enforce the law, low productivity not allowing expensive mechanisms of protection.

(b) Sociological and theoretical aspects:

The session on concepts of the body and the person in various cultural contexts moved the question of protection against all forms of discrimination beyond mainly national contexts. The quest for special recognition of vulnerable groups refers to several aspects of human life: its time span (regarding the early stages that are targeted in the new bioeconomy as the recent concept following bio-power), the colour of the skin (visible in the disadvantages of black citizens in equal health and access to health care), common stereotyping (as in the public representation of connections between HIV/AIDS and sexual practices) or in exclusive language (as with the medical expert confronted with popular ways of expressing illness experiences and treatment preferences). Possible solutions for an adequate protection were discussed in comparison with the legislation in North America, Brazil, France and Germany.

(c) Medical aspects

Medical pluralism is a concept that has been far more elaborated than legal or judicial pluralism. It is found in phenomena of day to day encounters in the university hospital as well as of innovative therapy in psychiatry, of the market for medicines and of national or international health policies. These four quite different settings were included in the workshop on day four and five. Professors of surgery, gynaecology and psychiatry shared their experiences, considerations and practical approaches with the participants.

In the Hospital Gabriel Touré, in front of a large audience of medical and nursing staff, the director of the hospital and his colleagues impressed by their reflections on the experience and the necessity of humanity in medicine which threatens to disappear in Western countries due to certain consequences of biomedicine.

A practical example for a more human approach to illness was given by the visit of the Hôpital du Point G under the directions of Professor Baba Koumaré. The participants observed and discussed a healing session by kotéba, a synthesis between local forms of conflict management and insights of psychotherapy which respects the social environment of the patient.

Sustainability of the Event

Certainly the main gain of the workshops was for individuals and institutions in Mali.

(a) Law

As the main focus of the workshop had been law the future judges, the institutions of jurisdiction and of jurisprudence were the ones who profited most. A major drawback for the faculty of law has been that due to the absence of their regular students (teaching had not been taken up again) they could not make use of the foreign experts' presence as much as it had been hoped for.

(b) Health care institutions

The university hospital with its medical and nursing staff could compare its experiences and approaches in the field of cultural diversity with those of other regions in the world. Different legislations and types of research on so called traditional or alternative medicine were described, analysed and discussed.

(c) Malian students in social sciences

The presentation and detailed discussion of students' research projects in the afternoon offered the rare opportunity to get in touch with international experts and their ideas on issues, concepts and methodologies. Professors Lafontaine, Maestrutti and Tonda as well as Doctors Mabika and Mba devoted their time to the exemplary analysis of several research proposals. A major restraint for the workshop's importance for the whole of Africa was the lack of experts from Anglophone East Africa. Despite the efforts to recruit participants from this region, specialised colleagues with a sufficient working knowledge of French that was needed for the interaction with the local institutions in Mali could not be identified.

Participants

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