

Refounding Cultural Heritage Law in Sub-Saharan Africa

Collective Work Project

CALL FOR CONTRIBUTIONS

I. ORGANISERS

School of African Heritage (EPA – Porto-Novo) with support from UNESCO's Regional Office for West Africa

II. SCIENTIFIC RESPONSIBILITY

Vincent Négri (Institute of Social Sciences in Politics / ISP – ENS Paris-Saclay)

III. ARGUMENTS

In 1993, following on from the symposium "*What museums for Africa? Heritage in the future*"¹, Alpha Oumar Konaré wrote :

The new museum is unlikely to be anything like what exists in the West. Indeed, how can we imagine that in the years to come - when economic conditions in our countries are likely to deteriorate even further - we will be able to conform to models that are financially impossible to support independently? And how can we fail to imagine a new economy for the African museum, in line with the resources of the population? It's with the elites of our villages, our rural communities, who have created our cultural assets and traditions, that we must find the solution.²

Konaré's argument is based on the model inherited from the colonial period, which has sometimes - often - persisted beyond independence, and the impotence - whether total or partial - of this standard to grasp or fit into the economic, social or cultural realities of African societies. Can we reproduce this observation for law?

Twenty years before Konaré, Guy Adjété Kouassigan wrote in the introduction to his book *Quelle est ma loi ?* :

The accession of French-speaking Black African countries to international sovereignty has brought about far-reaching changes, the extent of which is difficult to gauge at present. But do these changes affect the law to such an extent as to give it a new orientation and new foundations?³

Underlying the question is the evidence of a negative answer, in the period in which Kouassigan formulated this observation. Since then, normative pluralism has undoubtedly qualified the assertion, although it would be hasty to draw a general conclusion on the mixed nature of legal orders and, even more so, on the prevalence of traditional laws.

¹ *What museums for Africa? Heritage in the future*, Proceedings of the Encounters, Benin, Ghana, Togo, November 18-23, 1991, International Council of Museums, 1992.

² *Le Monde* du 2 février 1993. [unofficial translation]

³ Guy A. Kouassigan, *Quelle est ma loi ? Tradition et modernisme dans le droit privé de la famille en Afrique noire francophone*, éditions Pedone, 1974, p. 13. [unofficial translation]

Cultural heritage law is no exception. All too often, heritage policies still borrow from European conceptions of heritage conservation, based on more or less fixed archetypes, such as the notion of historic monument. On the one hand, many heritage protection laws still bear the imprint of a law inherited from the colonial period or, in other words, of a heritage law etched by history⁴; on the other hand, legislation, albeit recent, still borrows from the legal concepts and vocabulary of European heritage laws. The phenomenon of imitating foreign models, whether described as grafting, borrowing or mimicry, is still at work.

What remains to be explored is how to build a heritage law that is in touch with the realities - tangible and intangible, cultural and social, political and economic - of African societies and the heritage figures associated with them. This means rethinking, through the law, the very notion of cultural heritage and the legal categories that go with it, in order to overcome “the dominance of the Western saying and definition”.⁵

In order to rethink heritage law in sub-Saharan Africa, we need to move away from a positivist vision and, consequently, from inward-looking thinking. Beyond legal concepts and notions, the aim is to re-interrogate the roles and functions of actors and institutions, and to re-inscribe their positions and modes of intervention in the processes of determining, protecting and conserving heritage. Probing the places where norms are produced - sources of heritage dynamics - and the political and/or cultural spaces where they are deployed and assessing the performativity of these normativities; such is the watchword of this collective work to (re)found cultural heritage law in sub-Saharan Africa. Such a perspective calls for an examination of the modes of heritage protection that cultural heritage protection legislation currently configures, in light of the principles that infuse the standards of the African Union - the Cultural Charter of Africa (1976) and the Charter for African Cultural Renaissance (2006) - and those of the African Regional Intellectual Property Organization (ARIPO), such as the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010).

This cultural heritage law is also at the crossroads of other laws. In the international sphere, the UNESCO conventions produce the matrix obligations of an international cultural order, which national legislation must support and implement in order to establish a collective responsibility towards shared heritages. But other issues have also arisen around the principle of social integration of heritage; laws about culture, stemming from both United Nations texts and the African Charter on Human and Peoples’ Rights, are producing new rights of access to culture and arming claims for rights to heritage.

In the field of national legislation, the perimeter of heritage law now extends beyond the specific laws that ensure the identification, protection and conservation of a national heritage. This classical conception, which limits heritage law to the heritage protection, is now being challenged by the dynamics of heritage law as expressed in other laws - urban planning law, environmental law, land law, etc. - and by the emergence of new actors, such as communities: heritage law brings together these new forms of normativities and titularities. Under these influences, new approaches to determining what constitutes heritage are emerging, transcending the traditional divide between tangible and intangible heritage, and tending to reorganize the classic processes of qualifying and recognizing heritage.

⁴ Vincent Négri, « La conservation du patrimoine africain au péril du droit », in A. Mayor, V. Négri et E. Huysecom (dir.), *African Memory in Danger – Mémoire africaine en péril*, Journal of African Archaeology, Monograph Series, vol. 11, 2015, p. 100.

⁵ Barbara Cassin, Danièle Wozny (dir.), *Les intraduisibles du patrimoine en Afrique subsaharienne*, éditions Demopolis, 2014, p. 17.

IV. MAIN AXES

To shed light on these issues, the work will be structured around five themes:

- **A history of heritage policies and laws in sub-Saharan Africa**

The aim is to situate heritage policies and laws within a long history, from the colonial period to the present day, highlighting the systems of thought, political aims and legal dynamics that may have varied over time. The aim is to lay the foundations for a history of heritage law in Africa.

- **(Re)thinking heritage law in national legal systems today**

National legislation governing the protection and conservation of heritage is imbued with exogenous notions and concepts, in part borrowed from European law. Contributions will explore ways of rewriting cultural heritage law to reflect the economic, social and cultural realities of countries and populations. The aim will also be to examine other ways of thinking about the protection of cultural heritage through the law, based in particular on so-called customary or traditional codes, and thus to pose and test the conditions and principles of an opening towards normative pluralism.

- **From the heritage law to the right to heritage. Lessons from laws about culture and the affirmation of culture as a global public good**

The classic conception of heritage law as a vertical relationship between the State and the people is now being counterbalanced by demands from society and communities to reformulate this approach, giving priority to their right to heritage. This calls into question the place of culture laws and the prevalence of cultural diversity in the legal and political expressions of cultural heritage protection systems. It is also the matrix function of the principle of participation that is taking root in national laws, enhancing the rights of populations to take an active part in the formulation and implementation of decisions that concern them directly or by incidence.

- **Scope and limits of the reception of international standards relating to culture and heritage in national laws**

National laws are the receptacle for the obligations that States undertake when they accede to or ratify the UNESCO Conventions of 1970 (prevention of illicit trafficking and return of cultural property), 1972 (protection of the world heritage of humanity), 2001 (protection of underwater cultural heritage) and 2003 (safeguarding of intangible cultural heritage), and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. On another level, the texts of the African Union (charters of 1976 and 2006) and other international organizations, notably in the fields of intellectual property and human rights, lay down principles that interact with national legal systems dedicated to the protection of cultural heritage. The aim of this section is to analyze the multiple interactions resulting from the implementation of universal international norms or those stemming from African regional law.

- **Building an African law to return cultural property**

The publication of the Sarr-Savoy report on the restitution of African heritage reactivated the issue of restitutions, which had already been present in the United Nations since 1973 and revitalized by UNESCO since 1978. In West Africa, the Economic Community of West

African States (ECOWAS) has adopted an action plan on restitutions for 2019, setting out principles and a common platform for its member states. National legislation must now take these issues into account and, without doubt, formulate a new law for the return of cultural property.

Contributions should fall within one of these areas, or at the crossroads of two areas. Two types of proposals are expected: either an analysis or a critical and/or theoretical reflection that contributes to the construction of a theory of cultural heritage law in sub-Saharan Africa; or a case study based on one of the five proposed axes (the contribution should not be descriptive; the case study should be the starting point or illustration of an analytical and prospective reflection).

V. INDICATIVE BIBLIOGRAPHY:

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Guy Adjété Kouassigan, *Quelle est ma loi ? Tradition et modernisme dans le droit privé de la famille en Afrique noire francophone*, éd. Pedone, 1974.

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Carlos Lopes, *L'Afrique est l'avenir du monde. Repenser le développement*, éd. du Seuil, Paris, 2021.

Alain Mabanckou (dir.), *Penser et écrire l'Afrique aujourd'hui*, éd. du Seuil, Paris, 2017.

Daniel Etounga Manguelle, *L'Afrique a-t-elle besoin d'un programme d'ajustement culturel*, Editions Nouvelles du Sud, Paris, 1992.

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MAKE A CONTRIBUTION

I. Profiles of targeted researchers

Preference will be given to applications from young researchers from one of the 15 West African countries (Benin, Burkina-Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra-Leone, Togo).

This focus on nationals from these fifteen countries does not rule out other African candidates; it merely indicates that, if choices have to be made, priority will be given to young researchers from West Africa.

In all cases, qualified female applications are strongly encouraged. With equal skills and experience, these will be preferred.

II. Disciplines concerned

Contributions from the field of law are welcome, although contributions from other disciplines (political science, history, anthropology of laws, philosophy or sociology of laws, political geography) may also be included in the book, provided they shed light on or are related to the book's themes.

III. Working languages

Proposals for contributions can be written in either English or French.

IV. Submission and selection of contributions

Two phases :

1. In the first phase, authors will send a summary of their contribution. The abstract should not exceed three pages (8,000 characters including spaces). In addition, a selective bibliography and a CV, each not exceeding one page, should be included. The abstract, selective bibliography and CV should be sent to the following address: droitdupatrimoine@epa-prema.net
2. At the end of the first phase, the selected authors will be invited to produce their text (between 25,000 and 35,000 characters, including spaces), which will be published. All the selected authors will also be invited to take part in a coordination and discussion meeting to improve the links between the contributions, identify any additions or adjustments to be made, and set the final structure of the work. This meeting will be held over two days at the School of African Heritage in Porto-Novo (Benin) in the first quarter of 2025.

V. Timeline

- Receipt of abstracts (with selective bibliography and CV) by **November 10th, 2024** (deadline: proposals received after this date will not be considered). A reply will be sent in the first half of November.
- Authors whose proposals have been accepted are required to submit a finalized version of the text not later than **February 7th, 2025**.

This initiative is also supported by:



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