Workshop 2 - Report

JAGA

Getting out the best of tradition and modernity through legal pluralism recognition

1- Stakes and challenges

<u>**Main stake**</u> : How to conceive and implement legitimate and efficient governance methods enabling development in a normative institutional pluralism environment?

<u>**Stake 1**</u> **: Fostering African states development**:

> Building useful infrastructures, realizing huge investments and a balanced national territory planning or ensuring food security and fighting against poverty and unemployment to realize sustainable development do require that state actors and non state actors reach a shared understanding and control over the land tenure issue. Unfortunately this land tenure issue is currently "suffering" from a legal and institutional pluralism that is mismanaged.

<u>**Stake 2**</u> **: Fostering in African societies social peace and genuine political stability:**

➢ Regarding family matters for example, taking in account legitimate methods of family conflicts resolution will foster peaceful family conflicts and litigations.

➢ Consideration of diversity or traditional regulation modes will ensure better power regulation, especially political power

➢ Taking into account traditional regulation modes will foster better access to justice and law

➢ Taking into consideration positive aspects of both traditional and modern regulation modes will enhance better protection rights for social categories such as women and children

➢ Legitimate institutions and norms implementation will foster better citizenry institutionalization, tolerance, diversity acceptance and enable to build unity with respect to the right to be different

➢ Better prepare African youth to become a constructive actor in a dynamic and plural world

Challenges:

➢ Taking into account African societies specificities and realities coping with international standards

➢ reconcile different perceptions of concepts roles and functions such as power, land, family and justice

➢ avoid ethnic, regional particularisms instrumentalization that could harm political stability and social peace

➢ adapt regulation modes by taking into account societies fast evolutions

2- Patterns and evolutions:

➢ Persistency of phase shift between official systems and social practices

➢ contemporary world characterized by societies fast evolution in matters such as demography, migrations, urbanization, education, literacy training and globalization

➢ Official systems lacking capacity to regulate all types of conflicts, leading individuals to resort to traditional regulation modes

➢ On the land tenure domain : land grabbing for speculative and investment purposes

➢ Patterns to legislate more for responding to international demand and for imitating than taking national realities into account

➢ Global competition between judiciary systems(example, common law versus romano-germanic heritage system)

➢ in some cases weakening of traditional regulation structures without any control over its consequences (example : weakening of religious structures leading to integrism)

➢ Adoption of regional norms of constitutional convergence and community law development

3- Advantages:

➢ Existence of shared cultural heritage among most of countries, despite situations diversity, could serve as bases for common legislation.

➤ There is an emerging awareness and national and international willingness to search for efficient problem solving regarding issues such as land tenure, mining resources that can enable to integrate diversity, legitimacy and efficiency concerns in new norms and institutions created.

➤ The existence of two parliamentary chambers in most African countries is providing the opportunity to take into consideration diversity in political institutions.

➤ Efficient ancient regulation modes cannot be integrated into modern systems but their function can be considered.

4- Strategic objectives and structuring actions

➤ **Strategic objective 1** : Contributing to traditional regulation modes and institutions knowledge and recognition.

  ☐ actions related to this strategic objective:

  • Investing in interdisciplinary research projects focusing on traditional regulation modes and institutions.

  • Integrating in education systems curriculum related to traditional regulation modes and institutions.

  • Utilizing national languages in education, administration and others systems.

  • Identifying common norms heritage in order to refer to them when building new regulation norms at national, regional and international level.

➤ **Strategic objective 2** : Utilize decentralization processes as the driving force for diversity regulation.

  ☐ actions related to this strategic objective :

  • Decentralize the norms creation function in a framework build on accepted principles.

  • Find mechanisms that enable complementarities between states and traditional conflicts resolution modes;

➤ **Strategic objective 3** : Develop better political power regulation modes enabling to get the best out of tradition and modernity.

  ☐ actions arising from this strategic objective :

- Make African constitutions efficient prevention and resolution tools for political litigations by drawing the best out of tradition and modernity.

- Integrate in African constitutions political conflicts prevention and resolution by involving non political actors (wise people committee for example)

- Adoption of political leaders selection modes that will take into account executive power control, power sharing between political groups while preserving inside the system, real control and criticism capacities needed by any society that is willing to achieve good governance.

5- Actors roles and responsibilities

➢ the **state** should **regulate** diversity ; share standards creating power in particular and regulation power in general with others actors (territorial communities, family cell, traditional and religious communities…) ; state should also guarantee a true decentralization and allow as much as possible freedom of choice regarding legislation ; state should also be **protective** in view of threats that are affecting societies (land tenure protection, vulnerable categories protection such as women and children facing sometimes obsolete regulation types ;

➢ **Regional integration institutions** should play a regulation role through their common standards creation competency (example: in constitutional domain, democratic principles respect, public affairs management transparency…) or common political guidance in domains such as common resources protection and management and resources exposed to world competition (example land).

➢ **Grassroots communities** (territorial communities, grassroots communities) should be able to exercise standards competencies in few matters (example: land tenure, environment and resources management, some family matters), **participate to conflicts resolution, be represented in state institutions** (example: second chambers of parliament), weighing in social and economic policies definition; they also have **a particular role to play in educating to citizenry** and positive values promotion (responsibility, public good respect…)