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FROM LEGITIMACY TO LEGALITY OF THE WILL: A SEMI-CONTEXTUAL APPROACH .

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Abstract

This reflection emphasizes legitimacy and legality in the practice of the legacy in Lubumbashi; a systemic approach to communication.

It was a question of showing the primacy of legitimacy over legality in the process of communication of legacy. In order to reduce this gap, a communication of the global type taking into account the systems of cultural, religious and economic beliefs is possible.

For this, our reflection is inspired by the constructionist philosophy having as a position the constructivist approaches and two systemic and comprehensive approaches to communication. The following: life story served us as a technique, the systemic method allowed us to analyze the primacy of legitimacy over legality in the communication process of inheritance practice in Lubumbashi.

Keywords: Communication ; belief and legacy

I.   INTRODUCTION

The notion of succession, which is very daily a topical subject in the experience of all peoples in the world, has long been part of the subject of several conflicts that we would qualify as existential conflicts. Despite different civilizations in each category of settlement, we are sometimes all impacted by problems that affect us all at the same time. So there is no need to say that the problem related to the conflict of succession concerns only a certain class of people in the world. But Africa in particular suffers enormously. Not being in a position as the dead, to say to whom will really be destined or bequeathed our legacy or our property, a tedious solution was proposed some millennium ago by our ancestors. This miraculous solution is just the notary that will later be called the will (DELPORTE.V., 2017) . Indeed the will is a writing containing the expression of last will of a person before his death (DEKKERS, R. 1955). The will may contain legacies, gifts mortis causa, the choice of a guardian, the appointment of an executor, the division of the estate between children, the revocation of entire testamentary provisions, provisions relating to funerals (KATSHUNG

YAV.J.2008). When it is recorded, it somehow resolves the question of succession. The law of succession is that of absolute horror, death, whose tragedy dominates the human condition. But also, that of life. Succession is, in other words, a transmission from generation to generation, it is at the heart of the law of persons, family, property and obligations (MALAURIE, PH and ANYES, L., 1998:38). In Africa indeed; taking into account certain cultural, ethnic, religious and economic factors, the conflict of succession seems to find a place of choice in this said continent in general and in the Democratic Republic of Congo in particular. In DR Congo and more specifically in Lubumbashi, several illustrative cases can show us the scope of this issue. In this same city, complex phenomena, in particular shégués (street children), prostitution and many others, are often explained by the poor management of the estate, which is also the main cause of these phenomena. The realities in this matter of succession give us two aspects to take into account: Legitimacy and legality. Legitimacy being considered as a kind of collective rule or also considered as what is right, unfortunately prevails over legality which is considered as everything that conforms to the law and legislative truth, it is that is, legitimacy derives its strength from implicit norms while legality derives its strength from explicit norms. Having observed in the Lushois experience the comprehensive divergences between the legitimate approach and the legal approach in the communication on the practice of the will, we would like to know and understand: In the communication process related to the succession, in what way could we explain the almost perpetual situation of the conflict between the legitimacy and the legality of the actors of succession? And what type of communication to reduce this gap?

The cultural, religious, economic and legal system will help us to understand this recurring conflict, a communication of the global type could reduce the gap between legitimacy and legality in the understanding of legacy practice.

During this reflection, we will try to demonstrate and understand the gap between legitimacy and legality in inheritance practice in Lubumbashi. We not only want to identify this gap but also, in a completely scientific way, encourage the Lushois to take these aspects into account in the planning of estate communication.

1. On the conceptualization of succession and communication

1.1. Succession

Succession law has its origins in antiquity through practices such as levirate, sororate, royal heir, seniority.

In the Bible, one can read the story of Tamar and Oman Genesis 38:1-26, and on the one hand the story of Ruth the Moabite Ruth 4:1-13 on the other hand. Thus, in the messianic lineage, this practice played a determining role in the genealogy of Jesus Christ.

In Asia, this tradition spread to China among the Nomads Xiongnu (Clan Huns) and continued among the Mongols. In 1670 tradition required King Galdan Boshugtu Khan to marry Anu Khatan to the wife of his deceased brother. (Dawson. 2007:14)

In Africa, this practice is still current in certain ethnic groups, particularly in the DRC (teke, mboshis, bembe). In Benin, Burkina Faso and other African countries, it is always on the alert.

The story of succession has passed through time and developed into law as the world evolves.

In the DRC, the legislator has considered this matter, devoting several texts to it. We quote the decree of December 28, 1888 organizing the liquidation of succession when

the *cujus* died in Congo without leaving there neither heir nor executor, the decree of 1953 relating to the settlement of successions as well as the family code of ^August 1 1987 which is the law currently in force in the DRC.

The word "succession" has two meanings, sociological and legal.

For Joseph Yav Katshung, succession refers to extra-patrimonial rights such as the succession of kings (Katshung, Y. 2008:20)

It presupposes the transfer of the deceased to his successor, of powers and obligations to the exclusion of his patrimony.

It is vertical when the son succeeds his father, it is horizontal when a brother takes the place of another brother. It is oblique when a nephew replaces his uncle. It is in fact in reference to this succession that it has been estimated that in Africa, every man has only one heir, the one who replaces him in the family hierarchy. (Wikipedia, 2020).

In its legal sense, succession means the transmission of the patrimony of a deceased person to one or more living persons. (Googleschoolar, 2020) In other words, legacy.

1.1.1. *Method of transmission of the succession*

The mode of inheritance acquisition is different from the sale or the donation, it is done in three different ways:

- By operation of law (ab intestate succession)
- By the fact of the will (testamentary succession)
- By the fact of the contract (contractual institution)

1.1.1.1. *Ab Intestate Succession*

Death is an unpredictable natural reality that affects all social categories. There are times when people die without expressing their last wishes. One who dies without having tested is said to have died intestate. A succession is then legal, that is to say when it is provided for in advance by law.

Thus, the legal succession or ab intestate can be defined to liquidate and share the succession of the one who died without having done diligence to decide on his assets by will.

However, there is still an intestate succession when the will left by the *cujus* is completely negative, that is to say, the testator rules out the legal succession by not substituting a testamentary succession or by not designating any beneficiary of the succession (Wikipedia 2021).

1.1.1.2.Testamentary succession

Testamentary succession is that which is decided by the testator through his will.

1.1.2. OPENING OF AN AB INTESTATE

The opening of a succession, the fact that leads to the devolution of a person's property to his heirs, is the death of the cujus (Katshung.Y., 2008: 52-53)

The opening of a succession begins in the event that the cujus is dead or in the event that the presumption of life ceases, it departs without any news of the absentee having been heard. The court at the request of the interested parties of the public prosecutor's office, declares the death.

In the DRC, a person is considered dead, from the point of view of the opening of the succession, not at the moment when the beating of the heart has stopped, but as soon as the vital link which connects all the parts of the organism human has been severed and the simultaneous functioning of the various organs necessary for life has been interrupted.

This death must in law be proven by the death certificate. It is appropriate to reveal that the opening of succession is done at the domicile of the cujus or at his main residence. (Family Code, 755)

1.1.3. Legacy

The Congolese State categorizes inheritances into two categories:

a) the small inheritance is any property or asset less than 100,000 Zaires (i.e. $809)
b) the large inheritance any property or asset greater than $809.

1.1.4. heirs

Congolese legislators distinguish 5 categories of heirs:

1.1.4.1.1st category

These heirs are identified by article 758 littera a of the family code which provides: "the children of the *cujus* born in marriage, but affiliated, that is to say without a son or daughter during his lifetime, as well as the children he adopted, form the first category of heirs. This category contains three types of children.

➢ Children in wedlock: children born to parents united by a legal marriage bond.
➢ Children born out of wedlock: these are children born by chance encounters between a man and a woman. Congolese law requires that these children be affiliated to the *cujus* or recognized by the father during his lifetime.
➢ Adoptive children: these are children who have no blood relationship with those whom the law designates as parents (adopters), but recruited from among their children or have become their children by means of a legal relationship of parentage or filiation established by the bond of adoption.
➢ First category heirs receive ¾ of the legacy. The division between children takes place in equal portions between children and by representation between their descendants.

1.1.4.2.2nd category

The second category is composed of 3 groups:

• Surviving spouse: he is one of the spouses who remains alive at the death of his love partner.
• The father and mother of the deceased, biological parents of the [1st] degree.

- Brothers and sisters, these are relatives in the collateral line of the 1st degree. Those who shared the womb with cujus.

The share devolved to the second category is variable, depending on whether there are heirs of the first category or not and according to the number of groups of heirs of the 2nd category.

Article 760 fixes the variability of the shares, as the case may be. It provides that the heirs of the second category receive the balance of the legacy, if the heirs of the 1st category are present and the total legacy if there is none. The three groups each receive a twelfth of the legacy.

If among the three groups, only two groups are present, they receive 1/8

1.1.4.3.3rd category

This category is made up of paternal uncles and aunts. The division takes place between them in equal portions.

1.1.4.4.4th category

In the absence of heirs of the 3rd category , any other relative or ally will come to the succession, insofar as his bond of kinship or alliance is regularly noted by the court of peace which can take such measures of instructions as he will deem appropriate.

1.1.4.5.5th category

Article 763 provides for this option by providing that in the absence of heirs of the 4 categories, the succession devolves to the activated State. Article 12 of the land law provides that "all things without an owner belong to the State, except what will be said about the right of occupation".

It should be noted that when it comes to small legacy less than $809, only first category heirs benefit from it.

In the practice of wills, it often happens that the heirs are excluded from the succession. This is a forfeiture which strikes an heir guilty of a fault provided for by law. This fault will make him unworthy. This process is called unworthiness.

1.1.5. ex-heir

Anyone who falls into the net of one of the causes decided on as unworthy is excluded from inheritance under the terms of article 765 of the family code which provides: is unworthy and as such excluded from legacy, the legal heir or legatee:

1.2.COMMUNICATION AND GENERALIZED COMMUNICATION

The concept communication is defined in several ways, given that the plurality of approaches of researchers from various fields have made it an interdisciplinarity. What you need to know is that communication has been nourished by various disciplines such as mathematics, anthropology, sociology, psychology, etc.

According to the mathematical understanding, communication is considered as the transmission of messages from a sender to a receiver through a channel. This linear scheme is characterized by noise and redundancy.

And for philosophers, elementary social communication is based on reason and law. For the sociologist, communication is considered as a process of influence based on the interaction based on the construction of a negotiated mediation between the communication partners. (Kazadi JM., 2013:25)

In the understanding of the anthropology of communication "Dell Hymes" invites the researcher to question the definition of communication given to the society studied (Winkin, Y., 1996: 8).

This concept was developed by Alex Mucchielli and his colleagues from the University of Paul Valery of Montpellier 3, gathered within CERIC managed to propose an understanding and a general principle of communication "a kind of emergent construct in a situation of 'actors in interactions' from there they were able to construct the concept of generalized communication. (Ekambo, JC., 2006: 110) Mucchelli and his colleagues conceive of it as an expression resulting from a social actor and carrying an intentionality, which can be analyzed from the point of view of a wise observer-reader, that is to say capable of to understand its meaning, in a relevant situation correlative to the definition of an essential problem concerning the actors.

Ekambo derives two advantages from this definition. The first advantage is that it exploits the referential function developed by Roman Jakobson. For this American linguist of Russian origin, this function is the first of language and "which gives man the ability to name all the realities of humanity, whether they are constituted as concrete activities, imagined thing or idea altogether. Abstract fact. The second advantage is that of translating and explaining the emergent nature of communication, which situates the interacting partners in the past, present and future. (Ekambo, JC., 2002: 13.)

In this understanding, generalized communication will therefore include the following elements: words, writings and paralanguages; the actions and conduct of social actors; non-communications.

2. METHODOLOGY

On the epistemological level, our reflection is situated in a constructive position which postulates that the knowledge of reality is a construction between the observer and reality and not the exact reflection of this truth.

This research follows a philosophy called constructionism, constructionism which is a philosophical position which is interested in the way in which men manage to perceive the world and to act in this world interpreted by them. (MUCHIELLI A. 2005).

Constructionism is in line with the modern current of interpretative sociology and symbolic interactionism, it emphasizes the interpretative construction of the realities of the social world by social actors. As an actor and researcher in communication, we will try to interpret the meaning of this Lushois behavior which tends to separate legitimacy from legality in the communication-successional process.

This reflection is part of a dual approach: systemic and comprehensive communication.

The comprehensive approach which states that the world of human actors is a world of meaning and that what matters is to understand.

It aims to piece together the world of action meanings and thoughts for actors to consider. Understanding is therefore access to meaning for actors of observable or apprehensible phenomena.

And the systemic approach of the circular paradigms considers that the family constitutes a system itself. Because it is regulated by rules consistent with the definition of a system as "stable with respect to some of its variables, if these variables tend to remain within precise limits. (P. WATZLAWICK and ALL: 1972)

This approach will allow us to analyze the complexity of the family thanks to its decomposition into a set of smaller elements and therefore more accessible for our reflection.

To support these two approaches, we have followed a qualitative-inductive method given that our central question is of comprehensive aim, the documentary analysis and the interview serve as techniques.

3. RESULT AND DISCUSSION

3.1.results

In this part we will conduct our investigation in the form of a life story.

We approached a young girl who we will avoid mentioning her first name in this work, but whom we nicknamed Bora us who is currently a prostitute and street child commonly called sheguée, she lives in the city of Lubumbashi at the market level Rail which is in the town of Kampemba reference Texaco Bus stop / express. It was with this young person that we had an interview.

Named BORA, the 16-year-old girl lost her father in 2020, precisely two years and a few months ago. The story is such that the father of this young girl, Gaston, had come from Kalemie with his younger brother named David for reasons of University studies when the University of Kalemie was an extension of the University of Lubumbashi. When Gaston, an economist by training, finally finished his studies, he found himself a few years later working at the public company OCC (Office Congolais de Contrôle) while his younger brother was still a student. Before Gaston got married, he first lived with his brother David who is Bora's paternal uncle. When he finally got married, he moved to the Bel-Air district where he was a tenant. David his younger brother stayed at the university rental apartment, the Home. With his savings, Gaston bought a plot in the Kalubwe district in 2008 when his daughter Bora was only two years old. When Gaston welcomed his second child, whom he named Nathan, in 2010, he and his wife Fifi decided to go and live in the Kalubwe district where they had built an average house with three bedrooms, a double living room, two verandas and a spacious kitchen. All made from durable materials. Until he was 14, life for Bora and his younger brother was nothing to complain about. There was not much missing at home, i.e. there were no problems with food, schooling, medical care or other physiological needs. . In 2022, without remembering precisely the complete date, unexpected misfortune finally strikes. A day like any other Papa Gaston leaves home to go to work. A road traffic accident occurs and Papa Gaston is still alive but quickly evacuated to the hospital. It would appear that the accident was very sudden. The doctors tried with all their might to save Bora's father but without succeeding. He died two days after the accident incident. When the mourning was announced, Bora told us, despite being 14 years old, she still remembers the incident as if it were yesterday. Her mother Fifi, who was her husband's nurse, had even lost consciousness when the doctors told her the news. Bora's uncle, David, now married and childless, and his big sister (eldest of dad Gaston's family), who came directly from Kalemie, both took charge of the mourning and at the same time accused Bora's mother. Fifi that she would be the one who killed her husband to sell his heritage. Three months after dad Gaston's bereavement, Bora's mother suffering from high blood pressure succumbs to the disease and also dies. It was a tragedy for the two orphans who suddenly lost two parents in the space of

only three months. David their uncle took them to his house where they lived with his three children and his wife. David and his wife were devotees in a very famous local church whose name is refused. Uncle David was a deacon there. The day that Bora and his younger brother went to church with his uncle's family, the pastor of the church had told David's wife that day that the children she harbors are bewitched by their mother and that it was necessary to make an immediate deliverance. It was done "we were delivered publicly in the church, my brother and I". Coming back from church, my aunt told her children not to approach us on the pretext that we were dangerous for them. "Not a week had passed, my aunt convinced my uncle to kick us out of the house lest we be a curse on the house" and their uncle, David kicked them out of the house. They were only 14 and 10 years old and now find themselves at the mercy of the streets. Almost a few months ago, they still enjoyed and the cost without the interval of a lot of time the two orphans no longer have where to go. The first night, he spent it at the door of the house hoping that an appeal in their favor would be pronounced. In the morning, they are turned away like animals by their aunt and there they finally realize the reality of the situation. For Bora she did not know where to go since her father's large family was in Kalemie and their parents' friends and acquaintances were also suspicious of these children because they were accused of witchcraft. About three days, little Nathan suffers from hunger and fever, Bora also suffers from hunger. She went to the Rail market to ask for something to eat and was chased away by the vendors. It is at this moment that she then decides to steal to give her brother something to eat. Night is approaching Bora and her brother do not know where to sleep, they are first attacked by street children who have already conquered this territory before being violently raped by more or less seven boys. In this world of silence where the jungle reigns, anarchy, the stronger law, still not knowing where to go, they make friends and little by little they also learn the place and the practices to do for survival. Nathan learns to steal, Bora learns to steal and especially to prostitute herself. For the girls who resolve to stay in the group, it is necessary to resolve to sell sex to fill their belly and also to give the daily contribution to the gang leader.

3.2. discussion

About legitimacy and legality, it is necessary to go back through history to give a justifying explanation of the factors that have long influenced the actions of men, especially on the question of succession. To understand this phenomenon throughout history, we are going to reduce our discussion to two elements that should be highlighted immediately:

➢ Cultural-religious system
➢ Socio-politico-economic system

3.2.1. Cultural-religious system
3.2.1.1. Belief of different religions established in Africa

In this part, culture is the more or less strongly linked set of most resistant and shared acquired meaning that the member of a group, because of their affiliation to this group, are led to distribute in a way that prevails over the world. stimulus from their environment and two even, inducing vis-à-vis these stimuli attitudes, representations and valued common behavior which they tend to ensure the reproduction by non-genetic Albin wgener2010 systemic ways of harmattan interactions. This definition includes within it several elements likely to explain the question of our research. Culture in general is not common to everyone. It is, like civilization, relative to whom practices it and where it is practiced. It is in the light of this aspect of culture that we will go back in time to bring more details.

As far back as we go in human history, we observe that concern for the dying and the dead is as important as it is constant. For each death that he registers in his environment, the man must quickly offer him a burial which is considered in the Latin sense of the term, last duty.

From this moment, we will seek to find meaning in the observation of the conception of the dead in various moments of history.

3.2.1.1.1. Among the Hebrews

The Hebrew period; also called period of the Hebrew Bible, old testament, leads us to believe Daniel FAIVRE, has a very different consideration of death. By dying, in the Hebrew conception, man automatically switches to another world and his nature also changes. Death therefore transforms the dead into what the Hebrews call "elohims" which simply means a god. Certainly it is a subordinate god, it is all the same a kind of divinity which represents a certain danger for the humans. This other world in question is named by the Hebrew "sheol". It is a very disturbing world for the living but also and all the same the only world to which the dead are entitled and where men prolong their lives. In the conception of death among the Hebrews, it is absolutely necessary to prevent the dead from clinging to the world of the living, they must be guided towards the world of the dead. Daniel Faivre 2013.

For the Hebrews, it is necessary to avoid and do everything that people who pass from the other side of the world have links with living people whatever the relationship that previously existed between the dead and the living people. All family ties fall and no direct or indirect connection escapes the rule. The dead therefore remain of gods.

3.2.1.1.2. Among the Christians

The Christian era emanates from a historically impressive fact with Jesus Christ son of Mary. The Christian religion has its roots at the birth of Christ. After the establishment of Christianity, a change to the opposition of Hebrew rituals is immediately observed. Among Christians, the conception of the dead is just as particularly taken in another context. Indeed, among the Hebrews, in the Old Testament precisely, the world of the dead completely escaped Yahweh who was a celestial divinity and who was praised to life. To go back a little from the time of the Hebrews, the question of punishment and remuneration was posed in a very different way, that is to say that everything was done during the lifetime of the man. On the other hand, the world of the dead and that of the living is totally egalitarian in the conception of Christians, the punishments were carried out during the lifetime of man, the rewards also. In the New Testament, everything is in place; heaven and hell. Among Christians, God or Yahweh now has the upper hand over life and death and this implies a transformation of rituals. Now the living must help the dead to gain their paradise and prayers are now turned to God to welcome the deceased. But that is not enough, it is also necessary to go through a specialized staff which is made up of priests. Church mediation becomes mandatory or shifts from family rituals to religious and institutionalized rituals. In the Christian conception, the presence of the dead among the living has become much more important than in Hebrew times. Cemeteries also become sacred places.

3.2.1.1.3. Among Muslims

Death in Islamic conception is not as amazing as in most religions. Indeed, life and death in Muslim ideology are two things that are closely linked and even completely complementary. One accompanies the other.

Death is only a period that Muslims consider to be a transition to what the Koran calls true life. Life on earth, according to this Islamist belief, does not deserve any effort to live it, but the real life in the afterlife requires a certain initiative to deserve it. Man while living here must necessarily expect the eventuality of death.

In the passage from life to death, we accompany the dying person to make him cross this passage by people who are more or less close to him, among others friends, family. (Mostafa BRAHAMI, Funeral rites in Islam, 2005).

It is especially necessary to highlight the fact that in this ideology, the relations between dying and living do not cease to exist. The fraternity, the camaraderie continues incessantly but this time without exchanging the feelings between those who cross the second life and those who remain alive.

3.2.1.1.4. *Among the skeptics*

From the rebirth, things begin to change. The skeptic appears. There were also movements such as agnosticism, atheism during the revolution… It was in fact the Copernican revolution which was the first to introduce the break between science and the church. Among skeptics as well as among atheists, the question of death is exploited in another way. The monopoly exercised by the church, if not the funeral, is called into question. Indeed, one thing remains at least the same among Christians as among skeptics, the rapprochement of the dead with the living. For example, we find here during funeral rituals:

o Presentations of condolences to bereaved families;
o The praise of the deceased by recalling his human, professional, family values...

3.2.1.1.5. *Among the Africans*

To understand the African conception of death, it is imperative to resort to the true law of African society, which is custom or tradition. (Moammar EL KHADAFI) For the African, apart from this source, any attempt to justify the conception of death is not only useless but also illogical. The question of conception of death in African civilization is generally very complex because it almost reviews the conception of death among Christians and also among skeptics. For the African, life and death are linked, even inseparable. In some tribes, in this case among the Egyptians, the man faced with death should not have an attitude of fear or fright. In Théophile OBENGA's book, published since 1990, entitled "African philosophy of the Pharaonic period", he notes a very illustrative extract from a presentation dating from the XII th Glyptician in which a speech is recorded in the form of a a poem that the ancient Egyptians recited. They took up these terms: "Man, master of his life, must consider his disappearance from this earth without worry and must not worry too much about the moment or the funeral arrangements for his death, which are of no great importance". From this angle, we see very clearly the logic that justifies the belief in death in African civilization. After death, the African still believes in another form of life which pursues its path in another world which is called beyond. Death is therefore considered a passage for a journey to the other world and life continues. "The deceased is alive and triumphant".

3.2.1.2.Value of speech in African culture

In the beginning was the word the Bible says in John 1:1. There is thus a primacy of speech over writing in the functioning of the creation of humanity. In his condition Ngoma Nyambu stipulates that through his agents, society precisely is the guardian of traditions. It alone, through its managers, has the mission of instructing individuals and this instruction passes through speech. (NGOMA, N., 1981:227) Because this word plays an important role in the oral tradition, after cross-checking the various resource persons, we establish the meanings or functions of the word in the ancestral oral society.

3.2.1.2.1. The function of speech in oral society

The word in its ordinary use as in its extraordinary uses is full of simplification. It can heal, give life as well as death and also transmit knowledge.

3.2.1.2.2. *The word as a medium of teaching*

The general function of speech in the oral tradition is devoted to teaching, to learning, to transmitting knowledge. In a society devoid of writing, oral exchanges constitute almost all social activities. The initiation that makes young men necessarily passes through speech. It is the vehicle of customs, rites, cultures, taboos and cultural values of a society. It is through it alone that one acquires the attributes specific to a society (whether secret or religious). All these oral exchanges (tales, epics, etc.) constitute a teaching and are transmitted thanks to the word. We therefore understand its importance in traditional oral society.

3.2.1.2.3. *Speech as a factor of solidarity*

Twin sister of the language, the word which is its manifestation is not only a means allowing to communicate its movements, its ideas, its feelings. But it is also a means of transmitting collective memory and an essential support for cultural memory born of the awareness of belonging to the same society, of having a common past and of sharing the same values learned from an early age.

3.2.1.2.4. *Speech as action*

In society, certain acts of speech constitute in themselves an action. This means that the mere fact of pronouncing certain words is an action that takes effect: for example, "I pronounce you husband and wife", "I curse you", "I forgive you", "be healed". These statements attribute a force to the spoken word. Because speech is a weapon used to either attack or defend oneself. It plays the role of action in various circumstances of society. She can thus heal, save life, forgive, exclude someone. It is not only a passive mode of communication between companies, but also a mode of action depending on the circumstances.

In view of what precedes, we can affirm that speech is a power. And like any human power, its exercise in specific situations should not be random or at the mercy of everyone. This creative verb (in the beginning was the word) confers social power on those who know how to use it (wise men, old people, etc.)

3.2.1.2.5. *Speech, vector of ideology*

Speech is given, agreed. On the one hand there is the one who speaks and on the other hand, those who listen. This confers a privilege on the social place to the one who has the power to speak. He can thus develop his ideas and impose the values he deems good for the evolution of society (laws, habits and customs). An ideology is formed around the one who has the power of speech. It is not only about the one who speaks at all times but much more about the one who listens. The rarity of his speech thus gives him power in circumstances where his speech is strongly expected.

3.2.1.2.6. *The will in the era of orality*

In a context marked by the domination of oral tradition, succession plays an important role beyond mere material goods. When a traditional chief foresees his end, he bequeaths the power orally to one of his sons. It will not only be a question of a succession of goods, but also of powers, because the traditional chief is a spiritual chief who serves as a bridge between the invisible ancestors and their visible ruled (Kabuik Manz, 2020)

The succession, the legacy bequeathed is a power that passes through an initiation. The heir has a duty to take care of what belonged to the deceased on the grounds that it continues to exist through his estate.

Since death is a universal phenomenon that affects everyone, the issue of succession (inheritance) is common to all other members of society. While those of the royal line inherited power and property, others inherited property left by the deceased. "It is often an heir chosen from among many other sons to inherit his parent's property and take care of other family members."

The word of the deceased being sacred, especially in the presence of witnesses (the old and wise) was thus respected for fear of reprisals according to tradition and the fear of being haunted by the dead who watches over his property.

A good father must have a heritage to leave to his children after his death. "In our culture, the family is more extended than restricted. One cannot imagine that on the death of a parent with a large estate, his children inherit all his property and that parents and brothers who are still alive do not benefit from anything from their children and brothers" (Kumwimba, K ., 2020)

Common sense, solidarity and the idea of belonging to a group of individuals is even more intense in ancient society (the oral tradition). Generally speaking, status within a society matters more than an individual's wealth and economic power. Personal relationships (family ties, kinship) are still topical and in the foreground. A leader, a real man is the one who has the ability to come to the aid of his fellows. And who also has the ability to gather. Solidarity, the need to have recourse to his parents or neighbors pushes him to remain attached to his society.

3.2.1.2.7. *Africa, a global village*

The reference to the global village, a global concept of globalization, alludes here to solidarity, sharing, union, the free circulation of material goods, a sense of duty and recognition towards others.

"The surge of solidarity specific to the African continent is not a myth. This is a reality and it does not only concern Africa. The cultural values of the black man are important in understanding heritage in traditional society" (Ngandu Kamunga Jean, 2020)

The human thoughts of man, his concerns not being turned only on himself, have facilitated the unfolding of the heritage within human groups.

As our resource person points out, "this solidarity between peoples has made the task easy when it comes to sharing the property of the deceased. Certainly there is always jealousy, why him and not me. But a good management of the bequeathed goods ends up bringing appeasement to all". (RUKU ,B., 2021)

Because the owners of the property took care of each other, it is up to the heirs to do the same. The obligation of gratuity is a value specific to traditional society: to give freely without waiting. A cultural value transmitted by tradition and which helps to understand many facts.

The African is a product of society. It is forged within the society to which everything owes. Duty to society, family and concern for memory were the major concerns of those who had succeeded in having possessions in their life on earth. "The will is a personal act of the testator which reflects his feelings, his generosity, his will. Hence the exclusion of one to the detriment of another. It is a thoughtful act which decides who can be entitled to his succession, to whom to give the expenses of a whole life led on earth".

3.2.2. Socio-politico-economic system

One of the greatest causes of legitimacy, which to this day takes precedence over legality, also remains the social, political and also economic aspect. A very close relationship must be established between these three moments.

The history of the Democratic Republic of the Congo has known for many years a number of significant phenomena. These phenomena have affected and continue to have an impact on the development of the country and more particularly on the experience of the population. Since 1960, when independence was gained, social problems; politics and economics are now part of the major concern that the Congolese must resolve as soon as possible. Very unfortunately things are getting complicated. In 1994, for example, a year that the author MPUNGU MULENDA (2021) describes as turbulence; we note that the Gécamine company in particular is undergoing a complete cleaning of agents. It was in fact a question of sending back the Kasaiens to leave the place entitled. With this conflict, the authorities forgot the essentials and focused blindly on this matter.

The Belgians left, it was necessary to take over and improve things. Nothing happened. The socio-economic-political question disturbs again and again. With spectacularly abundant resources, the Democratic Republic of Congo, which is considered to be one of the richest countries in the world, has an unemployment rate within it that is more worrying and does not favor its population.

CONCLUSION

After making a connection between legitimacy and legality in inheritance practice, we have identified a consequence of legitimacy which prevails over legality. Anxious to explain and understand the situation of the incessant conflicts around the problems related to the succession; also anxious to propose a communication strategy likely to resolve or reduce in some way the gap that still exists between the two notions mentioned above, legitimacy and legality, we have forced ourselves to carry out an empirical investigation in order to arrive at a which testifies to the efforts made. Through this study, we have approached more closely the cases of the people most strongly affected and today victims of inheritance problems. These people now left to their fate must fight day and night against all the challenges of the street. We are not talking only about the cold or the bad weather, but about any form of danger that awaits these poor people who are unjustly lacking shelter.

By way of conclusion, in order to conform to the standards of our current society, we must, to ensure the best future for our offspring, be aware of the repercussions to come insofar as the will, a document which testifies to the will of the dead is not taken with its fair value.

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