SABINE NDZENGUE AMOA

Neurological rights to protect the brain



NAS ÉDITIONS

COLLECTION POING LEVÉ

Neurological rights to protect the brain

Author: Sabine Ndzengue Amoa,

Editor: NAS ÉDITIONS

Neurological rights to protect the brain

Neurological rights to protect the brain
Author: Sabine Ndzengue Amoa,
Editor: NAS ÉDITIONS

Neurological rights to protect the brain

Sabine Ndzengue Amoa

Neurological rights to protect the brain

Author: Sabine Ndzengue Amoa,

Editor: NAS ÉDITIONS

Cet ouvrage a été réalisé par : NAS ÉDITIONS

09, rue de la grand'maison, 77154, Villeneuve les bordes, France.

Tel : 0033769845780

Contact@naseditions.com

www.naseditions.com

ISBN : 978-2-487682-28-3

EAN : 9782487682283

Dépôt légal.

©NAS ÉDITIONS, 2024.

La première édition (en français) a été publiée par les éditions Connaissances et savoirs en 2023.

Le code de la propriété intellectuelle interdit les copies ou reproductions destinées à une utilisation collective.
Toute représentation ou reproduction intégrale ou partielle faite par quelque procédé que ce soit, sans le consentement de l'auteur ou de ses ayants droit ou ayants cause, est illicite et constitue une contrefaçon, aux termes des articles L. 335-2 et suivants du Code de la propriété intellectuelle.
***The French intellectual property code prohibits copies or reproductions intended for collective use. Any representation or reproduction in whole or in part made by any means whatsoever, without the consent of the author or successor in title, is unlawful and constitutes an infringement, under the terms of articles L. 335-2 et seq. Intellectual property code.

ACRONYMS AND ABBREVIATIONS

CESE	Conseil économique, social et environnemental
CDC	Centers for Disease Control and Prevention
DNA	Deoxyribonucleic acid
ECHR	European convention of human rights
ECHR	European court of human rights
EEG	Electroencephalography
fMRI	Functional magnetic resonance imaging
IBC	UNESCO International Bioethics Committee
IEEG	Intracranial electroencephalography
INSERM	Institut national de la santé et de la recherche médicale
MRI	Magnetic resonance imaging
OCDE	Organisation for Economic Co-operation and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization

Neurological rights to protect the brain

Author: Sabine Ndzengue Amoa,

Editor: NAS ÉDITIONS

UNICEF United Nations International Children's Emergency Fund

WFMH World Federation for Mental Health

Introduction

The brain is the basis for the development of every individual's imagination. The only safe that is a priori inviolable for any individual.

Is a right to mental privacy necessary? Is it truly imperative to protect the neurons of individuals, human beings, in the face of neurotechnological advances? The positive answer to these questions is obvious given the rapid pace of neurotechnological progress. Neurological rights are prerogatives linked to every individual and which deserve optimal protection. Initiative of the World Federation for Mental Health (WFMH), World Mental Health Day has been celebrated since 1992. Mental health must be understood as an essential resource that must be protected, nourished and supported.[1]

Indeed, the world is moving, the world is changing [2]. And in this century, perhaps more quickly than in the previous century.

So that it seems that we cease to be what we were[3] yesterday; and that before long, we will no

---

[1]-Isabelle Doré and Jean Caron, Mental Health: Concepts, Measures, Determinants ; revue Santé mentale au Québec, Volume 42, number 1, spring 2017, p. 125–145**.**

[2] - Camara Laye, L'enfant Noir, Presses Pocket, 1976, 224 pages, P80

[3] - Camara Laye, L'enfant Noir, Presses Pocket, 1976, 224 pages, P80

longer be ourselves from the moment when neurotechnological progress is made without ethics and without limits through our brains. If the need for neurotechnological rights is no longer debated, the question of their legal framework remains. The «new human rights », that are neuro-rights, also called neurological rights, need legal mechanisms in order to channel the development of neurotechnologies.
The human brain has around 100 billion neurons and has an average weight of 1,300 to 1,400 grams. It also contains glial cells and astrocytes. It is bathed in cerebrospinal fluid.[4]
The brain is the control center of the human body; it manages everything we do. Whether we are thinking, dreaming, playing sports, or even sleeping, the brain takes part in one way or another. It is an example of engineering organized into different parts connected together in a very specific way. Each part of the brain has specific tasks to perform, which makes it the ultimate processor. Working in tandem with the rest of the nervous system, the brain receives and sends messages, allowing

[4] - https://www.futura-sciences.com/sante/definitions/biologie-cerveau-3125/

uninterrupted communication between the external world and the self.[5]

Brain activity underlies functional states of the brain, such as cognitive and affective functions. It is so important to our lives that, in many countries, human death is legally defined by the irreversible cessation of brain activity.

Brain activity provides information inherent to all human beings, regardless of gender, nationality, language or religion. The central place of brain activity in the concepts of human identity, freedom of thought, autonomy, privacy and human well-being gives paramount importance to the ethical, legal and societal implications of the recording (« reading ») and/or modulation (« writing ») of brain activity by various devices and processes collectively referred to as neurotechnologies.[6] Thus the behavior, representations and actions of a person would be increasingly explained in

[5] - https://www.frcneurodon.org/comprendre-le-cerveau/a-la-decouverte-du-cerveau/anatomie-du-cerveau-et-du-systeme-nerveux/

[6]-Neurotechnologies: devices and procedures used to access the functioning or structure of the neural systems of natural persons and to study it, evaluate it, model it, exercise surveillance or intervene on its activity (OECD, 2019); in the Report of the UNESCO International Bioethics Committee (CIB), on the ethical aspects of neurotechnologies, shs/bio/ibc-28/2021/3 Rev.; Paris, December 15, 2021.

terms of “cerebrality”. This new anthropological conception is a source of many hopes both at the therapeutic level and in the possibility of improving neurocognitive capacities.[7]

The 20th century was that of the atom. The 21st century could be that of the gene, of the living [8], and neurological rights.

Since the beginning of the 21st century, discoveries and advances in the field of genes and life[9] and neurotechnologies are legion.

Using science as his favorite tool, the researcher gradually achieved feats that no one could have imagined. Faced with this, the legislator tries as much as possible to regulate and legislate. Already after the Second World War, the abuses perpetrated in terms of research on humans led

[7]-Jonas Gaillard, Neurofeedback en contexte clinique : Enjeux éthiques et épistémologiques de l'interface cerveau-machine, Master 2 Ethique, science, santé & société, Université Paris Sud, College year 2017-2018.

[8]-Meet the challenge of biotechnologies; Report to the French Minister of Economy, Finance and Industry. (Working group chaired by Noëlle Lenoir), March 11, 2002, P4.

[9]-Meet the challenge of biotechnologies; Report to the French Minister of Economy, Finance and Industry. (Working group chaired by Noëlle Lenoir), March 11, 2002, P4.

the community to take a stand so that such barbarity could not happen again.[10]

Advances in neurotechnology and neurological matters can arouse fears and apprehensions like anything new. However, legitimate fears should not lead to inaction.

On the contrary, it is about taking up the challenge linked to neurology and neurotechnology. This challenge can only be met by making them keep their promises and by overcoming the risks they may carry.[11]

Which principle best suits the framework of neurotechnologies? The precaution? Innovation? or ethics?

[10] - Carmen Denoël, Gautier Trébuchet, Les limites imposées à la recherche médicale, Petites affiches - 16/10/2015 - n° 207 - page 16.

[11] - Meet the challenge of biotechnologies; Report to the French Minister of Economy, Finance and Industry. (Working group chaired by Noëlle Lenoir), March 11, 2002, P4.

Neurological rights to protect the brain
Author: Sabine Ndzengue Amoa,
Editor: NAS ÉDITIONS

Introduction 7

Chapter I – Historical evolution of neurological rights: the « new » human rights..... 19

I. From the right to privacy…to the right to mental integrity 19

1- The right to privacy..... 20

2- The right to mental integrity 21

II. From freedom of thought…to cognitive freedom 27

1- Cognitive freedom and freedom of thought27

2- The European origins of the right to freedom of thought..... 30

III. Recourse to the ECHR as a means of settling disputes with States. 31

- Concerning the application of Article 8 of the European Convention on Human Rights - Right to respect for private and family life . 32

- Regarding the application of Article 9 of the European Convention on Human Rights - Freedom of thought, conscience, and religion 35

Chapter II – Neurological rights in the legal order 46

Neurological rights to protect the brain
Author: Sabine Ndzengue Amoa,
Editor: NAS ÉDITIONS

I. Consecration by international texts and agreements 47

1- Freedom of thought in international texts 47

a- United Nations texts 47

b- European texts 50

 The Convention for the Protection of Human Rights and Fundamental Freedoms (CSDHLF). 50

 LEÓN's declaration 52

c- American texts 54

2- Mental integrity in international texts ... 55

a- United Nations texts 55

b- Mental integrity in European texts 58

II. Protection by constitutional provisions 62

1- The right to privacy and freedom of thought are « explicitly » protected by constitutional provision 63

2- The right to mental integrity is expressly protected by a constitutional provision 64

III. Protection by dynamic interpretation of constitutional provisions or by national provisions 64

1- The right to privacy and freedom of thought protected by a dynamic interpretation of

Neurological rights to protect the brain
Author: Sabine Ndzengue Amoa,
Editor: NAS ÉDITIONS

1- The right to privacy and freedom of thought protected by a dynamic interpretation of constitutional provisions or by national provisions - the cases: France, Spain 65

- The reference of the Constitution to the Universal Declaration of Human Rights and to international treaties and agreements relating to the same matters ratified by the State. .. 65

In Spain, ... 65

- Protection by national provisions 66

In France, ... 66

2- Mental integrity protected by a dynamic interpretation of constitutional provisions or by national provisions: sanctions! 68

IV. Psychological continuity « abandoned »? . 70

Chapter III – Neurological rights as instruments of regulation in criminal matters 75

I. Purposes: Avoid abuses: cases of lie detection. 75

II. First pillar: ethics 80

III. Second pillar: neuroscientific proof 94

IV- Third pillar: the specter of judicial error linked to pseudoscience in the trial. 95

IV. Fourth pillar: economic issues 98

Conclusion 100

Neurological rights to protect the brain
Author: Sabine Ndzengue Amoa,
Editor: NAS ÉDITIONS

Neurological rights to protect the brain

The brain is the basis for the development of every individual's imagination. The only safe that is *a priori* inviolable for any individual.
Neurological rights or neuro-rights are atypical rights. Their legal framework is experiencing increasing development internationally and in national laws. These rights are a primordial necessity in order to channel the development of neurotechnologies. They are instruments serving not only the international community, States, individuals; but also, a guarantee of respect and protection of the brain; neurons, and mental integrity. Beyond legal regulation, they are the projection on international and national scales of scientific research which reconciles ethics, precaution and innovation.

Sabine Ndzengue Amoa is a legal consultant, trainer, speaker specializing in health law, environmental law, public law.

9 782487 682283

14 euros