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Satang Nabaneh, Adem Abebe and Gaye Sowe (editors) *The Gambia in transition: Towards a new constitutional order*. Pretoria University Law Press, 2022. Pp. xvi+ 333. Bibliography. ISBN: 978-1-7764116-5-8.

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Summary

In “The Gambia in Transition: A Path Towards a New Constitutional Order,” expertly edited by Satang Nabaneh, Adem Abebe, and Gaye Sowe, the intricate journey of The Gambia's constitutional history and its ongoing political transition receives a meticulous examination. Comprising of twelve insightful chapters, the book delves into the country's evolving constitutional landscape. While Chapter 1 sets the stage, subsequent chapters are thoughtfully grouped into three sections, each espousing the challenges and prospects of constitutionalism, human rights and state building and rebuilding in the Gambia. Drawing on academic literature, constitutional, international, and regional human rights law, as well as comparative studies and archival materials, each chapter is robustly referenced. Moreover, a comparative lens is applied across most chapters, encompassing diverse jurisdictions such as Bangladesh, New Zealand, Rwanda, and Iceland. The rationale behind these selections, however, lacks systematic justification.

The authors' collective expertise in constitutional law, human rights, and state-building shines through as they illuminate the diverse facets of The Gambia's historical context and present trajectory. This collaborative approach enriches the book with a diverse array of viewpoints, enhancing both its depth and breadth. Complementing the text is a meticulously curated bibliography, inviting readers to explore the subject matter in greater detail. The book's meticulous organization, coherent flow, and straightforward language contribute to its appeal for a broad readership interested in Gambia's institutions and ongoing constitutional and political reform efforts.

In the interest of brevity, this reflection focuses on select chapters. Notably, chapter 2, authored by Perfect, offers a meticulous historical account of The Gambia's constitution-making from colonial times to the 2021 draft constitution. While commendable, an overemphasis on minutiae might slightly detract from the overall impact. An intriguing anecdote surfaces within, recounting the 1965 referendum where the newly independent Gambia debated abolishing the British monarch's role as head of state to establish a republic. Although the incumbent

narrowly lost the referendum, a display of democratic commitment ensued. Despite the pressure to disregard the outcome and declare a republic, the prime minister of the time opted to respect the narrow majority's will. As a result, The Gambia postponed adopting a republican system for five years. This incident underscores a rare political will within the post-independence African landscape to uphold democratic values.

Optimism — The Core Theme

The prevailing theme resonating across the chapters is the writers' steadfast optimism regarding The Gambia's transition toward democracy. This optimism is palpable from the very title of the book itself, which serves as an embodiment of the earnest aspiration to break from decades of authoritarian rule under the former president, Jammeh. This positive outlook permeates multiple chapters. For example, Mathiba (p. 155) encapsulates the shift as a momentous move "from a deeply authoritarian to a multi-party system of government." He also acknowledges the new government's shift towards prioritizing "good governance and accountability, social cohesion, national reconciliation, and a revitalized and transformed economy for the wellbeing of all Gambians" (pp. 162). Njie ventures to draw a parallel between The Gambia's trajectory and historical turning points like the fall of the Berlin Wall, the dissolution of the Soviet Union in 1991, and the dismantling of apartheid in South Africa (p. 202-203). Zarifis characterizes the change as the country being propelled headlong into a complete political transformation (Zarifis, pp. 256-257).

The writers' collective intention is to utilize the book as a platform for proposing policy recommendations to navigate the transition and rebuild institutions. This optimism finds justification in the reforms undertaken by the new government post-2016, the pledges embedded within the draft constitution, and the inclusive nature of the constitution-making process. The draft constitution is viewed as "a beacon of hope, stability, and national unity, progress" (The Constitutional Review Commission as cited in Akech, p. 45). The terms "post-authoritarian" and "transition" epitomize the heightened hope for a rejuvenated Gambian state and society. The editors' sentiments align, echoing a resolute aspiration to lay the groundwork for a genuine and enduring democracy anchored within a new constitutional framework (p. 1). The closing chapter maintains this flame of hope asserting that The Gambia's regression into the old authoritarian system is improbable (Nabaneh, Adem & Sowep, p. 331).

However, it is prudent to acknowledge that, despite the fervour of faith and hope, human prognostication can be fallible (Bahru, 2004). The reality of democratic backsliding must be acknowledged, illustrated by a notable example familiar to this reviewer. Following the overthrow of a minority authoritarian

regime in 2018, Ethiopia underwent remarkable strides in political liberalization and institutional reform, only to be reversed after a few years. While faith and hope might be beneficial for the well-being of members of society, it is important to recognize the inherent uncertainty of predicting the future and to remain mindful of the potential for democratic regression, even in the presence of promising trajectories.

Navigating Complex Political Realities

Assessing whether Gambia is truly embarking on a new political trajectory post-2016 seems certain. While the new president initially fostered inclusivity in forming his cabinet (p. 29), his leadership has already encountered emerging challenges. The president has not honoured his commitment to step down after leading the transitional government, reneging on his pledge not to contest the 2016 elections (p. 29). Further complicating matters, the highly anticipated draft constitution failed to secure adequate legislative backing for progression to the referendum stage. Considering this constitutional setback, Nabaneh, Adem, and Sowep (p. 329) characterize the ensuing developments as a “delicate but ambitious transitional agenda” (Nabaneh, Adem & Sowep, p. 329). Additionally, the president’s dismissal of cabinet members might cast doubts about the country’s transition to genuine multiparty governance.

Under the current administration, the imprisonment and physical mistreatment of journalists by law enforcement authorities have been documented, signalling a worrisome clampdown on independent voices and information flow (Jammeh & Nabaneh p. 74). Furthermore, the president employed force against protesters demanding adherence to his three-year tenure commitment (p. 34). This complex landscape is underscored by the acknowledgment that some authors do not rule out the risk of reversal (Njie p. 190). These new political realities challenge the initial sense of euphoria, highlighting the obstacles confronting Gambian society as it aspires to embrace democratic values and human rights in the post-2016 era.

Some Remarks on Specific Chapters

Chapter 2, authored by Akech, delves into “Building Democracy after Dictatorship – A Case Study of Constitutional Design in Post-Jammeh Gambia”. Akech emphasizes the centrality of popular participation in ensuring the longevity and legitimacy of a constitution. However, the assertion that constitutional stability and legitimacy depend on mass participation in the making of a constitution raises a question. Lessons from Eastern European states reveal that elite bargaining and consensus, despite the absence of popular participation, are more important for political stability, a point mentioned briefly by Akech himself (p. 56). The postwar constitutions of Germany and Japan were imposed

by the Allied Forces with little say from the concerned people. But these constitutions proved stable commanding strong popular support.

Comparative Analyses: Scratching the Surface

Several comparative analyses in the book warrant closer scrutiny. Akech's mention of Uganda and Iceland as successful models of public engagement and consultation in the 1980s and 1990s raises questions. Uganda's non-democratic governance renders it an unsuitable model for democratic participation. In contrast, if mass participation inherently guaranteed democratic governance, Uganda would already be a democracy. The Ugandan example thus casts doubt on the presumed link between public engagement and the cultivation of human rights and constitutional supremacy. A similar concern arises from Nabaneh's reference to Rwanda and Uganda as exemplars for enhancing women's representation in parliament. While the quota system in Rwanda has led to substantial female representation, its true impact merits exploration. Notably, populist and authoritarian regimes often exploit gender representation for political expediency and propaganda (Thames, 2017). Moreover, Zarifis' assertion that Uganda serves as a model for transitional justice implementation contrasts with Macdonald's disputations (2019).

In conclusion, while navigating through the intricate realities of post-2016 Gambia, the book provides crucial insights into the nation's democratic transition. The evolving landscape necessitates a nuanced understanding of the challenges and complexities entailed. The work remains a valuable resource, offering readers a deeper comprehension of Gambia's aspirations, struggles, and multifaceted journey toward democratic ideals and constitutional progress.

Excessive Confidence in Constitutions

There is excessive reliance on the capacity of constitutions to prevent power abuse in some of the chapters. For instance, in Chapter 2, Perfect (p. 31) critiques past Gambian constitution designers for neglecting to establish institutional mechanisms conducive to robust democracy and effective governance. In practice, even meticulously crafted constitutions can falter during execution (Fruhng). Constitutions do not operate independently; they emerge from intricate power dynamics. Notably, clauses within the draft constitution that curtail presidential authority, notably the two-term limit, have posed challenges. The president, who initially committed to stepping down after three years, proposed term counting to commence from 2021, excluding his 2017-2021 tenure (p. 33).

In conclusion, the editors and authors have presented a fascinating and provocative book, particularly valuable for those intrigued by Gambia's constitutional framework and institutional reform. As the nation charts its post-authoritarian journey towards democracy, this book is a valuable contribution that helps to learn about the aspiration for constitutionalism, the rule of law and human rights in the Gambia.

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