

THE GAMBIA IN TRANSITION TOWARDS A NEW CONSTITUTIONAL ORDER

Edited by
Satang Nabaneh, Adem Abebe and Gaye Sowe

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The Gambia in transition: Towards a new constitutional order

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FOREWORD

As The Gambia celebrates its 57th independence anniversary, it can look back at a mixed story of resilience, regression, and progress in its socio-economic fortunes and in its constitutional democracy. While the country's socio-economic situation is fragile with challenges, and there have sometimes been gaps between the law on the books and the law in practice, the overall *longue durée* trajectory has been towards improving development and democratic dispensation. This is not a call for complacency, but a nudge for Gambians to aspire for more and enable the foundations for enhancing the capabilities of all citizens and their freedom both from fear and from want.

Particularly since 2016, the popular and political aspiration has been reenergised towards strengthening the gains and rebuilding the foundations for a legitimate, efficient, and effective constitutional governance. True, perhaps the most ambitious post-independence constitutional reengineering endeavour did not herald the Third Gambian Republic. But Gambians have experimented with a new way of doing constitutional politics, one centred on the sovereign people. The failings, experiences, insights, and proposals are likely to recur and shape socio-political conversations in the years and decades to come. A new constitution may not have been adopted, but the flames for better governance have been lit and will likely glow for the foreseeable future.

It is in this context that this important book on *The Gambia in transition: Towards a new constitutional order* was conceived and realised. The book traverses some of the enduring and emerging constitutional issues Gambians have grappled with since independence. The journey of constitutional transformation and adaptation knows no end points, and the chapters in this book analyse, distil, and make interesting and useful proposals for anchoring The Gambia's constitutional democracy on a firm stead.

The book spans issues ranging from the process of making a people-led and participatory constitution making process, to substantive civil, political, social, and economic rights, political representation of The Gambia's colourful diversities, and from the shape and nature of electoral

rules to the role of a strengthened judiciary and a framework for transitional and restorative justice. The book also includes important analysis and discourse on the role of the media and civil society organisations, the spider webs that connect and mediate the relationship between Gambians and their government.

In recognition of the fact that The Gambia is no island, the chapters draw not only from the country's history and particularities but also from the failures, successes, and experiences and insights of sister countries from across Africa and beyond.

In sum, the editors have produced an important and enriching addition to the existing scholarship on understanding and shaping Gambian constitutional and democratic governance. The issues covered and discussed will continue to inform conversations in the country. I would like to compliment the editors and authors for the work and recommend Gambian academics, political leaders, constitutional stakeholders and indeed all persons to read and engage the information, analysis and reform proposals outlined in the book.

Hassan B Jallow, CRG
Chief Justice of The Gambia

ENDORSEMENTS

“As The Gambia sets the agenda on how to move forward effectively and comprehensively with the implementation of the recommendations of the Truth, Reconciliation and Reparations Commission (TRRC), this book couldn’t have come at such an opportune time, when the country faces up to its inglorious past while committing to Never Again. This book is part of collective efforts to not only create a vast historical record of the impunity, lack of accountability and human rights violations that took place between 1994 and 2016 but also how we can create a better and more tolerant society, including establishing accessible and effective remedial systems and reforming political institutions to mitigate structural violence and social inequality. Further, this book will stimulate national debate and conversations on lessons learnt from the past and contribute to the emergence of a better, brighter, more peaceful Gambia, which is well poised to make reality the Never Again mantra and erect bulwarks against impunity and dictatorship.”

Adelaide Sosseh

Former Deputy Chair Truth, Reconciliation and
Reparations Commission (TRRC)

“A timely and pathbreaking volume that points to pathways for a more inclusive and democratic Gambia. Built around a people-centered, human rights approach, contributors proffer salient guidelines, which if ignored, risk deepening primordial faultlines. The chapters cohere well and are united in their call for strengthening already existing legal instruments and provisions in the Constitution, and international treaties- to bolster representation, improve economic and cultural well-being for women, and marginalized linguistic groupings, and differently-abled persons. This well-crafted volume should be read widely in the transitional justice community and is particularly relevant for personnel in all branches of government, future framers of a new, or a modified 1997 Constitution, to position The Gambia on a sustainable democratic path.”

Abdoulaye Saine

Professor Emeritus, Miami University, Oxford, OH

“This fine edited book is both a credible and timely addition to the discussion on constitutionalism, constitution-making, good governance,

democratic consolidation and respect for human rights in Africa. The volume brings together practitioners and scholars of political science, law, human rights, and media studies to discuss issues of governance and democracy, constitution-making and human rights protection in the Gambia, in response to the social, economic, political and governance challenges the country faces. This admirable study breaks new ground, and its uniqueness is that it is, arguably, the first major analysis of the Gambian experience in advancing constitutional reform, good governance and human rights protection since The Gambia's political transition began in 2016. Using a wide range of perspectives, this edited volume contributes important theoretical, conceptual, and empirical insights to existing knowledge. This important publication is bound to make a lasting contribution to Gambian Studies in particular, and African Studies, more generally. The text will surely stand the test of time and I strongly recommend it as an essential resource for students, researchers, policy-makers and anyone wanting to know more about The Gambia's recent transition from autocratic rule to democratic government."

Dr Ebrima Ceesay

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This book has come to fruition thanks to the work of an extended team of dedicated people, who are passionate about The Gambia. The book immensely benefits from the alumni network of the LLM in Human Rights and Democratisation in Africa of the Centre for Human Rights, the University of Pretoria, from which the majority of the authors were sourced, across Africa. Selected chapters were also drawn from scholars in the United Kingdom, United States, and Mexico. We are immensely grateful to all the authors for their commitment, determination, intellectual generosity, and patience to see this project to fruition.

We are enormously grateful for the institutional support given to the book project by the Centre for Human Rights, University of Pretoria. We would like to especially thank Professor Charles Fombad, the Director of the Institute for International and Comparative Law in Africa (ICLA), for his support, guidance, and direction in making this dream a reality.

Special thanks are also extended to all of our reviewers for their time and insightful comments on each of the manuscript. We would also like to thank Lizette Hermann, Liesl Hager, Kate Painting, and other editorial team members at the Pretoria University Law Press (PULP) for their help and support publishing the book.

Finally, special appreciation goes to the Chief Justice of The Gambia, Hassan B Jallow, for graciously agreeing to write this book's foreword. We greatly appreciate his support and kind words.

Any opinion expressed in this book is solely that of the authors and not necessarily of the institutions they represent or are associated with.

Satang Nabaneh
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March 2022

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ACRONYMNS AND ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
African Charter	African Charter on Human and Peoples' Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
African Court	African Court of Human and Peoples' Rights
AFPRC	Armed Forces Provisional Ruling Council
APRC	Alliance for Patriotic Reorientation and Construction
ARB	Africa Research Bulletin
AU	African Union
BLS	Best Loser System (BLS)
CBOs	Charity Based Organisations
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEECs	Central and Eastern European Countries
CO	Colonial Office
CPA	Child Protection Alliance
CSOs	Civil Society Organisations
CRC	Constitutional Review Commission 2018
CRC 1995	Constitutional Review Commission 1995
CRC Act	Constitution Review Commission Act, 2017
COMESA	Common Market for Eastern and Southern Africa
CSW	Commission on the Status of Women
DHS	Demographic and Health Survey
DCA	Democratic Congress Alliance
DoIS	Department of Information Services
ECOWAS	Economic Community of Western African States
EMB	Electoral Management Body
ESCR	Economic Social and Cultural Rights
EU	European Union
FBOs	Faith Based Organisations
FCO	Foreign & Commonwealth Office
FGM	Female Genital Mutilation
GAPD	Gambia Association of the Physically Disabled
GBA	Gambia Bar Association
GCC	Gambia Christian Council
GCP	Gambia Congress Party
GDC	Gambia Democratic Congress
GDP	Gross Domestic Product
GDP	Gambia Democratic Party
GMC	Gambia Muslim Congress
GNA	Gambia National Army
GPP	Gambia People's Party
GPU	Gambia Press Union
GRTS	Gambia Radio and Television Services
ICC	International Criminal Court

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IEC	Independent Electoral Commission
LRD	Lower River Division
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MDAG	Medical and Dental Association of The Gambia
MCG	Media Council of The Gambia
MoICI	Ministry of Information and Communication Infrastructure
MMD	Movement for Multi-Party Democracy
MPs	Members of Parliament
MSM	<i>Mouvement Socialiste Militant</i>
NA	National Assembly
NAMs	National Assembly Members
NCC	National Consultative Committee
NCCE	National Council for Civic Education
NCP	National Convention Party
NCSTJ	National Comprehensive Strategy on Transitional Justice
NDP	National Development Plan
NGOs	Non-Governmental Organisations
NMCA	National Media Commission Act
NHRC	National Human Rights Commission
NPP	National People's Party
NRP	National Reconciliation Party
NYP	National Youth Parliament
PDOIS	People's Democratic Organisation for Independence and Socialism
PIEC	Provisional Independent Electoral Commission
PPA	People's Progressive Alliance
PPP	People's Progressive Party
PURA	Public Utilities Regulatory Authority
SAPs	Structural Adjustment Programmes
SDGEA	AU Solemn Declaration on Gender Equality in Africa
SDGs	Sustainable Development Goals
TANGO	The Association of Non-Governmental Organisations
TCP	Transitional and Consequential Provisions
TFPTP	Three-first-past-the-post system (TFPTP)
TRRC	Truth, Reconciliation and Reparations Commission
UDP	United Democratic Party
UP	United Party
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational Scientific and Cultural Organisation
UNHCR	United Nations Human Rights Committee
VPN	Virtual Private Network
WANEP	West Africa Network for Peacebuilding
ZCTU	Zambian Congress of Trade Unions