

Thilo Marauhn / Hatem Elliesie (Eds.), Legal Transformation in Northern Africa and South Sudan, Eleven International Publishing, 2015, 203 pages, ISBN: 978-94-6236-524-7

2011 was an important year for the African continent. It was the year in which South Sudan became formally independent after more than 20 years of war and it was the year of a series of uprisings in Northern Africa known as the Arab spring. The publication “Legal Transformation in Northern Africa and South Sudan”, edited by *Thilo Marauhn and Hatem Elliesie*, provides insights into the historical events and their implications for legal transformations.

The contributions are mostly papers presented at the joint conference of the *Gesellschaft für afrikanisches Recht* (African Law Association) and the Max Planck Institute for Comparative Public and International Law, held in Heidelberg (Germany) on 4-5 November 2011, and the annual conference of the *Arbeitskreis Überseeische Verfassungsvergleichung* in Limburg an der Lahn (Germany) on 5-7 July 2012. The first part of the book discusses three issues: the legal transformations in Northern Africa from an international intervention perspective in Libya, the Egyptian constitution process, and the constitutional reform in Morocco. The second part of the publication deals with legal transformation in South Sudan assessing constitutional development, conflict management, and peace and secession processes.

In chapter one, *Thilo Marauhn* focusses on questions arising from the 2011 Military intervention in Libya. This military intervention was based on the UN Security Resolution 1973 (adopted on March 2011) and referred to the responsibility to protect civilians and civilian populated areas. The implementation of this resolution eventually contributed to the legal and constitutional transformation in Libya. The author states that the military operation of Resolution 1973 can be considered to follow more or less the UN Security Council Practice. On the other hand, such intervention in a non-international armed conflict calls to discuss the fact that the Responsibility to Protect will lead to further military interventions in the future. The question raised by the author is whether international standards or democratic intervention may serve as a justification for such interventions.

In the second chapter, *Katrin Seidel* and *Naseef Naeem* reflect on Egypt's Constitution. The constitution making process has been a key element in the political transition of Egypt, giving Egypt's Supreme Constitutional Court a huge role to play. However the Supreme Council of Armed Forces has currently given itself legislative and executive authority through 'extra-constitutional' action. This situation has initiated a process, which is referred to as 'military constitutionalism'.

The third chapter by *Hatem Elliesie* focusses on the political and legal changes in Egypt after former president Mubarak resigned. The authors critically assess the power play between the president and the Supreme Constitutional Court about elections and constitutional issues. *Elliesie* also discusses the different legal aspects and insights to the trial of president Mubarak. This trial was seen as a test for Egypt's legal system. However, the triumph for the rule of law, that once was promised, was not delivered to the people. The role of

transitional justice is thus a delicate one and one will have to wait to see if transitional justice will not only serve the past but also the future of economic and political reform.

Another interesting part regarding the legal transformation in Northern Africa is the judicial reform in Morocco. Morocco has been successful in slowly adapting and modernising its laws and is one of the few countries where protests have been present, but not to that extent as in its neighbouring countries. This is thanks to the constitutional reform process intended to enhance judicial independence and the promotion of the rule of law. *Carolyn A. Dubay* argues that vague promises and the slow pace of which reforms are implemented, should be reviewed by Morocco's magistracy.

The fifth chapter on legal transformation in Northern Africa focuses on the challenge of restructuring an economy under the rule of law. The Arab spring has been about freedom, the rule of law, and religion. *Achim-Rüdiger Börner* sees fundamental freedoms and the rule of law as the best possible basis for a free market economy in which market constraints are abolished and restructured national economies will lead to prosperity.

On 9 July 2011 the Republic of South Sudan was born and with it came a new constitution, the Transitional Constitution of South Sudan. This constitution is a transitional constitution and maps out the process for South Sudan's actual Constitution. The Transitional Constitution of South Sudan relies on a strong executive power and *Katharina Diehl* and *Daniel Gruss* argue in chapter six that the need for stability, peace and security is crucial but should not lead to a disproportionate concentration of power in the hands of the national executive.

Chapter seven, written by *Ingo Henneberg* and *Friedrich Plank*, deals with conflict management in the Constitution of South Sudan. South Sudan, as the youngest republic in the world, faces many challenges and conflicts which threaten the future of the young country. The multitude of violent conflicts should be transformed in a legal manner to enhance peaceful solutions and conflict resolution. To create conflict transformation, an analysis of the constitution and the political system is needed. However, this has not yet been achieved.

One of the best-known conflicts between Sudan and South Sudan is the Abyei Dispute. *Cindy Daase* in chapter eight discusses this conflict arguing that it introduced an appealing method of dispute resolution where its parties can only expect the procedure to be effective if they comply with underlying legal principles.

Finally, the last chapter deals with potential causes and consequences of South Sudan becoming a failed state. *Mehari Taddele Maru* argues that the transformation of South Sudan from a war torn, crisis ridden country to a stable constitutional democracy will remain elusive without a popularly vetted and democratically endorsed permanent Constitution. Constitutional transformation in South Sudan is unthinkable without internal democratic reforms. The author provides insights on how an inclusive and comprehensive national constitutive dialogue could strengthen the constitution-making process.

“Legal Transformation in Northern Africa and South Sudan” offers an interesting legal analysis based on the historical events of 2011. The authors give the reader insights in order to better understand the historical developments and the effects that the Arab spring and the

new nation of South Sudan have had on the rule of law and constitutionalism. It becomes apparent that the authors are experts in their field, making the book timely and relevant. In fact, it is one of the few books in which the legal processes behind the Arab spring and the birth of South Sudan are so eloquently explained. It is an important academic contribution, which is both recommended to legal comparative lawyers and a historically interested audience.

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